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

DEPARTMENT OF
HEALTH AND HUMAN SERVICES
Social Security Administration
Office of Legislative and Regulatory Policy

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

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

DEPARTMENT OF
HEALTH AND HUMAN SERVICES
Social Security Administration

TABLE OF CONTENTS

VOLUME 1

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969 (P.L. 91-173)

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

TABLE OF CONTENTS

VOLUME 2

BLACK LUNG BENEFITS REFORM ACT OF 1977 (P.L. 95-239)

TABLE OF CONTENTS

95TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 95-151

BLACK LUNG BENEFITS REFORM ACT OF 1977

MARCH 31, 1977.—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 VIEWS AND SEPARATE VIEWS

[Including cost estimate of the Congressional Budget Office]

[To accompany H.R. 4544]

The Committee on Education and Labor, to whom was referred the bill (H.R. 4544) to amend the Federal Coal Mine Health and Safety Act to improve the black lung benefits program established under such Act, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment strikes out all after the enacting clause of the bill and inserts a new text which appears in italic type in the reported bill.

PURPOSE OF THE BILL

The primary purpose of the bill is to establish objective criteria for determining entitlement to benefits payments arising out of employment in the Nation's coal mines; to transfer from the Federal Government to the coal industry the residual liability for black lung benefits payments; and to establish a Black Lung Disability Insurance Fund to be maintained by contributions from the coal industry.

BACKGROUND OF LEGISLATION

H.R. 4544, with the exception of minor and technical amendments and an amendment to retain part B responsibilities in the Department of Health, Education, and Welfare, is identical to H.R. 10760, which passed the U.S. House of Representatives on March 2, 1976. That

legislation was the product of extensive hearings and legislative consideration by the Subcommittee on Labor Standards during the First and Second Sessions of the 94th Congress. Comparable legislation was reported by the authorizing committee in the Senate, but sine die adjournment of the 94th Congress precluded final action.

The development of H.R. 4544 actually began in 1973 with an oversight inquiry by the Labor Standards Subcommittee into the processing and adjudication of black lung benefit claims. Relying upon and with resort to the evidence already gathered by the Labor Standards Subcommittee during the 93rd and 94th Congresses, the Full Committee conducted five days of hearings during the 95th Congress on March 14, 15, 16, 17, and 21, 1977, covering the problems to which H.R. 10760 of the 94th Congress was addressed, including:

1. Entitlement provisions based on length of service;
2. The practice of offsetting black lung payments against benefits received from other sources;
3. The practice of barring miners from qualifying for benefits solely because of a current employment status;
4. The administrative practice of appealing all claims favorable to the applicant;
5. The desirability of requiring a reprocessing of denied claims under part B of title IV;
6. The desirability of an amendment to title IV providing that criteria for determining total black lung disability with respect to claims filed after June 30, 1973, should be no more restrictive than the criteria applicable to claims filed on or prior to June 30, 1973;
7. The desirability of an amendment to title IV establishing the principle that affidavits regarding a miner's physical condition constitutes sufficient evidence that such miner was totally disabled due to pneumoconiosis or that his death was due to pneumoconiosis—in those cases where a miner is deceased and no relevant medical evidence exists;
8. Recommendations with respect to the establishment of a black lung insurance trust fund sustained by premiums on coal mined to assume liability for all black lung benefit payments under part C of the current law;
9. Other provisions to establish more objective and equitable criteria for determining eligibility or entitlement to benefits for black lung disability arising out of employment in coal mines;
10. Elimination of the termination date for the operation of part C.

On March 22, 1977, by a roll call vote of 27 to 9, the Committee ordered favorably reported H.R. 4544, amended by striking out all after the enacting clause and substituting in lieu thereof the text of an amendment in the nature of a substitute, as further amended by the Committee.

History of Black Lung Program

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 irrebuttable 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 conclusive presumption that a miner is totally disabled if he is so afflicted. Rather, the present test is administratively determined except that a miner is to be deemed 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."

The Black Lung Benefits Act of 1972 amended the basic law in several important respects; generally broadening claimant eligibility in the light of the experience gained during the operation of the program, and extending Federal responsibility for the payment of benefits in an attempt to enable States "a reasonable and necessary additional period of time * * * to prepare to assume responsibilities for the payment of black lung benefits, thereby relieving the Federal Government of future responsibilities." (H. Rept. 92–460, at 7–8) As will be discussed in a following section, this latter objective was not achieved. With respect to the changes broadening claimant eligibility, it should be noted that the Committee initiated the 1972 amendments in large part because of dissatisfaction with the administration of the law by the Department of Health, Education, and Welfare (Social Security Administration), which in some respects, clearly contravened discernible legislative guidelines.

The amendments proposed by H.R. 4544 rest on a comprehensive analysis of the program since its inception. They are remedial in nature—in several instances again redefining misapprehended legislative intent—and ultimately excise the Federal Treasury from continued responsibility for the payment of black lung benefits claims.

A concluding comment on the general health of coal miners compared with that of other workers, taken from the digest of a 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 percent 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 percent.

Summary and Discussion of Major Provisions

Section 1. *Short Title.*—Provides that the bill may be cited as the "Black Lung Benefits Reform Act of 1977".

SEC. 2. *Entitlements.*—This section amends sections 411, 412. 414, 421, and 430 of the Federal Coal Mine Health and Safety Act of 1969 to provide that a miner (or eligible survivors of a deceased miner) shall be entitled to the payment of benefits if the miner was employed for 30 years or more in underground coal mines. The entitlement is applicable with respect to employment for 25 years or more in anthracite coal mines.

These entitlements also apply to a miner whose conditions of employment in a coal mine other than an underground mine were substantially similar to those in an underground coal mine.

The entitlements need not be incorporated into a State workmen's compensation law in order to qualify as providing adequate coverage for black lung benefits.

In establishing periods of employment in underground coal mines for purposes of determining the applicability of the entitlements under part C of the program (coal industry responsibility), no consideration may be given to periods of employment after June 30, 1971, the date the dust standards became fully effective.

Based on data tabulated through 1974, 80.89 percent of the claims involving miners with a known coal mining employment experience of 30 or more years have been allowed under part B of the program (Federal responsibility).

On June 23, 1973, pursuant to growing complaints regarding eligibility determination inequities, the Subcommittee conducted an oversight hearing in Eastern, Kentucky, a major coal-producing area, and received testimony from more than 100 miners and widows who generally alleged wrongful denials of their benefits claims. Virtually all who appeared testified with regard to claims involving coal mining work exposures well in excess of 30 years. It was immediately apparent to the Subcommittee that the greater number of the miner-witnesses were severely and dramatically handicapped by respiratory difficulties. And it was equally apparent that the widows were testifying about the disabilities of husbands arising out of work experiences identical to those of the miners who appeared before the Subcommittee. Subsequent investigation revealed that the Eastern (Ky.) universe was not unique in that respect; indeed, that many seemingly allowable claims involving miners with extended coal mining work experiences were curiously being denied. The justifications given in individual cases more often turned on disputed or unavailable medical evidence; and proved ultimately unsatisfactory to the Subcommittee, and thereafter to the full Committee as well.

In recognition of the historically demonstrated and exceedingly high probability of total disability (80.89 percent), and out of concern for an equally probable risk of error in the remaining cases, an objective test was established to simply provide part B benefits payments to all claimants whose claims had been denied and who could demonstrate 30 or more years of underground coal mining experience. This assertedly rational and reasonable approach was elected over discretely restructuring the eligibility determination process in order to reach such legitimate and compelling cases; a restructuring, incidentally, which would have produced a complex, unmanageable, and enormously costly approach to ascertaining benefits entitlements.

The Committee approach was supported by eminent medical testimony:

(a) Dr. Daniel Fine, specialist in internal medicine:

> To affirm that any single test, or even combination of tests can by themselves accurately define the relationship between a given lung disorder and the ability of a miner to work suggests a gross misconception of the process of disability, a mesmerization by numbers and technology and a delusional acceptance of pseudo-science, rather than true science * * * [B]earing in mind the unlikelihood of establishing a meaningful objective quantifiable test of disability, recognizing the progressive and almost inevitable exposure of coal miners to dust inhalation over a period of years, and accepting the reasonable presumption that deposition of coal and silica and other minerals in the lungs is a deleterious body burden, it would seem eminently fair and humane to recognize as a matter of law that the passage of a given number of years as a coal miner is, in and of itself, reasonable evidence of a substantial burden of lung damage from coal mining and to compensate the miner accordingly. Such a law would be simple to administrate, would save government funds and the efforts of administrators, medical examiners and miners. Most importantly, it would recognize that coal mining practiced under present conditions produces continued exposure to dust inhalation and deposition which is cumulative, permanent and potentially injurious to the miner and by compensating for this exposure would provide a strong incentive to limit human exposure to this hazard. Such legislation would declare that we place at least as much value on human lives as we place on profit and a continuing source of cheap fuel.

(b) Dr. Lowell Martin, practicing physician among coal miners:

> This [entitlement] that we are all being concerned with, in my experience, is a good screening mechanism and a good practical way of getting rid of a lot of paperwork, a good way of getting rid of a lot of claims that have no reason to be processed through the usual manners in which we are processing claims. * * * Pathologically, it has been proven that the coal dust itself does cause damage to the lungs that is permanent, that cannot be demonstrated on X-ray maybe for several years, and maybe not at all.

(c) Dr. Murray B. Hunter, Director, Fairmont Clinic, Fairmont, W. Va.:

> It is exposure over time that produces coal workers pneumoconiosis and the enactment of a reasonable presumption that thus and so many years of exposure to coal mine dust, be it 25, 30, or 35 is enough, represents sound social policy. It will take both the doctors and the lawyers out of the black lung business, a development devoutly to be wished.
>
> A miner, wishing to establish disability, whose exposure comes to less than the stipulated number of years, would have to establish his disability by medical evidence. Pre-

sumptions as to disability are not new as matters of social policy. An individual who has made a career out of military service and has developed a psychosis while in the military. is presumed to have developed that psychosis as a result of his military service, irrespective of the fact that psychosis also exists in the general population. The presumption is that the military life is somehow or other psychologically noxious. The sense of H.R. 8 and 3333, by analogy, presumes that 35 years of dust exposure is noxious to the respiratory system. Soldiers and sailors do survive a lifetime of service without emotional sequelae and there are many coal miners who work for 35 years without pulmonary deficits. These facts in no way gainsay the social desirability of a statutory mechanism for the presumption of disability after a critical exposure has been reached. * * * If the law requires a test. the test should be as objective as man can devise it. There is nothing intrinsically wrong with a panel of experts, provided that such panelists are oriented as to the social policy objectives and human requirements that the Congress intends.

Dr. Edgar L. Dessen. Chairman, Task Force on Pneumoconiosis. American College of Radiology, pointed out the inherent invalidity of excessive reliance upon isolated medical testing in ascertaining disability (in this case, by chest roentgenogram) :

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. * * *

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.

> Our point, as in 1971, is to urge upon you an awareness of the extent and limitations of X-ray findings in this instance and to emphasize the need to avoid prejudicing their use in other circumstances where [other] studies can be more explicit in defining health problems. We would doubt that radiology will become a statistically exact science.

Finally, the Committee was deeply impressed by comments received from James L. Weeks, a noted consultant in the area of pneumoconiosis. Though Mr. Weeks advocated an entitlements test based on 15 or more years of coal mining employment, the impact of his summary bears as well on the 30-year provision incorporated in the bill—in fact, with more compelling emphasis. (Note: Mr. Weeks' comments appear in the Appendix to this Report.)

Under this provision, the Social Security Administration will be required to allow all claims filed by June 30, 1973—the filing date after which full Federal responsibility for the payment of benefits terminated—involving miners with 30 or more years of employment in underground coal mining by that date (notwithstanding the claim was filed prior to that date). Though section 15 of the bill makes all of the amendments made by section 2 (of the bill) effective on and after December 30, 1969 (the initial effective date of the black lung benefits program), claims approved solely because of such amendments (filed before the bill's enactment) shall be awarded benefits only for the period beginning on the date of the bill's enactment. Thus, a miner, for instance, who achieved 30 full years of underground coal mining employment by 1972, and who filed a timely part B claim which was subsequently denied, will be entitled to benefits payments under part B pursuant to this provision. If the entitlement derives solely from amendments made by this section, the award of benefits may not commence prior to the bill's enactment.

A test of 25 or more years was adopted with respect to employment in anthracite coal mines. A lesser test in the case of anthracite miners is easily supportable. Initially, it is significant that the Administration has advised the Committee that the 25-year requirement applicable to anthracite miners "would have minimal fiscal impact * * * since anthracite miners [with that amount of work experience] would have qualified for benefits on the basis of medical evidence."

Beyond that, the Subcommittee hearing record contains the following medical testimony suggesting peculiarly adverse qualities about anthracite coal dust:

(a) Dr. Keith Morgan:

> * * * in the anthracite area of Pennsylvania 14 percent of working coal miners had complicated pneumoconiosis. In Utah and Colorado it was around 0.1 percent. * * *

(b) Dr. Leroy Lapp:

> * * * there is a higher prevalence of abnormal respiratory function in anthracite miners than bituminous miners. * * * We are not certain [what would cause that]. * * * It could be something different about anthracite dust.

(c) Dr. Murray Hunter:

> The difference [in the increased prevalence of potentially disabling respiratory disease of coal miners as compared to the general population] is highest for anthracite miners. least for miners in the Western States.

Moreover, a study to determine the prevalence of coal workers' pneumoconiosis (CWP) in U.S. coal miners (conducted by the National Institute of Occupational Safety and Health of the U.S. Public Health Service) encompassed analyses among the major coal-producing geographic areas and according to years of employment. It revealed that progressive massive fibrosis (complicated pneumoconiosis) is nearly seven times more prevalent among anthracite miners than Appalachian bituminous miners. and infinitely more prevalent when compared to Midwestern and Western bituminous miners. In the potentially crippling stages of simple pneumoconiosis, the relevant comparisons are approximately 3.5:1 and 8:1. respectively. When years of employment are related to the prevalence of CWP according to region, it is observed that a similar pattern of increased prevalence among anthracite miners occurs over their bituminous counterparts in all other regions. The study report also contains the following relevant excerpts:

> * * * it is [also] evident that anthracite miners are not only at an increased risk of contracting the disease. but once they have developed category 1 (simple pneumoconiosis). they may also be more likely to progress to the more advanced stages more often than are their bituminous counterparts. * * * [I]t is difficult not to conclude that there is something in the environment of the anthracite miners that puts them in special jeopardy. However, it is doubtful that the quantity of respirable dust alone is responsible.

The entitlements established by section 2 of the bill are made expressly inapplicable as minimum requirements that must be incorporated into a State workmen's compensation law in order that it may qualify as providing adequate coverage for black lung benefits. The Committee did not wish to add any additional impediments to States contemplating revision of applicable workmen's compensation laws such that the State law would be then deemed "adequate" as a substitute for the Federal program with respect to claims otherwise covered by any such State law.

The entitlements do apply to a miner whose conditions of employment in a coal mine other than an underground mine were substantially similar to those in an underground coal mine. A similar provision exists in the current law regarding the application of certain presumptions. In this respect, the Committee was considering, for instance, surface mine employment in a preparation plant. or tipple. where the exposure to coal dust is no less intense than that in underground mines.

Under part C of the program, the entitlements apply only insofar as the required years of employment may be achieved by June 30, 1971.

Here again, an identical provision exists in the current law in determining whether a miner was employed for 15 years or more in underground coal mining. If that test is met, the claimant may be benefited by the application of certain rebuttable presumptions. Thus, the counting mechanism in the bill is keyed to the same period. The underlying purpose of a specified date certain in this application is that, prior to that date, the generation of coal dust in mining operations was virtually uncontrolled. By June 30, 1971, all coal operators were required (by title II of the Federal Coal Mine Health and Safety Act of 1969) to continuously maintain the average concentration of respirable dust in the mine atmosphere at or below 3.0 milligrams of respirable dust per cubic meter of air—a level of concentration which, if achieved and maintained, is not now believed to be unusually dangerous to the health of coal miners. Those miners employed for long periods prior to the onset of Federal regulation were inevitably and constantly exposed to dust concentrations devastating to the human condition. To the extent the requisite years of employment were accumulated prior to the advent of effective dust control, it is equally rational and reasonable to apply a comparable entitlements test to both parts B and C claimants without regard to the essential insignificance of whether a claim happened to be filed on June 30, 1973, or July 1, 1973 (dates surrounding the demarcation of full Federal responsibility for benefits payments).

The amendments made by this section provide further that a claim for benefits may be filed under part B of the program (Federal responsibility) at any time on and after the date of enactment of the bill in the case of a miner whose date of last coal mine employment occurred before December 30, 1969 (the date the black lung benefits program commenced). This provision recognizes that coal operators were not put on notice with respect to federally-mandated and rigorous dust control requirements until the date of enactment of the Federal Coal Mine Health and Safety Act of 1969. It was felt that miners whose total coal mining work experiences occurred prior to that date should therefore be regarded as Federal beneficiaries under the black lung benefits program. This is accomplished by adding the provision within the ambit of part B. Except to the extent this provision expressly renders inapplicable any other requirement, condition, or application of part B, it is applicable as well to this provision. The provision merely provides possible access to part B benefits payments for claimants in cases where all of the miner's coal mining employment occurred before December 30, 1969.

SEC. 3. *Offset Against Workmen's Compensation Benefits.*—Benefits received under the Act may be offset by an amount equal to any payment received under a State workmen's compensation, unemployment compensation, or disability insurance law on account of disability due to pneumoconiosis. This provision merely brings part B of the program into accord with the treatment afforded offsetting State benefits under part C of current law. Only State benefits received due to pneumoconiosis, and not those received due to an unrelated condition, may act to reduce Federal benefits payments in this respect. This amendment becomes effective on the date of the bill's enactment.

SEC. 4. *Current Employment As a Bar to Benefits.*—This section prohibits under certain circumstances denial of a claim solely on the

basis of employment as a miner at the time of filing or death. The provision is clearly not intended to reduce the fact of a miner's employment at the time of filing a claim for benefits or death to a state of irrelevance. Obviously, the employment circumstance itself bears very heavily against any contention of total disability at such time. Rather, the section isolates specific situations of employment change which may suggest the existence of legal disability notwithstanding continued employment status. The section thus bars denial of a claim for benefits payments solely on the basis of employment as a miner if (1) the location of such employment was recently (from the perspective of the date of filing, or death, as the case may be) changed to a mine area having a lower concentration of dust particles, (2) the nature of such employment was changed so as to involve less rigorous work, or (3) the nature of such employment was changed so as to result in the receipt of substantially less pay.

The Committee believes this understanding is already implicit in current law and seeks, by this amendment, to underscore the significance that mere status as an employee is not always accompanied by the absence of total disability or death due to pneumoconiosis (within the meaning of the Act). The Conference Report accompanying the 1972 amendments should have been instructive in this respect:

> * * * 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. H. Rept. 92–1048, at 7.

Despite this legislative mandate, claims have continuously been denied solely on the basis that the miner is or was working in a mine with no consideration as to the type of work being performed. Because of this administrative misapplication of the law, the amendment is made retroactive to December 30, 1969, the initial effective date of the black lung benefits program.

The section also provides that a miner may file a claim for benefits irrespective of his employment status at the time of such filing. The miner shall thereafter be notified as to whether he would be eligible for the payments of benefits except that the circumstances of his employment do not comport with the limited circumstances under which a claim may not be denied solely on the basis of employment as a miner. This provision augments the preceding provision by ensuring that miners who believe they are afflicted with disabling pneumoconiosis, and who are also employed in coal mining at the time, need not engage in an exercise of "Catch-22" futility by having to elect between maintaining employment (thus probably disqualifying themselves from eligibility on the basis of a threshold employment circumstances inquiry) and forsaking employment (thereby incurring the risk of denial, and a consequent loss of all income support) in the absence of any meaningful indication of benefits eligibilty.

At this point, it should be noted that the so-called "typical" coal miner, because of both the one-industry (coal) characteristic of his

region and his socioeconomic circumstance, continues to engage in the rigorous activity of his employment beyond the point where prudence and human compassion would dictate otherwise. It is a sorry and unconscionable specter indeed to witness that self-destruction, which itself is most often compelled by considerations apart from the miner's control. To the extent these provisions make some of the attendant decisions somewhat more manageable, and provide an alternative, they are amply justified.

SEC. 5. *Appeals.*—Except upon the motion of a claimant, the decision of an administrative law judge favorable to a claimant cannot be appealed or reviewed. This provision was born out of Committee concern that decisions favorable to claimants of certain administrative law judges were being selectively reviewed by the Social Security Administration's Bureau of Hearings and Appeals, and reversed at a curiously high rate. According to data requested by the Subcommittee from the Social Security Administration, Appeals Council reversals of favorable decisions issued by administrative law judges approached 90 percent of its own motion review cases completed to that point. The data was relevant to determinations made during FY 1974.

Heightening this concern was a memorandum from the Director of the Bureau of Hearings and Appeals to all black lung administrative law judges, issued October 20, 1975. It states in relevant part:

> * * * I am very pleased that there has been a substantial increase in the number of Black Lung case dispositions. However, I am concerned that this increase in production has been accompanied by a significant increase in the Black Lung reversal rate.
>
> During the period January through July 1975, the reversal rate in Black Lung showed a slight decline. * * * The recent increase in the reversal rate during the last two months is * * * difficult to understand. Our review of the individual production records shows that the higher reversal rate was caused largely by an increase in the reversal rate of a relatively small number of judges.
>
> In consideration of the overall increase in the reversal rate, I have decided to reinstitute the review of favorable Black Lung hearing decisions by the Appeals Council's support staff in the Division of Appeals Operations. Therefore, all such decisions (with the claim file) should be forwarded to (the Bureau of Hearings and Appeals).

The closing paragraph of the memorandum states: "The action being taken should not be construed as an attempt to interfere with the independence of Black Lung judges." It would appear that this somewhat belated exercise in propriety may have been lost in the rather profound implications of the preceding excerpts.

The Committee therefore believes reversals of favorable decisions issued by administrative law judges are suspect to the point where they should be summarily set aside. Such reversals are tainted beyond individual redemption and are impossible to isolate within the universe of favorable decisions reviewed. The only fair and appropriate response is to retroactively reinstate all favorable decisions issued by administrative law judges. However, the Committee is pleased to note

that the Department of Health, Education, and Welfare has announced a new policy with respect to this matter as reflected by the assurance of March 16, 1977 to the Chairman of the Committee as follows:

> In response to the specific concerns you have expressed to me, I want to inform you that the Department does not, and has not in the past, appealed approved black lung claims at the initial or reconsideration levels. Moreover, we are not now challenging favorable decisions reached at the hearing level, and do not plan to do so in the future. However, we will reconsider this course of action if we find over time that hearing decisions contain an excessive number of errors.

SEC. 6. *Individual Notifications.*—This section directs the Secretary of Health, Education, and Welfare, in cooperation with the Secretary of the Interior and coal operators, to locate potentially eligible persons (under part B of the program) who have not filed a black lung benefits claim and afford such persons an opportunity to do so. A 6-month filing limitation is imposed when notification is accomplished and claims filed will be considered as if filed on June 30, 1973 (under part B of the program).

The Committee is aware that the Social Security Administration, in nearing the conclusion of that part of the black lung benefits program delineating full Federal responsibility for the payment of benefits (versus coal operator responsibility), cooperated with certain coal operators in furnishing information sufficient to assist such operators in ascertaining former employees who had not yet filed a claim and thereafter to advise and encourage such employees to undertake a timely filing within the period of full Federal responsibility. Though the nature of this cooperation is itself questionable, it appears the Social Security Administration could have minimally extended such cooperation to all, in a genuine effort to reach as many of those possibly entitled to black lung benefits as was feasible.

Some Members of the Committee also asserted that the Social Security Administration had not undertaken a program sufficiently adequate to apprise potential claimants of the existence and availability of the black lung benefits program; indeed, that many miners and widows did not learn of the program until the period of full Federal responsibility had passed. At a Labor Standards Subcommittee hearing on June 6, 1974, Bernard Popick, former Director of the (SSA) Bureau of Disability Insurance responded:

> * * * I would like to go back to an earlier point that you made or implied and that is the question of how many people have not applied or did not apply for benefits with the Social Security Administration up to July 1973 and lost benefits by having failed to apply.
>
> I think we went into that question a little bit in an earlier hearing. We expressed our serious doubts and reservations as to whether there were very many people who by July 1973, going all the way back to December 1969, over that period, had failed to file a claim with us and would have had a valid claim if they had.
>
> That is why I began my remarks earlier with pointing out the lengths to which we went and the steps we took to

> make sure that eligibles under the program were informed of their rights and those who failed to file under the original law up to May 1972, we felt those additional ones had then filed after the amendments in May 1972 and as of July 1973 with over a half million claims having been filed, we were not under the impression that there were very many people who failed to file and who should have filed as far as part B of the program was concerned.

This provision of the bill requires only that the Secretary (HEW) undertake a good faith and diligent effort to locate individuals who are likely to be eligible for part B benefits and who have not filed a claim for such benefits. In this pursuit, the Secretary is directed to cooperate with specified parties in identifying individuals having long periods of employment in coal mining (and, if deceased, their potentially eligible survivors). He shall then appropriately inform those who have never filed a claim for benefits under either parts B or C of the program of the possibility of their eligibility for benefits and offer them assistance in preparing their claims where it is appropriate that a claim be filed. Any individual informed under this provision has six months from the date of notification within which to file a part B claim. Although any claim filed during any such period shall be considered on the same basis as if it had been filed on June 30, 1973, benefits payments need not be provided for any period before the date of the bill's enactment.

It is emphasized that this provision is intended to focus solely on those individuals who may have been eligible for part B benefits had they made a timely filing by June 30, 1973, but who did not do so because of their essential unawareness of such eligibility. To the extent they have since filed a claim for black lung benefits payments, they are aware of the program and therefore excluded from these notification requirements. It is also emphasized that the Secretary is expected to measure the eligibility of claimants notified under this provision according to eligibility criteria and conditions in effect and existing on June 30, 1973. The only exception to this date of assessment (regarding the application of such eligibility criteria) are covered by the amendments provided by sections 4 and 8 of this bill, which are made effective retroactive to December 30, 1969, because the Committee believes the law has been misapplied in these respects. The sections indicated address limited circumstances under which current employment shall not constitute a bar to benefits, and evidence required to establish a claim. Beyond those exceptions, a claimant notified under this provision will have his benefits eligibility determined as though he had filed on June 30, 1973.

The only guidance provided the Secretary in determining those who should be notified under this provision is couched within the language, "individuals who are likely to be eligible for such [part B] benefits" and "individuals having long periods of employment in coal mining [including survivors]." It is undesirable that the Committee attempt to further define this universe, except by again underscoring that the focus of this provision is the individual who may have qualified for part B benefits had he not been uninformed. A variety of conditions are inevitably assessed in the claims determinations process, and all claimants are surely not alike. The Secretary is best able to describe those characteristics which tend to be associated with favor-

able claims and the matter must necessarily therefore be committed to his discretion. The Committee expects only that the Secretary discharge this responsibility with good faith and diligence.

SEC. 7. *Definitions.*—This section provides that the criteria for determining total disability with respect to claims filed after June 30, 1973, shall be no more restrictive than those applicable to claims filed on June 30, 1973. For some inexplicable reason, the Department of Health, Education, and Welfare, exercising authority provided under the current law, has literally saddled the Department of Labor with rigid and difficult medical standards for measuring claimant eligibility under part C of the program. The so-called "permanent" medical standards now in effect under part C are much more demanding than the so-called "interim" standards applied by HEW under part B of the program. HEW points to "substantial legal and other reasons" for applying restrictive medical standards to a claim filed on and after July 1, 1973, and less restrictive criteria to a claim filed before July 1, 1973. That assertedly "substantial" support apparently arises out of language contained in the Senate Report accompanying the 1972 amendments. In actual fact, HEW has completely misplaced the emphasis of the Senate Report. The Senate directive with regard to the "interim" standards clearly spoke to standards that would obtain until "the establishment of new facilities or the development of new medical procedures." (S. Rept. 92-743, at 18) That was the clear and explicit condition underscoring the need for and the duration of "interim" medical standards. Under the HEW interpretation, these developments somehow magically occurred at the onset of part C of the program. The Congress did not intend in adopting the Senate initiative, as HEW so unequivocally asserts, that this "interim" approach would suddenly conclude at the termination date for new part B filings. And HEW could hardly intimate that the "new facilities" or "new medical procedures" referenced so specifically in the Senate Report have, in fact, become reality.

This provision of the bill would require that standards no more restrictive than the "interim" medical standards shall be equally applicable to part C claims. To the extent that more restrictive standards are justified by the presence of "new facilities" or "new medical procedures," it is apparent that the Congress must in the future make that determination.

It is significant that the Department of Labor shares the Committee's view of the inapplicability of the "permanent" criteria to part C claims. The following letter from the Solicitor of Labor to the General Counsel of HEW urges the latter to permit the use of the "interim" criteria in Department of Labor cases:

U.S. DEPARTMENT OF LABOR,
OFFICE OF THE SOLICITOR,
Washington, D.C., September 13, 1974.

JOHN B. RHINELANDER,
General Counsel, U.S. Department of Health, Education, and Welfare, Washington, D.C.

DEAR MR. RHINELANDER: On August 5, 1974, a meeting was held between Social Security and Department of Labor black lung officials with a view toward resolving the dispute which has arisen concerning the appropriateness of the medical and evidentiary standards promulgated by Social Security for use by the Department of Labor in its

black lung program. This meeting was first requested by my letter of June 14, 1974.

We are sorry to report that no satisfactory resolution of the problem was achieved at the meeting.

As you may recall, the substance of the issue is that Social Security, which has the exclusive authority under the Black Lung Benefits Act to promulgate medical-evidentiary standards, has issued regulations which require that certain more restrictive medical screening criteria are to be applied in determining the eligibility of Department of Labor black lung claimants than are applied in determining the eligibility of Social Security black lung claimants. It has been our belief that this variance in standards is unjust and completely unsupported by the mandate of the statute.

We have received your comments concerning this matter at the August 5 meeting, in your letter of August 1, 1974, as well as in Mr. Gerald Altman's letter of August 14, 1974. In light of these contacts it is now apparent that Social Security is unwilling to amend its medical regulations in the interest of uniform permanent medical criteria.

In defense of its decision not to change the interim regulations to make them applicable to Department of Labor claims, Social Security officials have advanced a number of arguments. For the reasons detailed herein we find the Social Security arguments unacceptable in all respects, and remain firm in our belief that there is no justification for the continued limitation on the use of the interim criteria in Department of Labor claims.

1. DOL is not authorized, by law, to adopt the interim criteria without SSA action.—The Social Security suggestion that the Department of Labor is authorized by law to adopt the interim criteria without a change in the regulations is legally unsupportable. The suggestion is predicated upon the language of section 422(h) of the Act and 20 CFR 410.414 and 410.426 of the permanent criteria.

Section 422(h) of the Act provides in pertinent part:

> * * * 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 coal mine or mines. * * *

We interpret this provision to give the Secretary of Labor authority to develop a formula for assessing liability against a particular coal operator. Clearly the language of 422(h) does not authorize a Labor Department foray into the medical standards area. More importantly, perhaps, is the clear congressional intention that the promulgation of medical standards be exclusively within the province of the Department of HEW. This fact is attested to on page 1 of the August 1 letter. Mr. Altman suggested that a presumption of disability based upon specific medical facts is not a medical standard but a standard of evidence within the province of the Secretary of Labor. We believe this position to be logically unsound. especially in light of the fact that the interpretation of all the medical-evidentiary presumptions contained in the Act itself are within the province of Social Security, and totally inadequate to support what appears to be a Department of Labor intrusion into an area from which it is clearly excluded by the express terms of the Act.

As Mr. Altman points out, sections 410.414 and 426 are incorporated in the Department of Labor's regulations. However, it is clear that any construction of those provisions which arguably permits the Department of Labor to utilize the interim standards does not comport with accepted canons of statutory interpretation. Section 410.414 and 426 of the regulations contain general provisions which permit the use of "other relevant evidence." Section 410,490, the interim criteria, contains an explicit delineation of the "other relevant evidence" in question and prohibits the Department of Labor from using such specific "other relevant evidence." It is impossible to see how the Department of Labor could appropriately utilize a general provision of law to incorporate by means of questionable regulatory authority a specific provision of law which by its own terms is not available for use by the Department. We think any court when faced with these facts would be compelled to rule that the Secretary of Labor had abused his authority under the Act.

2. The variance in standards adversely impacts on DOL claimants.—The further Social Security conclusion that there need be no appreciable effect on claimants as a result of the variance in screening criteria is, we believe, unrealistic.

It is becoming increasingly clear that many of those claimants who can meet the interim criteria, but not the 1969 criteria are, in fact, totally disabled by pneumoconiosis and should be entitled to benefits. In the August 5 meeting Mr. Altman verified this conclusion. In any event, under the current criteria prescribed by Social Security for the Department of Labor's program, a great number of these claimants who file with the Depatment of Labor must be tentatively denied benefits at an early stage in the adjudication of their claims. Although further pursuit of such claims might result in a determination of eligibility, it is our experience that claimants who are initially denied benefits on medcal grounds become discouraged and do not fully utilize the rights available to them to obtain a more intensive review of their claims. This type of claimant will encounter greater difficulty in obtaining legal assistance and often abandon or neglect to pursue his claim.

It must also be noted that those few claimants of this type who are willing to engage in the further pursuit of proof of entitlement must subject themselves to a battery of expensive, time consuming and often unpleasant medical procedures. Frequently, there are no facilities available to conduct these tests near the claimant's residence. The 1972 amendments were enacted largely to ease the difficulty evidentiary burden facing all black lung claimants. Social Security has negated this intent insofar as transitional and Part C claimants are concerned by promulgating variant standards of eligibility which will certainly result in the denial of benefits to an unknown number of worthy claimants who, within the intent of the 1972 amendments, should be found eligible.

3. The legislative history does not support variant standards.—The passage from the legislative history which Social Security argues authorizes the limited applicability of the interim criteria lends no support to their position in this regard. The passage in question, contained in S. Rep. No. 92-743, 92d Cong., 2d Sess. 17-19 (1972) affirms

Congress' intent to ensure the liberalization of eligibility screening criteria in light of the inadequacy and unavailability of clinical facilities with black lung testing capability, a condition which has not significantly changed. This passage clearly authorizes Social Security to liberally evaluate the evidence submitted in respect to a backlog claim but it does not authorize the promulgation of special breathing test screening standards which are applicable to Part B claims but not Part C claims. In fact, the passage refers specifically to evaluatory criteria "other than breathing tests." The relevant portions of the interim criteria are predicated largely on the results of "breathing tests." This passage, by its express terms, simply does not empower Social Security to create by regulation a legal discrimination between Part B and Part C claimants not authorized by the Act. It only directs Social Security to make a lesser effort to rebut the evidence submitted by a backlog claimant.

On the other hand, we believe Congress made it clear that all liberalized medical-evidentiary procedures mandated by the 1972 amendments were to be applied to both Part B and Part C claimants.

Section 430 of the Act makes all 1972 medical-evidentiary amendments applicable to Part C claims. In his explanation of section 430, Senator Randolph noted:

> Questions were raised during the committee deliberations over whether the amendments to Part B would automatically be applicable, * * * to Part C.
>
> * * * * * * *
>
> Although it would appear clear that the same standards are to govern, the committee concluded that it would be best to so specify. S. Rep. No. 92-743, 92d Cong., 2d Sess. 21 (1972).

The July 10, 1974 letter from Congressman Sieberling to Secretary Weinberger reaffirms our view in this regard. Congressman Sieberling points out:

> It was clearly the intent of Congress in passing the Black Lung Benefits Act that all black lung claims be considered under less restrictive medical standards than those established pursuant to the 1969 Act. When the [amendments were] being considered by Congress, the Senate added section 430 to the [Act] to insure that the standards * * * would be substantially equivalent whether the Black Lung Benefits Program was being administered by the Social Security Administration, the Department of Labor, or by the states.

In view of these fairly clear pronouncements, we do not believe that the exclusivity of the interim criteria represents either a correct or appropriate expression of congressional intent.

4. The interim criteria would not suffer from constitutional infirmity if applied by DOL.—We do not believe that Social Security's fears concerning the constitutionality of the interim criteria, if they are applied in cases involving private liability, are justified. It has been

pointed out that the interim criteria do no more than establish a rebuttable presumption of eligibility for benefits. The criteria by their terms set forth a number of avenues of rebuttal. A rebuttable presumption suffers from constitutional infirmity only if it is, in fact, irrebuttable in light of the circumstances surrounding its applicability. This is clearly not the case with respect to the interim criteria. Any coal operator has ample opportunity and resources available to him to present sound medical evidence tending to rebut the presumption of eligibility created by the interim criteria. Indeed, a coal operator often has greater resources at his disposal than does a claimant. Expert medical testimony, as well as a claimant's actual work responsibilities, are only two examples of possible rebutting evidence. There is clearly no due process problem with the procedural application of the interim criteria in respect of claims involving coal industry liability.

5. Variant standards may themselves be unconstitutional.—On the other hand, in light of recent pronouncements by the Supreme Court, there appears to be a strong likelihood that the failure to permit the interim standards to be applied to ease the evidentiary burden of Department of Labor black lung claimants may be unconstitutional. The variance in standards unquestionably creates a discrimination between Part B and Part C claimants. As we have indicated in this letter, such discrimination is not supported by the facts or the law. A discrimination created by law among persons within the same class, which may result in the denial of a benefit to certain members of that class. meets the requirements of equal protection only if a rational basis exists for such discrimination. We do not believe that a genuine rational basis can be constructed to justify the discrimination created by the variance in criteria.

6. Conclusion.—It is our firm belief that the only appropriate way to remedy the existing difficulty is for Social Security to amend its medical regulations to permit the use of the interim criteria in Department of Labor cases. We, therefore, request that you re-evaluate your legal position in this regard, taking into consideration the matters discussed in this letter and inform us of your findings at the earliest possible date.

If we can be of any further assistance to you in this matter, please do not hesitate to contact us.

I look forward to your reply.

Sincerely,

WILLIAM J. KILBERG,
Solicitor of Labor.

Copies to Congressman John H. Dent, Chairman, General Subcommittee on Labor and Bernard E. DeLury, Assistant Secretary for Employment Standards.

SEC. 8. *Evidence Required To Establish Claim.*—This section establishes that affidavits regarding a miner's physical condition shall be sufficient evidence, in the case of a deceased miner for whom no relevant medical evidence exists, that such miner was totally disabled due to pneumoconiosis or that his death was due to pneumoconiosis. The provision, though applicable to both part B and part C claims, is directed primarily at the former. It addresses the dilemma of survivors

who, because of the absence of any relevant medical evidence regarding the physical condition of deceased miners, cannot establish the validity of an otherwise valid claim. In most cases, the miner died many years ago, and such evidence has been lost or destroyed by the miner's physician, or is otherwise now non-existent. The provision merely permits affidavits of persons with knowledge of the miner's physical condition to supplant this void. It is not intended to eliminate the applicable employment test (as modified by section 4 of this bill) in determining eligibility for benefits under the program. In this context, an appropriately disqualifying mine employment at the time of death would constitute "relevant medical evidence."

Like the amendment provided by section 4, the Committee believes this amendment would have been unnecessary if the Social Security Administration had conformed its eligibility determinations process to accommodate all of the evidentiary considerations specified in section 413(b) of the Act. That subsection already establishes the significance of affidavits in the case of a deceased miner, and reads in pertinent part:

> 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 the deceased miner, other appropriate affidavits of persons with knowledge of the miner's physical condition, and other supportive materials.

The Committee bill also requires the Secretary to accept X-rays of acceptable quality submitted by the claimant's physician except where the Secretary has reason to believe that a claim has been fraudulently represented.

Both the Department of Health, Education, and Welfare and the Department of Labor have (without legislative direction) established X-ray quality control procedures under which government contract radiologists provide their own interpretations of X-rays submitted in connection with black lung claims. This procedure has elicited deep resentment among claimants, who believe strongly that the government readers are utilized solely for the purpose of denying claims.

While the Committee does not concur in this belief, it is concerned that this procedure alone has done more to destroy the credibility of the Federal government's administration of this program among miners and widows than any other factor. The Committee does agree with the statement of Dr. Edgar L. Dessen, chairman of the Task Force on Pneumoconiosis of the American College of Radiology that "we would doubt that radiology will become a statistically exact science."

The Department of Labor acknowledges that more than 60 percent of the X-rays which are submitted as positive for pneumoconiosis are re-read by the government's consulting radiologists as negative. As a general proposition reasonable men can differ, and this holds true for radiographic interpretations as well as for other fields of endeavor. The imperfection of this art is also indicated in cases of miners whose

X-rays were interpreted as negative and who have, on autopsy, been revealed to have suffered from varying stages of pneumoconiosis.

There is little reason, as a matter of policy, for the government to interpose panels of second-guessers, particularly where the original interpreter of a claimant's X-ray was a qualified radiologist. The Committee therefore intends that this provision be retroactively applied to denied and pending claims as well as to new ones. If, in the case of a claim by a living miner, an X-ray is objectively determined not to be of acceptable quality, the Secretary shall request that another X-ray be taken. Where fraud is suspected, the Committee expects the Secretary to take such action as may be appropriate, but he shall specifically describe the reasons upon which this suspicion is based.

Because of administrative omissions in this regard, the amendment is made retroactive to December 30, 1969.

SEC. 9. *Claims Filed After December 31, 1973.*—Part C of the black lung benefits program was designed to transfer claims liability from the Federal Government to the States through State workmen's compensation programs. A State program must meet certain minimum requirements before the Secretary of Labor is authorized to deem it "adequate." In the event a State program is not "adequate", provisions of the Longshoreman's and Harbor Workers Compensation Act are applied by the Secretary of Labor and liability is assessed against coal operators found to be responsible for a claim. An insurance contract or self-insuring mechanism is required to be maintained by coal operators for the purpose of meeting obligations incurred under this part. Where a responsible operator cannot be assessed, the Secretary is responsible for the payment of benefits.

Two significant realities have acted to frustrate the objective of transferring claims liability from the Federal Treasury to States and coal operators: (1) No State workmen's compensation law has yet been deemed "adequate" under part C, and (2) the Department of Labor has been successful in identifying responsible operators only with respect to about 25 to 30 percent of the part C claims. Moreover, recent testimony before the Subcommittee indicated that 97 percent of putative responsible operator cases are being contested by the industry.

The confluence of these unanticipated occurrences has meant continued Federal liability for black lung claims filed after the period when such liability was expected to end. In mid-1974, a Labor Department official advised the Subcommittee that the projected Federal liability under part C was already estimated at approximately $500 million. That estimate was subsequently revised upwards to $800 million and the Department has not yet submitted a current official estimate.

Section 9 of the bill conclusively ends this lingering Federal liability by the creation of a coal industry trust fund, into which all coal operators will contribute, and from which all part C benefits will flow. In accomplishing this objective, the Committee establishes that the costs of the occupational disease should be now borne by the industry from which it arises. It continues to recognize that an "adequate" State workmen's compensation plan may cushion this industry liability; and that to the extent individual coal operators can be assessed with liability in individual cases, that liability should attach. But it substitutes the industry-wide trust fund mechanism for the Federal Treasury in those cases where residual liability now falls to the Secretary of Labor.

In a statesmanlike appearance before the Subcommittee on March 13. 1975, the president of the industry's trade association made the following statement:

> We recommend that legislation be enacted to establish an industry financed, industry administered trust fund to pay for claims arising under part C, title IV of the Coal Mine Health and Safety Act of 1969.

Though that spokesman has recently communicated the trade association's "concern" with what he perceives to be "potential adverse effects" of the legislation, the Committee has not received any communication from the industry which would effectively countermand the endorsement for an industry financed, industry administered trust fund set forth above. The industry is to be congratulated for its forthright—albeit belated—willing acceptance of this heretofore primarily Federal burden.

The Committee also wishes to note that it regards this concept of an industry financed, industry administered trust fund as a possible prototype for future legislative treatment of other occupational diseases. Surely, lessons of the black lung program indicate that the incidence and prevalence of an occupational disease may far exceed the most exaggerated estimate; that an occupational disease is as debilitating as any other work-related injury and clearly occurs as a manifestation of employment alone; that liability may be difficult to attach to an individual employer because of the slow but steady progression of such diseases; and that the role of the Federal Government in addressing the essential vacuum of State activity in this area should not inevitably extend to providing Federal monies in the form of benefits payments—but rather, should be one of ensuring the provision of such necessary compensation to afflicted employees by placing the responsibility on the very source of its occurrence.

A summary description of section 9 of the bill is provided at this point.

During any period after December 31, 1973, black lung benefits deemed payable, where a State workmen's compensation law has not been approved by the Secretary of Labor, shall be paid from the Black Lung Disability Insurance Fund established by this section.

Part C of the program is made permanent by repealing the provision contained in existing law which would otherwise terminate benefit payments after 1981.

Claims for benefits under this section must be filed within 3 years of the discovery of total disability due to pneumoconiosis or from the date of death due to pneumoconiosis.

In the case of a living miner. a claim filed under this section based upon presumptions in existing law and the entitlements established in section 2 shall be filed within 3 years from the date of last exposed employment in a coal mine. In the case of death for which benefits would be payable pursuant to such presumptions or entitlements, the claim shall be filed within 15 years from the date of last exposed employment in a coal mine.

The amount of benefits payable under this section shall 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 pneumoconiosis.

The Secretary shall provide for the prompt hearing of appeals by aggrieved claimants within 45 days after a claimant requests such a hearing, at a time and place convenient to a claimant, and subject to relevant provisions of title 5, United States Code, relating to administrative procedures. A claimant may obtain review of any final decision of the Secretary pursuant to such a hearing, provided a civil action is commenced in the appropriate Federal district court no later than 90 days after receiving notice of such decision. The court shall have the power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Secretary, without remanding the case for a rehearing. Provision is also made for remanding the case for a rehearing and for ordering that additional evidence be taken at such rehearing.

The Federal Coal Mine Health and Safety Act is amended to establish in the Treasury of the United States a trust fund designated as the Black Lung Disability Insurance Fund.

The Fund shall essentially consist of assessments and premiums paid by coal operators and shall be managed and administered by trustees elected by coal operators. Provisions for the election of trustees, their duties and responsibilities, and other matters relevant to the organization and maintenance of the trust, are included in this section. Generally, the trustees shall control the Fund and have the authority to hold, sell, buy, exchange, invest, and reinvest the corpus and income of the Fund. Investment decisions are to be in accordance with corresponding provisions of the Employee Retirement Income Security Act of 1974. Any profit or return on any investment or reinvestment made by the trustees shall not be considered as income for tax purposes.

In addition to the payment of black lung benefits, amounts in the Fund shall be available to defray operating expenses and for providing medical benefits required under the program. The trustees may enter into agreements with any self-insurer or insurance carrier who has incurred an obligation under the Act under which the Fund will assume such obligation in return for prescribed payments to the Fund. Beginning October 1, 1977, the Fund shall assume benefit payment obligations incurred by the Secretary of Labor prior to that date under existing law.

The trustees are required to submit an annual report to the Secretary of Labor and to coal operators on the operation and financial condition of the Fund and the Secretary shall report annually to the Congress with respect to such matters.

No coal operator may bring any proceeding, or intervene in any proceeding, held for determining claims for benefits; the trustees shall act on behalf of all operators with respect to claims filed under part C of the program. The Fund may not participate or intervene as a party to any proceeding held for the purpose of determining claims for benefits under part C, except that the Fund may, if dissatisfied with any claim determination of the Secretary under part C, seek review in the appropriate Federal court of appeals, *Provided, however*, that any finding of fact of the Secretary relating to the interpretation of medical evidence which demonstrates the existence of

pneumoconiosis or any other disabling respiratory or pulmonary impairment, shall not be subject to such review. This provision does not, however, act as a complete bar to the Fund's right to seek judicial review in the event of dissatisfaction with any claims determination made by the Secretary of Labor. The Fund clearly has the unfettered right to full review in contesting claims determinations involving only findings of fact other than those the bill expressly precludes from review.

Where a State workmen's compensation law has not been approved by the Secretary of Labor, coal operators in such State shall secure the payment of assessments to the Fund and shall also pay premiums into the Fund in amounts sufficient to ensure the payment of benefits. Assessments may be secured according to requirements currently applicable under existing law with respect to the securing of benefits payments by coal operators: self-insurance or insurance contracts. Although the Fund will provide all benefits payments under part C, any operator who is determined to be liable by the Secretary (pursuant to provisions currently applicable under existing law) for a claim for benefits shall be annually assessed by the Fund to the full extent of such operator's aggregate liability for each year. Premiums shall be paid into the Fund by all coal operators (except by operators located in any State where the workmen's compensation law has been approved by the Secretary) irrespective of liability for individual benefits payments. The total premiums received by the Fund shall be applied, among other purposes, to obligations incurred by the Fund as a result of claims determinations for which no operator is found by the Secretary to be liable for a claim for benefits payments (and consequently, the payment of assessments to the Fund).

The initial premium rate is established by the Secretary as a rate per ton of coal mined by operators. Beginning one year later, the trustees may modify the premium rate to reflect the experience and expenses of the Fund, except that the Secretary may further adjust the rate to ensure that all obligations of the Fund will be met. Premium rates shall be uniform for all mines, mine operators, and amounts of coal mined. Premiums paid by operators shall be considered ordinary and necessary business expenses for Federal tax purposes.

Premiums are collected by the Secretary of the Treasury together with, and in the same manner as, quarterly payroll reports of employers. The Secretary of the Interior shall regularly certify the names of all operators subject to the Act in order to guarantee the payment of premiums by all operators. Any operator who fails or refuses to pay a required premium or assessment will be subject to a civil penalty pursuant to an action brought by the Fund in the appropriate U.S. district court.

Federal expenditures under part C of the program are limited to those necessary for carrying out administrative responsibilities. All other expenses shall be borne by the Fund, and if borne by the Federal Government, shall be reimbursed by the Fund. In this context, Federal expenditures shall be limited to the greatest extent consistent with the purpose of transferring Federal liability under part C to the Fund.

This section also authorizes the appropriation to the Fund of such sums as may be necessary to provide the Fund with amounts equal to 50 percent of the amount which the Secretary estimates is necessary for the payment of benefits under the foregoing provisions during the first year of the Fund's existence. Any amounts appropriated may be used only for the payment of benefits and are to be repaid with interest into the general fund of the Treasury no later than 5 years after the first appropriation made hereunder.

SEC. 10. *Clinical Facilities.*—The sum of $10 million is authorized to be appropriated each fiscal year to the Secretary of Health, Education, and Welfare, for the purpose of contracting with and making grants to agencies, organizations, and individuals for fixed-site and mobile clinical facilities for the analysis, examination, and treatment of respiratory and pulmonary impairments in active and inactive coal miners. The authorization provided herein will ensure the continued expansion of the program initiated under current law.

SEC. 11. *Medical Care.*—This section continues the provisions of section 7 of the Longshoremen's and Harbor Workers' Compensation Act (providing for medical services and supplies) to persons entitled to benefits on account of total disability.

Where the Secretary of Health, Education, and Welfare, has reason to believe a miner receiving benefits under part B of the black lung benefits program became eligible for medical services and supplies on January 1, 1974, the Secretary shall notify the miner of such possible eligibility. A miner so notified has 6 months from the date of notification to file a claim for medical services and supplies.

SEC. 12. *Transitional Provisions.*—The Secretary of Health, Education, and Welfare with respect to part B and the Secretary of Labor with respect to part C are required to review denied claims—first, to determine whether or not there was any initial error or inappropriate denial, and second, to ascertain whether or not the changes made by H.R. 4544 would require the approval of such claim. In either event, such Secretary shall approve any such claim forthwith if the review on this basis indicates the claimant to be entitled to benefits. Each Secretary is to make the review of those formerly denied claims without requiring the resubmission of any claim.

SEC. 13. *Short Title.*—This section amends title IV of the Federal Coal Mine Health and Safety Act of 1969 by identifying it as the "Black Lung Benefits Act".

SEC. 14. *Mine Accident Widows.*—This section provides that benefits payments shall be provided under part B to an eligible survivor of a miner who was employed for at least 17 years in underground coal mines and died as a result of an accident which occurred in any such coal mine. Benefits payments to survivors are reduced by an amount equal to any payment received by such survivors under the workmen's compensation, unemployment compensation, or disability laws of the miner's State.

SEC. 15. *Effective Dates.*—This section provides that the effective date of this bill (Black Lung Benefits Reform Act of 1977) shall be on the date of its enactment, except that—

(1) the amendments made by section 2 shall be effective on and after December 30, 1969, but claims approved solely because of

such amendments, which were filed before the date of enactment of this bill, shall be awarded benefits only for the period beginning on such date of enactment;

(2) the amendments made by sections 4, 5, and 8 shall be effective retroactive to December 30, 1969;

(3) the amendments made by section 6 shall not require the payment of benefits for any period before the date of enactment of this bill; and

(4) the amendments made by section 9 become effective on October 1, 1977.

This section also provides that the provisions of existing law relating to the payment of benefits shall remain in force after the effective date of the amendments made by this bill as rules and regulations of the Secretary, and that such provisions shall be revived as appropriate by the Secretary in the event that benefits payments cannot be made (for any reason) from the Fund.

Oversight

No oversight findings have been presented to the Committee by the Committee on Government Operations. The Committee's (Education and Labor) own findings are incorporated throughout the discussion above, "Summary and Discussion of Major Provisions".

Inflationary Impact

Since the total costs of the bill (including Federal receipts generated by the trust fund mechanism established under section 9) are not substantial, the Committee anticipates minimal inflationary impact on prices and costs in the operation of the national economy. The costs of the bill amount only to an infinitesimal percentage of the estimated total federal budget for fiscal year 1978. The impact in future years will even be smaller inasmuch as the first year's costs are based on certain provisions which require retroactive payments.

Costs

The Committee has received cost estimates on the bill from the Congressional Budget Office which the Committee adopts as appropriate estimates at this time as to the cost of the legislation through fiscal year 1982. These cost estimates follow:

Congressional Budget Office—Cost Estimate

1. Bill Number: H.R. 4544.
2. Bill Title: Black Lung Benefits Reform Act of 1977.
3. Purpose of Bill: The Black Lung Benefits Reform Act of 1977 amends the Federal Coal Mine and Safety Act of 1969 and the Black Lung Benefits Act of 1972. The substantive provisions proposed by the bill include the following:

1. An irrebutable presumption for miners having completed 30 years in an underground mine before 1972;
2. Removal of the provision barring miners from benefits because of current employment status;

3. Termination of offsets for state compensation benefits;
4. Establishment of a Black Lung Disability Insurance Fund which would assume responsibility for payments under Part C (for both located and unidentified operators);
5. A broad publicity campaign to inform people of the Black Lung program;
6. Acceptance of affidavits as evidence in survivors' claims;
7. The utilization of interim medical standards under Part C;
8. Expansion of eligibility to survivors of miners killed in mine accidents;
9. Removal of deadline for filing under Part B if miner's last exposed employment was before December 30, 1969; and
10. The approval of claims solely on the basis of the original interpretation of the X-ray with no denials allowed based upon a rereading of that X-ray.

4. COST ESTIMATE

[In millions of dollars]

	1978	1979	1980	1981	1982
Budget authority	358.8	320.6	224.3	217.4	208.7
Outlays	358.8	320.6	224.3	217.4	208.7

5. Basis for Estimate: In general, the data used to develop this cost estimate was based upon information and projections provided by the Department of Labor (DOL) and the Social Security Administration (SSA). Average future benefit amounts use 1976 actual benefits (adjusted by the relative weights of miners and survivors) inflated by CBO projections for increases in the G.S. pay scale. Retroactive costs assume that claims filed were distributed evently throughout the period (i.e., that for Part B, the same number of claims were filed in each of the years 1969 to 1973 and, for Part C, equal numbers were filed between 1974 and 1977). Also, in calculating Part B retroactive costs, full benefit amounts were included for all the years from 1974 to 1978.

In calculating 1978 and 1979 costs, it was assumed that, in the case of Part B, 85 percent of the claims that would become eligible under this bill would be processed and paid in 1978 and 15 percent in 1979. For Part C, a 25 percent rate was applied in 1978 with the remaining 75 percent processed and the first payments made in 1979.

Lastly, in calculating outyear costs, a mortality rate of 7.9 percent was used in 1979 (with a 0.3 percent per year increase after that) and a 4.2 percent rate (with a 0.2 percent increase per year) for widows.

The following represents a brief description of the specific assumptions used to estimate the section-by-section costs of the bill.

Section 2.—Subsection (a) provides for an irrebutable presumption of disability for miners of bituminous coal if they had worked for 30 or more years in the mines as of 1971 and 25 years for anthracite workers. According to SSA, this would entitle 17,000 additional miners to benefits (without retroactivity). The costs associated with this provision are:

	Millions		*Millions*
1978	$49.9	1981	$58.7
1979	59.3	1982	58.3
1980	59.0		

Section 3.—Provides for the elimination of offsets to workmen's compensation benefits for black lung payments. According to Social Security, this would affect approximately 3,300 beneficiaries and would have the following cost impact:

	Millions		*Millions*
1978	$9.7	1981	$9.3
1979	11.1	1982	8.0
1980	10.2		

Section 4.—Eliminates the present restriction that a miner currently employed cannot file a claim for benefits. According to Social Security this would affect approximately 600 miners and, including retroactivity, would cost:

	Millions		*Millions*
1978	$10.0	1981	$3.6
1979	4.0	1982	3.2
1980	4.0		

Section 5.—Prohibits appeals subsequent to the decision by an Administrative Law Judge in favor of the claimant. According to SSA, this would affect approximately 1,000 claimants. The costs associated with this section would be, including retroactivity:

	Millions		*Millions*
1978	$16.7	1981	$3.6
1979	6.6	1982	3.5
1980	3.7		

Section 6.—Provides that the Secretary of Health, Education, and Welfare will undertake a program to locate individuals who are likely to benefit from the provisions of the Act. It is estimated that this provision would affect approximately 2,000 additional beneficiaries and would cost:

	Millions		*Millions*
1978	$5.9	1981	$6.2
1979	7.3	1982	5.3
1980	6.8		

Section 7.—Makes applicable, under Part C, the interim medical standards used under Pact B. Costs associated with this section, based upon 8,325 additional beneficiaries, are estimated at:

	Millions		*Millions*
1978	$7.2	1981	$27.8
1979	30.0	1982	26.8
1980	28.8		

Section 8.—Under Subsection (a), provides for affidavits to be accepted as sufficient medical evidence to establish a claim where no other evidence existed at the time of death for a miner. This provision would qualify 2,000 additional miners under Part B according to SSA and 860 additional under Part C according to DOL. Costs under each Part are estimated at:

[In millions of dollars]

	Part B	Part C	Total
1978	33.4	4.2	37.6
1979	13.2	15.8	29.0
1980	13.2	3.3	16.5
1981	13.1	3.3	16.4
1982	13.0	3.2	16.2

Also, under Subsection (c), provides that the Secretary shall accept the report of a claimants physician as to the existence of pneumoconiosis and prohibits the rereading of an X-ray unless the Secretary has good reason to believe that X-ray is not of sufficient quality, if there is an inaccurate autopsy report, or if evidence of fraud exists. It is estimated that 7,900 claims have been denied based solely on rereadings under Part B and 15,120 by the Department of Labor. However, a certain percentage of these claims would still be reread based upon insufficient quality of X-rays. Assuming that 25 percent of the X-rays would be reread, this provision provides for an additional 11,340 Part B and 5,925 Part C recipients. Based upon these assumptions, the costs associated with this Section (including retroactivity) would be:

[In millions of dollars]

	Part B	Part C	Total
1978	190.5	16.5	207.0
1979	86.8	71.1	157.9
1980	57.5	22.3	79.8
1981	52.1	24.1	76.2
1982	45.0	26.7	71.7

Section 10.—Authorizes the continuation of the clinical facilities program at $10 million per year. Assuming full appropriations based upon the authorization levels, the costs would be:

	Millions		*Millions*
1978	$10.0	1981	$10.0
1979	10.0	1982	10.0
1980	10.0		

Section 14.—Provides benefits to survivors of miners killed in mine accidents on or before June 30, 1971, who had seventeen or more years of coal mine employment. Based upon data provided by the United Mine Workers, a total of 1,650 survivors would be eligible for this provision. Costs associated with this Section are estimated at:

	Millions		*Millions*
1978	$4.8	1981	$5.6
1979	5.4	1982	5.7
1980	5.5		

Under Section 9 of the bill, a trust fund has been created which will pay all benefits under Part C starting October 1, 1977. The revenues for this trust fund will be collected through premiums payed by the coal operators. The premium rate will be established by the Secretary of Labor such that sufficient monies will be available to the trust fund to meet the needs of the fund. Thus, in any given fiscal year, additional budget authority (i.e. revenues plus interest) due to this bill will be equal to the new outlays generated by H.R. 4544.

6. Estimate Comparison: None.
7. Previous CBO Estimate: None.
8. Estimate Prepared By: Jeffrey C. Merrill (225–7766).
9. Estimate Approved By:

JAMES L. BLUM,
Assistant Director for Budget Analysis.

APPENDIX

Summary of comments by James L. Weeks, Consultant, relative to medical knowledge supportive of an objective provision for establishing entitlements to black lung benefits payments based upon years of coal mining employment.

What do doctors know about black lung,[1] and what are they still relatively ignorant about? What can the state of medical knowledge contribute to making fair and efficient policy for awarding black lung benefits? The answers to these questions will be summarized from the medical literature listed in the appendix of this report.

There is broad agreement among doctors concerning the following:

1. Chronic disabling respiratory disease is significantly more widespread and more severe among deep coal miners than it is among the general population. (See articles Nos. 3, 5, 9, 12, 13, 17, 18, 19, 21, 22, 28.)

2. The probability of developing new cases of black lung and of worsening existing cases increases regularly with increased years underground. (See same articles as No. 1.)

3. The effects of exposure to underground mine environments are cumulative and the effects result in progressive disease which result in irreversible damage to miners' lungs with frequent complications of heart disease. Since treatment is not possible, prevention is all the more important. (See 9, 11, 12, 13, 21, 22, 28.)

4. The probability that coal miners will develop black lung increases regularly after about ten years of working underground. (5, 9, 13, 17, and see attached unpublished data from the National Coal Workers Autopsy Study.)

5. Some sort of respiratory disease is likely to begin after as little as one year underground and, because of the cumulative damage and progressive nature of black lung, symptoms get progressively worse with more years spent underground. (5, 28)

One study with the most carefully selected sample of miners and ex-miners showed, for example, 46% of their sample of 264 miners had some degree of X-ray evidence of pneumoconiosis. (5, p. 389) "There was little pneumoconiosis until miners had worked at least eleven years in the mines. The prevalence then rose progressively with increased years underground." (See Fig. 1, p. 389) In this same study, the authors found that "pulmonary function (as measured by breathing tests) becomes impaired with increasing years the men work underground. This effect seems to be separate from the effects of age, smoking, and roentgenographic categories." (p. 393–394)

Another study showed similar results. "Among working miners, the prevalence of roentgenographic evidence of pneumoconiosis is related directly to increasing age and years of underground experience." * * * (See Fig. 2) (13. p. 52) * * * "In all age groups, there is an incremental increase in the incident percentage with increase of underground experience." * * * "The prevalence of pneumoconiosis exceeded 17 percent in working miners 45 years of age and older hav-

[1] Following the statutory definition, black lung refers to any disabling respiratory disease among coal miners and does not mean only coal workers pneumoconiosis.

ing more than 30 years underground. Definite pneumoconiosis was found in over 20 percent of those non-working miners over 45 years of age who had more than 20 years mining experience." (13, p. 52)

The National Coal Study found similar results "Roentgenographic category of simple pneumoconiosis increases with the number of years worked underground." (17, p. 222) (See Fig. 3) The same study found marked differences between different regions but the same general trend showing a regular increase in the percentage of miners with X-ray evidence of pneumoconiosis with increased years spent underground. (See Fig. 4) And again, "the relationship between mean years spent underground and roentgenographic category of simple pneumoconiosis is a monotonic increasing trend." (p. 223)

In all of these studies, the regular increase in the percentage of cases of pneumoconiosis begins after ten years underground, a factor the U.S. Surgeon General noted in his testimony to the Senate Labor Subcommittee in 1969. (See those Hearings, p. 751.)

One might argue that these trends would not hold in the future since mines will be less dusty with increased compliance with the dust standard set with the 1969 Coal Mine Safety and Health Act. This contention is not supported by existing facts. In the second round of X-ray examinations under the National Coal Study, 13 percent of those miners examined progressed from category "0" to category "1" in their X-ray findings while the dust records for these mines showed a downward trend below the 2 mg/M^3 standard. These new cases of pneumoconiosis are much more than would be expected if the dust in the mines were below the standard. These new cases of CWP could mean that dust data are inaccurate or it could mean that CWP is caused by more than just coal mine dust. The X-rays that showed the increases in CWP were read by five different readers and the results are consistent. (See the Transcript the National Coal Advisory Council. March 1974.)

Most of the data for these studies comes from examinations of large numbers of miners. During these examinations, miners usually are given chest X-rays, lung function (breathing) tests for airway obstruction and lung restriction, and questionnaires concerning symptoms such as cough, wheezing, shortness of breath, etc. Most of the data concerning the prevalence and severity of black lung is based on chest X-ray data.

There is some autopsy data that provides a basis for some important and more reliable conclusions. Data collected from 405 autopsies as part of the National Coal Workers Autopsy Study at the Appalachian Laboratory for Occupational Respiratory Diseases (ALFORD) shows that of all the miners examined, 84 percent had CWP. When these autopsies were arranged by years worked underground, there was a sharp increase in the percentage of cases after fifteen years, with those with less than fifteen years underground showing 64 percent with CWP and those with more than fifteen years underground showing 88 percent with CWP. (See data attached.)

In testimony given to the Congress when it was considering the 1972 amendments to the black lung law, it was clearly demonstrated that the chest X-ray was an inadequate measure of disability when used to

determine eligibility for black lung claims.[2] The chest X-ray does not relate to lung disability and it identifies only Coal Workers Pneumoconiosis and not other disabling lung diseases associated with underground coal mining. These limitations on the use of chest X-rays were recognized and policy for determining eligibility for black lung claims was changed accordingly. If the chest X-ray is limited in its usefulness for the clinical determination of disability, it follows that it is also limited in its usefulness for the epidemiological determination of the prevalence of black lung. Since X-rays do not accurately indicate disability, epidemiological studies based on X-ray screening thus likely underreport the prevalence of black lung. Further, it also follows that any regular increase in the prevalence and severity of black lung is likely greater than existing studies show.

Other diagnostic tools for determination of eligibility on a case-by-case basis are similarly limited. The lung function tests have shown impairment of lung function but impairment by this test has been slight and results vary widely. (5, 12, 13, 16, 17) Lung function tests measure only the person's ability to move air in and out of their lungs and do not measure the basic function of the lung, namely, its ability to provide oxygen to the rest of the body and to remove carbon dioxide and other waste. Questionnaires concerning symptoms are similarly unreliable indicators of impairment and disability because they involve so much subjective information.

Other diagnostic tools for either clinical determination of disability or epidemiological determination of prevalence are indaequate for other reasons. Lung biopsy is major surgery and a person would have to be healthy in the first place to take it. Blood gas test taken during exercise is dangerous, painful, and expensive. Older persons, persons with heart conditions, or persons with some other deformity that would make it impossible for them to do the exercise cannot take the test. (21, 22) Autopsies, while useful, do not help living miners.

Thus in summary, existing medical evidence demonstrates not only the five general conclusions * * * [presented above] but also strongly suggests: (1) epidemiological data underreports the prevalence of black lung, and (2) existing diagnostic tools for case-by-case determination of eligibility for black lung payments are inadequate.

Thus it is reasonable that eligibility for receiving benefits not be based on a case-by-case clinical determination of disability but that eligibility for receiving payment be made on a simple determination of the number of years spent underground. Such an administrative device would be consistent with existing medical knowledge that shows the regular progression of black lung with increasing years underground, a progression that begins after ten years underground. It would also be consistent with the limitations on existing diagnostic tools. Further, given the regular increase in the prevalence of the disease after fifteen

[2] Later studies of X-ray readers further demonstrate their limited usefulness for determining eligibility for black lung payments. One recent study found that, on comparing British and American readers (all of the American readers in this study were those regularly used by the Social Security Administration in their determination of eligibility for claims), American readers agreed with British readers as seldom as 45 percent of the time and among each other as seldom as 48 percent of the time. After noting the disturbing results of this study, the researcher quipped, "Clearly, coal workers pneumoconiosis, like beauty, is in the eye of the beholder." (23, p. 1190) Black lung claimants cannot be so glib. Other studies have found similar inconsistencies and variations among readers of chest X-rays. (1, 4, 23, 24)

years spent underground, we suggest that the time period for determining eligibility for receiving benefits be set at fifteen years underground. After that time, a miner could exercise his option to leave underground work and receive a guaranteed payment of benefits.

A fifteen-year policy would have an additional advantage of allowing medical research and practice to continue unhampered by the confining constraints of administrative agencies. It would allow doctors to look after their patients rather than to leap through too many bureaucratic hoops. And it would allow researchers to conduct their research based on more factual information, thus making future policy based on more reliable fact than on medical knowledge that has been forced to serve too many masters—the needs of miner's health, public policy, and scientific research.

A fifteen-year policy would also be good preventive medicine. The effects of respiratory hazards in coal mines are cumulative and lead to progressive and chronic disease. Once many of these hazards are breathed in, they do irreparable damage and further exposure makes it worse. Black lung is a one-way street to ill health.

Given the cumulative effects and the progressive nature of black lung, it is good preventive medicine to fix a time limit after which a miner would be guaranteed the option of either continuing to work in the mines or of retiring with a black lung payment. This payment would be in recognition of the miner's massive exposure to respiratory hazards and of the significantly greater probability of developing black lung with more years underground. At least the miner would be given the option of either staying in the mines or not.

Currently, many miners stay in the mines because of uncertainty about whether they will be awarded black lung benefits and in spite of their doctor's advice that they are doing irreparable damage to their health. With the establishment of guaranteed black lung payment after fifteen years underground, a miner would not be forced by economic pressure to stay in a situation where his health would be permanently damaged and he would face premature death.

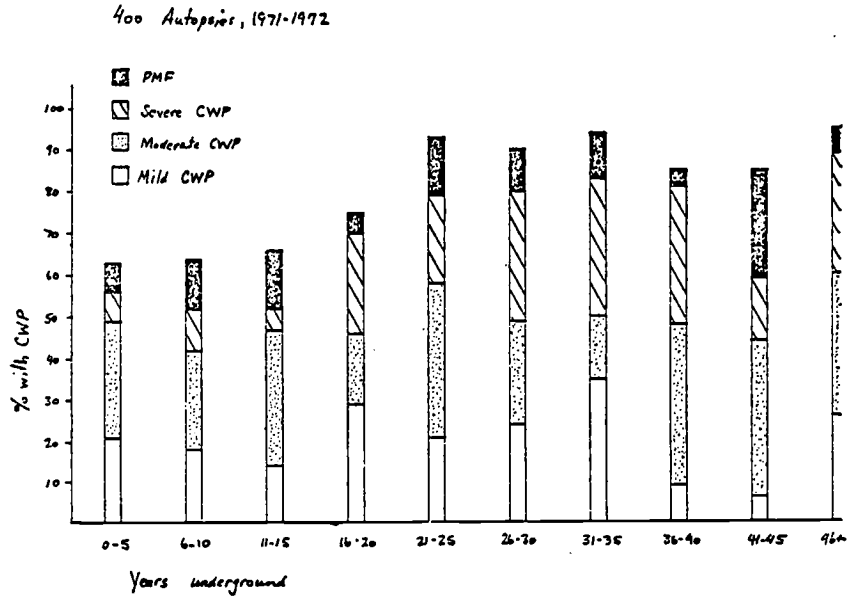
There is ample precedent for such a policy based on cumulative and progressive damage and oriented to prevention of disease before the fact rather than compensation for the disease after the fact. The health standard for workers who are exposed to radioactive materials is one such precedent. The adverse effects of radioactive materials are cumulative just as are the adverse effects of coal mine dust. Accordingly, workers exposed to radioactive materials are not supposed to be exposed to more than five rems of radioactivity per year, according to standards set by the Occupational Safety and Health Administration. This health standard is conceptually different from the standard for coal mine dust which is set at 2 mg/M^3 regardless of the length of time of exposure. A standard that does not consider length of exposure may be convenient to enforce but it does not guarantee the health of miners. The relevant measure for the protection of miners' health is not the average concentration of dust but rather the total amount of dust (and other hazards) the individual miner has taken into his lungs. This is measured in other coal mining countries but not in the United States. One way to guarantee the health of miners, then, is in addition to setting a dust standard for average

exposure, to set a time limit on underground employment after which a miner could exercise his option to leave the mines and be awarded a black lung payment. Such a policy would be consistent with the cumulative effects of work underground and with the progressive nature of black lung. It is simple, it is fair, it is consistent with medical knowledge concerning black lung, and it is good preventive medicine.

FIG. 1.—DISTRIBUTION OF 264 MINERS BY NUMBER OF YEARS WORKED UNDERGROUND AND ASSOCIATED ROENTGENOGRAPHIC FINDINGS[1]

Years underground	Number[2]	Roentgenographic category					Percent with pneumoconiosis
		0	1	2	3	Progressive massive fibrosis	
Less than 1	23	21	1	1	0	0	9
1 to 10	12	12	0	0	0	0	0
11 to 20	31	23	3	2	0	3	26
21 to 30	94	46	14	18	8	8	51
More than 30	104	41	16	34	5	8	61
Total	264	143	34	55	13	19	46
Percent		54	13	21	5	7	

[1] Classified according to new international classification "Geneva 1958" of pneumoconioses (17), described in text under "Roentgenographic methods."
[2] Number in each group by years worked underground. Figures under roentgenographic categories are numbers of subjects.



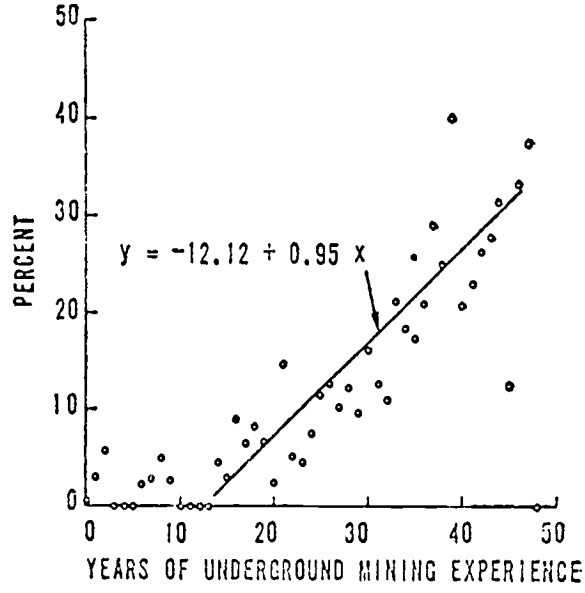


FIGURE 2.—Definite pneumoconiosis by years of underground experience, working miners

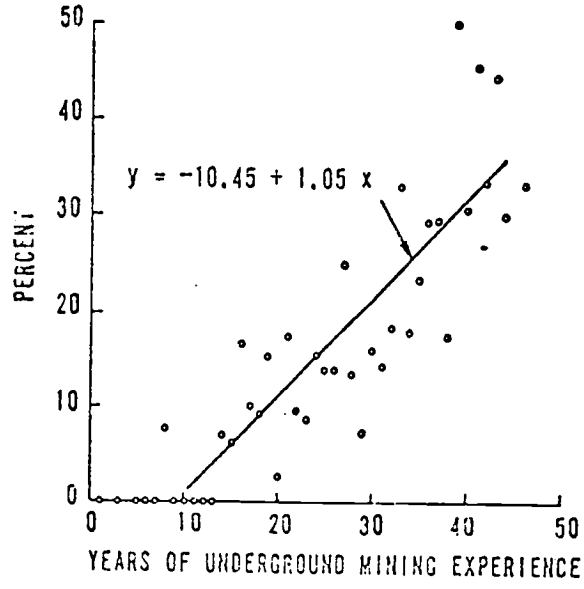


FIGURE 2A.—Definite pneumoconiosis by years of underground experience, working face workers

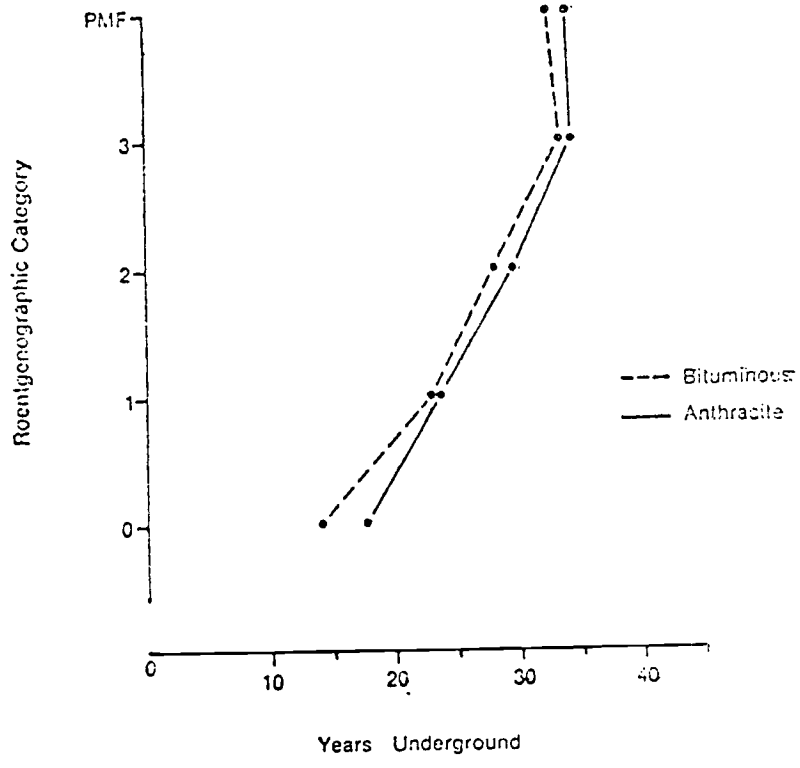


FIGURE 3.—Relationship of CWP to years underground

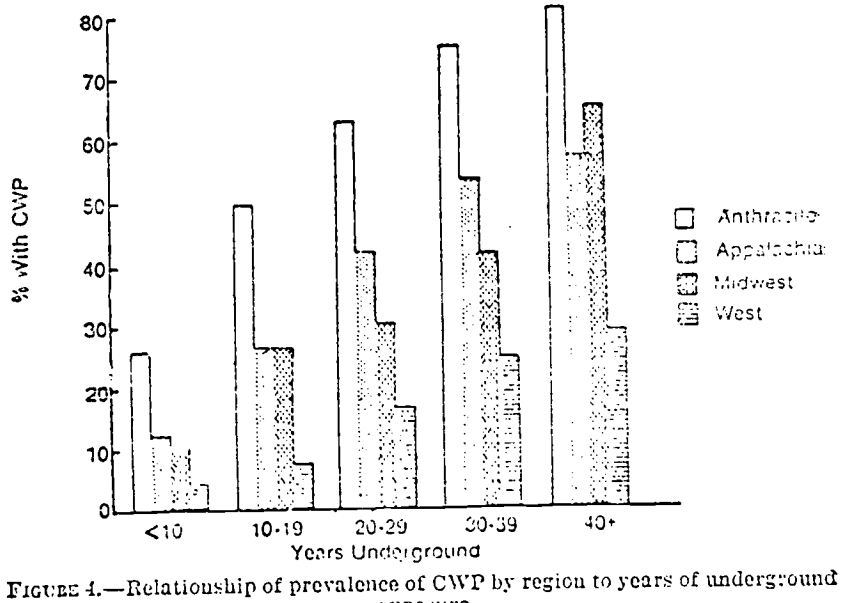


FIGURE 4.—Relationship of prevalence of CWP by region to years of underground exposure

REFERENCES

1. Amandus, H. E., et al. "The Pneumoconiosis: Methods of Measuring Progression," *Chest*, Vol. 63, (May, 1973). p. 736–743.
2. Amandus, H. E., et al. "Pulmonary Zonal Involvement in Coal Workers Pneumoconiosis," *Journal of Occupational Medicine*, Vol. 16, (April, 1974), p. 245–247.
3. Enterline, Phillip E., "A Review of Mortality Data for American Coal Miners," *Annals, New York Academy of Sciences*, Vol. 200, (December 29, 1972), p. 260–272.
4. Felson, Benjamin, et al. "Observations on the Results of Multiple Readings of Chest Films in Coal Miners' Pneumoconiosis," *Radiology*, Vol. 109, (October, 1973), p. 19–23.
5. Hyatt, R. E., et al. "Respiratory Disease in Southern West Virginia Coal Miners," *The American Review of Respiratory Disease*, Vol. 89, (March, 1964), p. 387–401.
6. Jacobson, M. "The Basis of the New Coal Dust Standard," *The Mining Engineer*, (U.K.). Vol. 131. (March, 1972), p. 269–279.
7. Jacobson, M. "The British Pneumoconiosis Field Research and New Dust Standards." presented to the *International Conference on Harmful Dust in Mines*, Gottwaldov, Czechoslovakia, October 27–29, 1970.
8. Jacobson, M., et al. "New Dust Standards for British Coal Mines," *Nature*, (U.K.), Vol. 227, (August 1, 1970), p. 445–447.
9. Jacobson, M. "Evidence of Dose-Response Relation in Pneumoconiosis. (2)." *Transactions of the Society of Occupational Medicine*, (U.K.), Vol. 22, 1972, p. 88–94.
10. Jacobson, M., et al. "The Relation Between Pneumoconiosis and Dust Exposure in British Coal Mines." in W. H. Walton, ed., *Inhaled Particles, #3. Proceedings of the Royal Society of Industrial Hygiene, 1970.* (Unwin Bros., Old Woking, England: 1971). p. 903–919.
11. Jacobson, M. "Progression of Coal Workers' Pneumoconiosis in Britain in Relation to Environmental Conditions Underground." in *Proceedings of Conference on Technical Measures of Dust Prevention and Suppression in Mines*, Luxemburg, Oct. 11–13, 1972, (Luxemburg, European Coal & Steel Community: 1973), p. 77–93.
12. Kibelstis, John A., et al. "Prevalence of Bronchitis and Airway Obstruction in American Bituminous Coal Miners." *The American Review of Respiratory Disease*, Vol. 108. (1973), p. 886–893.
13. Lainhart, H. N., et al. *Pneumoconiosis in Appalachian Bituminous Coal Miners*, (Washington, D.C.: U.S. Government Printing Office. 1969).
14. Lapp, N. LeRoy, et al., Correspondence, *The Lancet* (U.K.) (March 2. 1974), p. 351.
15. Morgan, W. K. C., et al. "A Comparison of the Prevalance of Coal Workers Pneumoconiosis and Respiratory Impairment in Pennsylvania Bituminous and Anthracite Miners." *Annals of the New York Academy of Sciences*, Vol. 200 (December 29, 1972), p. 252–259.
16. Morgan, W. K. C., et al. "Lung Volumes in Working Coal Miners." *Annals of the New York Academy of Sciences*, Vol. 200 (December 29, 1972). p. 478–493.
17. Morgan, W. K. C., et al. "The Prevalence of Coal Workers Pneumoconiosis in U.S. Coal Miners," *Archives of Environmental Health*, Vol. 27. (1973), p. 221–226.
18. Morgan, W. K. C., et al "Ventilatory Capacity and Lung Volumes of U.S. Coal Miners," *Archives of Environmental Health*, Vol. 28, (1974). p. 182–189.
19. Ortmeyer, Carl E., et al. "The Mortality of Appalachian Coal Miners, 1963–1971." *Archives of Environmental Health*. Vol. 29. (1974). p. 67–72.
20. Phelps, Harvey. "Observations on High Altitude Coal Miners," *Rocky Mountain Medical Journal*, Vol. 69, (1972). p. 59–63.
21. Rasmussen, Donald L. "Patterns of Physiological Impairment in Coal Workers Pneumoconiosis." *Annals of the New York Academy of Sciences*, Vol. 200. (December 29, 1972). p. 455–462.
22. Rasmussen, Donald L., et al. "Respiratory Function in Southern Appalachian Coal Miners." *American Review of Respiratory Disease*, Vol. 103. (1971), p. 240–248.
23. Reger, R. B., et al. "On the Diagnosis of Coalworkers Pneumoconiosis, Anglo-American Disharmony." *American Review of Respiratory Disease*, Vol. 108. (1973), p. 1186–1191.

24. Reger, R. B., et al. "On the Factors Influencing Consistency in the Radiologic Diagnosis of Pneumoconiosis," *American Review of Respiratory Disease*, Vol. 102, (1970), p. 905–915.
25. Reisner, M. "Pneumoconiosis and Exposure to Dust in Coal Mines in the German Federal Republic," in *Proceedings of Conference on Technical Measures of Dust Prevention and Suppression in Mines*, Luxemburg, Oct. 11–13, 1972, (Luxemburg, European Coal & Steel Community: 1973), p. 49–64.
26. Rogan, J. M., et al. "Role of Dust in the Working Environment in the Development of Chronic Bronchitis in British Coal Miners," *British Journal of Industrial Medicine*, (U.K.), Vol. 30, (1973), p. 217–226.
27. Rossiter, C. E. "Relation of Lung Dust Content to Radiological Changes in Coal Workers," *Annals of the New York Academy of Sciences*, Vol. 200, (December 29, 1972), p. 465–477.
28. Stoekle, John D., et al. "Respiratory Disease in U.S. Soft Coal Miners: Clinical and Etiological Considerations, A Study of 30 Cases," *Journal of Chronic Diseases*, (U.K.), Vol. 15, (1970), p. 887–905.

OTHER SOURCES

U.S. Congress, Senate, Subcommittee on Labor, Hearings, *Coal Mine Health and Safety*, 91st Cong., 1st Sess., (March, 1969).

U.S. Congress, Senate, Subcommittee on Labor, Hearings, *Black Lung Legislation*, 1971–1972, 92nd Cong., 1st & 2nd Sess., (December 1971, January & February, 1972).

SECTION-BY-SECTION EXPLANATION OF THE BILL

SHORT TITLE

Section 1 of the bill provides that the bill may be cited as the "Black Lung Benefits Reform Act of 1977".

ENTITLEMENTS

Section 2(a) of the bill amends section 411(c) of the Federal Coal Mine Health and Safety Act of 1969 (hereinafter in this explanation referred to as the "Act") to provide that a miner (or, in the case of a deceased miner, the eligible survivors of such miner) shall be entitled to the payment of benefits (1) if such miner was employed for 30 years or more in one or more underground coal mines; or (2) if such miner was employed for 25 years or more in one or more anthracite coal mines. Section 2(a) also amends section 411(c) of the Act to provide that the Secretary of Health, Education, and Welfare shall not apply any requirement of subsection (c) relating to a miner's having worked in an underground coal mine if the Secretary determines that conditions of such miner's employment in a coal mine other than an underground mine were substantially similar to conditions in an underground mine. Such waiver of the applicability of requirements, in existing law, applies only with respect to paragraph (4) of subsection (c).

Section 2(b) amends section 412(a)(1) of the Act to make conforming amendments based upon the new entitlements established by the amendments made by section 2(a) of the bill.

Section 2(c) amends section 414(a) of the Act by adding a new paragraph (4). Paragraph (4) provides that a claim for benefits under part B of title IV may be filed any time on or after the date of the enactment of the bill by a miner (or, in the case of a deceased miner, the eligible survivors of such miner) if the date of the last exposed employment of the miner involved occurred before December 30, 1969.

Section 2(d) amends section 414(e) of the Act to make conforming amendments based upon the new entitlements established by the amendments made by section 2(a) of the bill.

Section 2(e)(1) makes a similar conforming amendment to section 421(a) of the Act.

Section 2(e)(2) amends section 421(b)(2)(C) of the Act to provide that any State workmen's compensation law shall not be required, in order to be considered to provide adequate coverage for pneumoconiosis, to include standards for the payment of benefits based upon conditions substantially the same as conditions described in paragraphs (5) and (6) of section 411(c) of the Act, as added by section 2(a) of the bill.

Section 2(f) amends section 430 of the Act to provide that the amendments made by the bill to part B shall, to the extent appropriate, also apply to part C of title IV.

Section 2(f) also makes conforming amendments to section 430 of the Act based upon the entitlements established by the amendments made by section 2(a) of the bill.

OFFSET AGAINST WORKMEN'S COMPENSATION BENEFITS

Section 3 of the bill amends section 412(b) of the Act to provide that reductions in the amount of benefit payments to a miner under section 412 resulting from payments received by the miner under the workmen's compensation, unemployment compensation, or disability insurance laws of his State may be made only if the payments to the miner under such laws are made on account of the disability of such miner due to pneumoconiosis. In existing law, the reductions are made whether or not the disability of a miner is due to pneumoconiosis.

CURRENT EMPLOYMENT AS A BAR TO BENEFITS

Section 4(a) of the bill amends section 413(b) of the Act to provide that a claim for benefits under part B may not be denied solely on the basis of employment as a miner if (1) the location of such employment has recently been changed to a mine area having a lower concentration of dust particles; (2) the nature of such employment has been changed so as to involve less rigorous work; or (3) the nature of such employment has been changed to employment which receives substantially less pay.

Section 4(b) amends section 413 of the Act by adding a new subsection (d). Subsection (d) provides that a miner may file a claim for benefits whether or not he is employed by an operator of a coal mine at the time he files such claim. The Secretary of Health, Education, and Welfare is required to notify a miner whether, in the opinion of the Secretary, the miner (1) is eligible for benefits on the basis of the provisions of paragraph (1), (2), or (3) of subsection (b), as added by section 4(a) of the bill; or (2) would be eligible for benefits, except for the circumstances of the employment of the miner at the time he filed his claim.

APPEALS

Section 5 of the bill amends section 413(b) of the Act to provide that, notwithstanding the provisions of the Social Security Act which are made applicable to part B of title IV of the Act, any decision by an administrative law judge in favor of a claimant may not be appealed or reviewed, except upon motion of the claimant.

INDIVIDUAL NOTIFICATIONS

Section 6 of the bill adds a new section 416 to part B of title IV of the Act.

Section 416(a) requires the Secretary of Health, Education, and Welfare to undertake a program to locate individuals who are likely to be eligible for benefits under part B and have not filed a claim for such benefits.

Section 416(b) requires the Secretary, in cooperation with mine operators and with the Secretary of the Interior, to determine the names and addresses of individuals having long periods of employment in coal mining. The Secretary is required to inform any such individuals, other than those who have filed a claim for benefits under title IV, of the possibility of their eligibility for benefits, and offer them assistance in preparing their claims.

Section 416(c) provides that, notwithstanding any other provision of part B, a claim for benefits under part B filed by an individual informed by the Secretary under subsection (b) of section 416 shall, if filed no later than 6 months after the date the individual was so informed, be considered on the same basis as if it had been filed on June 30, 1973.

DEFINITIONS

Section 7(a) of the bill amends section 402(f) of the Act to provide that regulations of the Secretary of Health, Education, and Welfare relating to the definition of "total disability" shall not provide, with respect to claims filed after June 30, 1973, more restrictive criteria than those applicable to a claim filed on June 30, 1973.

Section 7(b) amends section 402 of the Act to provide that the term "fund" means the Black Lung Disability Insurance Fund established by section 423(a) of the Act, as added by amendments made by the bill.

EVIDENCE REQUIRED TO ESTABLISH CLAIM

Section 8(a) of the bill amends section 413(b) of the Act to provide that, with respect to affidavits submitted by the wife of a deceased miner or by persons with knowledge of the miner's physical condition, if there is no relevant medical evidence in the case of such deceased miner, such affidavits shall be considered to be sufficient to establish that the miner was totally disabled because of pneumoconiosis or that his death was due to pneumoconiosis.

Section 8(b) amends section 413(b) of the Act to make the provisions of section 205(n) of the Social Security Act applicable to part B of title IV of the Act.

Section 8(c) amends section 413(b) to provide that unless the Secretary has good cause to believe that an X-ray is not of sufficient quality or an autopsy report is not accurate or that the condition of a miner is being fraudulently misrepresented the Secretary shall accept the report or the opinion of the claimant's physician concerning the presence of pneumoconiosis and the stage of advancement.

CLAIMS FILED AFTER DECEMBER 31, 1973

Section 9(a)(1) of the bill amends section 422(a) of the Act to make a conforming amendment based upon the entitlements established by the amendments made by section 2(a) of the bill, and to provide that specified provisions of the Longshoremen's and Harbor Workers' Compensation Act shall apply to mine operators only to the extent consistent with the provisions of part B of title IV of the Act.

Section 9(a)(2) amends the last sentence of section 422(a) of the Act to make reference to premiums and assessments which are required to be paid by mine operators under the amendments made by the bill.

Securing of assessment payments

Section 9(a)(3) amends section 422(b) of the Act by adding a new paragraph (2). Paragraph (2)(A) provides that, during any period in which a State workmen's compensation law is not included on the list of approved laws published by the Secretary of Labor, each mine operator in the State involved shall secure the payment of assessments against such operator by (1) qualifying as a self-insurer in accordance with regulations prescribed by the Secretary; or (2) insuring the payment of such assessments with any stock company or similar organization, or with any other person or fund, while such company, person, or fund is authorized to insure workmen's compensation under the laws of any State.

Paragraph (2)(B) provides that, in order to meet the insurance requirements described in the preceding paragraph, every policy or contract of insurance shall contain (1) a provision to pay assessments, even if the provisions of the State workmen's compensation law may provide for payments less than the amount of such assessments; (2) a provision that bankruptcy of the operator shall not relieve the insurance carrier from liability for the payment of the assessments; and (3) such other provisions as the Secretary may require.

Paragraph (2)(C) provides that no policy or contract of insurance may be cancelled before the expiration date of the policy or contract, until at least 30 days have elapsed after notice of cancellation has been sent to the Secretary and to the mine operator involved.

Section 9(a)(4) amends section 422(b)(1) of the Act to make reference to premiums and assessments which mine operators are required to pay under amendments made by the bill.

Benefit payments

Section 9(a)(5) rewrites the provisions of section 422(c) of the Act. Subsection (c), as so rewritten, provides that benefits shall be paid under section 422 by the Black Lung Disability Insurance Fund (hereinafter in this explanation referred to as the "fund"), subject to reimbursement to the fund by mine operators. Such benefits shall be paid to the categories of persons entitled to benefits under section 412(a) of the Act in accordance with regulations of the Secretary of Labor and the Secretary of Health, Education, and Welfare, except that (1) the Secretary of Labor may modify any regulation of the Secretary of Health, Education, and Welfare; and (2) no mine operator shall be liable for payment of any benefit on account of death or total disability due to pneumoconiosis, or on account of any entitlement under paragraphs (5) and (6) of section 411(c), which did not arise, at least in part, out of employment in a mine during the period when it was operated by such operator.

Section 9(a)(6) amends section 422(e) of the Act to strike out a provision that no payment of benefits would be made under section 422 for any period after 12 years after the date of the enactment of the Act.

Section 9(a)(7) makes conforming amendments to section 422(f)(2) of the Act based upon the entitlements established by the amendments made by section 2(a) of the bill.

Section 9(a)(8) amends section 422(h) of the Act to eliminate the provision that the regulations of the Secretary of Health, Education, and Welfare prescribed under section 411 of the Act shall also apply to claims under section 422.

Consideration of claims; appeals procedure

Section 9(a)(9) rewrites section 422(i) of the Act. Subsection (i)(1), as so rewritten, requires the Secretary of Labor to prescribe regulations providing for the prompt consideration of claims under section 422.

Subsection (i)(2) requires the Secretary to prescribe regulations for the prompt hearing of appeals by claimants who are aggrieved by any decision of the Secretary. Any such hearing must be held no later than 45 days after a request is made by the claimant involved. A hearing may be postponed at the request of the claimant for good cause. A hearing shall be held at a time and place convenient to the claimant, and shall be of record and subject to the provisions of sections 554, 555, 556, and 557 of title 5, United States Code.

Subsection (i)(3) provides that any individual, after final decision by the Secretary in the hearing to which such individual was a party, may obtain a review of the decision by a civil action brought no later than 90 days after he receives notice of the decision, or no later than such further time as the Secretary may allow. The action must be brought in the district court of the United States in the State in which the claimant resides. The Secretary is required to file a certified copy of the transcript of the record in conjunction with any such appeal. The district court may affirm, modify, or reverse the decision of the Secretary, with or without remanding the case for rehearing. The findings of the Secretary shall be conclusive if supported by the weight of the evidence. If the Secretary so requests, the district court must remand the case to the Secretary for further action by the Secretary. The district court may order additional evidence to be taken by the Secretary, and the Secretary shall, after the case is remanded, modify his fact findings or decision, and file with the district court any additional or modified findings and decision. The additional or modified findings and decision shall be reviewable by the district court only to the extent provided for review of the original findings and decision. The judgment of the district court shall be final, except that it is subject to review in the same manner as a judgment in any other civil action. Any action brought under paragraph (3) shall not be affected by a change in the person serving as Secretary of Labor or a vacancy in such office.

Period for filing

Section 9(a)(10) provides that, in the case of any miner or any survivor of a miner eligible for benefits under section 422 of the Act because of any amendment made by the bill, the miner or survivor may file a claim for benefits under section 422 no later than 3 years after the date of the enactment of the bill, or no later than the close of

the applicable period for filing claims under section 422(f) of the Act, whichever is later.

Black Lung Disability Insurance Fund

Section 9(b) rewrites section 423 of the Act. Section 423(a)(1), as so rewritten, establishes the fund in the Treasury of the United States. The fund consists of such sums as may be appropriated under section 424(c)(1) of the Act, assessments paid into the fund under section 424(g) of the Act, premiums paid into the fund under section 424(a), interest and proceeds relating to the sale or redemption of any investment held by the fund, and any penalties recovered under section 424(c), including such earnings, income, and gains as may accrue from time to time.

Section 423(a)(2) requires that fund assets be used solely and exclusively to discharge obligations of mine operators under part C. Operators have no right, title, or interest in fund assets, and none of the earnings of the fund shall inure to the benefit of any person, other than through benefit payments under part C.

Section 423(b)(1) provides that the fund shall have 7 trustees. Except for trustees first elected, trustees shall serve for terms of 4 years. Of the trustees first elected (1) 4 shall be elected for terms of 2 years; and (2) 3 shall be elected for terms of one year. The Secretary is required to determine, before the date of the first election, whether each trustee office shall be for a term of one year or 2 years. The determination made by the Secretary must be made through the use of an appropriate method of random selection, except that at least one trustee nominated by small mine operators shall serve for a term of 2 years. Any trustee may be a full-time employee of a mine operator, except that no more than one trustee may be employed by any one mine operator.

Section 423(b)(2) provides that 2 trustees shall be nominated and elected by small mine operators, which are defined as those operators having an annual payroll which does not exceed $1,500,000. Five trustees shall be nominated and elected by all mine operators.

Section 423(b)(3) provides that mine operators must certify to the Secretary, no later than 60 days after the date of the enactment of the bill, their payrolls for the 12-month period ending December 31, 1976. The Secretary is required to publish a list stating the number of votes to which each small operator and each mine operator is entitled, computed on the basis of one vote for each $500,000 of payroll. Trustees are required to be elected no later than 180 days after the date of the enactment of the bill.

Subsection (b)(4) requires candidates for trustee to submit to the Secretary petitions of nomination showing the approval of small operators or all mine operators, as the case may be, representing at least 2 percent of the aggregate annual payroll of all such operators.

Subsection (b)(5) requires the Secretary to prescribe regulations regarding the nomination and election of trustees. Two or more trustees may file a petition in the United States district court where the fund has its principal office, for removal of a trustee for malfeasance, misfeasance, or nonfeasance. The cost of such an action must be paid from the fund, and the Secretary may intervene in any such action.

Subsection (b)(6) requires the trustees to elect a Chairman and Secretary and requires the trustees to adopt necessary or appropriate rules for governing the conduct of their business. Five trustees shall constitute a quorum and a simple majority of trustees may conduct the business of the fund.

Subsection (c)(1) provides that the trustees of the fund shall act on behalf of all mine operators regarding claims filed under part C.

Subsection (c)(2) provides that, except in specified cases, the fund may not participate or intervene in any proceeding held for the purpose of determining benefit claims under part C.

If, however, the fund is dissatisfied with any determination of the Secretary regarding benefit claims, the fund may, no later than 30 days after the date of the determination of the Secretary, file a petition for review in the appropriate United States court of appeals. The Secretary then is required to file in the court a record of the proceedings upon which he based his determination, in accordance with section 2112 of title 28, United States Code. The fact findings of the Secretary, if supported by substantial evidence, shall be conclusive. The court, however, may for good cause shown remand the case to the Secretary to take further evidence, and the Secretary may make new findings of fact and may modify his previous determination. Any new finding of fact shall be conclusive if supported by substantial evidence. The court may affirm or set aside the action of the Secretary, and the judgment of the court is subject to review by the Supreme Court in accordance with section 1254 of title 28, United States Code.

Any finding of fact of the Secretary relating to the interpretation of any chest roentgenogram or any other medical evidence demonstrating the existence of pneumoconiosis or any other disabling respiratory or pulmonary impairment, shall not be subject to review under the provisions described in the preceding paragraphs.

Subsection (c)(3) prohibits any mine operator from bringing any proceeding, or intervening in any proceeding, held for the purpose of determining benefit claims under part C.

Subsection (c)(4) requires the trustees to report annually to the Secretary and to mine operators regarding the financial condition of the fund and the operation of the fund, and regarding its expected condition during the current and ensuing fiscal year. The Secretary is required to make a report to the Congress each year, and the report of the fund is required to be included in the report of the Secretary.

Subsection (c)(5) requires the trustees to take control and management of the fund. Premiums paid into the fund by mine operators shall be held by the trustees as a single fund, and the trustees may not be required to segregate and invest separately any part of the fund assets. Assets of the fund which are not required to meet obligations under part C must be invested by the trustees, except that advances made to the fund under section 424(e) may not be invested. The trustees are required to make investments in accordance with section 404(a)(1)(C) of the Employee Retirement Income Security Act of 1974. Any profit or return on any investment made by the trustees may not be considered as income for purposes of Federal or State income taxation.

Subsection (c)(6) provides that amounts in the fund shall be available for expenditures to meet obligations under part C, including ex-

penses of providing medical benefits under section 432 of the Act. The trustees may enter into agreements with any self-insured person or any insurance carrier incurring obligations regarding claims under part C before the effective date of paragraph (6), under which the fund assumes the obligations of such person or carrier in return for payments to the fund in amounts which fully protect the financial interest of the fund. Payments shall be made from the fund, beginning on the effective date of paragraph (6), to meet obligations incurred by the Secretary regarding claims under part C before such effective date. The Secretary shall not be subject to any such obligations beginning on such effective date.

Subsection (c)(7) requires the trustees to keep accounts and records of their administration of the fund.

Subsection (c)(8) provides that the trustees are not required to obtain approval by any court of the United States or any other court regarding actions taken by the trustees in the performance of their duties. The trustees may file in the appropriate United States district court for a judicial declaration regarding the powers, authority, and responsibilities of the trustees under the Act, other than the processing and payments of claims. Only the trustees and the Secretary shall be necessary parties in any such proceeding, and no other person (whether or not such person has any interest in the fund) may participate in any such proceeding. Any final judgment resulting from such a proceeding shall be conclusive upon any person or other entity having an interest in the fund.

Subsection (c)(9) permits the trustees to employ such counsel, accountants, agents, and other employees as the trustees consider advisable. The trustees may charge against the fund the compensation of such persons and other specified expenses. Subsection (c)(10) grants to the trustees the power to execute any instrument they consider proper to carry out the provisions of the fund.

Subsection (c)(11) permits the trustees to vote any share of stock which the fund may hold. Subsection (c)(12) permits the trustees to employ actuaries to the extent they consider advisable. Any such actuary, however, must be enrolled under section 3042(a) of the Employee Retirement Income Security Act of 1974.

Subsection (d) provides that nothing in the Act shall be construed as exempting the fund or any of its activities or outlays from the Budget of the United States or any limitations imposed on it.

Premium payments

Section 9(c) of the bill rewrites section 424 of the Act. Section 424 (a)(1), as so rewritten, provides that, during any period in which a State workmen's compensation law is not included on the list of approved laws published by the Secretary, each mine operator in the State involved must pay premiums into the fund in amounts sufficient to ensure the payment of benefits under part C.

Subsection (a)(2) provides that the initial premium rate of each operator shall be established by the Secretary as a rate per ton of coal mined by the operator. The trustees may, beginning one year after the date initial premium rates are established, modify or adjust the premium rates per ton to reflect the experience and expenses of the fund. The Secretary, however, may further modify or adjust the premium

rate to ensure that obligations of the fund will be met. Any premium rate must be uniform for all mines, mine operators, and amounts of coal mined.

Subsection (a)(3) provides that, for purposes of section 162(a) of the Internal Revenue Code of 1954 (relating to trade or business expenses), premiums paid by mine operators shall be considered to be an ordinary and necessary expense in carrying on the trade or business of operators.

Subsection (a)(4) contains the following definitions:

(1) The term "coal" is defined to mean any material composed predominantly of hydrocarbons in solid states.

(2) The term "ton" is defined to mean a short ton of 2,000 pounds.

Paragraph (4) also provides that the amount of coal mined shall be determined at the first point at which such coal is weighed.

Subsection (b) requires the Secretary of the Treasury to collect premiums due from mine operators and transmit such premiums to the fund. Such collections shall be made by the Secretary of the Treasury in the same manner as, and together with, quarterly payroll reports of employers. In order to ensure premium payments, the Secretary of Labor shall certify annually the names of all operators subject to the Act.

Subsection (c)(1) permits the trustees to bring a civil action in the appropriate United States district court to require premium payments in any case in which an operator fails or refuses to make such payments. In any such action, the court may issue an order requiring the operator involved to make past and future payments, together with 9 percent annual interest on past due premiums.

Subsection (c)(2) permits the Secretary of the Treasury to assess a civil penalty against any operator who fails or refuses to pay any premium. The amount of such penalty may be in such amount as the Secretary may prescribe, except that it may not exceed the amount of the premium which the operator failed or refused to pay. Any civil penalty shall be in addition to any other liability of the operator involved under the Act, and civil penalties may be recovered in a civil action brought by the Secretary of the Treasury. Penalties so recovered shall be deposited in the fund.

Subsection (d) provides that the Secretary of Labor is required to make expenditures under part C only for the purpose of carrying out his obligation to administer part C. Other expenses incurred under part C shall be borne by the fund, and if borne by the Secretary, shall be reimbursed to him.

Subsection (e)(1) authorizes to be appropriated to the fund such sums as may be necessary to provide the fund with amounts equal to 50 percent of the amount which the Secretary of Labor estimates is necessary for benefit payments during the first 12-month period after the effective date of section 424. Any amounts appropriated under paragraph (1) may be used only for benefit payments.

Subsection (e)(2) provides that sums authorized to be appropriated by paragraph (1) are repayable advances to the fund. These advances must be repaid with interest into the general fund of the Treasury no later than 5 years after the first appropriation. The Secretary of the Treasury is required to establish a rate of interest on such advances in accordance with a specified formula.

Subsection (f) provides that any operator who purchases a coal mine from a prior operator shall be liable for the payment of benefits for which the prior operator would have been liable with respect to miners previously employed in such mine. Nothing in subsection (f), however, shall relieve any prior operator of any liability under section 422.

Subsection (g)(1) requires the fund to make an annual assessment against any mine operator liable for benefit payments under section 422. The assessments shall be in an amount equal to the amount of benefits for which the operator involved is liable under section 422 regarding death or total disability due to pneumoconiosis arising out of employment in a coal mine operated by the operator, or with respect to entitlements established in paragraph (5) or paragraph (6) of section 411(c) of the Act, as added by section 2(a) of the bill.

Subsection (g)(2) provides that any operator against whom an assessment is made must pay the amount involved into the fund no later than 30 days after receiving notice of the assessment.

Subsection (g)(3) provides that the provisions of subsection (c), relating to civil penalties, shall apply in the case of an operator who fails or refuses to pay an assessment.

Section 9(d) of the bill amends section 421(b)(2)(E) of the Act to make a technical reference amendment.

CLINICAL FACILITIES

Section 10 of the bill amends section 427(c) of the Act to extend the authorization of appropriations contained in such subsection. The extension made by the amendment does not have any fiscal year cut-off. The amount authorized in existing law under subsection (c) is $10,000,000.

MEDICAL CARE

Section 11(a) of the bill adds a new section 432 to part C of title IV of the Act. Section 432 makes applicable certain provisions of section 7 of the Longshoremen's and Harbor Workers' Compensation Act to any person entitled to benefits under part C on account of total disability or on account of eligibility under paragraph (5) or (6) of section 411(c) of the Act, as added by section 2(a) of the bill.

Section 11(b) requires the Secretary of Health, Education, and Welfare to notify each miner receiving benefits under part B of title IV of the Act on account of his total disability that such miner may be eligible for medical services and supplies, if the Secretary has reason to believe that such miner became eligible for such benefits on January 1, 1974. In any case in which the Secretary makes such a notification, the period during which the miner involved may file a claim for medical services and supplies under part C of title IV of the Act shall not terminate before 6 months after such notification was made.

TRANSITIONAL PROVISIONS

Section 12(a) of the bill requires the Secretary of Health, Education, and Welfare, and the Secretary of Labor, to distribute to interested persons and groups information relating to changes in the Act

made by the bill. Each such Secretary is required to undertake a program to give specific notice to individuals who are believed to be likely to have become eligible for benefits as a result of the changes made in the Act.

Section 12(b) requires the Secretary of Health, Education, and Welfare (with respect to part B) and the Secretary of Labor (with respect to part C) to review each pending claim and each claim which has been denied under each such part, taking into account amendments made to each such part by the bill. Each such Secretary must approve any such claim if changes made by the amendments require such approval. Section 12(b) also provides that each such Secretary, in undertaking the review of claims, shall not require the resubmission of any claim.

SHORT TITLE FOR ACT

Section 13 of the bill amends section 401 of the Act to provide that title IV may be cited as the "Black Lung Benefits Act".

MINE ACCIDENT WIDOWS

Section 14(a) of the bill provides that any eligible survivor of a miner shall be entitled to benefits under part B of the Black Lung Benefits Act if (1) such miner was employed for 17 years or more in one or more underground coal mines; and (2) such miner died in a coal mine accident which occurred on or before June 30, 1971.

Section 14(b) provides that benefit payments to a widow, child, parent, brother, or sister of a miner under subsection (a) shall be reduced on the basis of payments received by the widow, child, parent, brother, or sister under the workmen's compensation, unemployment compensation, or disability laws of the miner's State.

ADMINISTRATION OF BLACK LUNG BENEFITS ACT

Section 15(a) transfers the Division of Coal Mine Workers Compensation to the Office of the Secretary of Labor.

Section 15(b) provides that the Secretary shall establish field offices to carry out the Black Lung Benefits Act which shall be reasonably accessible to miners and may contract with other Federal or State agencies for the use of existing facilities.

Section 15(c) adds necessary definitions.

EFFECTIVE DATES

Section 16(a) of the bill provides that the bill shall take effect on the date of its enactment, with the following exceptions:

(1) Amendments made by section 2 shall take effect on December 30, 1969, except that any claim approved as a result of such amendments, which was filed before the date of the enactment of the bill, shall be awarded benefits only for the period beginning on such date of enactment.

(2) Amendments made by sections 4, 5, and 8 shall take effect on December 30, 1969.

(3) Amendments made by section 6 shall not require benefit payments for any period before the date of the enactment of the bill.

(4) Amendments made by section 9 shall take effect on October 1, 1977, except that (A) the Secretary of Labor must establish initial premium rights for mine operators not later than October 1, 1977; and (B) the Secretary of Labor must make an estimate relating to the amounts necessary to make benefit payments under part C as soon as practicable after the date of the enactment of the bill.

Section 16(b) provides that, in the event benefit payments cannot be made from the fund, the provisions of the Act relating to the payment of benefits (as in effect immediately before October 1, 1977) shall remain in force as rules of the Secretary of Labor until such provisions are revoked, amended, or revised by law. The Secretary of Labor shall make benefit payments in accordance with such provisions.

Section 16(c) provides that benefits payable because of the amendments made by the Black Lung Benefits Reform Act of 1977 shall not be paid until October 1, 1977.

WHITE LUNG STUDY

Section 17(a) of the bill provides for a study of white lung disease by the Committee on Education and Labor.

Section 17(b) provides that the Committee shall report its findings to the Congress not later than one year after enactment of the bill.

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):

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969

* * * * * * *

TITLE IV—BLACK LUNG BENEFITS

PART A—GENERAL

SEC. 401. (*a*) 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 coal mines; that there are a number of survivors of coal miners whose deaths were due to this 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 or who were totally disabled by this disease at the time of their deaths 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 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.

(b) *This title may be cited as the "Black Lung Benefits Act".*

SEC. 402. For purposes of this title—

(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.

(b) The term "pneumoconiosis" means a chronic dust disease of the lung 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 coal mine.

(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), 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, 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.

With respect to a claim filed after June 30, 1973, such regulations shall not provide more restrictive criteria than those applicable to a claim filed on June 30, 1973.

(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

(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.

(h) The term "fund" means the Black Lung Disability Insurance Fund established by section 423(a).

Part B—Claims for Benefits Filed on or Before December 31, 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 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 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 coal mines and died from a respirable disease there shall be a rebuttable presumption that his death was due to pneumoconiosis;

(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; [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 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 worked 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[.];

(5) if a miner was employed for thirty years or more in one or more underground coal mines such miner (or, in the case of a deceased miner, the eligible survivors of such miner) shall be entitled to the payment of benefits; and

(6) if a miner was employed for twenty-five years or more in one or more anthracite coal mines such miner (or, in the case of a deceased miner, the eligible survivors of such miner) shall be entitled to the payment of benefits.

The Secretary shall not apply all or a portion of any requirement of this subsection that a miner shall have worked in an underground mine if the Secretary determines that conditions of such miner's employment in a coal mine other than an underground mine were substantially similar to conditions in an underground 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 minor due to pneumoconiosis, *or in the case of miner entitled to benefits under paragraph (5) or (6) of section 411(c) of this title*, the [disabled] miner shall be paid benefits during the disability, *or during the period of such entitlement*, 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 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).

(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 death, and who is not survived at the time of his death by a widow or a child, or in the case of a 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.

(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.

(b) Notwithstanding subsection (a), benefit payments under this section to a miner or his 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, 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 *due to pneumoconiosis*, 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. 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, 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, but no claim for benefits under this part shall be denied solely on the basis of the results of a chest roentgenogram *or solely on the basis of employment as a miner if (1) the location of such employment has recently been changed to a mine area having a lower concentration of dust particles; (2) the nature of such employment has been changed so as to involve less rigorous work; or (3) the nature of such employment has been changed so as to result in the receipt of substantially less pay.* 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: *Provided, That unless the Secretary has good cause to believe (1) that an X-ray is not of sufficient quality to demonstrate the presence of pneumoconiosis, or an autopsy report is not accurate, or (2) that the condition of the miner is being fraudulently misrepresented, the Secretary shall accept such report, or in the case of the X-ray, accept*

the opinion of the claimant's physician, concerning the presence of pneumoconiosis and the stage of advancement of pneumoconiosis. Where there is no relevant medical evidence in the case of a deceased miner, such affidavits shall be considered to be sufficient to establish that the miner was totally disabled due to pneumoconiosis or that his death was due to pneumoconiosis.

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), *and (n)*, 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, *except that a decision by an administrative law judge in favor of a claimant may not be appealed or reviewed, except upon motion of the claimant.*

(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.

(d) (1) A miner may file a claim for benefits whether or not such miner is employed by an operator of a coal mine at the time such miner files such claims.

(2) The Secretary shall notify a miner, as soon as practicable after the Secretary receives a claim for benefits from such miner, whether, in the opinion of the Secretary, such miner—

(A) is eligible for benefits on the basis of the provisions of paragraph (1), (2), or (3) of subsection (b); or

(B) would be eligible for benefits, except for the circumstances of the employment of such miner at the time such miner filed a claim for benefits.

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, 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, 1973, 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 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 first been 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, entitlements 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.

(4) A claim for benefits under this part may be filed at any time on or after the date of the enactment of the Black Lung Benefits Reform Act of 1977 by a miner (or, in the case of a deceased miner, the eligible survivors of such miner) if the date of the last exposed employment of such miner occurred before December 30, 1969.

(b) No benefits shall be paid under this part after December 31, 1973, if the claim therefor was filed after June 30, 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, 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, *or with respect to an entitlement under paragraph (5) or paragraph (6) of section 411(c) of this title,* prior to his death, or (2) the death of such miner occurred prior to January 1, 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 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—

(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 claims, 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, 1972), 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.

SEC. 416. (a) For purposes of assuring that all individuals who may be eligible for benefits under this part are afforded an opportunity to apply for and, if entitled thereto, to receive such benefits, the Secretary shall undertake a program to locate individuals who are likely to be eligible for such benefits and have not filed a claim for such benefits.

(b) The Secretary shall seek to determine, in cooperation with operators and with the Secretary of the Interior, the names and current addresses of individuals having long periods of employment in coal mining and, if such individuals are deceased, the names and addresses of their widows, children, parents, brothers, and sisters. The Secretary shall then directly, by mail, by personal visit by a delegate of the Secretary, or by other appropriate means, inform any such individuals (other than those who have filed a claim for benefits under this title) of the possibility of their eligibility for benefits, and offer them individualized assistance in preparing their claims where it is appropriate that a claim be filed.

(c) Notwithstanding any other provision of this part, a claim for benefits under this part, in the case of an individual who has been

informed by the Secretary under subsection (b) of the possibility of his eligibility for benefits, shall if filed no later than six months after the date he was so informed, be considered on the same basis as if it had been filed on June 30, 1973.

PART C—CLAIMS FOR BENEFITS AFTER DECEMBER 31, 1973

SEC. 421. (a) On and after January 1, 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, *and in any case in which benefits based upon eligibility under paragraph (5) or paragraph (6) of section 411(c) are involved.* 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 section 402(f) of this title and to those standards established under part B of this title, and by the regulations of the Secretary of Health, Education, and Welfare promulgated thereunder, *except that such standards shall not be required to include provisions for the payment of benefits based upon conditions substantially equivalent to conditions described in paragraphs (5) and (6) of section 411(c);*

(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)] *424(f)* 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 of 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 sixth month following the month in which such amendments are enacted.

SEC. 422. (a) During any period after December 31, 1973, 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, 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 to the extent consistent with the provisions of this part*, and except as the Secretary shall by regulation otherwise provide), be applicable to each operator of a coal mine in such State with respect to death or total disability due to pneumoconiosis arising out of employment in such mine, *or with respect to entitlement established in paragraph (5) or paragraph (6) of section 411(c) of this title.* 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] *premiums and assessments* by such operator [to persons entitled thereto] as provided in this part and thereafter those provisions shall be applicable to such operator.

(b) *(1)* During any such period each such operator shall be liable for and shall secure the payment of [benefits] *premiums and assessments*, as provided in this section and section [423] *424* of this part.

(2)(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) of this part each operator of a coal mine in such State shall secure the payment of assessments against such operator under section 424(g) of the part by (i) qualifying as a self-insurer in accordance with regulations prescribed by the Secretary; or (ii) insuring and keeping insured the payment of such assessments 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 (ii) of subparagraph (A) of this paragraph, every policy or contract of insurance shall contain—

(i) a provision to pay assessments required under section 424 (g) of this part, notwithstanding the provisions of the State workmen's compensation law which may provide for payments which are less than the amount of such assessments;

(ii) a provision that insolvency or bankruptcy of the operator or discharge therein (or both) shall not relieve the carrier from liability for the payment of such assessments; and

(iii) 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 (ii) of subparagraph (A) of this paragraph 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.

[(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.]

(c) Benefits shall be paid during such period under this section by the fund, subject to reimbursement to the fund by operators in accordance with the provisions of section 424(g) of this title, 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, except that (1) the Secretary may modify any such regulation promulgated by the Secretary of Health, Education, and Welfare; and (2) no operator shall be liable for the payment of any benefit (except as provided in section 424(f) of this title) on account of death or total disability due to pneumoconiosis, or on account of any entitlement based upon conditions described in paragraphs (5) and (6) of section 411(c), 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] *made* 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, 1974 [, or].

[(3) for any period after twelve 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 *paragraph (4), (5), or (6)* of 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] *any of such paragraphs*, 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 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.]

(i)(1) The Secretary shall promulgate regulations providing for the prompt and expeditious consideration of claims under this section.

(2)(A) The Secretary shall promulgate regulations providing for the prompt and equitable hearing of appeals by claimants who are aggrieved by any decision of the Secretary.

(B) Any such hearing shall be held no later than forty-five days after the date upon which the claimant involved requests such hearing. A hearing may be postponed at the request of the claimant involved for good cause.

(C) Any such hearing shall be held at a time and a place convenient to the claimant requesting such hearing.

(D) Any such hearing shall be of record and shall be subject to the provisions of sections 554, 555, 556, and 557 if title 5, United States Code.

(3)(A) Any individual, after any final decision of the Secretary made after a hearing to which he was a party, may obtain a review of such decision by a civil action commenced no later than ninety days

after the mailing to him of notice of such decision, or no later than such further time as the Secretary may allow.

(B) Such action shall be brought in a district court of the United States in the State in which the claimant resides.

(C) The Secretary shall file, as part of his answer, a certified copy of the transcript of the record, including the evidence upon which the findings and decision complained of are based.

(D) The court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Secretary, with or without remanding the case for a rehearing. The findings of the Secretary as to any fact, if supported by the weight of the evidence, shall be conclusive.

(E) The court shall, on motion of the Secretary made before he files his answer, remand the case to the Secretary for further action by the Secretary, and may, at any time, on good cause shown, order additional evidence to be taken before the Secretary, and the Secretary shall, after the case is remanded, and after hearing such additional evidence if so ordered, modify or affirm his findings of fact or his decision, or both, and shall file with the court any such additional and modified findings of fact and decision, and a transcript of the additional record and testimony upon which his action in modifying or affirming was based. Such additional or modified findings of fact and decision shall be reviewable only to the extent provided for review of the original findings of fact and decision.

(F) The judgment of the court shall be final, except that it shall be subject to review in the same manner as a judgment in other civil actions. Any action instituted in accordance with this paragraph shall survive notwithstanding any change in the person occupying the office of Secretary or any vacancy in such office.

[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 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 regulations, 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. 423. (a) (1) There is hereby established in the Treasury of the United States a trust fund to be known as the Black Lung Disability Insurance Fund. The fund shall consist of such sums as may be appropriated as advances to the fund under section 424(e)(1) of this part, the assessments paid into the fund as required by section 424(g), the premiums paid into the fund as required by section 424(a), the interest on, and proceeds from, the sale or redemption of any investment held by the fund, and any penalties recovered under section 424(c), including such earnings, income, and gains as may accrue from time to time which shall be held, managed, and administered by the trustees in trust in accordance with the provisions of this part and the fund.

(2) Fund assets, other than such assets as may be required for necessary expenses, shall be used solely and exclusively for the purpose of discharging obligations of operators under this part. Operators shall have no right, title, or interest in fund assets, and none of the earnings of the fund shall inure to the benefit of any person, other than through the payment of benefits under this part, together with appropriate cost.

(b) (1) (A) The fund shall have seven trustees. Except as provided in subparagraph (B), trustees shall serve for terms of four years.

(B) Of the trustees first elected under this subsection—

(i) four shall be elected for terms of two years; and

(ii) three shall be elected for terms of one year.

The Secretary shall determine, before the date of the first election under this subsection, whether each trustee office involved in such election shall be for a term of one year or two years. Such determination shall be made through the use of an appropriate method of random selection, except that at least one trustee nominated under paragraph (2)(A) shall serve for a term of two years.

(C) Any trustee may be a full-time employee of an operator, except that no more than one trustee may be employed by any one operator or any affiliate of such operator.

(2) (A) Two trustees shall be nominated and elected by operators having an annual payroll not in excess of $1,500,000 (hereinafter referred to as "small operators").

(B) Five trustees shall be nominated and elected by all operators.

(3) No later than 60 days after the date of the enactment of the Black Lung Benefits Reform Act of 1977, all operators shall certify to the Secretary their payrolls for the 12-month period ending December 31, 1976. The Secretary shall then publish a list setting forth the number of votes to which each small operator and each operator is entitled, computed on the basis of one vote for each $500,000 or fraction thereof of payroll. Trustees shall be elected no later than 180 days after the date of the enactment of such Act.

(4) Candidates seeking nomination for election to the office of trustee under paragraph (2)(A) shall submit to the Secretary petitions of nomination reflecting the approval of small operators representing not less than 2 per centum of the aggregate annual payroll of all small operators. Candidates seeking such nomination under paragraph (2)(B) shall submit petitions reflecting the approval of oper-

ators representing not less than 2 per centum of the aggregate annual payroll of all operators.

(5) The Secretary shall promulgate regulations for the nomination and election of trustees. Such regulations shall include provisions for the nomination and election of trustees, including the nomination and election of trustees to fill any vacancy caused by the death, disability, resignation, or removal of any trustee. The Secretary shall certify the results of all nominations and elections. Two or more trustees may at any time file a petition, in the United States district court where the fund has its principal office, for removal of a trustee for malfeasance, misfeasance, or nonfeasance. The cost of any such action shall be paid from the fund, and the Secretary may intervene in any such action as an interested party.

(6) The trustees shall organize by electing a Chairman and Secretary and shall adopt such rules governing the conduct of their business as they consider necessary or appropriate. Five trustees shall constitute a quorum and a simple majority of those trustees present and voting may conduct the business of the fund.

(c) (1) The trustees shall act on behalf of all operators with respect to claims filed under this part.

(2) (A) Except as provided by subparagraph (B), the fund may not participate or intervene as a party to any proceeding held for the purpose of determining claims for benefits under this part.

(B) (i) If the fund is dissatisfied with any determination of the Secretary with respect to a claim for benefits under this part, the fund may, no later than thirty days after the date of such determination, file with the United States court of appeals for the circuit in which such determination was made a petition for review of such determination. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which he based his determination, as provided in section 2112 of title 28, United States Code.

(ii) The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive, except that the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary thereupon may make new or modified findings of fact and may modify his previous determination, and shall certify to the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(iii) The court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject 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.

(iv) Any finding of fact of the Secretary relating to the interpretation of any chest roentgenogram or any other medical evidence which demonstrates the existence of pneumoconiosis or any other disabling respiratory or pulmonary impairment, shall not be subject to review under the provisions of this subparagraph.

(3) No operator may bring any proceeding, or intervene in any proceeding, held for the purpose of determining claims for benefits under this part.

(4) It shall be the duty of the trustees to report to the Secretary and to the operators no later than January 1 of each year on the financial condition and the results of the operations of the fund during the preceding fiscal year and on its expected condition during the current and ensuing fiscal year. Such report shall be included in a report to the Congress by the Secretary not later than March 1 of each year on the financial condition and the results of the operations of the fund during the preceding fiscal year and on its expected condition and operations during the current and next ensuing fiscal year. The report of the Secretary shall be printed as a House document of the session of the Congress to which the report is made.

(5)(A) The trustees shall take control and management of the fund and shall have the authority to hold, sell, buy, exchange, invest, and reinvest the corpus and income of the fund. All premiums paid to the fund under section 424(a)(1) shall be held and administered by the trustees as a single fund, and the trustees shall not be required to segregate and invest separately any part of the fund assets which may be claimed to represent accruals or interests of any individuals. It shall be the duty of the trustees to invest such portion of the assets of the fund as is not required to meet obligations under this part, except that the trustees may not invest any advances made to the fund under section 424(e). The trustees shall make investments under this paragraph in accordance with the provisions of section 404(a)(1)(C) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104(a)(1)(C)).

(B) Any profit or return on any investment or reinvestment made by the trustees under subparagraph (A) shall not be considered as income for purposes of Federal or State income taxation.

(6)(A) Amounts in the fund shall be available for making expenditures to meet obligations of the fund which are incurred under this part, including the expenses of providing medical benefits as required by section 432 of this title, and the operation, maintenance, and staffing of the office of the fund. The trustees may enter into agreements with any self-insured person or any insurance carrier who has incurred obligations with respect to claims under this part before the effective date of this paragraph, under which the fund will assume the obligations of such self-insured person or insurance carrier in return for a payment or payments to the fund in such amounts, and on such terms and conditions, as will fully protect the financial interests of the fund.

(B) Beginning on the effective date of this paragraph, payments shall be made from the fund to meet any obligation incurred by the Secretary with respect to claims under this part before such effective date. The Secretary shall cease to be subject to such obligations on such effective date.

(7) The trustees shall keep accounts and records of their administration of the fund, which shall include a detailed account of all investments, receipts, and disbursements.

(8) At no time during the administration of the fund shall the trustees be required to obtain any approval by any court of the United States or by any other court of any act required of them in connection with the performance of their duties or in the performance of any act required of them in the administration of their duties as trustees. The

trustees shall have the full authority to exercise their judgment in all matters and at all times without any such approval of such decisions. The trustees may file an application in the United States district court where the fund has its principal office for a judicial declaration concerning their power, authority, or responsibility under this Act (other than the processing and payment of claims). In any such proceeding, only the trustees and the Secretary shall be necessary or indispensable parties, and no other person, whether or not such person has any interest in the fund, shall be entitled to participate in any such proceeding. Any final judgment entered in such proceeding shall be conclusive upon any person or other entity claiming an interest in the fund.

(9) The trustees may employ such counsel, accountants, agents, and employees as they consider advisable. The trustees may charge the compensation of such persons and any other expenses, including the cost of fidelity bonds and indemnification and fiduciary insurance for trustees and other fund employees, necessary in the administration of the fund, against the fund.

(10) The trustees shall have the power to execute any instrument which they consider proper in order to carry out the provisions of the fund.

(11) The trustees may, through any duly authorized person, vote any share of stocks which the fund may hold.

(12) The trustees may employ actuaries to such extent as they consider advisable. No actuary may be employed by the trustees under this paragraph unless such actuary is enrolled under section 3042(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1242(a)).

(d) Nothing in this Act or in the Black Lung Benefits Reform Act of 1977 shall be construed as exempting the fund, or any of its activities or outlays, from inclusion in the Budget of the United States or from any limitations imposed thereon.

[SEC. 424. If a totally disabled miner or a 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, child, parent, brother, or sister under this title.]

SEC. 424. (a)(1) 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 a coal mine in such State shall pay premiums into the fund in amounts sufficient to ensure the payment of benefits under this part.

(2) The initial premium rate of each operator shall be established by the Secretary as a rate per ton of coal mined by such operator. Beginning one year after the date upon which the Secretary establishes initial premium rates, the trustees may modify or adjust the premium rate per ton of coal mined to reflect the experience and expenses of the

fund to the extent necessary to permit the trustees to discharge their responsibilities under this Act, except that the Secretary may further modify or adjust the premium rate to ensure that all obligations of the fund will be met. Any premium rate established under this subsection shall be uniform for all mines, mine operators, and amounts of coal mined.

(3) For purposes of section 162(a) of the Internal Revenue Code of 1954 (relating to trade or business expenses), any premium paid by an operator of a coal mine under paragraph (1) shall be considered to be an ordinary and necessary expense in carrying on the trade or business of such operator.

(4) For purposes of this subsection—

(A) the term "coal" means any material composed predominantly of hydrocarbons in a solid state;

(B) the term "ton" means a short ton of two thousand pounds; and

(C) the amount of coal mined shall be determined at the first point at which such coal is weighed.

(b) The Secretary shall advise the Secretary of the Treasury or his delegate of premium rates established under subsection (a)(1). The Secretary of the Treasury or his delegate shall collect all premiums due and payable by operators under subsection (a)(1), and transmit such premiums to the fund. Collections shall be effected by the Secretary of the Treasury or his delegate in the same manner as, and together with, quarterly payroll reports of employers. In order to ensure the payment of premiums by all operators, the Secretary, after consultation with the Secretary of the Interior, shall certify, not less than annually, the names of all operators subject to this Act.

(c)(1) In any case in which an operator fails or refuses to pay any premium required to be paid under subsection (a)(1), the trustees of the fund shall bring a civil action in the appropriate United States district court to require the payment of such premium. In any such action, the court may issue an order requiring the payment of such premiums in the future as well as past due premiums, together with 9 per centum annual interest on all past due premiums.

(2) An operator who fails or refuses to pay any premium required to be paid under subsection (a)(1) may be assessed a civil penalty by the Secretary of the Treasury or his delegate in such amount as such Secretary or his delegate may prescribe, but not in excess of an amount equal to the premium the operator failed or refused to pay. Such penalty shall be in addition to any other liability of the operator under this Act. Penalties assessed under this paragraph may be recovered in a civil action brought by such Secretary or his delegate, and penalties so recovered shall be deposited in the fund.

(d) The Secretary shall be required to make expenditures under this part only for the purpose of carrying out his obligation to administer this part. All other expenses incurred under this part shall be borne by the fund, and if borne by the Secretary, shall be reimbursed by the fund to the Secretary.

(e)(1) There are hereby authorized to be appropriated to the fund such sums as may be necessary to provide the fund with amounts equal to 50 per centum of the amount which the Secretary estimates is necessary for the payment of benefits under this part during the first twelve-

month period after the effective date of this section. Any amounts appropriated under this paragraph may be used only for the payment of benefits under this part.

(2)(A) Sums authorized to be appropriated by paragraph (1) shall be repayable advances to the fund.

(B) Such advances shall be repaid with interest into the general fund of the Treasury no later than five years after the first appropriation made under paragraph (1).

(3) Interest on such advances shall be at a rate determined by the Secretary of the Treasury, taking into consideration the current average yield during the month preceding the date of the advance involved, on marketable interest-bearing obligations of the United States of comparable maturities then forming a part of the public debt rounded to the nearest one-eighth of 1 per centum.

(f)(1) During any period in which section 422 of this title is applicable with respect to a coal mine an operator of such mine who, after the date of the enactment of this title, acquired such mine or substantially all the assets thereof from a person (hereinafter in this paragraph referred to 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 this section and section 423 of this title, secure the payment of all benefits for which the prior operator would have been liable under section 422 of this title with respect to miners previously employed in such mine if the acquisition had not occurred and the previous operator had continued to operate such mine.

(2) Nothing in this subsection shall relieve any prior operator of any liability under section 422 of this title.

(g)(1) The fund shall make an annual assessment against any operator who is liable for the payment of benefits under section 422 of this title. Such assessment against any operator of a coal mine shall be in an amount equal to the amount of benefits for which such operator is liable under section 422 of this title with respect to death or total disability due to pneumoconiosis arising out of employment in such mine, or with respect to entitlements established in paragraph (5) or paragraph (6) of section 411(c) of this title.

(2) Any operator against whom an assessment is made under paragraph (1) shall pay the amount involved in such assessment into the fund no later than thirty days after receiving notice of such assessment.

(3) The provisions of subsection (c) of this section shall apply in the case of any operator who fails or refuses to pay any assessment required to be paid under this subsection.

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 reimbuse 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, 1974, 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] *fiscal year*. 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. 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. 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.

(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 *and by the Black Lung Benefits Reform Act of 1977* 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) *and the applicability of entitlements based upon conditions described in paragraphs (5) and (6) of section 411(c)*, 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] *the period during which the miner was employed* in one or more underground mines.

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. 432. The provisions of subsections (a), (b), (c), (d), and (g) of section 7 of the Longshoremen's and Harbor Workers Compensation Act (33 U.S.C. 907 (a), (b), (c), (d), and (g)) shall be applicable to persons entitled to benefits under this part on account of total disability or on account of eligibility under paragraph (5) or paragraph (6) of section 411(c), except that references in such section to the employer shall be considered to refer to the trustees of the fund.

MINORITY VIEWS

We are strongly opposed to the bill H.R. 4544 as reported by this committee. Joining us in our opposition is the present administration, which stated unequivocally that it was opposed to the major provision in the bill—"entitlement" of disability benefits to those who are not disabled.

We are equally opposed to the manner in which this legislation has been handled by the committee.

PROBLEMS THIS LEGISLATION DOES NOT ADDRESS

It is our judgment that this bill address neither the problems not the criticisms of the administration and application of the black lung benefits program. As a matter of fact, this bill violates the assurances of its original sponsors that the black lung program was intended to be a "one-shot" special type compensation plan.

The problems of administration of the black lung program arise from the failure to understand the program as envisioned in 1969 and liberalized in 1972. The fact that there has been a failure to understand the program arises from the sponsors' and administrators' inability to limit the program to a special type compensation plan. Instead, this program has been viewed in the geographic areas where mining is performed as the miners' pension bill. Although the program was not originally set up to be such, this legislation undoubtedly makes it so.

When first introduced, prior to the enactment of the Federal Coal Mine Health and Safety Act of 1969, the black lung prgoram was intended to be a "one-shot" special type of compensation plan. That original proposal called for benefit payments to coal miners totally disabled from pneumoconiosis, or black lung. As the legislation emerged from conference, however, the legislation called for benefit payments not only to those miners totally disabled, but also to those miners who had some stage of the disease, but were not totally disabled. Then, in 1972, a presumption of total disability from pneumoconiosis was incorporated into the law when a miner had worked 15 years and had a respiratory impairment, although that miner had no X-ray evidence of pneumoconiosis.

This legislation would now require absolutely no disability and no impairment of any miner. Accordingly, this legislation allows miners who have worked for a certain number of years in the mines to receive total disability benefits. The black lung disability benefits program thereby clearly becomes a Federal pension program for miners.

Misunderstanding of this legislation was graphically demonstrated by a miner witness before the committee. This witness had worked for a number of years in the mines, and in 1969 he was involved in a mine accident. The accident precluded him from further work in the mines. Thereafter, he filed for black lung benefits. He was denied, although

he was disabled. However, he apparently has never been informed that the black lung program provides disability benefits for those disabled from pneumoconiosis—not from accidents. This case represents just one of the misconceptions that the Federal black lung program has created. Other cases, such as the woman who claimed she was entitled to benefits because her husband had been killed in a mine accident, or the woman who eventually received benefits because she had worked as a secretary in a room where coal dust collected at the railway terminal, were brought to our attention by Dr. Harold Passes, the former Acting Chief Medical Officer of the Bureau of Hearings and Appeals at the Social Security Administration, Department of Health, Education, and Welfare. Admittedly, these are unusual cases, but they do illustrate the misconceptions surrounding the program. These are the type of misconceptions that have caused (1) the irrationality of the program; (2) administrative inefficiency in the program; and (3) jealousies to arise between recipients of the benefits and those who are denied. The reasons those misunderstandings and misconceptions have grown can be traced directly to the legislative history of the act.

History Prior to 1972

The black lung benefits program commenced in 1969 with the enactment of title IV of the Federal Coal Mine Health and Safety Act. The act provided for payment of benefits to miners totally disabled from complicated pneumoconiosis and to 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 an individual's employment in a coal mine. That act also provided that if a miner was employed in an underground mine for 10 years or more, there would be a rebuttable presumption that the disease arose out of his employment and that if the miner were not so employed, the individual must demonstrate that the disease arose out of his employment in a coal mine.

In the House committee report (H. Rept. No. 91-563) explaining these particular provisions of the Act, it was asserted as follows:

> 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 in 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.

During the floor debate on the compensation provisions of the Federal Coal Mine Health and Safety Act of 1969, it was made clear that these provisions were for past damage to a coal miner's health, and were to be considered a Federal responsibility inasmuch as existing State compensation laws were inadequate to meet the needs of miners disabled by black lung. However, these provisions were not intended to establish a Federal prerogative or precedent, but were in the nature of a special compensation plan. (See House debate, October 27, 1969, H–10031.) The effort to provide compensation for those miners who were totally disabled by complicated pneumoconiosis was explained as follows (October 27, 1969, H–10047) Mr. Dent:

> 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 its fourth stage—complicated pneumoconiosis . . .
>
> However, this is only one shot. I want to say this today and I want to have it placed on the record indelibly . . .

and on October 27, 1969, H–10067, Mr. Burton:

> One of the very little-known facts about the temporary, one-shot black lung pay provision is that this provision ripened as a result of a conversation held between the gentleman from Pennsylvania and me.

It was the gentleman from Pennsylvania who advanced one of the essential concepts of the bill, in order to avoid what was the justifiable concern expressed in the very early days of this black [lung] payment idea, that we might be running the risk of federalizing in some way the workman's compensation program.

As the gentleman from Pennsylvania and I know full well, it was the concept advanced by the gentleman from Pennsylvania, embodied in this bill, that avoids that which all of us at least at this stage are delighted we have avoided; that is, that we would be creating any unnecessary or unhealthy precedent.

In that particular I want to now spread on the public record that of which the gentleman from Pennsylvania is so clearly aware as part of the background of this measure.

I would think the gentleman from Pennsylvania, in addition to that, deserves great credit along with others I shall mention during the course of my statement, for bringing virtually all the men representing the coal areas into very full and vigorous support of this amendment.

and Mr. Dent:

This is because the gentleman understood then and understands now that this need be only a one-shot proposition. The reason for this is that we believe if they live up to the law as we hope to write it, there will be no more disease in the mines.

and H–10069, Mr. Daniels:

Section 112(b) is clearly not intended to establish a Federal prerogative or 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. I am sure none of us would want to excuse inaction elsewhere. We must make progress where we can, and whenever we can.

On October 29, 1969, Mr. Scherle offered an amendment to strike the compensation provisions from the bill and the House received these reassurances from the sponsor of that provision and the chief sponsor of the bill:

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. Dent:

I want to reassure the gentleman from Wisconsin [Wm. Steiger] 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.

We are not going to restrict this to miners except that we are restricting it to a certain disease.

Despite these and other assurances, the conference report established a broad program of benefits to miners totally disabled by pneumoconiosis, as well as to those who had some stage of the disease although not totally disabled, and of financing disability benefits after a certain date (December 31, 1972) until a time certain for discontinuation of the program, except for lifetime benefits to miners and their survivors coming under the Federal lifetime program. The bill as it emerged from conference became law (Public Law 91–173).

Under Public Law 91–173, some 364,600 claims were filed with the Social Security Administration. Prior to the May 1972 amendments, decisions had been made in 345,000 cases, with about 171,000 claims allowed and 174,000 claims denied. While administration costs have been substantial, they become dwarfed when compared with the cumulative payment of benefits which amounted to almost $700 million (on a program that was originally estimated to cost, in total, anywhere from $40 to $355 million). In May of 1972, monthly benefits in current payment status were quickly approaching $33 million, an amount almost equal to the original estimated total of the whole cost of the program.

History Since 1972

Mainly because the committee discovered that orphans of miners eligible for black lung benefits were not eligible as surviving dependents, the committee reported a bill amending the 1969 act which eventually became the "Black Lung Benefits Act of 1972" (Public Law 92–303, 30 United States Code 901, May 19, 1972). As that bill evolved from conference, the 1972 act not only extended benefits to "double

orphans," but to other dependents and eligible survivors, as well as to surface miners, their dependents and eligible survivors. In addition, according to the September 5, 1972, GAO Report, the 1972 act liberalized the eligibility requirements by:

(1) Providing a rebuttable presumption that miners are totally disabled due to complicated pneumoconiosis, that their deaths were due to complicated pneumoconiosis, or that they were totally disabled by complicated pneumoconiosis at the time of their deaths if they were employed for at least 15 years in underground coal mines or in comparable dusty conditions in surface mines and if other than X-ray evidence demonstrated the existence of totally disabling respiratory or pulmonary impairments. This provision may be rebutted only by establishing that the miners do not, or did not, have pneumoconiosis, or that their respiratory or pulmonary impairments did not arise out of their coal mine employment.

(2) Providing that death benefit claims be allowed irrespective of the causes of the deaths if the miners were totally disabled due to pneumoconiosis at the time of their deaths. The 1969 law allowed payment of death benefits only when the deaths were due to complicated pneumoconiosis or when the miners were entitled to benefits at the time of their deaths.

(3) Providing that miners be considered totally disabled when pneumoconiosis prevents them from engaging in gainful employment requiring skills and abilities comparable to those of any coal mine employment in which they previously engaged with some regularity over substantial periods of time.

(4) Providing that no claims for benefits be denied solely on the basis of X-ray evidence. Under the 1969 act, the Social Security Administration frequently denied claims solely on the basis of X-ray evidence.

The 1972 Act also:

(1) Specifies that black lung benefits paid by the Social Security Administration not be considered as benefits under a workmen's compensation law or plan for purposes of section 224 of the Social Security Act, (effective December 1, 1969). Section 224 limits the amount of combined income from social security benefits and workmen's compensation benefits. Under the 1969 act the Social Security Administration regarded black lung benefits as benefits under a workmen's compensation law or plan and therefore reduced social security disability for about 5 percent of those who had been awarded black lung benefits.

(2) Required the Department of Health, Education, and Welfare to (a) generally disseminate information on the new legislation to persons who filed claims prior to enactment of the 1972 act, and (b) advise all persons whose claims were denied under the 1969 act or whose claims were pending at the time of the 1972 act that their claims will be revised under the provisions of the new legislation.

(3) Authorizes (a) $10 million a year for 3 years to the Department of Health, Education, and Welfare for establishing and operating clinical facilities for analysis, examination, and treatment of miners' lung impairments and (b) additional funds, as appropriate, to the Department of Health, Education, and Welfare for research grants to devise simple and effective tests for measuring, detecting, and treating miners' lung impairments.

Under the 1972 legislation, the Social Security Administration is responsible for: (1) miners' claims filed before July 1973; (2) widows' claims filed before 1974; and (3) widows' claims filed after 1973 if the deceased miners either died due to complicated pneumoconiosis before January 1974 or were entitled to benefits from the Social Security Administration at the time of their deaths *and* and widows file within 6 months after the miner's deaths. SSA is responsible also for the following claims if deceased miners either died due to complicated pneumoconiosis before January 1974 or were entitled to benefits from the Social Security Administration at the time of their deaths:

Claims of orphans of miners which are filed within 6 months after the deaths of the miners or their widows or by December 31, 1973, whichever is later.

Claims of totally dependent surviving parents, brothers, sisters which are filed within 6 months after the deaths of the miners or by December 31, 1973, whichever is later. However, surviving widows or children preclude parents from succeeding to benefits and surviving widows, children, or parents preclude brothers and sisters from succeeding to benefits.

The Department of Labor will be responsible for all other claims under part C. The Department of Labor's administrative responsibilities for the program include: (1) taking, adjudicating, and paying claims during the transition period from July 1, 1973, through December 31, 1973; (2) starting January 1, 1974, to continue taking and determining claims, but only paying benefits when a responsible operator (interpreted as last responsible operator for whom the claimant worked a year) cannot be identified and when the State does not have a worker's compensation program that meet Federal criteria (no State has been certified); (3) notifying coal mine operators of their liability to pay after December 31, 1973; and (4) adjudicating differences that claimant or operator may have with the Department of Labor's findings. The Department of Labor, where a State does not qualify and no responsible operator can be found, has residual responsibility for paying an eligible claim out of general revenue funds. The 1972 legislation also extends—from 1976 to 1981—the end of the period during which the Department of Labor or coal mine operators are required to pay benefits in States where State workmen's compensation does not provide appropriate coverage.

Since enactment of the 1972 amendments, the operating and administrative experience of the black lung benefits program has become staggering. As of the end of 1974, a cumulative total of 556,200 claims had been filed with the Social Security Administration. Payment awards have been made to 58.6 percent of the miner claimants and 74.7 percent of the survivor claimants, with over 509,000 individuals being black lung beneficiaries, including dependents. Cumulative payments at the end of 1974 totaled $3 billion, with monthly recurring payments over $75 million.

By December of 1975, total cumulative benefit payments amounted to $3,923 million, that is, almost $4 billion. Total cumulative benefit payments were about $1 billion annually in 1976. Over 565,000 beneficiaries have been awarded benefits by the Social Security Administration, and, as of January 1977, over 490,000 beneficiaries were on the

roles. Filings are continuing at a rate of about 750 survivor claims a month. The Department of Labor, by December of 1975, had received 80,000 claims with an approval rate at about 20 percent. Outlays by the Department of Labor in 1975 for payment of black lung benefits is estimated to be about $36,000,000. In nearly 4 years, the Department of Labor has received almost 107,000 claims, approving 4,000 of which operators are paying only 138, and denying about 53,000. The rest are pending. The approval rate at the Department of Labor has now dropped to about 7 percent, since many ineligible claimants continue to file for claims.

Present Conditions

Now, for the second time, we are being asked to reconsider and reform the black lung benefits reform program, this time, under the guise of establishing objective criteria for determining entitlement to benefit payments arising out of employment in the Nation's coal mines; of transferring from the Federal Government to the coal industry the residual liability for black lung benefits payments; and by establishing a black lung disability insurance fund to be maintained by contributions from the coal industry. However, the alleged purposes of the pending legislation are not accomplished by the provisions in the bill; the bill is not endorsed by any interested party; the bill is incompatible with the intent of the original legislation and inconsistent with prior assertions that the program was to be limited; the bill is contrary to the assertion that the reduced dust levels will lessen the prevalence of pneumoconiosis; and the bill further intrudes into the more comprehensive study of federalization of workmen's compensation. More succinctly, the bill is discriminatory, ambiguous and irresponsible.

Section-by-Section Criticism

Section 2 provides black lung benefits for miners (and their widows, dependents and survivors) who worked 30 years or more in an underground mine (or 25 years in an anthracite mine) or in a surface mine where the Secretary determines conditions were substantially similar to conditions in an underground mine whether or not the miner has or had pneumoconiosis or any other disease or disability. This provision establishes an "entitlement" for miners who are not and were not disabled; amounting, in effect, to a Federal pension or retirement based on years of service. Besides adding to the present administrative burden of the Social Security Administration, there is absolutely no justification to expand the benefits program to those who do not suffer from pneumoconiosis and add also to the taxpayers' burden.

We cannot stress too strongly the inequitable features of this section. Nowhere else does Federal law provide a compensation program for disability comparable to the disability benefits for pneumoconiosis provided for coal miners. Now this program is to be expanded even further to provide for benefits based, not on any actual disability, but simply on number of years of employment. Although coal mining is a hazardous occupation, considering the safety factors along with the potential health hazards, it would be completely unreasonable,

and discriminatory for this Congress to enact legislation providing for what amounts to early retirement benefits for only one of the many hazardous occupations in the Nation.

Workers who are occupationally disabled should be compensated, but their compensation should be related to their disability rather than to their prior occupation. Medical testimony (Dr. Keith Morgan, West Virginia Medical Center, formerly director, Appalachian Laboratory for Occupational Respiratory Disease; Dr. Leroy Lapp, West Virginia Medical Center; Dr. Donald Rasmussen, Appalachian Regional Hospital) before our committee in 1975 demonstrated that miners with clear X-rays and miners with simple pneumoconiosis even with 35 or more years of coal dust exposure, have normal ventilatory capacities—that is the ability to get air in and out of the lungs—and only a slight reduction of diffusing capacity—gas transfer—a decrease of insufficient severity to be associated with disability. As a matter of fact, Dr. Morgan stated: "The U.S. Public Health Service studies indicate that cigarette smoking is between 5 and 10 times as important as dust exposure in producing impairment of ventilatory capacity." Actual disability is usually associated with complicated pneumoconiosis, which may be found in only about 2.9 percent of the working miners, 10–12 percent of the retired miners, and only about 0.1 percent of the coal miners in Utah and Colorado. Despite this medical testimony, these "entitlements" would provide the equal of black lung disability benefits to those who are in no way disabled. The majority views cite the testimony of certain practicing doctors in support of the "entitlements" approach. However, we note that those doctors (Dr. Daniel Fine, Dr. Lowell Martin, and Dr. Murray B. Hunter in testimony in 1975, and Dr. Lorin E. Kerr and Dr. Hunter again in 1977) testified from a "social policy" point of view and not from a medical disability point of view, and in no way disputed the recent studies conducted under the auspices of Dr. Keith Morgan when he was Director of ALFORD. Certain of those recent studies are of some relevant interest. A study by Dr. Kibelstis of ALFORD of over 130 miners attempted to relate the slight decrement in diffusing capacity of workers with simple pneumoconiosis, which could not be associated with disability, to years spent working underground. Dr. Kibelstis "was unable to show that years underground in any way affected this index of pulmonary function." Furthermore, other studies related to life expectancy of Appalachian and Pennsylvania miners show a normal life expectancy unless the miner had either complicated pneumoconiosis or chronic bronchitis and emphysema, conditions that frequently occur in the general population.

Dr. Rasmussen, who has in the past been extremely sympathetic to the plight of coal miners, testified in response to a direct question as to whether the number of years that a miner is exposed has any relationship to his condition that:

> We see quite a wide variation. Congressman Dent. We could show you some miners with, let's say, fewer than 15 years who exhibit impairment in functions. We could show you miners with 50 years or more and no impairment. I can't really relate it to years of employment.

Dr. Lapp, involved in numerous recent studies at ALFORD stated:

> Thus, the preponderance of medical evidence does not support the presumption that because a man has worked for 25 years or more in an underground coal mine that he should be necessarily totally disabled due to pneumoconiosis or that his death should have occurred as a result of such pneumoconiosis unless the individual has radiographic evidence of the complicated form of the disease.

and

> The assumption that the employment for 35 years or more in an underground mine necessarily results in total disability due to pneumoconiosis is not supported by the medical evidence to date.

Dr. Hans Weill, president of the American Thoracic Society, a branch of the American Lung Association, testifying before the full committee on March 21, 1977, stated that:

> Until now, we have been compensating workers who have structural or functional evidence of disease. The proposed legislation being considered by this Committee takes the process one step further, and in fact makes the presumption of disease based on years of exposure in a coal mining job.
>
> In February 1976. the ALA Board adopted a resolution stating "ALA opposes legislation which extends eligibility for occupational disability benefits without regard to sound medical criteria for the determination of such disability." I would urge this committee to consider carefully the question of whether this Nation's resources would be applied equitably in the area of workmen's compensation if the provisions of this bill were enacted. How would one explain or justify to the sandblaster with terminal silicosis that the Federal law does not provide him compensation but is providing benefits to a miner who has no evidence of coalworkers' pneumoconiosis on X-ray and no pulmonary functional impairment. We are here today speaking for the medical and scientific communities in strongly suggesting that these provisions not be adopted.

Dr. Weill claimed that automatic eligibility for black lung benefits would undermine the advances and increasing sophistication of medical diagnosis and. in fact, prejudge as ineffective the important dust control measures being undertaken in this and other industries which we hope will effectively prevent occupational lung disease in the future.

Dr. Howard VanOrdstrand. 1974 president of the American College of Chest Physicians and head of the section on environmental health of the Cleveland Clinic Foundation. supported our assertions that most miners are under the false impression that they will eventually develop black lung disease, and therefore cannot understand why they are denied benefits when they file a claim. It is his opinion that it would be in the best interests of all living miners if they were given the correct medical information—that only a small percentage are

likely to develop coal workers' pneumoconiosis and that the safe levels of their working environment are being met in most instances.

Thus, all present available medical evidence shows that the Social Security Administration and the Department of Labor have already erred on the basis of being too liberal, in view of the multitude of claims that have been approved. We see no reason to further compensate miners for the reason of their occupation.

Another consideration which the proponents of this section have not addressed is the general schematization of the Federal labor laws. If these provisions are enacted, the Congress will be plagiarizing the National Labor Relations Act by doing for miners what labor organizations representing them have failed to do through collective bargaining. We would be undermining our Federal scheme relating to labor relations for the benefit of just one group of workers. Besides substituting congressional action for the collective bargaining process, these provisions are completely inconsistent with the purpose and intent of title IV, which, as originally envisioned, was to compensate those individuals who were totally disabled as a result of complicated pneumoconiosis.

We are not the only individuals who object to these entitlement provisions. It was to be expected that the coal industry would object to entitlements, but, more importantly, the present administration objects. The Assistant Secretary of Labor testified before our committee on March 17, 1977, and speaking for the administration, said:

> *We cannot, however, support automatic entitlements based exclusively on years in the mines.* While it is true that most coal miners with 25 years in the mines are likely to have some coal dust in their lungs, there is no evidence that they all have or will contract totally disabling pneumoconiosis. [emphasis in original]

Representative John Dent stated in the March 14, 1977, hearing:

> I am hoping that we will not get into the question of saying, only because of the number of years this person worked in a mine, that person is totally disabled. We cannot write that as a principle in law.

We contend that declaring a person totally disabled after so many years of coal mine employment will become a principle of the law if this legislation passes, and amounts to providing sick benefits to the healthy. We must note that, in a very candid statement before the Committee, a witness representing the West Virginia Black Lung Association stated:

> We are the first people in the world that want only the miners that have pneumoconiosis to be paid; we do not want ripoff artists to be paid, because that in itself destroys the intent of Congress and justice for the man that really does have pneumoconiosis. We do not want that. We do not want a man * * * paid on any amount of years unless he shows pneumoconiosis.

In addition to this very candid statement, Arnold Miller, president of the United Mine Workers, offered to work toward a reasonable solution. This committee, obviously, has declined to accept medical

advice, will not accept the argument of justice, and refused the offer of the United Mine Workers' president. Contrary to the majority's contentions, we believe there are alternatives that should be explored, and there are many administrative problems that can be corrected without radical legislative action.

It has been suggested by supporters of this bill that having an "entitlement" provision is the only way to relieve the applicant of having to wait years to have their claim denied or approved. Yet the Assistant Secretary of Labor in his testimony before our committee stated that the Department has recently concluded an extensive black lung program. The evaluation did find that improvement could be made in the administrative process and that the Department is currently implementing these changes. It is their expectation that the changes will make it easier for the miner and the miner's survivors to receive their benefits more rapidly. It seems only logical that the Department should be given a chance to improve its administrative process instead of forcefully proceeding with a bill that will cost the taxpayers an additional $1 billion over the next 4 years, that is, to reemphasize, an addition to the present cost of about $1 billion a year to the taxpayer.

Section 3 provides that Federal black lung benefits are to be reduced under part B only if other worker's compensation benefits are being received because of pneumoconiosis. In our view, where State worker's compensation or other State payments based on disability are payable concurrently with black lung benefits, it is reasonable that those black lung benefits should be offset regardless of whether State payments are based only on black lung, since all such payments are designed to replace, in part, earnings from work which are lost when the worker loses his ability to work. It is immaterial whether this ability to work is lost because of one severe impairment or because of a combination of impairments which give rise to payments from several different sources. It is obvious, however, that miners, whether disabled or "entitled", would collect more in benefits than any other workers totally disabled due to other reasons. Furthermore, limiting the offset of black lung benefits to State payments based only on black lung could possibly result in situations where a beneficiary could receive total benefits exceeding the amounts of his earnings before he became disabled. This section, moreover, imposes a retroactive burden on the Social Security Administration of reviewing numerous allowed part B claims.

Since part B was originally viewed as a disability program, it was appropriate to offset benefits by benefits received under any other disability program. However, since part C was intended as a workers' compensation program, it was appropriate to offset only benefits paid due to pneumoconiosis. At this point, we see no reason or justification to give additional special treatment to claimants under part B of the black lung benefits program.

Section 4 provides that no claim for benefits could be denied on the basis of employment as a miner if such employment had recently been changed to a less dusty part of the mine, to less rigorous work, or to a position of substantially less pay, and that the miner is to be thereafter notified as to whether he would be eligible for payment of benefits or, if not, whether he would be if he were not working.

This provision appears a little confusing, but to put it into perspective, under present law, if a miner has complicated pneumoconiosis, he will be found to be disabled even if he is currently working. The presence of complicated pneumoconiosis meets the tests of 411(c)(3) of total disability. However, if a miner does not have complicated pneumoconiosis, which is not always disabling, he is denied benefits if he is currently working, in a mine earning substantial wages. This obviously comports with the intent of the Conference on the Black Lung Benefits Act of 1972 (H. Rept. 92–1048, page 7):

> 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 miner employment in which previously engaged with some regularity and over a substantial period of time, or if it clearly demonstrated that he is capable of performing such work and such work is available to him in the immediate area of his residence."

There is no reason to liberalize the law beyond that agreed to in conference in 1972. It seems extremely clear to us that a person cannot be totally disabled when he is working in a mine earning substantial wages. It is equally inconsistent and illogical to say that a miner is totally disabled when he is not totally disabled. It is obvious that this section attempts to accomplish what is impossible to accomplish without a legal fiction. If this section were ever to become law, we would hope that some language could be written that would require a miner to elect either to continue working or to receive benefits under this anomaly.

We have another important reason for criticizing this particular section: That is, it again interferes with labor relations matters, and would penalize the general taxpayer for the management prerogatives of a mine operator of the past. Assumedly, operators move and moved their employees for a variety of reasons, many of which are probably not associated with black lung benefits. Nevertheless, under this provision as written, a claim cannot be denied if the operator had changed the miner's location, nature of his work, or reduced his pay. We realize that this surely could not be the intent of this section, but the intent and language are as incompatible as the reasoning behind it.

Section 5 provides that a decision of an administrative law judge favorable to a claimant cannot be appealed or reviewed except upon the motion of the claimant.

We have reservations about the Constitutionality of such a provision. Those reservations aside, such a provision is clearly inconsistent with the Administrative Procedures Act, and constitutes a separate, privileged appeals process for a favored group. It is abhorrent to our system of justice and the fact that it is directed at part B rather than part C does not make it less objectionable.

Section 6 provides that the Secretary of Health, Education, and Welfare must locate potentially eligible claimants who have not filed claims and afford such persons the opportunity to do so.

The "one shot" effort by the Federal Government now becomes a continuing burden on the Secretary of Health, Education, and Welfare. The previous information programs conducted by the Social Security Administration which have produced almost 600,000 claims is not inadequate, but the Social Security Administration must now go out and hunt down potentially eligible claimants who failed to file under the 1969 act and the extensions granted in 1972. The extension becomes not only permanent but also an affirmative duty on an already overloaded bureaucracy to seek out those who may or may not exist. This extension is contrary to the prior promises of those who have backed the black lung program. This extension is unnecessary from all that we have heard during our hearing. The hearings have produced numerous witnesses claiming they have been unjustly denied and none who have claimed they were prejudiced in filing because they were unaware of their rights to do so until too late. We can see no rational or legal basis for this provision. Not only must the Secretary seek new claimants, but this section also burdens the Social Security Administration with reviewing all denied claims, an enormous administrative burden, amounting to the review of 170,000 claims, and at a cost of 1,700 staff years. But, the Secretary of Labor is not forgotten and has an almost equal burden as well if relative to the number of claims filed. The Secretary of Labor must also review denied claims amounting to 53,500 claims. Exactly how the Secretary of Labor is to award claims where they have been denied during the appellate process is questionable. However, since we are now creating a special privileged class, it is entirely proper that they be accorded special considerations.

Section 7 provides that criteria for determining total disability shall be no more restrictive than those applicable to claims filed on June 30, 1973.

With the ongoing medical and scientific research regarding disability associated with black lung, we feel that the Secretary of Health, Education, and Welfare should be allowed to adjust the criteria in line with advanced knowledge, and not be restricted to antiquated concepts.

The Assistant Secretary for the Department of Labor disagreed with this provision in the legislation. He stated, and we quote:

> There is some difficulty, however, with the idea of simply adopting the interim standards for part C. While the interim standards are more liberal standards, they are, we feel, not entirely appropriate for part C purposes. For instance, in respect to the above example of pneumoconiosis, there is considerable evidence to indicate that a person with simple pneumoconiosis quite possibly is not totally disabled: we believe the part C requirement are correct in this case."

Instead of the approach of the committee bill, the Department of Labor would devise its own standards.

Section 8 provides that affidavits are sufficient to establish a claim of a deceased miner where no relevant medical evidence exists.

An affidavit-only procedure to establish total disability due to pneumoconiosis would be open to abuse. This type of practice also contains an element that would cause operators to challenge the procedure. It is estimated to cost $90 million by 1981.

Additionally, this section precludes the use of anything other than relevant medical evidence to rebut such affidavits, which "shall be considered to be sufficient" to establish a claim. We are opposed to this affidavit-only procedure whose only purpose is to assure that all survivor claims will be found eligible for benefits.

In an anomalous statement, the Assistant Secretary of Labor appeared to agree with the use of the "affidavits-only" approach as to black lung claims, but would not establish it as a precedent in other compensation claims. We contend that the "affidavits-only" provision is equally bad for black lung as it is for other proofs of disability in compensation areas. Furthermore, the insurance industry has warned us that "the abuses likely to arise from such practice are bound to make the program uninsurable through private workers' compensation insurers.

In addition, section 8 bars rereading of X-rays unless the Secretary has good cause to believe that (1) the X-ray is of inferior quality, (2) autopsy report is not accurate, or (3) a miner is being fraudulently misrepresented. If none of the aforementioned circumstances are present, the Secretary shall accept the report or opinion of the claimant's physician concerning the presence of pneumoconiosis. This subsection is too restrictive, as qualified B readers should be used in determining the existence of pneumoconiosis in reading X-rays. Besides, such ban on rereading may deny many eligible claimants, and result in even more inequity.

Section 9 establishes a black lung disability insurance fund to meet obligations incurred under part C and makes the part C program permanent. The fund would receive premiums based initially on tonnage of coal mined, from operators, and would assess any operator found liable for benefit payments annually. Much complicated language in this section is devoted to a timely appeals process and duties of the trustees.

Other than to extend part C from a definite termination date to a continuing program, we fail to see the need for revisions in part C and the establishment of this fund. Apparently, the problems of delay are part of the reason, but the problems contributing to delay are not resolved by establishment of this new procedure. The establishment of new medical criteria will continue to cause delay as well as the proof of employment. Nor will the establishment of the trust fund diminish the volume of litigation surrounding part C. Instead, it can be expected that the establishment of a new, and certainly unique, program under Federal law to provide occupational disease compensation, as well as entitlements, to only one group of workers will be a cause for escalation of the volume of litigation.

We are concerned about questions of due process. For instance, all operators must pay premiums and assessments to the fund and the fund, in turn, must pay all claims awarded by the Secretary of Labor. No operator may intervene in any way in any claims process and the

fund may appeal awards only in limited circumstances. The result is that an operator's money can be required to be given claimants by a process in which neither the fund nor the operator may participate. Furthermore, an operator will be required to pay premiums when none of that operator's employees have ever experienced any disability from pneumoconiosis and may never contract pneumoconiosis. In our opinion, these provisions are a violation of procedural due processes.

The proponents of this section have not addressed the issue of why it is necessary to make this program permanent by eliminating the 1981 cutoff date for filing claims. A report of the Secretary of the Interior under the Federal Coal Mine Health and Safety Act shows that 92 percent of the dust samples taken in December 1974 met the current dust standard of 2 milligrams of dust per million parts of air. Over 50 percent showed less than 1.0 mg/m. Although the validity of some samples are questioned, the report illustrates that the conditions which may have caused pneumoconiosis in the past are being eliminated. Since the disease itself may disappear, it does not seem reasonable to establish a new and elaborate bureaucratic procedure for financing and paying claims.

With reference to the funding mechanism in this bill, we wish to point out that there is testimony that an important segment of the insurance industry questions whether the benefit program contemplated by this legislation is insurable and consequently whether a market for such insurance will exist.

Their reasoning is that this legislation, including the entitlement provisions sets up a program departing so drastically from basic insurance concepts that the industry sees no basis for participation in the program within the general confines of insurance law.

If we ignore this warning and fail to provide a workable funding mechanism it will only mean that the implementation of the act will be delayed.

Section 10 provides for a continuation of an authorization for appropriations of $10 million annually for clinical facilities relating to respiratory impairments in coal miners. This section also authorizes to be appropriated $2,500,000 for the period beginning July 1, 1976, and ending September 30, 1976. The extension made by the amendment does not have any fiscal year cutoff.

We have no objection to a more limited extension of this authorization for appropriation, although we are unable to say from our hearings, just how much is needed or for how long.

Section 11 requires that any person entitled to benefits under part C receive medical services and supplies. This section also requires HEW to notify miners receiving benefits under part B that such miner may be eligible for medical services and supplies, if eligibility was determined on January 1, 1974. The miner has 6 months after notification to file for medical services and supplies under part C.

Section 12 requires both HEW and Labor Departments to advise interested persons of the amendments provided by this bill, to give additional notices to those who may have become eligible, and to review each claim denied and each claim pending in light of the amendments made by this bill.

The 1972 amendments provided for a review of denied claims. This bill is now providing for still another review. At considerable cost, social security would have to identify, reopen, and review more than 170,000 previously denied claims, many of which have already been reviewed several times, and process the subsequent hearings and appeals that would occur as a result of the new liberalized eligibility requirements created by the bill. Actually, this section of the bill would result in a one-time hearing workload of up to 50,000 requests and have an adverse impact on other social security hearings and supplemental security income claimants. As the chairman of the Social Security Subcommittee of the Committee on Ways and Means, Mr. Burke, concluded in his November 14, 1975, letter to Chairman Perkins: "Needless to say, this would greatly exacerbate the current social security appeals crisis."

Section 14 provides that an eligible survivor of any miner who had worked 17 years in underground coal mining, and who died as a result of an accident in a coal mine is entitled to benefits, reduced only by State payments for worker's compensation, unemployment, or disability laws.

In our opinion, this section epitomizes the extent to which the original proponents of coal miner's benefits will go to insure that the black lung benefits program provides benefits for all miners and survivors, regardless of the existence of black lung, regardless of the existence of disability, and regardless of the burden on the taxpayers of this Nation. Any death resulting from an accident has absolutely no relationship to black lung. It certainly has no relationship to disability due to black lung since the miner would have been working in a mine at the time of the accident. This section has no relationship to inhalation of coal dust and further supports our position that the Federal Coal Mine Health and Safety Act is becoming a Federal welfare act for coal miners and their survivors.

Section 15 transfers the Division of Coal Mine Workers' Compensation to the Office of the Secretary of Labor and requires the Secretary to establish field offices, which shall be reasonably accessible to miners to carry out this act. The Secretary may contract with other Federal or State agencies for the use of existing facilities. Our objection to this section is that it divides the coal workers' compensation functions from other compensation functions now within the Department of Labor, including Federal employees workers' compensation and compensation under the Longshoremen and Harbor Workers' Compensation Act.

Section 17 directs the Education and Labor Committee to do a study of white lung disease and report its findings to Congress not later than 1 year after enactment of the act.

The committee can do such a study with or without this section. However, we would note that other lung diseases will be ignored, such as "red lung."

The Manner in Which This Legislation Has Been Handled

H.R. 4544 was introduced on March 8, 1977. On that same date Chairman Perkins inserted in the Congressional Record a list of 10 items to be considered during the hearings. We learned for the first

time that these hearings were to be held at the full committee level on March 14, 15, and 16 bypassing subcommittee consideration. The committee rules (rule 12(a)) require that 1-week's notice of hearings be given unless the committee determines there is good cause to begin hearings at an earlier date. Without the required notice, without the committee determining good cause, and without a copy of H.R. 4544, the full committee held its first hearing on March 14, 1977, even before the bill was available on March 17. Prior to the hearings, Mr. Erlenborn, on March 10, wrote the chairman requesting that expert medical witnesses be given the opportunity to testify. Because of the haste to complete hearings, the minority was forced to formally request a hearing day. The chairman acquiesced, and allowed medical testimony to be presented on March 21, 1977, and the same time miraculously making available three medical witnesses, two representing the United Mine Workers, for the Majority, as well. Full committee markup was scheduled on March 22, 1977. On the afternoon of March 18, 1977, the minority office received a copy of a draft new bill which was to be considered in full committee. Upon arriving at the full committee meeting on March 22, the Members were presented with a committee print in the nature of a substitute to H.R. 4544. H.R. 4544 contained 5 pages, while the committee print was an expanded 36 pages, following for the most part, the bill of last Congress, H. R. 10760.

We contend that Members, on both sides of the aisle, should have an opportunity to become familiar with this complex piece of legislation, to prepare amendments, or to offer constructive alternatives.

The Coal Mine Health and Safety Act is a complex law. The medical criteria and the safety standards in the act came about after months of hearings, during which committee members went into coal mines, and even travelled to Great Britain to study the administration of that country's program. No such reasoned study has taken place in the consideration of this legislation.

There are nine Members of our committee (seven Democrats and two Republicans) who were not members of the previous Congress, have not heard all the expert medical testimony from hearings in the previous Congress, and probably have not had the time to study any of the debates regarding this program. Furthermore, there are other Members unfamiliar with either the 1969 or 1972 legislation.

By rushing this bill through committee, we believe the committee has reported a bill about which many Members have little knowledge.

It is our contention that this is an improper way to legislate. As the editorial in the Washington Star of March 23, 1977, stated: "What's the hurry? Perhaps it's because the bill can't stand very much exposure."

Conclusion

We wish to emphasize that we are sympathetic to miners who have been exposed to coal dust. We are equally sympathetic toward other workers exposed to other potential occupational diseases. However, we feel that this legislation goes far beyond any conceived compensation system for other than one segment of the population and is, therefore, discriminatory. Furthermore, the utilization of the Federal Black Lung Disability Insurance Fund initiates a shifting of responsibility for occupational hazards away from the State workers' compensation system.

We have been unusually lengthy in our statement of opposition to this bill, but we feel our colleagues should be apprised of the history of this black lung legislation, its origin and intent, and the eventual consequences of this extension. It is our belief that the responsibility for occupational hazards belongs with the employers in the industries where the hazards exist. It is generally agreed that the black lung benefits program was intended to be a temporary compensation program in order to give States an opportunity to develop programs that would hold the industry responsible for supporting such benefits. Any responsibility the Federal Government has had in this area is being fulfilled; any further expansion of Federal responsibility will go beyond what was intended by the original sponsors of the Federal Coal Mine Health and Safety Act.

Enactment of this bill would impose severe financial burdens on the Federal budget. As we have pointed out, the actual costs of providing black lung benefits have greatly exceeded the initial estimates, even discounting the cost of the very expensive 1972 amendments, which greatly liberalized the law. The changes proposed by the committee's bill substantially increase these costs. It has been estimated that enactment of this bill could cost the taxpayers up to $1 billion over the next 5 years alone. Considering the continuing pressures on the Federal budget, we think these expenditures cannot be justified. Moreover, the savings effectuated by the creation of an industry financed fund under part C is completely offset by the liberalization of part B and the consequent loss of tax moneys in allowing premiums to be considered ordinary and necessary business expenses for purposes of the Internal Revenue Code.

Although costs are a significant consideration, we strongly oppose enactment of this bill for other reasons as well. It would again extend Federal responsibility in an area that appropriately is the responsibility of the States and the industry involved. It would establish a permanent, ongoing black lung benefits program at a time when the Congress is considering proposals to establish a national workers' compensation program. It would provide for compensation to those who are not disabled. It would provide additional Federal compensation to only one group of workers, thereby discriminating against all other workers who work in dusty environments and all other workers generally. It would create even more delays and litigation.

For all the foregoing reasons, we oppose enactment of this bill.

Appendix to Minority Views

Report to the Coal Mine Health Research Advisory Council for Criteria for the Diagnosis of Disability and Death from Coal Workers' Pneumoconiosis. the Coal Mine Health Research Advisory Council. Department of Health, Education and Welfare. Public Health Service Center for Disease Control of the National Institute for Occupational Safety and Health.

RECOMMENDATIONS

Disability from CWP

1. The committee feels that the etiologic basis for loss of capacity to work due to respiratory disease cannot be defined by pulmonary function tests and miners may have more than one etiologic factor pro-

ducing respiratory impairment. The Committee further believes that when the chest X-ray is negative or shows only simple CWP and when ventilation is normal or near normal, a significant impairment due to pulmonary disease is most unlikely. The Committee therefore recommends that NIOSH consider appropriate administrative changes or statutory changes to deal with these facts.

2. Disability testing should be confined to those with X-ray evidence of CWP (requiring statutory change) and should consist in (1) screening ventilatory tests, (2) a determination of oxygen uptake ability commensurate with the job of coal mining, i.e., 1.75 L O/min., and a careful evaluation for the presence of heart and other lung diseases.

Death from CWP

3. In order to be sure that death can have been caused by CWP, the lung must contain the typical lesions of CWP, there must be premortem evidence of pulmonary hypertension and arterial hypoxemia and/or postmortem evidence of cor pulmonale and there must be no evidence of some other obvious and overriding cause of death. Postmortem assessment of right ventricular hypertrophy is reliably done by the method of Bove et al., Circulation 33:558, 1966.

Research in CWP

4. Research on the effects of inhalation of coal dust and the diagnosis and treatment of CWP can be carried out most effectively as a coordinated part of a research program on the health effects of all types of occupational exposure to dusts, fumes, and vapors. For this reason, and for economy, it is recommended that research on CWP be merged, within NIOSH with research on all other occupational inhalants.

5. Areas in need of more research include:

(*a*) Long term longitudinal studies of the natural history of coal workers versus control populations.

(*b*) The only satisfactory end point for epidemiologic studies is currently death. Another useful end point would be respiratory disability if it could be precisely defined.

(*c*) The total (outside the mine) environment in which miners and their families live needs careful delineation.

(*d*) The energy demands (i.e., oxygen costs) of various coal mining tasks.

(*e*) Continuing studies of the oxygen transport assessment of disability.

(*f*) Lungs obtained at postmortems on coal workers should have electromicroscopic and X-ray diffraction studies designed to determine the exact location and nature of any materials present.

(*g*) Correlation of postmortem lung findings with X-ray and physiologic changes during life.

General

6. It should be made possible for any working coal miner to continue his usual work, if he so desires, regardless of the presence or degree of abnormal findings on his chest X-ray.

7. In addition to improving the safety of the environment in which coal miners work, other efforts at prevention are needed. Recognizing that much of the respiratory impairment and disability in coal miners

cannot be attributed to CWP but rather to smoking and respiratory infections, especially smoking, the committee recommends expanded preventive and educational efforts in this direction.

Dr. E. Cuyler Hammond,
Dr. John D. Stoeckle,
Dr. Roger S. Mitchell,
Chairman, Coal Mine Health Research Advisory Council Work Group.

Albert H. Quie.
John M. Ashbrook.
John N. Erlenborn.
Ronald A. Sarasin.
William F. Goodling.
Mickey Edwards.

SEPARATE VIEWS

There are a few areas of the minority views that I feel need emphasis.

The argument that the black lung program cannot function fairly without an automatic entitlement provision based exclusively on years of employment is not only groundless, but also may carry a $1 billion price tag over the next 5 years. It is significant that Assistant Secretary of Labor Donald Elisburg and expert medical witnesses voiced their opposition to this provision.

Perhaps an entitlement provision would be justified if disabling black lung could not be medically detected. This may have been true several years ago, but no longer.

Dr. Howard S. VanOrdstrand, recent president of the American College of Chest Physicians, told the committee:

> We do have medically established, clear-cut ways of determining both diagnosis as well as disability with reference to coal workers' pneumoconiosis, as well as all of the other currently known fibrogenic dust diseases of the lungs.
>
> I and our entire American College of Chest Physicians strongly feel, therefore, that it continues to be sound medical judgement that the determination of both coal workers' pneumoconiosis as well as other pneumoconioses be made through completely well-established ways of diagnosis and disability irregardless of the number of years of working at the dust hazards such as in mining, rather than just empirically on the basis or years of mining.

Dr. VanOrdstrand's testimony was cogently reinforced by comments from Dr. Hans Weill, president of the American Thoracic Society, the medical and scientific arm of the American Lung Association. He stated,

> We are here today speaking for the medical and scientific communities in strongly suggesting that these provisions not be adopted. They would undermine the advances and increasing sophistication of medical diagnosis and in fact prejudge as ineffective the important dust control measures being undertaken in this and other industries which we hope will effectively prevent occupational lung disease in the future.

Dr. Weill described more specifically the present state of diagnostic techniques for black lung.

> Coalworkers' pneumoconiosis (CWP) produces a distinctive radiographic pattern and the extent of the disease on X-ray and pathologically correlates with the amount of coal dust found in the lungs. The simple form of CWP is associated with minimal demonstrable impairment of lung func-

> tion, generally requiring specialized pulmonary function testing. The ordinary spirometric measurements are normal and generally do not separate miners with X-ray evidence of simple CWP from those without such evidence. The complicated form of CWP also called progressive massive fibrosis (PMF) is however likely to produdce functional impairment which can be easily demonstrated by measurements of lung volumes, ventilatory function, and gas exchange.

The sponsors still might be able to justify an entitlement provision if there were evidence that alll miners are disabled bv black lung disease after a certain number of years in the mines. However. the only evidence, and I might add highly credible evidence, is to the contrary.

The National Academy of Sciences 1976 report, "Coal Workers' Pneumoconiosis Medical Considerations, Some Social Implications," shows that after 30 years in the coal mines of the anthracite region, about 60 percent of the miners who had worked at least 30 years in anthracite coal mines had any stage of black lung, and only 14.3 percent had progressive massive fibrosis, the disabling stage.

The number of miners with the disease is even smaller in other regions. In the Appalachian region 45 percent had even the simplest first stage, while only 2.1 percent were disabled. In the Midwest, only 25 percent had the disease after 30 years, and no statistically significant number were disabled. In the West, 10 percent had the disease, and no statistically significant number were disabled.

Yet the sponsors' bill would say that everybody, 100 percent, would get compensation after 30 years in bituminous mines or after 25 years in anthracite mines. Obviously, if this bill were to become law, the American people would be asked to suffer more taxes and higher fuel bills to pay disability benefits to healthy coal miners—needlessly.

Do any of my colleagues seriously believe this bill would not set a precedent for other hazardous industries? Would we not be discriminating against workers from other industries if we did not ask the taxpayer and the consumer to pay disability benefits to their healthy workers also?

The cost of this precedent would be enormous. The National Academy of Sciences reports:

> If they (benefits) were extended to workers in other industries, the costs might range from $20 to $100 billion annually. Undoubtedly, they would force new and fundamental decisions on society regarding pension and benefit programs.

The use of the word "pension" here is most revealing, for what is a disability benefit based on years of service rather than medical evidence but a pension?

I ask my colleagues, when searching the majority report to explain away these questions, to note the quality of evidence supplied in support of this bill.

For example, the appendix once again contains comments submitted from a James L. Weeks, consultant, who "deeply impressed" the committee last year. However, the committee, for the second year in a row, did not call on Mr. Weeks to appear as a witness. I would have

welcomed the chance to examine him. I would have liked to have pointed out to the consultant that there is nothing in his report that proves that simple pneumoconiosis is disabling or that complicated pneumoconiosis cannot be read from an X-ray.

Finally, I ask my colleagues to consider that this program originated in 1969 as a one-shot deal to compensate those who had contracted black lung before it was recognized by the State as an occupational disease. Now it is to be a permanent Federal program. Originally, the program was to compensate miners disabled by black lung. In 1972 it was changed to compensate all miners with black lung, whether or not the disease was in a disabling stage.

Now we are being asked to provide the ultimate liberalization to the program—to provide black lung disability benefits to miners regardless of whether they even have the disease.

The majority will try to win the votes of my colleagues by painting over the facts with emotionalism. Do not be misguided by this emotional appeal. Remember these irrefutable facts:

There is an existing black lung program.

Approximately $1 billion in benefits was paid in 1976.

Nearly 500,000 people receive black lung benefits.

Black lung disability can be diagnosed.

This bill is a publicly financed coal miner pension bill in disguise and will set a far reaching precedent for other industries.

JOHN N. ERLENBORN.

O

Union Calendar No. 81

95TH CONGRESS
1ST SESSION

H. R. 4544

[Report No. 95–151]

IN THE HOUSE OF REPRESENTATIVES

MARCH 7, 1977

Mr. DENT (for himself and Mr. PERKINS) introduced the following bill; which was referred to the Committee on Education and Labor

MARCH 31, 1977

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To amend the Federal Coal Mine Health and Safety Act to improve the black lung benefits program established under such Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

~~SHORT TITLE~~

~~SECTION 1. This Act may be cited as the "Black Lung Benefits Reform Act of 1977".~~

~~ENTITLEMENTS~~

~~SEC. 2. (a) Section 411(c) of the Federal Coal Mine Health and Safety Act of 1969 (30 U.S.C. 921(c)), hereinafter in this Act referred to as the "Act", is amended—~~

(1) in paragraph (3) thereof, by striking out "and" at the end thereof;

(2) in paragraph (4) thereof, by striking out the next to the last sentence thereof, and by striking out the period at the end thereof and inserting in lieu thereof a semicolon; and

(3) by adding at the end thereof the following:

"(5) if a miner was employed for thirty years or more in one or more underground coal mines such miner (or, in the case of a deceased miner, the eligible survivors of such miner) shall be entitled to the payment of benefits; and

"(6) if a miner was employed for twenty-five years or more in one or more anthracite coal mines such miner (or, in the case of a deceased miner, the eligible survivors of such miner) shall be entitled to the payment of benefits.

The Secretary shall not apply all or a portion of any requirement of this subsection that a miner shall have worked in an underground mine if the Secretary determines that conditions of such miner's employment in a coal mine other than an underground mine were substantially similar to conditions in an underground mine.".

(b) Section 412(a)(1) of the Act (30 U.S.C. 922 (a)(1)) is amended——

(1) by inserting immediately after "pneumoconiosis," the following: "or in the case of a miner entitled to benefits under paragraph (5) or paragraph (6) of section 411(c) of this title,";

(2) by striking out "disabled" the first place it appears therein; and

(3) by inserting immediately after "disability" the second place it appears therein the following: ", or during the period of such entitlement,".

(c)(1) Section 414(a) of the Act (30 U.S.C. 924(a)) is amended by adding at the end thereof the following new paragraph:

"(4) A claim for benefits under this part may be filed at any time on or after the date of the enactment of the Black Lung Benefits Reform Act of 1977 by a miner (or, in the case of a deceased miner, the eligible survivors of such miner) if the date of the last exposed employment of such miner occurred before December 30, 1969.".

(2) The Secretary of Labor shall be responsible for the administration of the provisions of section 414(a)(4) of the Act (30 U.S.C. 924(a)(4)), as added by paragraph (1).

(d) Section (414)(c) of the Act (30 U.S.C. 924(c)) is amended by inserting immediately after "pneumoconiosis" the following: ", or with respect to an entitlement under

paragraph (5) or paragraph (6) of section 411(c) of this title,".

(c)(1) Section 421(a) of the Act (30 U.S.C. 931 (a)) is amended by inserting immediately after "pneumoconiosis" the second place it appears therein the following: ", and in any case in which benefits based upon eligibility under paragraph (5) or paragraph (6) of section 411(c) are involved,".

(2) Section 421(b)(2)(C) of the Act (30 U.S.C. 931(b)(2)(C)) is amended by inserting immediately before the semicolon at the end thereof the following: ", except that such standards shall not be required to include provisions for the payment of benefits based upon conditions substantially equivalent to conditions described in paragraphs (5) and (6) of section 411(c)".

(f) Section 430 of the Act (30 U.S.C. 938) is amended by inserting "and by the Black Lung Benefits Reform Act of 1977" immediately after "1972", by inserting immediately after "section 411(c)(4)" the following: "and the applicability of entitlements based upon conditions described in paragraphs (5) and (6) of section 411(c),", and by striking out "whether a miner was employed at least fifteen years" and inserting in lieu thereof the following: "the period during which the miner was employed".

~~EVIDENCE REQUIRED TO ESTABLISH CLAIM~~

~~SEC. 3. The second sentence of section 413(b) of the Act (30) U.S.C. 923(b)) is amended by striking out the period at the end thereof and inserting a colon and the following: "*Provided,* That unless the Secretary has good cause to believe (1) that an X-ray is not of sufficient quality or an autopsy report is not accurate, to demonstrate the presence of pneumoconiosis, or (2) that the condition of the miner is being fraudulently misrepresented, the Secretary shall accept such report, or in the case of the X-ray, accept the opinion of the claimant's physician, concerning the presence of pneumoconiosis and the stage of advancement of pneumoconiosis.".~~

~~EFFECTIVE DATES~~

~~SEC. 4. This Act shall take effect on the date of its enactment, except that the amendments made by sections 2 and 3 shall be effective on and after December 30, 1969: *Provided,* That claims approved solely because of the amendments made by section 2, which were filed before the date of enactment of this Act, shall be awarded benefits only for the period beginning on such date of enactment.~~

SHORT TITLE

SECTION 1. This Act may be cited as the "Black Lung Benefits Reform Act of 1977".

ENTITLEMENTS

SEC. 2. (a) Section 411(c) of the Federal Coal Mine Health and Safety Act of 1969 (30 U.S.C. 921(c)), hereinafter in this Act referred to as the "Act", is amended—

(1) in paragraph (3) thereof, by striking out "and" at the end thereof;

(2) in paragraph (4) thereof, by striking out the next to the last sentence thereof, and by striking out the period at the end thereof and inserting in lieu thereof a semicolon; and

(3) by adding at the end thereof the following:

"(5) if a miner was employed for thirty years or more in one or more underground coal mines such miner (or, in the case of a deceased miner, the eligible survivors of such miner) shall be entitled to the payment of benefits; and

"(6) if a miner was employed for twenty-five years or more in one or more anthracite coal mines such miner (or, in the case of a deceased miner, the eligible survivors of such miner) shall be entitled to the payment of benefits.

The Secretary shall not apply all or a portion of any requirement of this subsection that a miner shall have worked in an underground mine if the Secretary determines that conditions of such miner's employment in a coal mine other than an un-

derground mine were substantially similar to conditions in an underground mine.".

(b) Section 412(a)(1) of the Act (30 U.S.C. 922 (a)(1)) is amended—

(1) by inserting immediately after "pneumoconiosis," the following: "or in the case of a miner entitled to benefits under paragraph (5) or paragraph (6) of section 411(c) of this title,";

(2) by striking out "disabled" the first place it appears therein; and

(3) by inserting immediately after "disability" the second place it appears therein the following: ", or during the period of such entitlement,".

(c) Section 414(a) of the Act (30 U.S.C. 924 (a)) is amended by adding at the end thereof the following new paragraph:

"(4) A claim for benefits under this part may be filed at any time on or after the date of the enactment of the Black Lung Benefits Reform Act of 1977 by a miner (or in the case of a deceased miner, the eligible survivors of such miner) if the date of the last exposed employment of such miner occurred before December 30, 1969.".

(d) Section 414 (e) of the Act (30 U.S.C. 924(e)) is amended by inserting immediately after "pneumoconiosis" the following: ", or with respect to an entitlement under

paragraph (5) or paragraph (6) of section 411(c) of this title,".

(e)(1) Section 421(a) of the Act (30 U.S.C. 931(a)) is amended by inserting immediately after "pneumoconiosis" the second place it appears therein the following: ", and in any case in which benefits based upon eligibility under paragraph (5) or paragraph (6) of section 411(c) are involved,".

(2) Section 421(b)(2)(C) of the Act (30 U.S.C. 931 (b)(2)(C)) is amended by inserting immediately before the semicolon at the end thereof the following: ", except that such standards shall not be required to include provisions for the payment of benefits based upon conditions substantially equivalent to conditions described in paragraphs (5) and (6) of section 411(c)".

(f) Section 430 of the Act (30 U.S.C. 938) is amended by inserting "and by the Black Lung Benefits Reform Act of 1977" immediately after "1972", by inserting immediately after "section 411(c)(4)" the following: "and the applicability of entitlements based upon conditions described in paragraphs (5) and (6) of section 411(c),", and by striking out "whether a miner was employed at least fifteen years" and inserting in lieu thereof the following: "the period during which the miner was employed".

OFFSET AGAINST WORKMEN'S COMPENSATION BENEFITS

SEC. 3. The first sentence of section 412(b) of the Act (30 U.S.C. 922(b)) is amended by inserting immediately after "disability of such miner" the following: "due to pneumoconiosis".

CURRENT EMPLOYMENT AS A BAR TO BENEFITS

SEC. 4. (a) The first sentence of section 413(b) of the Act (30 U.S.C. 923(b)) is amended by inserting immediately before the period at the end thereof the following: "or solely on the basis of employment as a miner if (1) the location of such employment has recently been changed to a mine area having a lower concentration of dust particles; (2) the nature of such employment has been changed so as to involve less rigorous work; or (3) the nature of such employment has been changed so as to result in the receipt of substantially less pay".

(b) Section 413 of the Act (30 U.S.C. 923) is amended by adding at the end thereof the following new subsection:

"(d)(1) A miner may file a claim for benefits whether or not such miner is employed by an operator of a coal mine at the time such miner files such claim.

"(2) The Secretary shall notify a miner, as soon as practicable after the Secretary receives a claim for benefits

from such miner, whether, in the opinion of the Secretary, such miner—

"(A) is eligible for benefits on the basis of the provisions of paragraph (1), (2), or (3) of subsection (b); or

"(B) would be eligible for benefits, except for the circumstances of the employment of such miner at the time such miner filed a claim for benefits.".

APPEALS

SEC. 5. The last sentence of section 413(b) of the Act (30 U.S.C. 923(b)) is amended by inserting immediately before the period at the end thereof the following: ", except that a decision by an administrative law judge in favor of a claimant may not be appealed or reviewed, except upon motion of the claimant".

INDIVIDUAL NOTIFICATIONS

SEC. 6. Part B of title IV of the Act (30 U.S.C. 911 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 416. (a) For purposes of assuring that all individuals who may be eligible for benefits under this part are afforded an opportunity to apply for and, if entitled thereto, to receive such benefits, the Secretary shall undertake a program to locate individuals who are likely to be eligible for such benefits and have not filed a claim for such benefits.

"(b) The Secretary shall seek to determine, in cooperation with operators and with the Secretary of the Interior, the names and current addresses of individuals having long periods of employment in coal mining and, if such individuals are deceased, the names and addresses of their widows, children, parents, brothers, and sisters. The Secretary shall then directly, by mail, by personal visit by a delegate of the Secretary, or by other appropriate means, inform any such individuals (other than those who have filed a claim for benefits under this title) of the possibility of their eligibility for benefits, and offer them individualized assistance in preparing their claims where it is appropriate that a claim be filed.

"(c) Notwithstanding any other provision of this part, a claim for benefits under this part, in the case of an individual who has been informed by the Secretary under subsection (b) of the possibility of his eligibility for benefits, shall, if filed no later than six months after the date he was so informed, be considered on the same basis as if it had been filed on June 30, 1973.".

DEFINITIONS

SEC. 7. (a) Section 402(f) of the Act (30 U.S.C. 902 (f)) is amended by adding at the end thereof the following new undesignated paragraph:

"With respect to a claim filed after June 30, 1973, such

regulations shall not provide more restrictive criteria than those applicable to a claim filed on June 30, 1973.".

(b) Section 402 of the Act (30 U.S.C. 902) is amended by inserting immediately after paragraph (g) the following new paragraph:

"(h) The term 'fund' means the Black Lung Disability Insurance Fund established by section 423(a).".

EVIDENCE REQUIRED TO ESTABLISH CLAIM

SEC. 8. (a) Section 413(b) of the Act (30 U.S.C. 923 (b)) is amended by inserting immediately after the second sentence thereof the following new sentence: "Where there is no relevant medical evidence in the case of a deceased miner, such affidavits shall be considered to be sufficient to establish that the miner was totally disabled due to pneumoconiosis or that his death was due to pneumoconiosis.".

(b) The last sentence of section 413(b) of the Act (30 U.S.C. 923(b)) is amended by striking out "and (l)," and inserting in lieu thereof "(l), and (n),".

(c) The second sentence of section 413(b) of the Act (30 U.S.C. 923(b)) is amended by striking out the period at the end thereof and inserting a colon and the following: "Provided, That unless the Secretary has good cause to believe (1) that an X-ray is not of sufficient quality to demonstrate the presence of pneumoconiosis, or an autopsy report is not accurate, or (2) that the condition of

the miner is being fraudulently misrepresented, the Secretary shall accept such report, or in the case of the X-ray, accept the opinion of the claimant's physician, concerning the presence of pneumoconiosis and the stage of advancement of pneumoconiosis.".

CLAIMS FILED AFTER DECEMBER 31, 1973

SEC. 9. (a)(1) The first sentence of section 422(a) of the Act (30 U.S.C. 932 (a)) is amended—

(A) by inserting immediately before the period at the end thereof the following: ", or with respect to entitlements established in paragraph (5) or paragraph (6) of section 411(c) of this title"; and

(B) by inserting immediately after "except as otherwise provided in this subsection" the following: "and to the extent consistent with the provisions of this part,".

(2) The last sentence of section 422(a) of the Act (30 U.S.C. 932(a)) is amended—

(A) by striking out "benefits" and inserting in lieu thereof "premiums and assessments"; and

(B) by striking out "to persons entitled thereto".

(3) Section 422(b) of the Act (30 U.S.C. 932(b)) is amended by inserting "(1)" immediately after "(b)", and by adding at the end thereof the following new paragraph:

"(2)(A) During any period in which a State work-

men's compensation law is not included on the list published by the Secretary under section 421(b) of this part each operator of a coal mine in such State shall secure the payment of assessments against such operator under section 424(g) of this part by (i) qualifying as a self-insurer in accordance with regulations prescribed by the Secretary; or (ii) insuring and keeping insured the payment of such assessments 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 (ii) of subparagraph (A) of this paragraph, every policy or contract of insurance shall contain—

"(i) a provision to pay assessments required under section 424(g) of this part, notwithstanding the provisions of the State workmen's compensation law which may provide for payments which are less than the amount of such assessments;

"(ii) a provision that insolvency or bankruptcy of the operator or discharge therein (or both) shall not relieve the carrier from liability for the payment of such assessments; and

"(iii) 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 (ii) of subparagraph (A) of this paragraph 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.".

(4) Section 422(b)(1) of the Act, as so redesignated by paragraph (3), is amended—

(A) by striking out "benefits" and inserting in lieu thereof "premiums and assessments"; and

(B) by striking out "section 423" and inserting in lieu thereof "section 424".

(5) Section 422(c) of the Act (30 U.S.C. 932(c)) is amended to read as follows:

"(c) Benefits shall be paid during such period under this section by the fund, subject to reimbursement to the fund by operators in accordance with the provisions of section 424(g) of this title, 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 sec-

tion, except that (1) the Secretary may modify any such regulation promulgated by the Secretary of Health, Education, and Welfare; and (2) no operator shall be liable for the payment of any benefit (except as provided in section 424(f) of this title) on account of death or total disability due to pneumoconiosis, or on account of any entitlement based upon conditions described in paragraphs (5) and (6) of section 411(c), which did not arise, at least in part, out of employment in a mine during the period when it was operated by such operator.".

(6) Section 422(e) of the Act (30 U.S.C. 932(e)) is amended—

(A) by striking out "required" and inserting in lieu thereof "made"; and

(B) by adding "or" immediately after the semicolon in paragraph (1) thereof, by striking out ", or" at the end of paragraph (2) thereof and inserting in lieu thereof a period, and by striking out paragraph (3) thereof.

(7)Section 422(f) (2) of the Act (30 U.S.C. 932(f) (2)) is amended—

(A) by inserting "paragraph (4), (5), or (6) of" immediately after "eligibility under";

(B) by striking out "section 411(c)(4)" the first

place it appears therein and inserting in lieu thereof "section 411(c)";

(C) by striking out "from a respiratory or pulmonary impairment"; and

(D) by striking out "section 411(c)(4) of this title, incurred as a result of employment in a coal mine" and inserting in lieu thereof "any of such paragraphs".

(8) Section 424(h) of the Act (30 U.S.C. 932(h)) is amended by striking out the first sentence thereof.

(9) Section 422(i) of the Act (30 U.S.C. 932(i)) is amended to read as follows:

"(i)(1) The Secretary shall promulgate regulations providing for the prompt and expeditious consideration of claims under this section.

"(2)(A) The Secretary shall promulgate regulations providing for the prompt and equitable hearing of appeals by claimants who are aggrieved by any decision of the Secretary.

"(B) Any such hearing shall be held no later than forty-five days after the date upon which the claimant involved requests such hearing. A hearing may be postponed at the request of the claimant involved for good cause.

"(C) Any such hearing shall be held at a time and a place convenient to the claimant requesting such hearing.

"(D) Any such hearing shall be of record and shall be

subject to the provisions of sections 554, 555, 556, and 557 of title 5, United States Code.

"(3)(A) Any individual, after any final decision of the Secretary made after a hearing to which he was a party, may obtain a review of such decision by a civil action commenced no later than ninety days after the mailing to him of notice of such decision, or no later than such further time as the Secretary may allow.

"(B) Such action shall be brought in a district court of the United States in the State in which the claimant resides.

"(C) The Secretary shall file, as part of his answer, a certified copy of the transcript of the record, including the evidence upon which the findings and decision complained of are based.

"(D) The court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Secretary, with or without remanding the case for a rehearing. The findings of the Secretary as to any fact, if supported by the weight of the evidence, shall be conclusive.

"(E) The court shall, on motion of the Secretary made before he files his answer, remand the case to the Secretary for further action by the Secretary, and may, at may time, on good cause shown, order additional evidence to be taken

before the Secretary, and the Secretary shall, after the case is remanded, and after hearing such additional evidence if so ordered, modify or affirm his findings of fact or his decision, or both, and shall file with the court any such additional and modified findings of fact and decision, and a transcript of the additional record and testimony upon which his action in modifying or affirming was based. Such additional or modified findings of fact and decision shall be reviewable only to the extent provided for review of the original findings of fact and decision.

"(F) The judgment of the court shall be final, except that it shall be subject to review in the same manner as a judgment in other civil actions. Any action instituted in accordance with this paragraph shall survive notwithstanding any change in the person occupying the office of Secretary or any vacancy in such office.".

(10) In the case of any miner or any survivor of a miner who is eligible for benefits under section 422 of the Act (30 U.S.C. 932) as a result of any amendment made by any provision of this Act, such miner or survivor may file a claim for benefits under such section no later than three years after the date of the enactment of this Act, or no later than the close of the applicable period for filing claims under section 422(f) of the Act (30 U.S.C. 932(f)), whichever is later.

(b) Section 423 of the Act (30 U.S.C. 933) is amended to read as follows:

"SEC. 423. (a)(1) There is hereby established in the Treasury of the United States a trust fund to be known as the Black Lung Disability Insurance Fund. The fund shall consist of such sums as may be appropriated as advances to the fund under section 424(e)(1) of this part, the assessments paid into the fund as required by section 424(g), the premiums paid into the fund as required by section 424 (a), the interest on, and proceeds from, the sale or redemption of any investment held by the fund, and any penalties recovered under section 424(c), including such earnings, income, and gains as may accrue from time to time which shall be held, managed, and administered by the trustees in trust in accordance with the provisions of this part and the fund.

"(2) Fund assets, other than such assets as may be required for necessary expenses, shall be used solely and exclusively for the purpose of discharging obligations of operators under this part. Operators shall have no right, title, or interest in fund assets, and none of the earnings of the fund shall inure to the benefit of any person, other than through the payment of benefits under this part, together with appropriate costs.

"(b)(1)(A) The fund shall have seven trustees. Ex-

cept as provided in subparagraph (B), trustees shall serve for terms of four years.

"(B) Of the trustees first elected under this subsection—

"(i) four shall be elected for terms of two years; and

"(ii) three shall be elected for terms of one year. The Secretary shall determine, before the date of the first election under this subsection, whether each trustee office involved in such election shall be for a term of one year or two years. Such determination shall be made through the use of an appropriate method of random selection, except that at least one trustee nominated under paragraph (2)(A) shall serve for a term of two years.

"(C) Any trustee may be a full-time employee of an operator, except that no more than one trustee may be employed by any one operator or any affiliate of such operator.

"(2)(A) Two trustees shall be nominated and elected by operators having an annual payroll not in excess of $1,500,000 (hereinafter referred to as 'small operators').

"(B) Five trustees shall be nominated and elected by all operators.

"(3) No later than 60 days after the date of the enactment of the Black Lung Benefits Reform Act of 1977, all operators shall certify to the Secretary their payrolls for the 12-month period ending December 31, 1976. The Secretary

shall then publish a list setting forth the number of votes to which each small operator and each operator is entitled, computed on the basis of one vote for each $500,000 or fraction thereof of payroll. Trustees shall be elected no later than 180 days after the date of the enactment of such Act.

"(4) Candidates seeking nomination for election to the office of trustee under paragraph (2)(A) shall submit to the Secretary petitions of nomination reflecting the approval of small operators representing not less than 2 per centum of the aggregate annual payroll of all small operators. Candidates seeking such nomination under paragraph (2)(B) shall submit petitions reflecting the approval of operators representing not less than 2 per centum of the aggregate annual payroll of all operators.

"(5) The Secretary shall promulgate regulations for the nomination and election of trustees. Such regulations shall include provisions for the nomination and election of trustees, including the nomination and election of trustees to fill any vacancy caused by the death, disability, resignation, or removal of any trustee. The Secretary shall certify the results of all nominations and elections. Two or more trustees may at any time file a petition, in the United States district court where the fund has its principal office, for removal of a trustee for malfeasance, misfeasance, or nonfeasance. The cost of any such action shall be paid from the fund,

and the Secretary may intervene in any such action as an interested party.

"(6) The trustees shall organize by electing a Chairman and Secretary and shall adopt such rules governing the conduct of their business as they consider necessary or appropriate. Five trustees shall constitute a quorum and a simple majority of those trustees present and voting may conduct the business of the fund.

"(c)(1) The trustees shall act on behalf of all operators with respect to claims filed under this part.

"(2)(A) Except as provided by subparagraph (B), the fund may not participate or intervene as a party to any proceeding held for the purpose of determining claims for benefits under this part.

"(B)(i) If the fund is dissatisfied with any determination of the Secretary with respect to a claim for benefits under this part, the fund may, no later than thirty days after the date of such determination, file with the United States court of appeals for the circuit in which such determination was made a petition for review of such determination. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which he based his determination, as provided in section 2112 of title 28, United States Code.

"(ii) The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive, except that the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary thereupon may make new or modified findings of fact and may modify his previous determination, and shall certify to the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

"(iii) The court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject 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.

"(iv) Any finding of fact of the Secretary relating to the interpretation of any chest roentgenogram or any other medical evidence which demonstrates the existence of pneumoconiosis or any other disabling respiratory or pulmonary impairment, shall not be subject to review under the provisions of this subparagraph.

"(3) No operator may bring any proceeding, or intervene in any proceeding, held for the purpose of determining claims for benefits under this part.

"(4) It shall be the duty of the trustees to report to

the Secretary and to the operators no later than January 1 of each year on the financial condition and the results of the operations of the fund during the preceding fiscal year and on its expected condition during the current and ensuing fiscal year. Such report shall be included in a report to the Congress by the Secretary not later than March 1 of each year on the financial condition and the results of the operations of the fund during the preceding fiscal year and on its expected condition and operations during the current and next ensuing fiscal year. The report of the Secretary shall be printed as a House document of the session of the Congress to which the report is made.

"(5)(A) The trustees shall take control and management of the fund and shall have the authority to hold, sell, buy, exchange, invest, and reinvest the corpus and income of the fund. All premiums paid to the fund under section 424(a)(1) shall be held and administered by the trustees as a single fund, and the trustees shall not be required to segregate and invest separately any part of the fund assets which may be claimed to represent accruals or interests of any individuals. It shall be the duty of the trustees to invest such portion of the assets of the fund as is not required to meet obligations under this part, except that the trustees may not invest any advances made to the fund under section 424(e). The trustees shall make investments under this

paragraph in accordance with the provisions of section 404 (a)(1)(C) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104(a)(1)(C)).

"(B) Any profit or return on any investment or reinvestment made by the trustees under subparagraph (A) shall not be considered as income for purposes of Federal or State income taxation.

"(6)(A) Amounts in the fund shall be available for making expenditures to meet obligations of the fund which are incurred under this part, including the expenses of providing medical benefits as required by section 432 of this title, and the operation, maintenance, and staffing of the office of the fund. The trustees may enter into agreements with any self-insured person or any insurance carrier who has incurred obligations with respect to claims under this part before the effective date of this paragraph, under which the fund will assume the obligations of such self-insured person or insurance carrier in return for a payment or payments to the fund in such amounts, and on such terms and conditions as will fully protect the financial interests of the fund.

"(B) Beginning on the effective date of this paragraph, payments shall be made from the fund to meet any obligation incurred by the Secretary with respect to claims under this part before such effective date. The Secretary

shall cease to be subject to such obligations on such effective date.

"(7) The trustees shall keep accounts and records of their administration of the fund, which shall include a detailed account of all investments, receipts, and disbursements.

"(8) At no time during the administration of the fund shall the trustees be required to obtain any approval by any court of the United States or by any other court of any act required of them in connection with the performance of their duties or in the performance of any act required of them in the administration of their duties as trustees. The trustees shall have the full authority to exercise their judgment in all matters and at all times without any such approval of such decisions. The trustees may file an application in the United States district court where the fund has its principal office for a judical declaration concerning their power, authority, or responsibility under this Act (other than the processing and payment of claims). In any such proceeding, only the trustees and the Secretary shall be necessary or indispensable parties, and no other person, whether or not such person has any interest in the fund, shall be entitled to participate in any such proceeding. Any final judgment entered in such proceeding shall be conclusive upon any person or other entity claiming an interest in the fund.

"(9) The trustees may employ such counsel, account-

ants, agents, and employees as they consider advisable. The trustees may charge the compensation of such persons and any other expenses, including the cost of fidelity bonds and indemnification and fiduciary insurance for trustees and other fund employees, necessary in the administration of the fund, against the fund.

"(10) The trustees shall have the power to execute any instrument which they consider proper in order to carry out the provisions of the fund.

"(11) The trustees may, through any duly authorized person, vote any share of stock which the fund may hold.

"(12) The trustees may employ actuaries to such extent as they consider advisable. No actuary may be employed by the trustees under this paragraph unless such actuary is enrolled under section 3042(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1242(a)).

"(d) Nothing in this Act or in the Black Lung Benefits Reform Act of 1977 shall be construed as exempting the fund, or any of its activities or outlays, from inclusion in the Budget of the United States or from any limitations imposed thereon.".

(c) Section 424 of the Act (30 U.S.C. 934) is amended to read as follows:

"SEC. 424. (a)(1) During any period in which a State workmen's compensation law is not included on the list pub-

lished by the Secretary under section 421(b), each operator of a coal mine in such State shall pay premiums into the fund in amounts sufficient to ensure the payment of benefits under this part.

"(2) The initial premium rate of each operator shall be established by the Secretary as a rate per ton of coal mined by such operator. Beginning one year after the date upon which the Secretary establishes initial premium rates, the trustees may modify or adjust the premium rate per ton of coal mined to reflect the experience and expenses of the fund to the extent necessary to permit the trustees to discharge their responsibilities under this Act, except that the Secretary may further modify or adjust the premium rate to ensure that all obligations of the fund will be met. Any premium rate established under this subsection shall be uniform for all mines, mine operators, and amounts of coal mined.

"(3) For purposes of section 162(a) of the Internal Revenue Code of 1954 (relating to trade or business expenses), any premium paid by an operator of a coal mine under paragraph (1) shall be considered to be an ordinary and necessary expense in carrying on the trade or business of such operator.

"(4) For purposes of this subsection—

"(A) the term 'coal' means any material composed predominantly of hydrocarbons in a solid state;

"(B) the term 'ton' means a short ton of two thousand pounds; and

"(C) the amount of coal mined shall be determined at the first point at which such coal is weighed.

"(b) The Secretary shall advise the Secretary of the Treasury of premium rates established under subsection (a)(1). The Secretary of the Treasury shall collect all premiums due and payable by operators under subsection (a)(1), and transmit such premiums to the fund. Collections shall be effected by the Secretary of the Treasury in the same manner as, and together with, quarterly payroll reports of employers. In order to ensure the payment of premiums by all operators, the Secretary, after consultation with the Secretary of the Interior, shall certify, not less than annually, the names of all operators subject to this Act.

"(c)(1) In any case in which an operator fails or refuses to pay any premium required to be paid under subsection (a)(1), the trustees of the fund shall bring a civil action in the appropriate United States district court to require the payment of such premium. In any such action, the court may issue an order requiring the payment of such premiums in the future as well as past due premiums, together with 9 per centum annual interest on all past due premiums.

"(2) An operator who fails or refuses to pay any pre-

mium required to be paid under subsection (a)(1) may be assessed a civil penalty by the Secretary of the Treasury in such amount as such Secretary may prescribe, but not in excess of an amount equal to the premium the operator failed or refused to pay. Such penalty shall be in addition to any other liability of the operator under this Act. Penalties assessed under this paragraph may be recovered in a civil action brought by such Secretary and penalties so recovered shall be deposited in the fund.

"(d) The Secretary shall be required to make expenditures under this part only for the purpose of carrying out his obligation to administer this part. All other expenses incurred under this part shall be borne by the fund, and if borne by the Secretary, shall be reimbursed by the fund to the Secretary.

"(e)(1) There are hereby authorized to be appropriated to the fund such sums as may be necessary to provide the fund with amounts equal to 50 per centum of the amount which the Secretary estimates is necessary for the payment of benefits under this part during the first twelve-month period after the effective date of this section. Any amounts appropriated under this paragraph may be used only for the payment of benefits under this part.

"(2)(A) Sums authorized to be appropriated by paragraph (1) shall be repayable advances to the fund.

"(B) Such advances shall be repaid with interest into the general fund of the Treasury no later than five years after the first appropriation made under paragraph (1).

"(3) Interest on such advances shall be at a rate determined by the Secretary of the Treasury taking into consideration the current average yield during the month preceding the date of the advance involved, on marketable interest-bearing obligations of the United States of comparable maturities then forming a part of the public debt rounded to the nearest one-eighth of 1 per centum.

"(f)(1) During any period in which section 422 of this title is applicable with respect to a coal mine, an operator of such mine who, after the date of the enactment of this title, acquired such mine or substantially all of the assets thereof from a person (hereinafter in this paragraph referred to 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 this section and section 423 of this title, secure the payment of all benefits for which the prior operator would have been liable under section 422 of this title with respect to miners previously employed in such mine if the acquisition had not occurred and the previous operator had continued to operate such mine.

"(2) Nothing in this subsection shall relieve any prior operator of any liability under section 422 of this title.

"(g)(1) The fund shall make an annual assessment against any operator who is liable for the payment of benefits under section 422 of this title. Such assessment against any operator of a coal mine shall be in an amount equal to the amount of benefits for which such operator is liable under section 422 of this title with respect to death or total disability due to pneumoconiosis arising out of employment in such mine, or with respect to entitlements established in paragraph (5) or paragraph (6) of section 411(c) of this title.

"(2) Any operator against whom an assessment is made under paragraph (1) shall pay the amount involved in such assessment into the fund no later than thirty days after receiving notice of such assessment.

"(3) The provisions of subsection (c) of this section shall apply in the case of any operator who fails or refuses to pay any assessment required to be paid under this subsection.".

(d) Section 421(b)(2)(E) of the Act (30 U.S.C. 931 (b)(2)(E)) is amended by striking out "section 422(i)" and inserting in lieu thereof "section 424(f)".

CLINICAL FACILITIES

SEC. 10. The first sentence of section 427(c) of the Act (30 U.S.C. 937(c)) is amended by striking out "of the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975" and inserting in lieu thereof "fiscal year".

MEDICAL CARE

SEC. 11. (a) Part C of title IV of the Act (30 U.S.C. 931 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 432. The provisions of subsections (a), (b), (c), (d), and (g) of section 7 of the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 907 (a), (b), (c), (d), and (g)) shall be applicable to persons entitled to benefits under this part on account of total disability or on account of eligibility under paragraph (5) or paragraph (6) of section 411(c), except that references in such section to the employer shall be considered to refer to the trustees of the fund.".

(b) The Secretary of Health, Education, and Welfare shall notify each miner receiving benefits under part B of the Black Lung Benefits Act on account of his total disability who the Secretary has reason to believe became eligible for medical services and supplies on January 1, 1974, of his possible eligibility for such benefits. Where the Secretary so notifies a miner, the period during which he may file

a claim for medical services and supplies under part C of such Act shall not terminate before six months after such notification was made.

TRANSITIONAL PROVISIONS

SEC. 12. (a) The Secretary of Health, Education, and Welfare, and the Secretary of Labor shall disseminate to interested persons and groups the changes in the Black Lung Benefits Act made by this Act. Each such Secretary shall undertake a program to give individual notice to individuals who they believe are likely to have become eligible for benefits by reason of such changes.

(b)(1) The Secretary of Health, Education, and Welfare (with respect to part B of the Black Lung Benefits Act) shall review each claim which has been denied, and each claim which is pending, under such part, taking into account the amendments made to such part by this Act, and with respect to claims which have been denied taking into account the possibility of error or inappropriate denial of benefits in the initial processing of such claim. The Secretary shall approve any such claim forthwith if the provisions of such part, as so amended, require such approval or if in the initial processing of a denied claim there was error or inappropriate denial of benefits to such claimant.

(2) The Secretary of Labor (with respect to part C of the Black Lung Benefits Act) shall review each claim which

has been denied, and each claim which is pending, under such part, taking into account the amendments made to such part by this Act, and with respect to claims which have been denied taking into account the possibility of error or inappropriate denial of benefits in the initial processing of such claim. The Secretary shall approve any such claim forthwith if the provisions of such part, as so amended, require such approval or if in the initial processing of a denied claim there was error or inappropriate denial of benefits to such claimant.

(3) Each Secretary, in undertaking the review required by paragraphs (1) and (2), shall not require the resubmission of any claim which is the subject of any such review.

SHORT TITLE FOR ACT

SEC. 13. Section 401 of the Act (30 U.S.C. 901) is amended by inserting "(a)" immediately after "SEC. 401." and by adding at the end thereof the following new subsection:

"(b) This title may be cited as the 'Black Lung Benefits Act'.".

MINE ACCIDENT WIDOWS

SEC. 14. (a) If a miner was employed for seventeen years or more in one or more underground coal mines, and died as a result of an accident in any such coal mine which occurred on or before June 30, 1971, any eligible survivor of

such miner shall be entitled to the payment of benefit under part B of the Black Lung Benefits Act.

(b) For purposes of this section, benefit payments to a widow, child, parent, brother, or sister of any miner to whom subsection (a) applies shall be reduced, on a monthly or other appropriate basis, by an amount equal to any payment received by such widow, child, parent, brother, or sister under the workmen's compensation, unemployment compensation, or disability laws of the miner's State.

(c) The Secretary of Labor shall be responsible for the administration of the provisions of this section.

ADMINISTRATION OF BLACK LUNG BENEFITS ACT

SEC. 15. (a)(1) The Division of Coal Mine Workers' Compensation is hereby transferred to the Office of the Secretary of Labor.

(2) The Secretary shall act through the Division in carrying out the provisions of the Black Lung Benefits Act.

(b)(1) The Secretary, in carrying out the Black Lung Benefits Act, shall establish and operate such field offices as may be necessary to assist miners and other persons with respect to the filing of claims under such Act. Such field offices shall be established and operated in a manner which makes them reasonably accessible to such miners and other persons.

(2) The Secretary, in connection with the establishment and operation of field offices under paragraph (1), may enter into arrangements with other Federal departments and agencies, and with State agencies, for the use of existing facilities operated by such departments and agencies.

(c) For purposes of this section—

(1) the term "Division" means the Division of Coal Mine Workers' Compensation established in the Office of Workers' Compensation Programs by the Assistant Secretary of Labor for Employment Standards under the Secretary's Order No. 13-71 (36 Federal Register 8755); and

(4) the term "Secretary" means the Secretary of Labor.

EFFECTIVE DATES

SEC. 16. (a) This Act shall take effect on the date of its enactment, except that—

(1) the amendments made by section 2 shall be effective on and after December 30, 1969, except that claims approved solely because of the amendments made by section 2, which were filed before the date of the enactment of this Act, shall be awarded benefits only for the period beginning on such date of enactment;

(2) the amendments made by sections 4, 5, and 8 shall be effective on and after December 30, 1969;

(3) the amendments made by section 6 shall not require the payment of benefits for any period before the date of the enactment of this Act; and

(4) the amendments made by section 9 shall take effect on October 1, 1977, except that (A) the Secretary of Labor shall establish initial premium rates for operators under section 424(a)(1) of the Black Lung Benefits Act, as added by section 9(c) of this Act, no later than October 1, 1977, and (B) such Secretary shall make the estimate required by section 424(e)(1) of such Act, as added by section 9(c) of this Act, as soon as practicable after the date of the enactment of this Act.

(b) In the event that the payment of benefits to miners and to eligible survivors of miners cannot be made from the Black Lung Disability Insurance Fund established by section 423(a) of the Act, as added by section 9(b) of this Act, the provisions of the Act relating to the payment of benefits to miners and to eligible survivors of miners, as in effect immediately before October 1, 1977, shall remain in force as rules and regulations of the Secretary of Labor, until such provisions are revoked, amended, or revised by law. Such Secretary shall make benefit payments to miners and to eligible survivors of miners in accordance with such provisions.

(c) No benefits payable because of the enactment of this

Act shall be paid to any miner or survivor before October 1, 1977.

WHITE LUNG STUDY

SEC. 17. (a) The Committee on Education and Labor of the House of Representatives is authorized and directed to conduct a study of white lung disease, also known as silicosis or talcosis, including, but not limited to, the extent and severity of the disease in the United States; the relationship, if any, between white lung disease and black lung disease; the adequacy of current workman compensation programs in compensating victims of white lung disease; a review of current mine safety and Occupational Safety and Health regulations relating to talc mining to determine whether such regulations are adequate to protect the safety and health of talc miners; and the need, if any, for Federal legislation to protect the safety and health of talc miners or to provide additional compensation for the victims of white lung.

(b) The Committee shall report its findings and any legislative recommendations to the Congress not later than one year after enactment of this Act.

Union Calendar No. 81

95TH CONGRESS
1ST SESSION

H. R. 4544

[Report No. 95–151]

A BILL

To amend the Federal Coal Mine Health and Safety Act to improve the black lung benefits program established under such Act, and for other purposes.

By Mr. DENT and Mr. PERKINS

MARCH 7, 1977

Referred to the Committee on Education and Labor

MARCH 31, 1977

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

PROVIDING FOR CONSIDERATION OF H.R. 4544, BLACK LUNG BENEFITS REFORM ACT OF 1977

Mr. MEEDS. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 702 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 702

Resolved, That upon the adoption of this resolution it shall be in order to move, section 401(b)(1) of the Congressional Budget Act of 1974 (Public Law 93-344) to the contrary notwithstanding, 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. 4544) to amend the Federal Coal Mine Health and Safety Act to improve the black lung benefits program established under such Act, and for other purposes. After general debate, which shall be confined to the bill and shall continue not to exceed two hours, 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. It shall be in order to consider the amendment in the nature of a substitute recommended by the Committee on Education and Labor now printed in the bill as an original bill for the purpose of amendment, and all points of order against said amendment for failure to comply with clause 5 of rule XXI, clause 7 of rule XVI, and section 401(b)(1) of the Congressional Budget Act of 1974 (Public Law 93-344) are hereby waived. At the conclusion of such consideration, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the committee amendment in the nature of a substitute. 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 with or without instructions.

The SPEAKER pro tempore (Mr. GIAIMO). The gentleman from Washington (Mr. MEEDS) is recognized for 1 hour.

Mr. MEEDS. Mr. Speaker, I yield 30 minutes to the gentleman from Tennessee (Mr. QUILLEN), pending which I yield myself such time as I may consume.

Mr. MEEDS asked and was given permission to revise and extend his remarks.)

Mr. MEEDS. Mr. Speaker, House Resolution 702 provides for the consideration of H.R. 4544, the Black Lung Benefits Reform Act of 1977. This is an open rule providing for 2 hours of general debate to be equally divided and controlled by the chairman and ranking minority member of the Committee on Education and Labor, and it makes in order the committee amendent in the nature of a substitute to be considered as an original bill for the purpose of amendment.

All points of order against the substitute are waived for failure to comply with clause 5, rule XXI, which prohibits appropriations in a legislative measure, clause 7, rule XVI, the germaneness clause, and section 401(b) of the Congressional budget Act.

The first waiver is required to allow consideration of that part of the bill which establishes a trust fund from which benefit payments would be made automatically. The chairman of the Appropriations Committee, Mr. MAHON, has agreed to this waiver with the understanding that Mr. THOMPSON will offer a floor amendment whereby such payments would be made only to the extent and in such amounts as are provided in advance by appropriations acts.

The waiver of points of order under the germaneness clause is necessary, because the committee substitute contains provisions not germane to the bill as introduced. An example is section 17 of the bill authorizing and directing the House Committee on Education and Labor to study white lung disease, and to report its findings and recommendations within 1 year. The waiver in regard to section 401(b) of the Budget Act is necessary to allow consideration of the entitlement provisions of H.R. 4544, some of which would come into effect before October 1, 1977, the start of the new fiscal year. For example, sections 8 and 14 of the bill would allow for more miners and their survivors to be eligible for certain benefit payments under the bill. Chairman GIAIMO of the House Budget Committee has agreed to this waiver with the understanding that an amendment will be offered on the floor to cure the Budget Act problem.

Mr. Speaker, the Committee on Rules considered the request for a rule on H.R. 4544 on three separate occasions, and on July 21 reported this rule by a voice vote. It was the feeling of the majority of the members of the committee that, while the legislation is controversial, the rule should be granted so the House could work its will on this issue. I urge the adoption of House Resolution 702 so the House may proceed to the consideration of the bill.

Mr. QUILLEN. Mr. Speaker, I yield myself such time as I may consume.

(Mr. QUILLEN asked and was given permission to revise and extend his remarks.)

Mr. QUILLEN. Mr. Speaker, the able gentleman from Washington (Mr. MEEDS) has explained the provisions of the rule. Let us not say that the black lung bill is not controversial. It is.

The chairman of the Committee on Education and Labor came over to the committee table and said that he had agreed to some amendments that would be offered to take out the entitlement sections of the measure.

I have no coal mining in my district, although my district borders on one of the Nation's leading coal-producing areas. Many of the miners from the area have retired or become disabled, and miners or widows of miners have moved into my district. Therefore, I know that pneumoconiosis is a tremendous problem, and I have always supported black lung legislation. But there are certain provisions in this measure which need to be corrected.

Mr. Speaker, I understand that the

leman from New Jersey (Mr. MPSON) and the gentleman from th Carolina (Mr. ANDREWS) will offer e amendments to make these cor-ions.

r. Speaker, I yield 10 minutes to the leman from Illinois (Mr. ERLEN-N).

Mr. ERLENBORN asked and was n permission to revise and extend remarks.)

r. ERLENBORN. Mr. Speaker, I rise pposition to the rule that is being posed for the consideration of H.R.

r. Speaker, the Black Lung Benefits rm Act of 1977 is very badly named. re is nothing in the act that will e before the House as a result of the tion of this rule that could in any be construed as reform.

r. Speaker, I was the ranking Repub-n on the subcommittee which con-red the original Coal Mining Health Safety Act of 1969, out of which e this program for compensation of ims of coalworkers' pneumoconiosis. t that time there was a good deal of pathy for the people in the coal ing areas because of a very bad coal e disaster in Farmington, Ky., about ear before the final passage of this l Mine Health and Safety Act. Cer-ly, revisions in the safety require-nts in the coal mines were long over-and I did as much as I could to see proper safety restrictions were pted in that act.

was also convinced by those who ted to include pneumoconiosis com-sation in the act that there was a onale for having a Federal program, escribed at that time.

What was that Federal program? The blem we faced was people with coal-kers' pneumoconiosis who had not, in past, qualified for workmen's com-sation under State workmen's com-sation laws.

was impossible to identify, in many es, the responsible operator back over eriod of 20 or 30 or 40 years since obably the individual worker had ked for many different employers ing that period of time. Therefore, argument was made that we should e a one-shot Federal compensation gram to pick up all of those old claims that then we should guarantee that lworkers' pneumoconiosis was com-sated on the same basis as other kers' diseases and workmen's com-sation claims. On that basis, I sup-ted the program.

When the bill passed the House, it vided for compensation for those who e totally disabled as a result of com-cated pneumoconiosis or what is own as progressive massive fibrosis, ich medically is the only disabling ge of the disease.

The Senate bill likewise provided com-sation for that disabling stage of the ease.

n the conference the reference to nplicated pneumoconiosis was re-ved by the conferees, contrary to the es of the House, in my opinion; and made it possible for those who were totally disabled or even disabled at all by pneumoconiosis to get compensation.

In 1969 this program was adopted. In 1972 amendments were adopted to change the character of the program, to liberalize beyond the original concept the treatment of these claims so that additional people not disabled by pneumoconiosis could get compensation. It further extended the Federal responsibility for an additional number of years so that it was going to be the responsibility of the Federal Government for an additional period of time before the responsibility was turned over to the employers through workmen's compensation. That today is the condition of the law, and the time has expired when the Federal Government is responsible under what we call part B of the law.

Part C now has taken effect and the employers are liable for the current claims that are being filed. But now the bill that comes before us out of the Committee on Education and Labor is going to make this a permanent Federal program. The promises of 1969, that were repeated in 1972, have now been forgotten. We hear that equity will be brought to this program. That we are going to make the employers responsible. All but one of the 50 States now cover pneumoconiosis under their workmen's compensation laws. Those who are currently working who contract pneumoconiosis have the same recourse as other workers through workmen's compensation.

There is no justification for making this a total Federal program.

In addition, Mr. Speaker, some of the neat little features in this bill would allow one to draw worker's compensation, pneumoconiosis compensation, and social security disability, three different disability payments at the same time.

How often can one be totally disabled? I submit it is hard to suggest that you can be disabled, totally disabled, more than once.

In addition, the bill before us says that when a claim is filed if the claimant wins no one can appeal, neither the employer nor the Government, can appeal a favorable decision on the claim, but if the claimant loses then the claimant may appeal until he gets his claim approved. And then no one can appeal.

The bill before us says because medical criteria have been established and enforced to some extent, that now the family physician, if he certifies that the claimant has the disease, he has the final say, that cannot be reviewed, or in the case of an application based upon the death of a coal worker, the affidavit of the widow will establish the claim.

I submit that those who are the sponsors of this legislation will not be satisfied until every coal miner is drawing compensation regardless of disability. I can just about prove that with the one last provision in this act that now you do not even need to claim you have the disease, if this bill passes, just prove that you have worked in the coal mines for 25 or 30 years and you automatically draw benefits. Not only that, you can keep working in the coal mines, keep working at full pay and draw disability compensation for being totally disabled.

There is not one provision in the bill before us that is needed.

There is not one provision in the bill before us that adds any equity to the program, just the contrary.

This bill was before the Committee on Rules for months. There were three separate hearings before the Committee on Rules granted a rule.

I heard it reported that the chairman, the gentleman from Kentucky (Mr. PERKINS), has agreed to an amendment. I have never heard him say that he agreed to an amendment before the Committee on Rules, he reported somebody was going to offer an amendment on the floor, but he announced he would oppose the amendment.

Mr. PERKINS. Mr. Speaker, will the gentleman yield?

Mr. ERLENBORN. I would be happy to yield to the gentleman from Kentucky.

Mr. PERKINS. Mr. Speaker, let me say to my distinguished colleague, the gentleman from Illinois (Mr. ERLENBORN), that I wholeheartedly agree with and support the amendment to remove the entitlement provisions.

Mr. ERLENBORN. I thank the gentleman from Kentucky and I will not yield any further.

This is the first time that I have heard the chairman say that he would modify this bill at all. Finally, he does realize his bill is in trouble. But, even before the Committee on Rules, he would not agree to offer or support such an amendment. But even if that amendment is offered and adopted, there is still nothing in this bill that is needed. There is still nothing in this bill that will add any equity to this program. We ought not to be writing this legislation on the floor of the House.

The kindest thing we can do is to defeat the rule, send the bill back to the committee, and then if it is something that is worth while doing, let the committee do its own work. Let us not permit one man, the chairman, to dictate to the committee, to dictate to the Committee on Rules and to dictate to the Members on the floor of this House.

This should be handled the way good legislation is handled. The committee of jurisdiction should do its job, and having done its job, then seek a rule that is justified. Only then should this House grant a rule for the consideration of the bill. I hope the Members will agree with me and will defeat this rule.

Mr. MEEDS. Mr. Speaker, I yield 2 minutes to the gentleman from North Carolina (Mr. ANDREWS).

Mr. ANDREWS of North Carolina. Mr. Speaker, I rise in support of this rule. It is a good rule. Let me preface my remarks by saying that I, as a member of the Committee on Education and Labor, did not support this bill when it was voted on some few weeks ago, and about a year ago when a bill of similar purport came before the House, I opposed it. The reason I did so is the same reason that my predecessor speaker has just indicated, or at least primarily so, and that is I did not favor the automatic entitlements for a person who has simply worked in the mines for 30 years, without any evi-

dence whatsoever of his disability by reason of the black lung disease. I would not support it now in spite of my fond friendship for the chairman as a chief supporter, but an amendment as a substitute has been presented and will be offered on the floor of the House to modify the bill in a very major way by eliminating those automatic entitlements and thus making the bill such that I can support it and I believe many others of us will feel the same way when it is explained in general debate on that particular subject. Hence, I think it is altogether possible when we bring the bill and the substitute amendment before the body for its consideration that it will be supported. I see no reason for further delay. I am very much in support of the rule and as others to join me in adopting it here today.

Mr. QUILLEN. Mr. Speaker, as I said, I have always supported black lung benefits, and with the agreement on the elimination of the entitlements provision, I see no objection to the House debating the measure on its merits. Therefore, Mr. Speaker, I have no objection to the rule, and I reserve the remainder of my time.

Mr. MEEDS. Mr. Speaker, I yield 3 minutes to the gentleman from Illinois (Mr. SIMON).

Mr. SIMON. Mr. Speaker, I shall be very brief, but I do want to respond to my friend and colleague, the gentleman from Illinois, who, among other things, said not one provision in this bill is needed. It is very interesting that the GAO has just come out with a report of July 11, 1977, and on the front page here it says, "Program to pay black lung benefits to coal miners and their survivors"—and in great big print—"improvements are needed."

He suggests that the coal companies are now responsible for black lung payments, and they should be responsible. But the Members should know the statistics.

As of right now, the most recent statistics I have seen, 108,000 coal miners have applied for black lung benefits in the past 4 years when the coal companies are responsible. Out of those 108,000, the coal companies are paying for 140 out of 108,000. They are responsible all right, and they would love to have the law just stand as it is and not change one iota.

The States' coverage is inadequate. Everyone agrees with that. To suggest that we turn this over to the States is suggesting no action for the coal miners.

Finally, on the appealability point that the gentleman from Illinois has made, that is a weakneess in the proposal that is before us. It is going to be taken care of by amendment. It is not a legitimate argument against the bill. Mr. Chairman, I hope we vote for the rule and do it properly, and then provide some benefits for the coal miners.

Mr. MEEDS. Mr. Speaker, I have no further requests for time.

I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. ERLENBORN. 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 pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 306, nays 83, answered "present" 1,—not voting 43, as follows:

[Roll No. 455]

YEAS—306

Addabbo	Edwards, Ala.	Levitas
Akaka	Edwards, Calif.	Lloyd, Calif.
Alexander	Eilberg	Lloyd, Tenn.
Allen	Emery	Long, La.
Ambro	English	Long, Md.
Ammerman	Ertel	Lujan
Andrews, N.C.	Evans, Colo.	Luken
Annunzio	Evans, Del.	Lundine
Applegate	Evans, Ga.	McCloskey
Armstrong	Evans, Ind.	McCormack
Ashley	Fary	McDade
Aspin	Fascell	McFall
AuCoin	Fenwick	McHugh
Baldus	Findley	McKay
Barnard	Fisher	Madigan
Baucus	Fithian	Mahon
Beard, R.I.	Flood	Markey
Bedell	Florio	Marks
Beilenson	Flowers	Marlenee
Benjamin	Flynt	Marriott
Bennett	Foley	Mathis
Bevill	Ford, Mich.	Mattox
Biaggi	Ford, Tenn.	Mazzoli
Bingham	Fountain	Meeds
Blanchard	Fowler	Metcalfe
Blouin	Fraser	Meyner
Boggs	Frenzel	Mikva
Boland	Fuqua	Milford
Bolling	Gammage	Miller, Calif.
Bonior	Gaydos	Miller, Ohio
Bowen	Giaimo	Mineta
Breaux	Gibbons	Minish
Breckinridge	Gilman	Mitchell, Md.
Brinkley	Ginn	Mitchell, N.Y.
Brodhead	Glickman	Moakley
Brooks	Gonzalez	Mollohan
Brown, Calif.	Gore	Moore
Brown, Mich.	Hall	Mottl
Buchanan	Hamilton	Murphy, Ill.
Burke, Fla.	Hammer-schmidt	Murphy, N.Y
Burlison, Mo.		Murphy, Pa.
Burton, John	Hanley	Myers, Gary
Burton, Phillip	Hannaford	Myers, John
Butler	Harkin	Myers, Michael
Byron	Harrington	Natcher
Caputo	Harris	Neal
Carney	Harsha	Nedzi
Carr	Hawkins	Nichols
Carter	Heckler	Nix
Cavanaugh	Heftel	Nolan
Chappell	Hightower	Nowak
Chisholm	Holland	O'Brien
Clausen, Don H.	Holtzman	Oakar
	Howard	Oberstar
Clay	Hubbard	Obey
Cohen	Huckaby	Ottinger
Collins, Ill.	Hughes	Panetta
Conte	Ireland	Patten
Conyers	Jacobs	Pattison
Corman	Jeffords	Pease
Cornell	Jenkins	Pepper
Cornwell	Jenrette	Perkins
Cotter	Johnson, Calif.	Pickle
D'Amours	Jones, Okla.	Pike
Daniel, Dan	Jones, Tenn.	Pressler
Danielson	Kastenmeier	Preyer
Davis	Kazen	Price
de la Garza	Kemp	Quillen
Delaney	Keys	Rahall
Dellums	Kildee	Railsback
Derrick	Kindness	Rangel
Diggs	Kostmayer	Regula
Dingell	Krebs	Reuss
Dodd	Krueger	Richmond
Drinan	LaFalce	Rinaldo
Duncan, Oreg.	Le Fante	Risenhoover
Duncan, Tenn.	Leach	Roberts
Early	Lederer	Rodino
Eckhardt	Leggett	Rogers
Edgar	Lehman	Roncalio
Rooney	Spellman	Vanik
Rosenthal	Spence	Vento
Rostenkowski	St Germain	Volkmer
Roybal	Staggers	Walgren
Runnels	Stangeland	Walsh
Ruppe	Stark	Watkins
Russo	Steed	Waxman
Ryan	Steers	Weaver
Santini	Stokes	Weiss
Scheuer	Stratton	Whalen
Schroeder	Studds	White
Schulze	Stump	Whitten
Seiberling	Thompson	Wilson, Tex.
Sharp	Thone	Wirth
Shuster	Thornton	Wolff
Sikes	Traxler	Wright
Simon	Treen	Wylie
Sisk	Trible	Yates
Skelton	Tsongas	Yatron
Skubitz	Tucker	Young, Tex.
Slack	Udall	Zablocki
Smith, Iowa	Ullman	Zeferetti
Solarz	Van Deerlin	

NAYS—83

Abdnor	Forsythe	Pettis
Anderson, Ill.	Frey	Poage
Archer	Goldwater	Pritchard
Ashbrook	Gradison	Quayle
Badham	Grassley	Quie
Bauman	Guyer	Rhodes
Beard, Tenn.	Hagedorn	Robinson
Broomfield	Hansen	Rousselot
Brown, Ohio	Hillis	Sarasin
Broyhill	Holt	Satterfield
Burgener	Hyde	Sawyer
Burleson, Tex.	Ichord	Sebelius
Cederberg	Johnson, Colo.	Smith, Nebr.
Clawson, Del	Jones, N.C.	Snyder
Cochran	Kasten	Stanton
Coleman	Kelly	Steiger
Collins, Tex.	Ketchum	Stockman
Conable	Lagomarsino	Symms
Corcoran	Latta	Taylor
Coughlin	Lent	Waggonner
Cunningham	Lott	Walker
Daniel, R. W.	McClory	Whitehurst
Derwinski	McDonald	Whitley
Devine	Martin	Wiggins
Dornan	Michel	Wilson, Bob
Edwards, Okla.	Montgomery	Winn
Erlenborn	Moorhead, Calif.	Wydler
Fish		Young, Alaska

ANSWERED "PRESENT"—1

Bafalis

NOT VOTING—43

Anderson, Calif.	Flippo	Moorhead, Pa.
	Gephardt	Moss
Andrews, N. Dak.	Goodling	Murtha
	Gudger	Patterson
Badillo	Hefner	Pursell
Bonker	Hollenbeck	Roe
Brademas	Horton	Rose
Burke, Calif.	Jordan	Rudd
Burke, Mass.	Koch	Shipley
Cleveland	McEwen	Teague
Crane	McKinney	Vander Jagt
Dent	Maguire	Wampler
Dickinson	Mann	Wilson, C. H.
Dicks	Mikulski	Young, Fla.
Downey	Moffett	Young, Mo.

The Clerk announced the following pairs:

Mr. Burke of Massachusetts with Mr. Teague.

Mr. Brademas with Mr. Maguire.

Mr. Shipley with Mr. Patterson of California.

Mr. Murtha with Mr. Roe.

Mr. Moorhead of Pennsylvania with Mr. Charles H. Wilson of California.

Mr. Dent with Mr. Moffett.

Ms. Mikulski with Mr. Bonker.

Mr. Wampler with Mr. Flippo.

Mr. Dicks with Mr. Gudger.

Mr. Downey with Mr. Gephardt.

Mrs. Burke of California with Ms. Jordan.

Mr. Badillo with Mr. Moss.

Mr. Koch with Mr. Anderson of California.

Mr. Hefner with Mr. Young of Missouri.

Mr. Mann with Mr. Andrews of North Dakota.

Mr. Rose with Mr. Crane.

Mr. Cleveland with Mr. Goodling.

Mr. Dickinson with Mr. Hollenbeck.

Mr. Horton with Mr. McKinney.

Mr. McEwen with Mr. Pursell.
Mr. Rudd with Mr. Young of Florida.

Mr. CONTE and Mr. WALGREN changed their vote from "nay" to "yea."

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

BLACK LUNG BENEFITS REFORM ACT OF 1977

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. 4544) to amend the Federal Coal Mine Health and Safety Act to improve the black lung benefits program established under such act, and for other purposes.

The SPEAKER pro tempore (Mr. GIAIMO). The question is on the motion offered by the gentleman from Kentucky (Mr. PERKINS).

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. 4544, with Mr. MCKAY 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 1 hour, and the gentleman from Illinois (Mr. ERLENBORN) will be recognized for 1 hour.

The Chair recognizes the gentleman from Kentucky (Mr. PERKINS).

Mr. PERKINS. Mr. Chairman, I yield myself 15 minutes.

Mr. Chairman, first let me state that the issue to be decided will be on the amendment in the nature of a substitute offered by the gentleman from New Jersey (Mr. THOMPSON) and by the gentleman from North Carolina (Mr. ANDREWS). I presume a substitute will be offered for the Thompson-Andrews amendment in the nature of a substitute by our colleague, the gentleman from Illinois (Mr. ERLENBORN).

Although I strongly support the committee bill, I will vote to have the Thompson-Andrews substitute, as this is the only way we will get meaningful legislation in this Congress.

Mr. Chairman, we had hoped with the passage of the black lung provisions of the coal Mine Health and Safety Act of 1969 that the national neglect for the unredressed suffering of disabled coal miners had at long last been faced up to and met. It was true then and, unfortunately, for many of the claimants for pneumoconiosis benefits it is true now, that the risk of death and disability among coal miners is twice that of the general population and higher than that of any other occupational group in the United States.

I came before the House again in 1972 because the 1969 black lung benefits provisions were bogged down because of extremely harsh application of the determination of whether or not a miner had the disease or whether or not a miner had died from the disease. Unfortunately, the state of medical knowledge as to the diagnosis of black lung is such that often it cannot be determined until an autopsy has been performed.

Not all lungs respond in the same fashion to the inhalation of dust particles, some whose lung X-rays clearly evidence the disease to a disabling extent do not appear to be disabled. The lungs of others with a long history of service in an underground coal mine produce only inconclusive X-ray findings yet manifest obvious respiratory difficulties and render such miners unemployable.

The 1977 amendments to title IV become necessary first of all because justice needs to be done to disabled miners. Secondly, the 1977 amendments are necessary in order that a sound, long-range plan may be established, payable from the proceeds derived from the extraction of coal, thus relieving the general taxpayer from this burden.

Coal is important to our Nation's economy. Coal is an essential source of energy for this Nation confronted with a long-range energy need. The Nation needs the production of coal, more abundant in its energy-producing potential than the massive middle east oil reserves, so as to be energy independent of foreign sources.

Just as the Nation needs a sound energy policy recognizing our coal reserves, it needs a sound safety, health and compensation policy, not only for protecting the lives and limbs of miners who extract it, but for compensating those and their defendents who become exposed to the disease-producing effects of the inhalation of coal dust.

H.R. 4544 seeks simply to accomplish these objectives, it does so by the following changes in the law.

First of all, it creates an entitlement for black lung compensation for the anthracite miner who has been employed in an underground mine for 25 years or more, and for bituminous miners who have been so employed for 30 years or more. Recent data show that 81 percent of the claims involving miners involved in the mining of coal for 30 years or more have been allowed. Investigation by the Labor Standards Subcommittee shows that many more miners aer obviously disabled because of respiratory ailments who have had similar periods of underground employment are disabled from employment by any objective standards even though their claims for black lung compensation have been denied.

Because of a strict and rigorous determination process established by both the Social Security Administration and the Department of Labor in the processing of black lung claims, claimants who are disabled by any objective criteria are put to lengthy examination, trial, rehearing, administrative review and other processes in their claims determinations. These procedures involve expense to the claimant, all of which can be readily eliminated by recognition of the fact that service in a coal mine prior to the date when the Federal law mandated safe dust levels, if such service period was at least 30 years in the case of a bituminous miner and 25 years in the case of an anthracite miner, produced a respiratory disease which at that point was disabling and irreversible. Hence, the first major change in title IV by the committee's bill.

Under existing law, State worker's compensation benefits paid to a miner as well as unemployment compensation may be offset against Federal black lung benefits. H.R. 4544 would make these offsets applicable only with respect to a disability payment to the miner on account of pneumoconiosis. This provision makes part B of title IV comparable to the provisions of part C so that only state benefits received due to an unrelated condition may act to reduce Federal benefits.

Often a miner who would under any other circumstances be considered totally disabled because of his pneumoconiosis is forced to continue to work in a mine in order to support his family because of the administrative time in processing a black lung claim and the doubt with respect to the disposition of the claim by the administrative agency. We sought in the 1972 amendments not to have a miner's continued employment operate as evidence of his possible employability to work against his claim for disability because of black lung. Despite the efforts to eradicate this situation in 1972, claims have continuously been denied solely on the basis that the miner is or was working in a mine. and with no consideration given to that fact as to the type of work the miner was performing.

In this regard. section 4 of the bill provides that claims for benefits may not be denied solely on the basis of employment as a miner if: First, the location of such employment has recently been changed to a mine area having a lower concentration of dust; second, the nature of such employment has been changed so as to involve less rigorous work; or third, the nature of. such employment has been changed to employment which receives substantially less pay. The act is further amended by this section to provide that a miner may file a claim for benefits whether or not he is employed at a coal mine at the time he files.

No administrative action demonstrates more clearly the past administration's reluctance to carry out the intent of Congress with respect to the compensation of disabled miners than the practice of taking an appeal of every administrative law judge's decision approving the claim of a miner, but not requiring the review of denials. Section 5 of the bill amends section 413(b) of the act. Any decision by an administrative law judge in favor of a claimant may not be appealed or reviewed except on motion of the claimant himself.

Section 6 of the bill adds new provisions to the act requiring the Secretary of Health, Education, and Welfare to disseminate information to individuals who are likely to be eligible for benefits and who have not filed for a claim. Individuals thus informed, if a claim is filed no later than 6 months after receiving such information, shall be entitled to have his claim considered on the same basis as if it had been filed on June 30, 1973.

Section 7 of the bill amends section 402(f) of the act to provide that the regulations of the Secretary of Health, Education, and Welfare relating to total disability shall not provide more restrictive criteria for claims filed after June 30, 1973, than those applied before that date. This amendment has been recommended by the GAO in its report of July 11, 1977.

In many instances, despite affidavits on the part of a widow or a miner as to the miner's physical condition prior to his death, in the case of a miner with a long history of service in the mine, claims have been denied even though there is no medical evidence to contradict this evidence of the diseased condition of the miner.

Section 8 of the bill would provide that such affidavits shall be considered to be sufficient to establish that the maner was totally disabled because of pneumoconiosis or that his death was due to pneumoconiosis.

The committee bill also requires the Secretary to accept X-rays of acceptable quality submitted by the claimant's physician except where the Secretary has reason to believe that a claim has been fraudulently represented.

Both the Department of Health, Education, and Welfare and the Department of Labor have established X-ray quality control procedures under which Government contract radiologists provide their own interpretations of X-rays submitted in connection with black lung claims. This procedure has elicited deep resentment among claimants, who believe strongly that the Government readers are utilized solely for the purpose of denying claims.

There is little reason, as a matter of policy, for the Government to interpose panels of second-guessers, particularly where the original interpreter of a claimant's X-ray was a qualified radiologist. The committee therefore intends that this provision be retroactively applied to denied and pending claims as well as to new ones. If, in the case of a claim by a living miner, an X-ray is objectively determined not to be of acceptable quality, the Secretary shall request that another X-ray be taken. Where fraud is suspected, the committee expects that Secretary to take such action as may be appropriate, but he shall specifically describe the reasons upon which this suspicion is based.

The final major feature of the bill, Mr. Chairman, involves the creation within the Treasury of a trust fund into which assessments on the mining of coal will be paid, and out of which compensation to miners disabled from pneumoconiosis will be paid. This represents a change from the existing law which anticipates that for those States whose worker's compensation laws do not meet the standards prescribed by the law for recognition of the compensatory nature of the disease nor the level of benefits, coal producers would be covered by the Longshoremen and Harbor Workers Compensation Act. Where no responsible employer could be found at the time the claim was filed this could be the burden of the Federal taxpayer.

The new provisions of H.R. 4544 creating the trust fund for the payment of claims places the burden upon assessments levied upon each ton of coal mined in all instances in which a claim may arise due to disability because of pneumoconiosis. In the light of the fact that no State worker's compensation law meets the Federal standards at this time, and 7 years has elapsed since this requirement was written, this further change in meeting future liabilities is essential.

Mr. Chairman, I believe this legislation is urgently needed and deserves the support of all Members.

The CHAIRMAN. The time of the gentleman has expired.

Mr. PERKINS. Mr. Chairman, I yield myself 5 additional minutes.

I have before me a letter dated today by the Director of the Congressional Budget Office, Alice M. Rivlin. It says:

CONGRESSIONAL BUDGET OFFICE.
Washington, D.C., July 25, 1977.

Hon. CARL D. PERKINS,
Chairman, Committee on Education and Labor, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: As per the request of your staff, the Congressional Budget Office—given the following proposed changes: elimination of retroactivity (Section 16(a)(2)), of the 30 year irrebuttable presumption (Section 2), of the removal of the current employment bar (Section 4), and of the prohibition of appeals of decisions by Administrative Law Judges (Section 5))—estimates the costs of H.R. 4544 to be:

[In millions of dollars]

Section:	1978
3	8.2
6	5.8
7	[1] 51.0
8(a)	[2] 6.5
8(c)	[3] 33.3
10	10.0
14	4.8
Total	119.6

[1] Includes 11.8, Part B and 39.2, Part C.
[2] Includes 5.8, Part B and 0.7, Part C.
[3] Includes 28.9, Part B and 4.4, Part C.

Of the $119.6 million in total 1978 costs, $65.3 million are attributable to Part B, $44.3 million to Part C, (both Parts B and C costs represent new entitlement authority), and $10.0 million in authorized funds. Based upon this reestimate, the fiscal year 1978 costs to the trust fund established under Section 9 of this bill, would include the $44.3 million new Part C entitlement plus $27.0 million in liabilities under current law for a total of $71.3 million.

This estimate replaces the one included in our letter of July 22nd which reflected an earlier set of assumptions provided by your staff.

If we can be of further assistance in this matter, please do not hesitate to contact us.

Sincerely,

ALICE M. RIVLIN,
Director.

(Mr. PERKINS asked and was given permission to revise and extend his remarks.)

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, I rise in opposition to H.R. 4544.

Before explaining my reasons for opposing the bill, let me define some of the terms that have been and will be used relative to coal workers' pneumoconiosis, commonly known as black lung.

Coal workers' pneumoconiosis is really the condition of having coal dust accumulate in the lungs. There is good medical definition of this condition and of the stage of this condition that could be properly called a disease.

There is nothing new about this. It was well known to the committee in 1969. We did extensive research prior to enacting the legislation or reporting the legislation from our committee.

The International Labor Organization, which is now one of the constituent agencies of the United Nations and actually precedes the United Nations by many years, going back to the days around World War I and the old League of Nations, has adopted definitions and criteria years ago for diagnosing coal workers' pneumoconiosis. These are applicable, understood, and utilized worldwide.

Coal workers' pneumoconiosis has two principal stages. Simple pneumoconiosis under the ILO definition is determined by the number and the size of what they call opacities shown in the X-rays of the lung. In other words it is a way of measuring the amount of coal dust that has accumulated in the lung of one who has been exposed to the coal dust and in whom such an accumulation has occurred. Simple pneumoconiosis in the ILO classification is not disabling to any—to any—degree, not even a partial disability.

It is the stage known as progressive massive fibrosis where there are large opacities, large accumulations, that the condition really can be called a disease, is disabling, and can become progressive and compensable.

This was all known to the committee in 1969. As I said, the committee, both committees, in fact, the House and the Senate in passing the legislation in 1969 took cognizance of the clear, undisputed medical evidence, and we made only complicated pneumoconiosis compensable.

That is a stage of this condition where it could be called a disease and be either partially or totally disabling. Of course, as I mentioned in the debate on the rule, in the conference the word "complicated" was taken out of the bill as finally passed.

I opposed the conference report, made a point of order against the conference report as not reflecting the condition of either the House or the Senate bill; but the final result was that even simple pneumoconiosis could become compensable, although clearly, medically, there is no evidence it was disabling.

In 1972 the first set of amendments to this law was adopted.

I might say at the time with the active aid of the coal mine companies, these

amendments were adopted, because they were about to be required under the 1969 law to take responsibility under part C. Their responsibility under part C of the act was delayed in the act of 1972. One or two things that we had overlooked in 1969 that did need to be amended, difficulties to be taken care of, were double orphans which, unfortunately, have been overlooked. Where the orphan has lost only the father, there was compensation; but, unfortunately, in our definition we left out double orphans; so I originally supported the bill then to take care of these deficiencies; but the 1972 amendments went a lot further than that. They absolved the companies of the responsibilities for a greater length of time.

The gentleman from Kentucky (Mr. PERKINS), by the way, was a sponsor of that bill and absolved the employers of responsibility for an additional number of years and made it simpler for those who claimed the disease to prove their claim and bypass good medical procedures and evidence.

Additionally, it provided that one could draw full social security disability compensation and full coal workers pneumoconiosis compensation at the same time; so we went from a single compensation under black lung to double compensation for the same condition.

Now, what do they want to do today? Today under part C the coal mine employer is liable, if you can identify the last responsible employer.

My friend, the gentleman from Illinois (Mr. SIMON) mentioned the large number of claims that have been filed under part C, a very small number where the employer is actually paying the compensation. Certainly it sounded like a great indictment of the program. What the gentleman forgot to tell us was that the vast majority, something like 90 percent of the claims filed, have been unwarranted claims and have been denied; so this strikes out 90 percent of that total number, because the people were not entitled to any compensation. The balance, a large number are in litigation, and when it is resolved the coal mine operator will have to pay all of the back amounts as well, not just from the time it is resolved; so what looked like a horrible indictment of the program merely is a statement of the fact that many unjustified claims had been filed, that the Labor Department under the better medical criteria that they are using, are approving only about 20 percent of the claims.

The National Science Foundation tells us that in the anthracite coal mine areas of Pennsylvania only about 14.3 percent after long-term exposure, only about 14.3 percent of the workers develop the disabling stage of pneumoconiosis.

In the kind of area that Mr. PERKINS represents, the soft coal area, long-term, 30-year exposure, about 2.3 percent of the people get the disabling stage of the disease. And yet, over 60 percent of those who filed claims under part B had their claims approved and are now drawing over a billion dollars a year from the Federal Treasury.

Oh, I remember so well in 1969 my friend, the gentleman from Pennsylvania (Mr. DENT), when I said that the Social Security Administration had estimated that about $355 million would be the annual cost of the program, he laughed and he said, "Why, if we gave full compensation to every ex-coal miner and a fur coat to every widow, it could not cost more than $40 or $50 million." It is now costing over $1 billion a year for part B, the Federal responsibility.

What is the bill we have before us now? If we have employer responsibility under part C; if we have more than a generous amount of claims being allowed under the administration of part C, why is there a bill before the House today? Well, it is because Mr. PERKINS and others from the coal mine areas thought that there ought not be any medical criteria for giving coal workers pneumoconiosis compensation, so they put in the provision for entitlements—work 25 or 30 years in the coal mines and everybody, regardless of whether he has or not, is assumed that they have the disease and they get full compensation for full disability.

To make certain that there is no hardship in drawing that compensation, this bill provides that they can continue to work full time in the mines. They are not satisfied with allowing social security disability and coal workers pneumoconiosis compensation simultaneously. The bill before us extends one additional benefit: It would allow workers compensation, as well as pneumoconiosis and social security disability, so that three payments, if you will, for total disability could be drawn by the same person at the same time.

Mr. PERKINS very reluctantly today, for the first time, has admitted that maybe entitlements cannot pass this House, and has agreed that he will support an amendment to remove entitlements. What does that leave us? It still leaves the provision that allows workman's compensation to be drawn simultaneously with these provisions. It still leaves the provision that current employment is no bar to receiving compensation. It still provides that a very expensive notice program to seek out and give notice to every ex-coal miner is in this program—a couple of million dollars in itself.

By the way, most of these people have had their claims filed once, and then in 1972 all the old claims were reprocessed. Now, for the third time, all of the old claims, when this bill is passed, will be opened up.

Mr. PERKINS. Mr. Chairman, will the gentleman yield?

Mr. ERLENBORN. I did not interrupt the gentleman when he was proceeding.

Mr. PERKINS. The gentleman had that opportunity.

Mr. ERLENBORN. I would yield to the gentleman when I have reached the conclusion of my remarks.

Mr. PERKINS. When the gentleman made an incorrect statement, he could yield to me.

Mr. ERLENBORN. I yield briefly.

Mr. PERKINS. All right. There is no provision. Our substitute clearly eliminates any coal miner from working and drawing benefits.

Mr. ERLENBORN. The substitute does that, not the committee bill.

Mr. PERKINS. The substitute does.

Mr. ERLENBORN. I thank the gentleman for his contribution. As of now, I have not seen a substitute. We were told it was going to be in the RECORD last Friday. I am told on the floor today for the first time that there is a substitute, finally. I am not certain who is going to offer it, and I have never seen it. I thank the gentleman for finally giving us some idea what it is.

Mr. PERKINS. The substitute of the gentleman from Illinois has not been put in the RECORD.

Mr. ERLENBORN. It was put in the RECORD last Friday. I beg to differ with the gentleman. It was introduced as a bill last Friday, and it was put in the RECORD under the amendment section.

Mr. PERKINS. Mr. Chairman, the Thompson-Andrews substitute will be put in the RECORD for the gentleman to read, and I will ask the gentleman to read it carefully.

Mr. ERLENBORN. I thank the gentleman for finally letting us know what it is.

Mr. Chairman, to go on with the provisions of this bill, one thing the gentleman has not agreed to remove, so far as I know—and the gentleman can again correct me if I am wrong—is a death benefit which will be given, not based on any stage of pneumoconiosis. If a coalworker dies in a mine after 17 or more years of work in the mine, the widow will receive pneumoconiosis compensation, even though the coal miner had no coal dust in his lungs at all. There is no requirement that there be any stage of the disease. Compensation for disability will be given based only on the fact that in an accident the coal miner dies and the coal miner has a certain number of years of work in the coal mines, the widow will receive automatic compensation.

Mr. Chairman, I am not going to go into the cost of this program, because if the compensation is justified the cost would be justified. I am not going to even suggest that this House would be stingy with the dollar to deserving people who were disabled, because that is not the case. It is not the case under the current condition of the law. Many people who are not disabled are drawing benefits, and I am firmly convinced that no one who really had disabling pneumoconiosis has ever had his claim denied. We constantly hear the claim made that there are those who had pneumoconiosis who did not get compensation. I submit there is no one who is disabled by pneumoconiosis who did not get compensation. But, technically speaking, there may be someone in the first stage, simple pneumoconiosis, who is not at all disabled, who was denied; and properly so. They should not get compensation. But in an attempt to confuse the listener, the supporters of this bill will say that many people had pneumoconiosis and their claims were denied, that when they died an autopsy proved that they had pneumoconiosis.

I have heard by friend, the gentleman from Kentucky (Mr. PERKINS), say time and time again that 88 percent of coal miners have pneumoconiosis. I just do not think that we have ever had the so-called autopsy report that he referred to before our committee that would prove that that number of coalworkers had pneumoconiosis. Certainly that number is not disabled as a result of having pneumoconiosis.

Mr. CARTER. Mr. Chairman, will the distinguished gentleman yield?

Mr. ERLENBORN. I yield to my colleague, the gentleman from Kentucky (Mr. CARTER), who represents a very fine local mining area and who is a well qualified physician.

Mr. CARTER. I thank the gentleman for yielding.

Mr. Chairman, I ask my friend, the gentleman from Illinois (Mr. ERLENBORN), where in the consideration of this matter did he ever hear me say that 85 percent of the coal miners had pneumoconiosis? I do not recall ever having said that.

Mr. ERLENBORN. No. The gentleman from Kentucky (Mr. PERKINS) is the Member I had reference to.

Mr. CARTER. I believe the gentleman mentioned my name.

Mr. ERLENBORN. I am sorry if the gentleman ever understood me to say that, and I would so correct the RECORD. It was the gentleman from Kentucky (Mr. PERKINS) whom I had reference to.

Mr. CARTER. Mr. Chairman, I thank the gentleman for yielding, and if he will permit me to continue, let me say I am familiar with mining. Since 1970 we have had three disasters in our area.

On the 30th of December 1970, 38 men were killed at Hyden, Ky. I was there that night. I saw them taken out, and I known what it is to see their bodies black and blistered. I know what it is to see their families there waiting for them. I saw the same thing at Scotia. I was there when that happened. I was there with Government inspectors, and I saw them.

I would say to my dear friends that this is a most hazardous occupation. Every time those miners go down into the ground, most of them have the Master with them. They are Christian people, they are good people.

Mr. ERLENBORN. Mr. Chairman, I thank the gentleman for his contribution. I agree with the gentleman from Kentucky (Mr. CARTER), it is a hazardous occupation.

People are killed in the coal mines, people are maimed in the coal mines, and people receive injuries in the coal mines for which they should be compensated. They should be compensated for death or injury, and their families should be compensated. But to continually year after year use this emotional appeal to justify disability compensation to those who suffer no disability does a disservice to the people of the United States whom we represent.

Mr. PERKINS. Mr. Chairman, will the gentleman yield?

Mr. ERLENBORN. Mr. Chairman, I will not yield at this time. I would like to conclude and not use up any more time of the House than is necessary.

Let me say there is one last provision of this bill to which I want to refer, and that is the trust fund for payment of claims in the future.

This will set a very, very bad precedent for compensation of industrial disease and workers' injuries. For the first time we are going to have a permanent Federal program for the compensation of a Federal disease. If it is justified for coal miners, it is justified for the textile workers, for the asbestos miners, and for every other occupation that is hazardous. We will set the precedent for not only federalizing the workers' compensation program but also for having separate trust funds for each disease. We will have varying criteria, possibly even varying compensation. We ought not to do this.

Finally, let me say that I would like to help the original sponsors of this legislation fulfill their promise to this House that was made in 1969 to make this a temporary program to be responsible at the Federal level for old claims in situations where we cannot identify the responsible employer. I answered the gentleman from Kentucky (Mr. PERKINS). I answered his challenge about taking care of these old claims.

I am going to offer a substitute bill that will make it a total Federal responsibility for all claims filed up until the present time and for the next year. Any one of these workers with a justified claim that is based on service years ago can get his claim filed and paid by the Federal Government. At the end of that year the Federal program will terminate, and coal workers' pneumoconiosis will be compensated under workers' compensation laws.

This was the promise that was made to us. This is the promise that has already been violated in the 1972 amendments, and this is the promise that ought to be fulfilled. With the help of the Members of this Congress, we can see that those promises that were made to us and were the basis for our action in adopting the program 8 years ago are kept.

I entreat the Members to support the Erlenborn substitute when it is offered. I hope that it will be adopted. If it is, we will do full equity to coal miners and their widows and families, but, also importantly, we will do equity to the taxpayers of the United States and do equity to other workers, who ought to be treated the same way, because they are entitled to equal treatment.

Mr. Chairman, I yield back the balance of my time.

Mr. PERKINS. Mr. Chairman, I yield such time as he may consume to the distinguished gentleman from Illinois (Mr. SIMON).

Mr. SIMON. Mr. Chairman, I suppose the most fundamental question is, How important is coal to this Nation?

If we come to the conclusion that the President is right and that we have to move to place greater reliance on coal, then we had better provide justice for coal miners. Coal miners are an unusual breed, I think in large part because they live with hazard. It is the most hazardous major occupation in the Nation, even aside from pneumoconiosis, whether one determines that in terms of fatalities or injuries.

Mr. Chairman, the only thing I can compare to the hazards which coal miners face is the time when I was in the Army where, again, we faced hazards and we had frank talks.

Mr. Chairman, if we expect the coal miners of this Nation to produce the energy this Nation needs, we should not do it at the expense of the health and breath and blood of those coal miners.

My friend and colleague, the gentleman from Illinois (Mr. ERLENBORN), has said, if I quote him correctly—and he may correct me if I did not write this down accurately; I do not have the skills that our reporters have—that—.

No one who has ever been disabled by pneumoconiosis has been denied.

Mr. Chairman, it is very depressing to me to go into my district and to talk to those people who have to sleep at night under an oxygen tent, and yet have been denied benefits.

If we look at the statistics under part C—the ones who have filed during the last 14 years—Mr. Chairman, 108,972 coal miners have filed for black lung benefits, and the companies are paying for 142 claims.

Mr. ERLENBORN. Mr. Chairman, will the gentleman yield?

Mr. SIMON. I will yield briefly to my colleague, the gentleman from Illinois (Mr. ERLENBORN).

Mr. ERLENBORN. Mr. Chairman, I thank the gentleman for yielding.

I think the gentleman was absent from the floor when I commented on his use of these figures earlier in the debate on the rule.

How many of those 108,000 claims have been denied, I ask the gentleman?

Mr. SIMON. I would state to the gentleman 45,689 have been denied.

Mr. ERLENBORN. How many have not yet been determined?

Mr. SIMON. Some 49,000 have not been determined.

Mr. ERLENBORN. How many are on appeal?

Mr. SIMON. Mr. Chairman, since I have the time here, if I may respond to the gentleman's question, of those who were denied, the GAO report points out very clearly that many of those should be receiving benefits.

We need, of course, changes in the law so that they can receive benefits.

If I may get back to my point, Mr. Chairman, the gentleman claims that no one who is really disabled has been denied.

Mr. ERLENBORN. Mr. Chairman, will the gentleman yield?

Mr. SIMON. I will not yield at this point any further, with all due respect to the gentleman.

Mr. Chairman, one cannot walk down through a coal mining community in my district or in the district of the gentleman from Kentucky (Mr. PERKINS) or that of our colleague, the gentleman from Alabama, without running into people who are in desperate straits. Either they have something severely wrong with them or they are the greatest actors in the world, and I do not believe that.

They need help, and right now our programs do not give them that help.

Mr. Chairman, the Federal Government picks up not quite 4,000 of those 108,000 cases because they cannot find the employers; but that means that 97 percent of those who believe that they deserve black lung benefits are denied.

Mr. Chairman, the gentleman made reference to the autopsy report. Unfortunately, I do not have the report here, but I have the committee report, 95th Congress, 1st session, with the graphs on page 34, which I am sure the gentleman can refer to. If the gentleman will check it, it shows that of 400 coal miners autopsied after having been in the coal mines from 16 to 20 years, just under 80 percent had pneumoconiosis.

When you go from 21 to 25 years it is in excess of 90 percent. How one can gibe those figures with the statement made by the gentleman from Illinois (Mr. ERLENBORN) I just do not know.

A couple of other minor points: One is the workmen's compensation, he talks about those who can collect both workmen's compensation and black lung benefits. I think our colleague should know you can collect both if you lose an arm, or have some other injury not related to black lung. You cannot collect both workmen's compensation for pneumoconiosis and black lung benefits. Let there be no misunderstanding on that portion of it.

The substitute prevents the rare case that the gentleman referred to where somebody can be actually working and receiving benefits. The reason that is in the bill is that there are some people who have been working and drawing benefits who are given a special job—such as in an office. But even that is eliminated in the substitute. The automatic entitlement is eliminated. I hate to see it eliminated. I believe the bill as originally introduced is better. No coal miner is going to quit working if he is in good health. He is living in a community where there are no other jobs and to quit and draw about 16 percent of your wages in order to get black lung benefits, you just do not do that.

I asked Mr. Carl Bagge, one of the representatives of the coal operators, "If tomorrow you could retire and get 16 percent of your present salary, would you do it?"

And there was silence for a moment, and he finally figured it out and numbled an answer. But he lives in a community where there are all kinds of jobs. Also he has executive ability. But when you are talking about a coal community and you are 55 years old and you have worked in the coal mines and have lived in that community where there are no other jobs, what do you do? You work in the coal mine or nothing.

I believe we have to recognize the need for justice here. I hope we can move ahead with this legislation.

Mr. BUCHANAN. Mr. Chairman, will the gentleman yield?

Mr. SIMON. I yield to the gentleman from Alabama.

Mr. BUCHANAN. Mr. Chairman, I thank my colleague, the gentleman from Illinois (Mr. SIMON), for yielding to me, and I would like to associate myself with his remarks, and to respond to some of them.

He compared his own experience in the military service to that of the coal miners in terms of the degree of hazard involved in the work. Let me say that there is not a congressional district in the United States that does not benefit from the hazards that are undertaken, from the risks that are run in the work that is done by the coal miners, no matter whose district it may be. All of the people of the United States benefit from the work of the coal miners and rely upon them to help meet our vital energy needs. Just as we all benefit, whether we have sons, or not, from those who fought for our country in time of war.

I hope the Members of this House will understand the true situation. Those Members who have coal mining areas in their congressional districts know from their own casework the reality and the need of those coal miners who have not been deemed to qualify under the present law.

We are all aware as Members of the House of Representatives that in addition to our legislative responsibilities we do have a certain ombudsman function, and when someone in the gentleman's district or in my district needs help and is upset by the giant bureaucracy of this Federal Government, often that citizen will turn to the gentleman or to his own Congressman for aid and assistance. And we know from the cases, the heartbreaking cases of individual American citizens, the need that exists for this legislation as represented in the Thompson substitute. The gentleman and I would like to see something stronger done than that.

I hope that our colleagues will understand this is not just our fight; it is the fight of all Americans, all of whom benefit from the work of our constituents who are coal miners. I hope that our colleagues tomorrow will stand up for the rights of these people whose work is so important to all of the people of our country.

I thank the gentleman.

Mr. SIMON. I concur in the statement of my colleague. The gentleman from Alabama (Mr. BUCHANAN) is one of the most enlightened members of our Committee on Education and Labor. He is absolutely correct.

My colleague, the gentleman from Illinois (Mr. ERLENBORN), talked about the Federal Treasury being hit by this thing; it ought to hit on coal; those who benefit ought to pay. We are talking about relatively minor sums. The Senate bill, for example, has a 1-percent tax. The Congressional Budget Office suggested 11 cents a ton on coal would take care of the kind of provisions we have here. We are talking about a very minor thing. We are talking about getting coal so Du Page County, Ill., and Alabama, Tennessee, and everywhere else can get coal and get energy. It should not be on the backs of those coal miners that we impose the kind of strictures that some people would like to impose.

Mr. ALLEN. Mr. Chairman, will the gentleman yield?

Mr. SIMON. I yield to the gentleman from Tennessee.

Mr. ALLEN. I thank the distinguished gentleman from Illinois for yielding.

As a matter of information and to enlighten this Member, if a miner, let us say, 50 years of age should be declared totally disabled from black lung, what would be his benefits?

Mr. SIMON. His benefits are one-half of the G–2 salary of the Federal Government. It amounts to between $200 and $405 per month, I believe. I can be corrected here.

Mr. PERKINS. Mr. Chairman, will the gentleman yield?

Mr. SIMON. I yield to the gentleman from Kentucky.

Mr. PERKINS. I thank the gentleman for yielding.

The gentleman is right. His calculations are absolutely correct. For a miner or survivor, it presently is $205.40. With one dependent it would be $308.10. With two dependents it would be $359.50. With three or more dependents, it would be $419.80. The amount payable to miners is 50 percent of the amount payable to a totally disabled employee in GS–2, as the gentleman stated. The increases are the same as provided in the social security law.

Mr. ALLEN. Mr. Chairman. if the gentleman will yield further, how does this compare on the average with the wages and earnings of a coal miner?

Mr. SIMON. On the average it works out to about 16 percent. What a miner gets in black lung benefits is about 16 percent of what he would get if he were working.

Mr. ALLEN. So that if he is totally disabled and has to quit work, he takes approximately an 84-percent cut in compensation of money that he will have to support his family.

Mr. SIMON. That is correct.

Mr. ALLEN. I thank the gentleman.

Mr. SIMON. I think the point the gentleman is making is extremely important, because to say this is an attractive opportunity just is not true. None of us wants to take an 84-percent cut in salary.

Mr. BENNETT. Mr. Chairman, will the gentleman yield?

Mr. SIMON. I yield to the gentleman from Florida, who is one of the most distinguished Members of this body.

Mr. BENNETT. I thank the gentleman for yielding.

The reason I want to ask this question is because of what has been said here before. Does he also get social security at the same time?

Mr. SIMON. The question is, Does he also get social security at the same time? He can. It depends on the situation.

Mr. BENNETT. Of course, that amount of money would depend upon what his income would be, so the gentleman cannot give me a dollar figure.

Mr. SIMON. That is correct. In some cases he would not be eligible for social security.

Mr. HEFTEL. Mr. Chairman, will the gentleman yield?

Mr. SIMON. I yield to the gentleman from Hawaii.

Mr. HEFTEL. I thank the gentleman for yielding.

We have captured the imagination of much of the world today and the irritation of much of the world, I might add, because the President keeps talking about human rights. I know of no group of citizens working in a single industry, coal mining, whose human rights are more abused because of the nature of what have been the working conditions of those mines. Even today the working conditions are not such that one would want to have any member of his family working in those mines. We know that we are degrading the health and the life expectancy of every human being who works as a coal miner.

To say that there is something unreasonable about a compensation for what has been done to human beings in providing coal for this country is simply contrary to every facet of human rights that we talk about. The amount of money involved when we add social security is still barely enough to live on, but it is not a case of what it takes to live on. It is a case of the state of health, the state that physically one is left in because he worked in those coal mines, and medically we cannot argue those facts. We can demonstrate it just by the condition of the lungs of any miner who has worked as little as 10 years in the mines.

So I hope this august body will not talk about the Treasury and dollars but simply human rights and the responsibility to improve those mines if we want to go back in and aggressively continue coal mining in this country.

Mr. SIMON. I commend my colleague, the gentleman from Hawaii, for that sensible and sensitive statement.

Mr. ERLENBORN. Mr. Chairman, I yield 10 minutes to the gentleman from Kentucky (Mr. SARASIN).

(Mr. SARASIN asked and was given permission to revise and extend his remarks.)

Mr. SARASIN. Mr. Chairman, I would say to all 11 of my colleagues, of the 435, who have decided to take the time to share in this important debate—and at the last count there were only 11 Members on this floor and I frankly find that rather disgraceful. We are speaking about the possibility of spending millions of dollars on this program—a program that should have been brought out around Thanksgiving because it is the biggest turkey ever to fly from the Rules Committee, from the 3d floor to the 2d floor into this Chamber.

If we were talking about compensation for illness, that would be one thing, but we are not.

If we were talking about paying miners for the severe disease of complicated pneumoconiosis, that would be one thing, but we are not.

We are talking here about paying miners here for spending x number of years in the mine. Even if a substitute is offered—and we have yet to see the substitute which eliminates the entitlement section—apparently of paying survivors of miners who are killed or injured in a mine accident totally unrelated to pneumoconiosis on the basis of the presumed fact under this law that the miner had pneumoconiosis.

At this point I ask the chairman of the committee, the gentleman from Kentucky (Mr. PERKINS), if the entitlement after 17 years has been removed.

Mr. PERKINS. If the gentleman will yield, that particular section has not been removed and we think it is justifiable in every respect. There are a limited number of cases of widows of miners who were killed in accidents a long time ago and the widows are receiving very inadequate pensions under State workmen's compensation laws. It seems equitable to me and to the committee to provide benefits in these cases of genuine need.

Mr. SARASIN. If I may reclaim my time, that is, with all due respect, absurd. There is no way we can justify it. We are right back to the entitlement question again. There is no way we can justify the payment, which is supposedly a payment because of a severe illness, on the basis of the time spent in the mines. It would be my assumption that the removal of this entitlement section would be in agreement with that statement, and yet here we are.

Mr. PERKINS. Mr. Chairman, will the gentleman yield further?

Mr. SARASIN. I yield to the gentleman from Kentucky.

Mr. PERKINS. Mr. Chairman, the question of human rights has been raised. Few compensation laws in this country, none of them so far as coal mining is concerned, are adequate. I think if we have any sense of justice and want to do something that is equitable, we have a right to presume from all the studies that have been made that an individual who has worked in the mine in excess of 15 years has some form of pneumoconiosis. The high percentage do.

And if we are going to just turn our backs on those few cases, those few widows in this country, the hundreds of widows in this country who are involved, and say to them that because their husband received some workmen's compensation we are not going to give the widows any other benefits, that is wrong.

We thought it was nothing but equitable to provide something after 17 years to that widow.

Mr. SARASIN. Mr. Chairman, I thank the gentleman for those comments, but again I would say there is no way we can justify this arbitrary decision, saying that after a certain number of years in the mines an individual who has the misfortune to be killed in a mine accident should be paid on the basis of black lung disease.

We are saying that the individual who died had pneumoconiosis. That, in fact, has not been established. It certainly is unjustified to try to make that connection on the basis of time when, as a matter of fact, only 60 percent of the miners in the anthracite region come down with any form of pneumoconiosis and out of that 60 percent, 14.3 percent have the progressive massive fibrosis, which is the serious and disabling form of pneumoconiosis.

One can have black lung disease if he is an elderly resident of New York City or any other large city. They have black lung, too; but we are not paying those people. This is a dangerous precedent we are setting.

Mr. PERKINS. Mr. Chairman, will the gentleman yield?

Mr. SARASIN. I yield to the gentleman from Kentucky.

Mr. PERKINS. Mr. Chairman, let me say to the gentleman, that I do not believe that we are setting a precedent by this legislation. Coal is unique. The Federal Government, unlike other mining and other industrial activities, has taken a special interest in coal, not only in its production, but also in the safety and welfare of the miners involved in the coal mining process. Because of this, I believe that the Federal Government has a unique obligation to the coal miners and this should not be and cannot be a precedent for the treatment of other occupational diseases. I will say that the committee through its Compensation, Health and Safety Subcommittee has had under review and study for the past several Congresses State workman's compensation laws and the whole question of industrial diseases but no clear pattern or policy has developed for these matters.

Mr. SARASIN. Mr. Chairman, I decline to yield further.

Mr. PERKINS. Most people are suffering from some form of pneumoconiosis after 11 years in the mines.

Mr. SARASIN. Mr. Chairman, I am reluctant to take my time back from the chairman; but I would point out that in those other areas of the country, I gave the figures for anthracite. In Appalachia there is less than 30 percent of all coal miners that have any form of pneumoconiosis and out of that, 2.1 percent have the severe disabling disease.

If we are going to pay people for having a disabling disease. Let us see if they have it. Let us not invent presumptions. Let us not create fictions and automatically say that you have something you do not have, or if you die because you got hit by a truck, somehow you should be paid on the basis of black lung disease.

We are establishing here, if we take any of this bill, the substitute or not, a very dangerous precedent for the future, because to the coal workers pneumoconiosis is a respiratory disease, but it is not the only respiratory disease that exists out there. There are a number of others as well. If we decide this is the pattern the Federal Government is going to follow in the future, we are in trouble. The cost, according to the National Academy of Sciences, is about $100 billion a year.

What are we doing for the people in the cotton mills, the asbestos workers, the hard-rock miners, the coke workers and the steel workers? They are all subject to a wide variety of diseases, too.

Silicosis, berylliosis, aluminosis, talc pneumoconiosis, and so forth. These diseases can be aggravated by the individual himself. In any of these cases, if the individual happens to smoke cigarettes, he is helping his chances of coming down with a disabling disease. If we accept this legislation, ignoring medical evidence, ignoring medical fact, and simply saying that we can handle this on the basis of affidavits, on the basis of time in the acci-

dental situation, and preventing government from doing what it ought to be doing: that is, to make sure that the individual putting in the claim in fact has the disease.

We do not let the employer appeal; we do not let the fund appeal; we will not let anybody re-read X-rays. We create all of these presumptions in the name of paying for this disease which very, very few coal miners actually come down with. I am not going to say, do not pay the disabled. If we have people with progressive massive fibrosis, let us pay them.

The CHAIRMAN. The time of the gentleman from Connecticut has expired.

Mr. ERLENBORN. Mr. Chairman, I yield 3 additional minutes to the gentleman from Connecticut.

Mr. HEFTEL. Mr. Chairman, will the gentleman yield for a moment?

Mr. SARASIN. I yield.

Mr. HEFTEL. I appreciate that.

The medical evidence shows that of 400 autopsies, where the miner had worked for 21 years, over 90 percent had black lung disease.

Mr. SARASIN. The evidence that the gentleman refers to is on page 34 of the report. I would point out that only about 10 percent of the people he talks about had progressive massive fibrosis. That is the disabling disease. As I said earlier, you can get black lung disease if you live in New York City. It is the ingestion of pollutants in the air. Black lung is a legal term, not a medical term. One can find that in New York City or in any of the major industrial cities, but to equate it with respiratory failure or disability, is erroneous.

Here we are, saying that we are going to pay everyone.

Mr. SIMON. Mr. Chairman, will the gentleman yield?

Mr. SARASIN. I yield to the gentleman from Illinois.

Mr. SIMON. If I may differ with the gentleman, if he will look at that graph on page 34, he will see that three of the four categories there are coal workers pneumoconiosis. One is listed severe, one moderate, and one mild, but it can by no stretch of the imagination be compared to walking down the streets of New York City or Washington.

Mr. SARASIN. I point out to the gentleman that coal workers pneumoconiosis is determined on the basis of opaqueness of the lung. That same opaqueness is found in the lungs of people who live in major industrial cities. The mild or simple pneumoconiosis is not disabling. It does not cause a problem. There is no shortness of breath, and the individual is not denied the opportunity to work. All these things do not exist.

So, here we are, saying that no matter what part of this problem you might have, you are eligible for these benefits which are designed to take care of the individual who cannot work and cannot breathe very well. We are distorting the original intent of this Congress.

Mr. SIMON. To assume, as the gentleman from Connecticut has, that only severe pneumoconiosis is disabling, is simply contrary to fact. Pneumoconiosis is a condition of the lungs that is disabling, that can be disabling at any stage of the disease, as studies show, and if we fail to recognize that, we fail to recognize something very fundamental.

Mr. ERLENBORN. Will the gentleman yield?

Mr. SARASIN. I yield.

Mr. ERLENBORN. I thank the gentleman for yielding.

What the gentleman from Illinois (Mr. SIMON) just said is just totally inaccurate as far as every bit of medical evidence before our committee.

The CHAIRMAN. The time of the gentleman from Connecticut has again expired.

Mr. ERLENBORN. I yield 3 additional minutes to the gentleman from Connecticut.

Mr. SARASIN. I thank the gentleman.

Mr. ERLENBORN. Will the gentleman yield further?

Mr. SARASIN. Certainly.

Mr. ERLENBORN. As I said in my initial remarks the international labor organizations established worldwide. accepted standards and stages 1, 2, and 3. Simple pneumoconiosis, by those standards, has no disability attached to it whatsoever. It is only when we get to complicated pneumoconiosis does it begin to get even partial disability. There has been this myth perpetuated by those who seek the passage of this legislation that pneumoconiosis, or black lung, is totally disabling.

Even the figures that we have in this unpublished study that has been referred to by the gentleman in the well and the gentleman from Illinois (Mr. SIMON) we know nothing about. This, by the way, was put in as an attachment to the testimony of a witness who never appeared before the committee and was not subject to cross-examination, the study was not published, so we did not have an opportunity to study that. It was just an attachment by someone who had the consent of the chairman to have the testimony put in here. Even that does not show that mild, moderate or severe CWP is disabling or not. We do now know. This is IWO standards. Even medical witnesses from the United Mine Workers have the good sense not to prostitute their professional reputations by telling us that all pneumoconiosis was disabling. They told us that all workers in the cold mines, after being in there for a certain number of years, as a social matter ought to get compensation.

Yes, they were for the entitlements, but they never told us that in their professional judgment these people were disabled. At least they had the good sense as physicians, as professional people. not to go that far. They said that socially it was desirable to give them payments.

Mr. SARASIN. I thank the gentleman for his comments. I would echo his remarks. Certainly the chairman of the committee just said it was socially desirable to pay people who were killed in mine accidents because other benefits were not adequate. But let us not say they have a disease which they did not have. If we want to call it a social determination, let us call it a social determination. But let us not invent the disease. If we do this, it will come back to haunt us. We will have the same problem with asbestosis and byssinosis.

This is just a terrible vehicle to try to use as a precedent to take care of the occupational diseases we are learning about every single day.

This is our big problem. What do we do tomorrow when a demand is made?

The CHAIRMAN. The time of the gentleman from Connecticut has expired.

Mr. ERLENBORN. Mr. Chairman. I yield 3 additional minutes to the gentleman from Connecticut (Mr. SARASIN).

Mr. SIMON. Mr. Chairman, will the gentleman yield?

Mr. SARASIN. I yield to the gentleman from Illinois (Mr. SIMON).

Mr. SIMON. I thank the gentleman for yielding.

If I may, I would like to say that I realize a term such as "disability" could mean that one could get social security disability when he goes beyond a certain point. And there can be some question about when one is disabled. There is no question, whether we use the term "disability" or "disabled" or not, that when a person has pneumoconiosis he has shortness of breath and he has problems. Sometimes those problems are very severe. They do not come only under the category of severe coal workers' pneumoconiosis.

Second. I would just like the RECORD to show that while there were some who testified that there is no reason to provide these benefits, some medical witnesses, there were also witnesses who testified that it is a very severe problem, that present laws are woefully inadequate.

Mr. SARASIN. Mr. Chairman, we are back to the question of what is socially desirable. And the fact that we are creating this vehicle to take care of a perceived social need is an issue which will really come back to us when we look at other diseases. I cannot stress this point too much. We are going to have to face the fact of occupational diseases in this Congress. We are going to have to look at the plastics problem. We are going to have to look at the discoveries which are being made every day and ask who is going to pay for those.

Is it going to be fair to attach something to an industry which also had no knowledge of the severity of a disease? Or even the possible existence of an occupational disease?

Or are we going to say that it shall be social policy for the Federal Government to pick up the tab for all these occupational diseases?

If we do that, fine, but then let us only pay the people who have such diseases. We have not even gotten to that point yet, but if we ever get there—and I have no basic objection to reaching that point—let us only pay the people who have the disease and find it disabling.

In the black lung provisions of this bill, that is not what we are doing. Here we invent a disease or a condition. and we say everybody has it after a certain time, and so we are willing to pay them on the basis of that and in the face of medical evidence to the contrary. I think that is unreasonable, and I think this precedent will come back to haunt us

when we deal with other occupational diseases in the future.

On that basis, Mr. Chairman, since I do not believe the substitute that will be offered will be able to correct these deficiencies in this "turkey," I intend to vote against it when the time comes.

Mr. Chairman, the very articulate, reasoned, and logical statement by Congressman ERLENBORN should be sufficient enlightenment as to the undesirability of this legislation. However, the bill, H.R. 4544, is such outrageous special-interest legislation that I feel I must back him up on his constant fight against such type legislation as well as express my own disapproval.

Although I was not a Member of Congress when the original black lung legislation was introduced and passed, I am very aware of the express promises of its sponsors that it was to be a "one-shot" deal, limited in duration of Federal involvement. I believe those sponsors should keep those commitments.

I am not here to tell you that coalmine work is not hard or that it is not dirty or that at one time miners did not work for low pay. All of that was true at one time—but not all these emotional appeals are true at this time. The work is still hard, but a lot of it is done by machines; the work will probably always remain dirty and relatively dangerous; and those are the reasons, along with the fact that coal will be an increasing source of energy, that the work will in the future be relatively highly paid—from $50 to $60 to $70 a day now. Therefore, the historical and emotional arguments that the "special compensation program" of black lung benefits is needed to reward the long suffering, long-ignored miners of coal who suffered disability while extracting the Nation's energy cheaply are no longer valid. Today, miners receive good pay, they are protected by the health and safety laws and regulations, and have further been compensated for their past sufferings by the federally enacted black lung benefits program that has awarded benefits to over 565,000 miners and survivors at a cost to the taxpayer of over $1 billion a year.

Those miners whom the committee promised to compensate for their past sufferings for work-related respiratory disability have been compensated—their survivors have been compensated—and liberalizations of the 1972 amendments have allowed them and their survivors benefits under a Federal program far beyond anything imaginable under the original 1969 bill.

The bill before us today—the bill you are asked to support in the guise of improving the black lung law—is totally and completely inappropriate to the original intent of the 1969 law—is totally and completely inappropriate to the concept of disability compensation—and is totally and completely discriminatory as compared to workers in any other occupation, dangerous, hazardous, dusty, or not.

How is this alleged compensation program conceived by the public? Certainly, we know that other workers who have been exposed to occupational disease are now learning that they have been ignored in comparison to coal miners, illustrated by the demonstrations of textile workers. But, the most telling example of how this program is viewed is a recent article in the Monthly Labor Review (April 1977) published by the U.S. Department of Labor, authored by John F. Burton, Jr., professor of industrial relations and public policy, Graduate School of Business, University of Chicago, entitled "Will Workers' Compensation Standards be Mandated by Federal Legislation?" In speaking of preconditions for Federal involvement, Professor Burton points out that usually there must be a national problem or concern. He goes on to say:

> Sometimes, however, the geographical concentration of employees can lead to special treatment. Most notable is the Federal black lung problem which provides liberal benefits to coal miners. The beneficiaries were largely concentrated in eastern coal mining States where the motional issue was used by several influential Federal legislators. The costs of the program, particularly in the early years, were paid from Federal revenues. The black lung program *thus is a classic example of pork barrel legislation,* with benefits going to a limited locale and costs spread widely (p. 56) (emphasis supplied).

If further liberalization of what is now recognized to be a "pork barrel legislation" is allowed, I doubt whether this Congress will be held in very high esteem. As an example of how this current legislation is viewed, an editorial by the Washington Star dated March 23, 1977, picks up in a one-sentence query three of the most important points of my opposition to this legislation.

> If this is passed, are we then going to offer automatic government-guaranteed special disability pension to workers in other industries whether or not they are disabled?

That quote correctly noted:

First. That this one-time disability program will become a pension program or retirement program for coal miners only under this proposed legislation;

Second. That the Federal black lung "pension" program will possibly serve as a prototype for future Federal involvement in what was and is presently State administered workers' compensation programs; and

Third. That this type of special interest legislation discriminates against workers in other occupations who work in equally dusty conditions or in other hazardous occupations. It further discriminates against workers who may be equally disabled—or even those who are somewhat disabled, since this legislation would base benefits on years of service and not disability.

This legislation is totally contrary to the concept of compensation based on disability. To illustrate this point, I direct your attention to section 14 of H.R. 4544. This section would allow what has heretofore been black lung disability benefits from the Federal Treasury to widows and other eligible survivors of miners who had worked in the mines for 17 years and died as a result of a mine accident. This provision has nothing to do with black lung. It has nothing to do with disability. It has nothing to do with coal dust.

One more point that needs amplification and that is the potential constitutional problem in section 5 of the legislation (as well as section 9 which prohibits controversion of disability by either the fund or the operator who may be liable for payment of benefits). Section 5 provides that a favorable determination of an administrative law judge cannot be appealed or reviewed except upon the motion of the claimant. This is totally contrary to this Nation's constitutional concept of due process. It is certainly contrary to the Administrative Procedures Act. How the Committee on Education and Labor or how this committee could allow this legislation to come to the floor for debate are questions I fail to understand as a conscientious legislator.

Mr. PERKINS. Mr. Chairman, I yield 5 minutes to the distinguished gentleman from Alabama (Mr. BEVILL).

(Mr. BEVILL asked and was given permission to revise and extend his remarks.)

Mr. BEVILL. Mr. Chairman, I just want to say that I rise in support of this legislation. It does not, of course, contain everything we had hoped for, but it is certainly a step in the right direction.

I was born and raised in a coal mining community, and I am very familiar with the problems of coal miners. My father was a coal miner. I do not think I have ever seen a man who has ever worked in the coal mines oppose black lung legislation.

One of the most pitiful cases of any kind that I have ever seen is that of an old coal miner sitting at home with a tank of oxygen that he has to have in order to breathe and to sleep at night. He probably worked 30 or 40 years in the coal mines, and the company for which he worked has no records.

In order to protect that man and to give him some help and to show our appreciation for the coal industry, we must pass this legislation. The coal industry is, as the Members know, one of the only two sources of energy that we have except for oil. We talk about energy, and all we have right now in this Nation that is going to get us away from the greedy oil countries is nuclear energy and the coal industries. Just those two—that is all we have. The importance of the coal mining industry is being noticed more and more, particularly in view of our energy crisis. Therefore, it is very important that the Congress act and be aware of the problems that the coal miners of our Nation face.

Coal mining is a most hazardous occupation, and the lives of coal miners are limited because of the nature of their work. I am very much in support of this legislation. I only wish really that the Congress could do more for the coal miner than is set out in this legislation.

Mr. PERKINS. Mr. Chairman, I yield such time as he may consume to the gentleman from Michigan (Mr. CARR).

(Mr. CARR asked and was given permission to revise and extend his remarks.)

Mr. CARR. Mr. Chairman, I thank the chairman of the committee and congratulate the committee and its chairman on their diligent work.

I rise in support of this legislation, not only for what it will do for the human

beings who are contracting black lung disease but for what it will do to speed the process and the receipt of benefits by miners in the just adjudication of their claims.

I might point out to the chairman of the committee that just recently in my own congressional district we had a constitutent come in for help, and we tried to help the constituent process his claim for black lung benefits. The process took so long that before the benefits arrived, this former miner died, and the autopsy proved that he indeed had black lung disease.

Mr. PERKINS. Mr. Chairman, I will say to the gentleman from Michigan (Mr. CARR) that what he points out is one of the principal reasons for this bill. In the processing of any of these claims we have seen long delays. The average time for processing is more than 600 days. That is one of the principal reasons for the legislation that is before us today.

I certainly wish to compliment the gentleman for his contribution.

Mr. CARR. Mr. Chairman, I thank the gentleman.

Mr. Chairman, the Black Lung Benefits Reform Act of 1977 would make needed improvements in the black lung benefits program. Few of us in this Chamber or across the country fully comprehend the severity of black lung disease, otherwise known as coal miners' pneumoconiosis or the inefficient and inequitable administration of the current black lung benefits program.

Notwithstanding our recent air pollution alerts in Washington, D.C., we generally take clean air for granted. We do not know what it is like to breathe coal dust all day long. We can not fully appreciate the physchological burden of knowing that every breath progressively and irreversibly damages the respiratory tract.

From the first experience with a feeling of a shotness of breath to the difficulty in walking long distances or climbing stairs or small hills and eventually, the spells of violent, painful, and suffocating coughing, we do not fully realize the impact of black lung disease.

Black lung disease also increases susceptibility to an ominous variety of other respiratory diseases such as asthma, bronchitis, or pneumonia. Finally, black lung diseases can lead to heart failure and premature death.

The tragedy of black lung disease is magnified by the fact that so many miners have suffered unnecessarily, contracting the disease because of the coal companies' disgraceful neglect of mine conditions and mine safety. Coal miner's pneumoconiosis is a serious occupational disease, and it is obvious that the victims of such disease should receive adequate and speedy compensation for their suffering.

Unfortunately, the poor administration of the black lung benefits program has prevented most victims of the disease from receiving adequate or speedy compensation for their condition. The case of Bennie Clemons in Michigan is illustrative of this problem. Mr. Clemons worked in and around coal mines for over two decades. He contracted black lung disease, and in 1973 he filed a claim with the Department of Labor. Four years later, despite numerous calls and inquiries from our office on his behalf, his case is still pending.

While Mr. Clemons' case may be somewhat extreme, delays of 1 year or more are the rule rather than the exception. In fact, some diseased miners die before their claims for black lung benefits are approved.

These long delays in the consideration and processing of claims are costly, both in economic and in human terms. The legislation now before us is designed primarily to eliminate such costly delays and to insure that eligible miners receive prompt and adequate compensation.

There is another benefit to be gained from passage of this bill. Under the current program, many diseased miners are uncertain about whether they will be able to receive black lung benefits. Since many of these miners must have some income to support their families, they stay in the mines, despite their conditions and often against the advice of their doctor. The bill now before us would solve this problem by establishing a program which guarantees black lung benefits to miners who have worked a certain number of years in the mines. This provision will effectively remove the economic pressure upon diseased miners to continue working in the mines when doing so can permanently damage their health and result in premtaure death.

In sum, this bill would effectively eliminate the costly delays in the present program. It would provide diseased miners with a quick and efficient determination of their eligibility for compensation, and it would drastically reduce the administrative costs of the benefits program.

I hope that my colleagues will approve this needed legislation, and I urge them to oppose any amendments which would weaken the original intent of the bill. It is the least we can do for those who risk their lives and sacrifice their health to meet our Nation's energy needs.

Mr. PERKINS. Mr. Chairman, I yield 5 minutes to the distinguished gentleman from West Virginia (Mr. RAHALL).

(Mr. RAHALL asked and was given permission to revise and extend his remarks.)

Mr. RAHALL. Mr. Chairman, I thank the gentleman from Kentucky for yielding this time to me.

I would like to commend the chairman of the Committee on Education and Labor, the distinguished gentleman from Kentucky (Mr. PERKINS), for the excellent work he has done on this bill and for his many long years of work with black lung legislation.

The primary purpose of this bill is to establish objective criteria for determining entitlement to benefits and payments arising out of employment in the Nation's coal mines.

This bill is designed to meet the problems of the long delays involved in the present processing of black lung claims, as was just pointed out by the gentleman from Michigan (Mr. CARR). I have had many such problems of this nature with my constituents, both in my Washington office and my district offices. We see miners applying for their benefits, and they are indeed dying before they hear whether their applications have been received by the Department of Labor, much less whether or not they have been approved.

This bill also transfers from the Federal Government to the coal industry the liability for black lung payments by establishing a black lung disability insurance fund to be maintained by contributions from the coal industry. This fund will be administered by seven coal industry operators.

This, I believe, is a proper shift of the burden of payment from the Federal Government to the coal industry for benefits to the victims of pneumoconiosis.

Mr. Chairman, the November 1968 methane gas explosion in my home State of West Virginia killed 78 men. Within a year after that the Congress acted speedily in passing the Federal Coal Mine Health and Safety Act of 1969. Since that time, as has already been pointed out, there have been amendments to this 1969 act.

Now is the time to proceed further to correct some inequities that exist in that legislation. This bill will give the coal miners and their families the opportunity for just compensation, those victims who have suffered economic and mental and physical anguish from this curse, which can only be contracted from a lifetime of labor in the dark, dusty catacombs of our Nation's collieries.

At the present time death and disability among coal miners is twice that of the general population: and according to a study by the National Safety Council, chance of death among coal miners is eight times more than that of any other occupation.

Because of our President's call for increased reliance on coal, this resource will once again become important to our Nation's economy. Coal in the 21st century will be an essential source of energy for our Nation, both in its natural state and through gasification, which will meet the long-term energy needs of our country. Just as we need a sound energy policy, so do we need a sound compensation policy for protecting the lives of the miners who extract our coal from the earth.

Because of these ill health effects that the miner contracts from working underground daily, because of the risks that he faces in not knowing each day whether he is going to see his family that night, this bill is only sound, basic human rights policy, as has been pointed out by the gentleman from Hawaii.

Mr. Chairman, as I travel throughout my district and visit in the homes of many coal miners, sometimes during the day when they are sleeping after returning from the "hoot owl" shift, midnight to 7 a.m., I realize the deep suffering, the wheezing that prevents them from getting a good night's or good day's sleep. This is suffering not only for the individual miner, but for his family, for his wife and kids, who cannot sleep at night

either because of concern for their husband or their father.

Mr. Chairman, at the present time there are approximately 220,000 active and retired members of the United Mine Workers across the United States. Their president, Mr. Arnold Miller, has submitted to me a letter and explanatory remarks concerning the present bill.

Mr. Chairman, I insert that material in the RECORD, as follows:

UNITED MINE WORKERS OF AMERICA,
Washington, D.C.

DEAR REPRESENTATIVE: The House of Representatives will be considering the most important piece of legislation affecting coal miners since the Federal Coal Mine Health and Safety Act of 1969. H.R. 4544, the Black Lung Benefits Reform Act of 1977, serves to correct many of the deficiencies and inequities of the Black Lung program which have become apparent over the seven years the program has been functioning. This bill has the full support of the United Mine Workers of America. As the representative of the majority of our nation's coal miners, the UMWA believes that the time is long overdue for providing justice to those people who pay the human costs of supplying our nation with its energy. More than eleven men every day wheeze away their lives as the penalty for mining coal as a living. If the 77 deaths a week were to occur on the same day in the same place—remember the Farmington disaster and its 78 victims—the nation would undoubtedly demand an immediate solution to this grave problem. We urge your support of H.R. 4544.

H.R. 4544 is almost identical to the bill passed last year by the U.S. House of Representatives. Time ran out in last year's short, election year session and the Senate did not have a chance to act on this important legislation. It is one year later and many deserving Black Lung victims still are not receiving benefits. The time has certainly come for the Congress to complete the promise it made to our coal miners in 1969, when Congress initially enacted the Black Lung program.

The program is due to end in 1981. This bill would make the program permanent. The Congress believed that the dust control program mandated by the 1969 Act would eradicate this horrible disease and there would be no need for an ongoing program; however, this is not the case. The supposition that the mines are no longer dusty is viewed as an absurdity by all working miners because they know first hand that their work environment remains very dusty. The GAO study of the federal dust program, released on December 31, 1975, confirms the miners' contentions. The report revealed the woeful inadequacy and unreliability of the dust control program. The Black Lung program should be made permanent so miners who may presently be contracting the disease in the course of their work may be eligible for benefits in the future.

The bill contains a number of other provisions which will correct widely recognized problems in the present program. These provisions are outlined in the accompanying package. One of the provisions is automatic eligibility based upon years of service in a mine. A sheet is attached explaining the need for this unique provision.

Finally, H.R. 4544 creates a trust fund, financed by a tonnage tax, which will pay for all new claims for which a responsible operator cannot be determined. This provision will relieve the General Treasury of the responsibility of paying for any new claims. It places the financial burden on the coal industry where it belongs and not on the American taxpayer.

The UMWA endorses H.R. 4544 as a bill which deserves your strong support. Also, the UMWA urges you to oppose any weakening amendments which may be offered on the floor. This bill will improve the Black Lung program so those who were meant to receive benefits under the 1969 Act will finally have a fair chance to do so. The 1969 Federal Coal Mine Health and Safety Act was the beginning of the end of an era that required coal miners to sacrifice their health and well-being in exchange for a livelihood. H.R. 4544 is a continuation of that beginning. Please support the pledge Congress made eight years ago by voting for H.R. 4544.

Sincerely,

ARNOLD MILLER.

[From the United Mine Workers of America, Washington, D.C.]

SUMMARY OF THE MAJOR PROVSIONS OF H.R. 4544—BLACK LUNG BILL AS REPORTED BY THE HOUSE EDUCATION AND LABOR COMMITTEE

ELIGIBILITY BASED ON YEARS OF SERVICES
30/25 YEARS

Miners (or the eligible survivors of miners) with 30 years of underground service in bituminous mines would automatically be eligible for benefits. Miners (or the eligible survivors of miners) with 25 years of service in anthracite mines would automatically be eligible for benefits. The number of years worked must be served prior to June 30, 1971.

Surface workers would not be eligible based on their years of service alone unless Social Security or the Labor Department found that the dust conditions of their job were equivalent to the dust conditions in an underground mine.

ELIGIBILITY FOR MINERS WITH LESS THAN
30/25 YEARS

All the present presumptions in the law would remain, including the presumption that a miner who has worked 15 years in an underground mine and who has a totally disabling lung condition is disabled due to pneumoconiosis.

The interim standards, which now apply only to claims filed before July 1, 1973, would become permanent maximum standards. The Committee bill says that the permanent standards may not be "more restrictive" than the interim standards. This means that it would be possible for the permanent standards to be more liberal than the interim standards but they could not be stricter, as they now are. The interim standards create a presumption that a miner is totally disabled. They also contain less strict breathing test standards than those now applicable to claims with the Department of Labor.

ELIGIBILITY FOR WIDOWS

The law would be clarified to provide that, where there is no medical evidence relating to a miner's lung condition, lay evidence alone will be enough to establish a widow's claim.

Certain widows of miners who were working when they died would be able to qualify if the miner had changed to a less dusty job or to a job with less pay or less rigorous work on account of his lung condition.

A widow or survivors of a miner killed in a mine accident before 1971 where the miner had worked 17 or more years in an underground mine would be eligible for black lung benefits; however, workers compensation benefits the widow now receives on account of the miner's death would be subtracted from these black lung benefits.

PERMANENT FEDERAL PROGRAM

At present the federal black lung program is scheduled to end in 1981. The Committee bill would make the program permanent.

WORKER'S COMPENSATION OFFSET

State workmen's compensation benefits would not be subtracted from federal benefits except where the state benefits were awarded "due to pneumoconiosis."

APPLICATIONS FROM WORKING MINERS

A coal miner could apply for benefits while working and be notified whether or not he would be eligible for benefits if he stopped working. In addition, a miner who had changed to a less dusty job or to a job with less pay or less rigorous work because of a lung condition might be able to qualify while still working.

FAVORABLE HEARING DECISION

The Appeals Council would not be permitted to reverse a favorable decision by an administrative law judge.

JOINT CHECKS

Where a husband and wife are living together, the black lung check would be made out in both names. This way, if the miner died, his widow would be able to cash the check rather than having to turn it in to Social Security. Social Security checks are handled this way now.

PROGRAM ADMINISTRATION

The 3-way split of administration between the Labor Department, Social Security, and the states would continue. Social Security would continue to have permanent responsibility for all claims already filed with it. In addition Social Security would have the duty to notify individual miners and survivors who have not yet applied of their possible eligibility for benefits. After receiving notice of possible eligibility, the person would have six months to file for benefits with Social Security. Any miner who retired before December 30, 1969, could file a claim with Social Security at any time without regard to when he received notice that he was possibly eligible.

States would still be able to take over the program by bringing their law into compliance with the federal law. A State would not have to grant benefits based on 30 or 25 years of coal mine employment in order to qualify to take over the program. But a miner who qualifies for benefits based on years of service would have a permanent right to apply under the federal program if the state program did not provide for eligibility based on years of service.

The Department of Labor would process all other applications. Except as noted below, Department of Labor would process claims according to the procedures they now use.

PAYMENT OF BENEFITS

A Black Lung Disability Insurance Fund would be set up to pay all claims awarded by the Department of Labor. Claims would be paid from the Fund, but coal operators would be billed at the end of the year for payments for which they were liable. Coal operators would be required to purchase insurance or to self-insure to cover their obligations. A tax would be imposed on every ton of coal mined to pay claims for which no responsible coal operator could be located and to cover administrative costs.

The Fund would have seven trustees, who would all be coal operators. However, their primary duty would be to make sure the money in the Fund was properly invested. They would have no right to be involved in the processing of claims by the Department of Labor.

DEPARTMENT OF LABOR CLAIMS PROCESSING

The Secretary of Labor would be ordered to write regulations providing for the prompt processing of claims. A hearing would have to be held within 45 days after a claimant requested it.

Coal operators would have no right to protest favorable decisions.

The Fund would have an extremely limited right to appeal favorable decisions. The Fund would not have any right to protest a medical determination of disability. The Fund could only protest on the grounds that the award was contrary to law or not supported by any substantial evidence.

WORK AFTER JUNE 30, 1971

For claims filed with the Department of Labor, work after July 1, 1971 would not be counted in establishing the application of the 15-year presumption, or establishing eligibility based on 30 or 25 years. This means that only people who completed 30 or 25 years of work before 1971 could be eligible based on years of service. And the law's present provision that a miner must have worked 15 years before 1971 to get the benefit of the 15-year presumption is not changed.

MEDICAL BENEFITS

All miners receiving black lung benefits under the Social Security program must be notified of their probable eligibility for medical benefits under the Department of Labor program. After receiving this notice, the miner would have six months to sign up with the Department of Labor. In order to qualify for these medical benefits, the miner would have to file a new application. This is the same situation that exists under the present program.

BLACK LUNG CLINICS

The $10 million annual authorization for black lung clinics would be made permanent.

AUTOMATIC REVIEW OF CLAIMS

All claims which have been denied in the past by the Department of Labor or Social Security would be automatically reviewed to see if the person is eligible based on the new amendments.

RETROACTIVITY

Most people who become eligible as a result of the new amendments would not qualify for back pay for any period amendments were passed. Specifically this means that persons who have 25/30 years of service and whose prior applications for benefits have been denied would now receive benefits from the time the amendments were passed but would not receive any benefits for the months before the amendments were passed. This same rule would apply to the workmen's compensation offset. Benefits would no longer be offset after the passage of the amendments but a miner could not recover benefits that have been offset in the past. However, people who had favorable hearing decisions which were reversed by the Appeals Council, and certain widows whose claims were denied because of lack of medical evidence or because the miner was working when he died could get retroactive benefits.

FEDERAL GUARANTEE OF PAYMENTS

If, for some reason, the Black Lung Disability Insurance Fund was unable to make payments due, the federal government would make the payments.

RE-READING OF X-RAYS

The routine re-reading of x-rays is barred. Re-reading of x-rays and autopsy reports would be permitted only where the administering agency has reason to believe the film is not of sufficient quality to demonstrate the presence or absence of pneumoconiosis, or where there is a suspicion of misrepresentation.

Mr. Chairman, in my congressional district in West Virginia there are approximately 27,000 active members of the United Mine Workers. In my whole State there are approximately 58,000 members.

Mention has already been made that the automatic entitlement section of this bill may be deleted by the substitute amendment that will be offered to strike that entitlement section. I will be very sorry to see the entitlements deleted from this bill.

The CHAIRMAN. The time of the gentleman from West Virginia (Mr. RAHALL) has expired.

Mr. PERKINS. Mr. Chairman, I yield 2 additional minutes to the gentleman from West Virginia.

Mr. RAHALL. Mr. Chairman, I thank the gentleman for yielding.

The automatic entitlement provision I believe in wholeheartedly. That is why I introduced earlier this Congress, H.R. 1532, providing for a 20-year automatic entitlement. But I also realize the need to pass a bill during this session of Congress. I feel confident that if that section is deleted, we will still have a strong bill that will be passed by the House, that will not die in the other body in this session, and that will be signed into law.

Therefore, Mr. Chairman, in order to pass a strong bill and to obtain the many other important provisions of this bill, I am willing to reluctantly support the deletion of the automatic entitlement provision.

One of the most important provisions that I do believe must remain in this bill is the elimination of the offset penalty, as has been mentioned in earlier debate this afternoon. This is very important to me. I do not feel that penalizing a coal miner because he has suffered the loss of an arm or a leg and is receiving State workmen's compensation should be required to have that money set off from his Federal black lung payments, to which he is also justly entitled. That is not a fair way for the Government to treat our coal miners.

Mining represents a small segment of the working population yet the operation is of a nature that is so unique, so complex, and so hazardous as to not fit neatly under any State workmen's compensation program or the present OSHA guidelines. Therefore, the need is stronger now to pass H.R. 4544 immediately.

I have been in the coal mines. I have seen that spending just a couple of hours underground products a couple of weeks of spitting out and breathing out coal dust.

The dust levels have not improved as dramatically as many would lead us to believe. Only by passing this present legislation and making the present black lung program permanent can we produce the strong incentive, the strong governmental push that is needed to provide for a lessening of coal dust levels in our Nation's mines.

There are in my congressional district many coal mining communities such as Holden, Man, Barnabee, Affinity, Red Jacket, War, Iaeger, Bradshaw, Carswell, Hollow, Crum, Stotesbury, Slab Fork, Mullens, Pineville, Kopperston, Itmann, Matoaka, and Montcalm, where coal miners live who are wheezing away their lives.

The CHAIRMAN. The time of the gentleman has expired.

Mr. PERKINS. Mr. Chairman, I yield 1 additional minute to the gentleman from West Virginia.

Mr. RAHALL. In conclusion, Mr. Chairman, I hope that my many colleagues from across this country will realize that there are many miners who left my home State in years past and went to other States. They are still trying to obtain black lung benefits, and are facing long delays, and are trying to support families across our country and trying to get our Government to listen to their dying voices

I hope that the Members will consider this in voting on this important legislation.

Mr. THOMPSON. Mr. Chairman, I am placing in the RECORD the text of a substitute to the text of H.R. 4544, the Black Lung Benefits Reform Act, which I will offer on the Floor at the appropriate time.

As a member of the House Education and Labor Committee I have had growing concern over many Members' dissatisfaction with features of this legislation. I personally have reservations about the measure as reported by the committee. At the same time, I think it is important that the Congress enact into law black lung reform legislation.

For this reason, I am offering a substitute to the committee-reported bill which I believe will be responsive to the concerns expressed to me by many of my colleagues and yet bring into effect much needed reform in the black lung compensation program.

My substitute is identical to the committee bill with these five major changes:

First, in view of the widespread concern and apparent disagreement over that provision of the committee bill which would have created a black lung entitlement based on 30 years of service in a bituminous mine and 25 years of service in an anthracite mine—

My substitute deletes entirely these entitlements.

Second, the committee bill is subject to the interpretation that a miner can receive black lung benefits while being employed—

To completely eliminate the possibility of this, my substitute contains an absolute bar to receiving any black lung benefits as a result of the enactment of this bill while the miner is employed.

Third, much concern has been expressed about the committee bill in that it denies the Department of Health, Education, and Welfare the right to appeal from a favorable decision for a black lung claimant but permits at the same time such an appeal by the claimant when he has been denied by an administrative law judge—

My substitute eliminates this provision so that an appeal may be taken by either party.

Fourth, this amendment responds to concerns expressed by the chairman of the Appropriations Committee, the gentleman from Texas (Mr. MAHON), that benefits payable from the trust fund were not subject to prior appropriations—

A provision in my substitute makes them so subject. The precise language has been worked out with the Appropriations Committee.

Fifth, the final amendment responds to concerns expressed by the chairman

of the House Budget Committee, the gentleman from Connecticut (Mr. GIAIMO).

A provision in my substitute brings the bill in technical compliance with section 401(b) of the Congressional Budget Act and brings the bill's costs within the ceiling imposed by the first concurrent resolution of the budget for fiscal year 1978 by prohibiting the retroactive payment of black lung benefits generated as a result of this legislation.

The Education and Labor Committee on May 24 in a regular meeting unanimously adopted a motion authorizing the chairman of the Education and Labor Committee to accept these last two amendments on behalf of the committee:

AMENDMENT IN THE NATURE OF A SUBSTITUTE

SHORT TITLE

SECTION 1. This Act may be cited as the "Black Lung Benefits Reform Act of 1977".

EMPLOYMENT BEFORE 1970

SEC. 2. Section 414(a) of the Act (30 U.S.C. 924(a)) is amended by adding at the end thereof the following new paragraph:

"(4) A claim for benefits under this part may be filed at any time on or after the date of the enactment of the Black Lung Benefits Reform Act of 1977 by a miner (or in the case of a deceased miner, the eligible survivors of such miner) if the date of the last exposed employment of such miner occurred before December 30, 1969.".

OFFSET AGAINST WORKMEN'S COMPENSATION BENEFITS

SEC. 3. The first sentence of section 412(b) of the Act (30 U.S.C. 922(b)) is amended by inserting immediately after "disability of such miner" the following: "due to pneumoconiosis".

CURRENTLY EMPLOYED MINERS

SEC. 4. (a) The first sentence of section 413(b) of the Act (30 U.S.C. 923(b)) is amended by inserting immediately before the period at the end thereof the following: "or solely on the basis of employment as a miner if (1) the location of such employment has recently been changed to a mine area having a lower concentration of dust particles; (2) the nature of such employment has been changed so as to involve less rigorous work; or (3) the nature of such employment has been changed so as to result in the receipt of substantially less pay".

(b) Section 413 is further amended by adding at the end thereof the following new subsection;

"(d) No miner who is engaged in coal mine employment shall (except as provided in section 411(c)(3)) be entitled to any benefits under this part while so employed. Any miner who has been determined to be eligible for benefits pursuant to a claim filed while such miner was engaged in coal mine employment shall be entitled to such benefits if his employment terminates within one year after the date such determination becomes final."

ADVISORY OPINIONS

SEC. 5. Section 413 of the Act (30 U.S.C. 923) is amended by adding at the end thereof the following new subsection:

"(e)(1) A miner may file a claim for benefits whether or not such miner is employed by an operator of a coal mine at the time such miner files such claim.

(2) The Secretary shall notify a miner, as soon as practicable after the Secretary receives a claim for benefits from such miner, whether, in the opinion of the Secretary, such miner would be eligible for benefits except for the circumstances of the employment of such miner at the time such miner filed a claim for benefits.

INDIVIDUAL NOTIFICATIONS

SEC. 6. Part B of title IV of the Act (30 U.S.C. 911 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 416. (a) For purposes of assuring that all individuals who may be eligible for benefits under this part are afforded an opportunity to apply for and, if entitled thereto, to receive such benefits, the Secretary shall undertake a program to locate individuals who are likely to be eligible for such benefits and have not filed a claim for such benefits.

"(b) The Secretary shall seek to determine, in cooperation with operators and with the Secretary of the Interior, the names and current addresses of individuals having long periods of employment in coal mining and, if such individuals are deceased, the names and addresses of their widows, children, parents, brothers, and sisters. The Secretary shall then directly, by mail, by personal visit by a delegate of the Secretary, or by other appropriate means, inform any such individuals (other than those who have filed a claim for benefits under this title) of the possibility of their eligibility for benefits, and offer them individualized assistance in preparing their claims where it is appropriate that a claim be filed.

"(c) Notwithstanding any other provision of this part, a claim for benefits under this part, in the case of an individual who has been informed by the Secretary under subsection (b) of the possibility of his eligibility for benefits, shall, if filed no later than six months after the date he was so informed, be considered on the same basis as if it had been filed on June 30, 1973.".

DEFINITIONS

SEC. 7. (a) Section 402(f) of the Act (30 U.S.C. 902(f)) is amended by adding at the end thereof the following new undesignated paragraph:

"With respect to a claim filed after June 30, 1973, such regulations shall not provide more restrictive criteria than those applicable to a claim filed on June 30, 1973.".

(b) Section 402 of the Act (30 U.S.C. 902) is amended by inserting immediately after paragraph (g) the following new paragraph:

"(h) The term 'fund' means the Black Lung Disability Insurance Fund established by section 423(a).".

EVIDENCE REQUIRED TO ESTABLISH CLAIM

SEC. 8. (a) Section 413(b) of the Act (30 U.S.C. 923(b)) is amended by inserting immediately after the second sentence thereof the following new sentence: "Where there is no relevant medical evidence in the case of a deceased miner, such affidavits shall be considered to be sufficient to establish that the miner was totally disabled due to pneumoconiosis or that his death was due to pneumoconiosis.".

(b) The last sentence of section 413(b) of the Act (30 U.S.C. 923(b)) is amended by striking out "and (1)," and inserting in lieu thereof "(1), and (n),".

(c) The second sentence of section 413(b) of the Act (30 U.S.C. 923(b)) is amended by striking out the period at the end thereof and inserting a colon and the following: "*Provided*, That unless the Secretary has good cause to believe (1) that an X-ray is not of sufficient quality to demonstrate the presence of pneumoconiosis, or an autopsy report is not accurate, or (2) that the condition of the miner is being fraudulently misrepresented, the Secretary shall accept such report, or in the case of the X-ray, accept the opinion of the claimant's physician, concerning the presence of the pneumonoconiosis and the stage of advancement of pneumoconiosis.".

CLAIMS FILED AFTER DECEMBER 31, 1973

SEC. 9. (a)(1) The first sentence of section 422(a) of the Act (30 U.S.C. 932(a)) is amended—

(A) by inserting immediately before the period at the end thereof the following: ", or with respect to entitlements established in paragraph (5) or paragraph (6) of section 411(c) of this title"; and

(B) by inserting immediately after "except as otherwise provided in this subsection" the following: "and to the extent consistent with the provisions of this part,".

(2) The last sentence of section 422(a) of the Act (30 U.S.C. 932(a)) is amended—

(A) by striking out "benefits" and inserting in lieu thereof "premiums and assessments"; and

(B) by striking out "to persons entitled thereto".

(3) Section 422(b) of the Act (30 U.S.C. 932(b)) is amended by inserting "(1)" immediately after "(b)", and by adding at the end thereof the following new paragraph:

"(2)(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) of this part each operator of a coal mine in such State shall secure the payment of assessments against such operator under section 424(g) of this part by (i) qualifying as a self-insurer in accordance with regulations prescribed by the Secretary; or (ii) insuring and keeping insured the payment of such assessments 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 (ii) of subparagraph (A) of this paragraph, every policy or contract of insurance shall contain—

"(i) a provision to pay assessments required under section 424(g) of this part, notwithstanding the provisions of the State workmen's compensation law which may provide for payments which are less than the amount of such assessments;

"(ii) a provision that insolvency or bankruptcy of the operator or discharge therein (or both) shall not relieve the carrier from liability for the payment of such assessments; and

"(iii) 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 (ii) of subparagraph (A) of this paragraph 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."

(4) Section 422(b)(1) of the Act, as so redesignated by paragraph (3), is amended—

(A) by striking out "benefits" and inserting in lieu thereof "premiums and assessments"; and

(B) by striking out "section 423" and inserting in lieu thereof "section 424".

(5) Section 422(c) of the Act (30 U.S.C. 932(c)) is amended to read as follows:

"(c) Benefits shall be paid during such period under this section by the fund, subject to reimbursement to the fund by operators in accordance with the provisions of section 424(g) of this title, 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, except that (1) the Secretary may modify any such regulation promulgated by the Secretary of Health, Education, and Welfare; and (2) no operator shall be liable for the payment of any benefit (except as provided in section 424(f) of this title) on account of death or total disability due to pneumoconiosis, or

account of any entitlement based upon conditions described in paragraphs (5) and (6) of section 411(c), which did not arise, at least in part, out of employment in a mine during the period when it was operated by such operator.".

(6) Section 422(e) of the Act (30 U.S.C. 932(e)) is amended—

(A) by striking out "required" and inserting in lieu thereof "made"; and

(B) by adding "or" immediately after the semicolon in paragraph (1) thereof, by striking out ", or" at the end of paragraph (2) thereof and inserting in lieu thereof a period, and by striking out paragraph (3) thereof.

(7) Section 422(f) (2) of the Act (30 U.S.C. 932(f)(2)) is amended—

(A) by inserting "paragraph (4), (5), or (6) of" immediately after "eligibility under";

(B) by striking out "section 411(c)(4)" the first place it appears therein and inserting in lieu thereof "section 411(c)";

(C) by striking out "from a respiratory or pulmonary impairment"; and

(D) by striking out "section 411(c)(4) of this title, incurred as a result of employment in a coal mine" and inserting in lieu thereof "any of such paragraphs".

(8) Section 424(h) of the Act (30 U.S.C. 932(h)) is amended by striking out the first sentence thereof.

(9) Section 422(i) of the Act (30 U.S.C. 932(i)) is amended to read as follows:

"(i)(1) The Secretary shall promulgate regulations providing for the prompt and expeditious consideration of claims under this section.

"(2)(A) The Secretary shall promulgate regulations providing for the prompt and equitable hearing of appeals by claimants who are aggrieved by any decision of the Secretary.

"(B) Any such hearing shall be held no later than forty-five days after the date upon which the claimant involved requests such hearing. A hearing may be postponed at the request of the claimant involved for good cause.

"(C) Any such hearing shall be held at a time and a place convenient to the claimant requesting such hearing.

"(D) Any such hearing shall be of record and shall be subject to the provisions of sections 554, 555, 556, and 557 of title 5, United States Code.

"(3)(A) Any individual, after any final decision of the Secretary made after a hearing to which he was a party, may obtain a review of such decision by a civil action commenced no later than ninety days after the mailing to him of notice of such decision, or not later than such further time as the Secretary may allow.

"(B) Such action shall be brought in a district court of the United States in the State in which the claimant resides.

"(C) The Secretary shall file, as part of his answer, a certified copy of the transcript of the record, including the evidence upon which the findings and decision complained of are based.

"(D) The court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Secretary, with or without remanding the case for a rehearing. The findings of the Secretary as to any fact, if supported by the weight of the evidence, shall be conclusive.

"(E) The court shall, on motion of the Secretary made before he files his answer, remand the case to the Secretary for further action by the Secretary, and may, at any time, on good cause shown, order additional evidence to be taken before the Secretary, and the Secretary shall, after the case is remanded, and after hearing such additional evidence if so ordered, modify or affirm his findings of fact or his decision, or both, and shall file with the court any such additional and modified findings of fact and decision, and a transcript of the additional record and testimony upon which his action in modifying or affirming was based. Such additional or modified findings of fact and decision shall be reviewable only to the extent provided for review of the original findings of fact and decision.

"(F) The judgment of the court shall be final, except that it shall be subject to review in the same manner as a judgment in other civil actions. Any action instituted in accordance with this paragraph shall survive notwithstanding any change in the person occupying the office of Secretary or any vacancy in such office.".

(10) In the case of any miner or any survivor of a miner who is eligible for benefits under section 422 of the Act (30 U.S.C. 932) as a result of any amendment made by any provision of this Act, such miner or survivor may file a claim for benefits under such section no later than three years after the date of the enactment of this Act, or no later than the close of the applicable period for filing claims under section 422(f) of the Act (30 U.S.C. 932(f)), whichever is later.

(b) Section 423 of the Act (30 U.S.C. 933) is amended to read as follows:

"SEC. 423. (a)(1) There is hereby established in the Treasury of the United States a trust fund to be known as the Black Lung Disability Insurance Fund. The fund shall consist of such sums as may be appropriated as advances to the fund under section 424(e)(1) of this part, the assessments paid into the fund as required by section 424(g), the premiums paid into the fund as required by section 424(a), the interest on, and proceeds from, the sale or redemption of any investment held by the fund, and any penalties recovered under section 424(c), including such earnings, income, and gains as may accrue from time to time which shall be held, managed, and administered by the trustees in trust in accordance with the provisions of this part and the fund.

"(2) Fund assets, other than such assets as may be required for necessary expenses, shall be used solely and excusively for the purpose of discharging obligations of operators under this part. Operators shall have no right, title, or interest in fund assets, and none of the earnings of the fund shall inure to the benefit of any person, other than through the payment of benefits under this part, together with appropriate costs.

"(b)(1)(A) The fund shall have seven trustees. Except as provided in subparagraph (B), trustees shall serve for terms of four years.

"(B) Of the trustees first elected under this subsection—

"(i) four shall be elected for terms of two years; and

"(ii) three shall be elected for terms of one year.

The Secretary shall determine, before the date of the first election under this subsection, whether each trustee office involved in such election shall be for a term of one year or two years. Such determination shall be made through the use of an appropriate method of random selection, except that at least one trustee nominated under paragraph (2)(A) shall serve for a term of two years.

"(C) Any trustee may be a full-time employee of an operator, except that no more than one trustee may be employed by any one operator or any affiliate of such operator.

"(2)(A) Two trustees shall be nominated and elected by operators having an annual payroll not in excess of $1,500,000 (hereinafter referred to as 'small operators').

"(B) Five trustees shall be nominated and elected by all operators.

"(3) No later than 60 days after the date of the enactment of the Black Lung Benefits Reform Act of 1977, all operators shall certify to the Secretary their payrolls for the 12-month period ending December 31, 1976. The Secretary shall then publish a list setting forth the number of votes to which each small operator and each operator is entitled, computed on the basis of one vote for each $500,000 or fraction thereof of payroll. Trustees shall be elected no later than 180 days after the date of enactment of such Act.

"(4) Candidates seeking nomination for election to the office of trustee under paragraph (2)(A) shall submit to the Secretary petitions of nomination reflecting the approval of small operators representing not less than 2 per centum of the aggregate annual payroll of all small operators. Candidates seeking such nomination under paragraph (2)(B) shall submit petitions reflecting the approval of operators representing not less than 2 per centum of the aggregate annual payroll of all operators.

"(5) The Secretary shall promulgate regulations for the nomination and election of trustees. Such regulations shall include provisions for the nomination and election of trustees, including the nomination and election of trustees to fill any vacancy caused by the death, disability, resignation, or removal of any trustee. The Secretary shall certify the results of all noimnations and elections. Two or more trustees may at any time file a petition, in the United States district court where the fund has its principal office, for removal of a trustee for malfeasance, misfeasance, or nonfeasance. The cost of any such action shall be paid from the fund, and the Secretary may intervene in any such action as an interested party.

"(6) The trustees shall organize by electing a Chairman and Secretary and shall adopt such rules governing the conduct of their business as they consider necessary or appropriate. Five trustees shall constitute a quorum and a simple majority of those trustees present and voting may conduct the business of the fund.

"(c)(1) The trustees shall act on behalf of all operators with respect to claims filed under this part.

"(2)(A) Except as provided by subparagraph (B), the fund may not participate or intervene as a party to any proceeding held for the purpose of determining claims for benefits under this part.

"(B)(i) If the fund is dissatisfied with any determination of the Secretary with respect to a claim for benefits under this part, the fund may, no later than thirty days after the date of such determination, file with the United States court of appeals for the circuit in which such determination was made a petition for review of such determination. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which he based his determination, as provided in section 2112 of title 28, United States Code.

"(ii) The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive, except that the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary thereupon may make new or modified findings of fact and may modify his previous determination, and shall certify to the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

"(iii) The court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject 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.

"(iv) Any finding of fact of the Secretary relating to the interpretation of any chest roentgenogram or any other medical evidence which demonstrates the existence of pneumoconiosis or any other disabling respiratory or pulmonary impairment, shall not be subject to review under the provisions of this subparagraph.

"(3) No operator may bring any proceeding, or intervene in any proceeding, held for the purpose of determining claims for benefits under this part.

"(4) It shall be the duty of the trustees to report to the Secretary and to the operators no later than January 1 of each year on the financial condition and the results of the operations of the fund during the preceding fiscal year and on its expected condition during the current and ensuing fiscal year. Such report shall be included in a report to the Congress by the Secretary not later than March 1 of each year on the financial condition and the results of the operations of the fund during the preceding fiscal year and on its expected condition and operations during the current and next ensuing fiscal year. The report of the Secretary shall be printed as a House document of the session of the Congress to which the report is made.

"(5)(A) The trustees shall take control and management of the fund and shall have the authority to hold, sell, buy, exchange, invest, and reinvest the corpus and income of the fund. All premiums paid to the fund under section 424(a)(1) shall be held and administered by the trustees as a single fund, and the trustees shall not be required to segregate and invest separately any part of the fund assets which may be claimed to represent accruals or interests of any individuals. It shall be the duty of the trustees to invest such portion of the assets of the fund as is not required to meet obligations under this part, except that the trustees may not invest any advances made to the fund under section 424(e). The trustees shall make investments under this paragraph in accordance with the provisions of section 404(a)(1)(C) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104 (a)(1)(C)).

"(B) Any profit or return on any investment or reinvestment made by the trustees under subparagraph (A) shall not be considered as income for purposes of Federal or State income taxation.

"(6)(A) Amounts in the fund shall be available for making expenditures to meet obligations of the fund which are incurred under this part, including the expenses of providing medical benefits as required by section 432 of this title, and the operation, maintenance, and staffing of the office of the fund. The trustees may enter into agreements with any self-insured person or any insurance carrier who has incurred obligations with respect to claims under this part before the effective date of this paragraph, under which the fund will assume the obligations of such self-insured person or insurance carrier in return for a payment or payments to the fund in such amounts, and on such terms and conditions as will fully protect the financial interests of the fund.

"(B) Beginning on the effective date of this paragraph, payments shall be made from the fund to meet any obligation incurred by the Secretary with respect to claims under this part before such effective date. The Secretary shall cease to be subject to such obligations on such effective date.

"(7) The trustees shall keep accounts and records of their administration of the fund, which shall include a detailed account of all investments, receipts, and disbursements.

"(8) At no time during the administration of the fund shall the trustees be required to obtain any approval by any court of the United States or by any other court of any act required of them in connection with the performance of their duties or in the performance of any act required of them in the administration of their duties as trustees. The trustees shall have the full authority to exercise their judgment in all matters and at all times without any such approval of such decisions. The trustees may file an application in the United States district court where the fund has its principal office for a judicial declaration concerning their power, authority, or responsibility under this Act (other than the processing and payment of claims). In any such proceeding, only the trustees and the Secretary shall be necessary or indispensable parties, and no other person, whether or not such person has any interest in the fund, shall be entitled to participate in any such proceeding. Any final judgment entered in such proceeding shall be conclusive upon any person or other entity claiming an interest in the fund.

"(9) The trustees may employ such counsel, accountants, agents, and employees as they consider advisable. The trustees may charge the compensation of such persons and any other expenses, including the cost of fidelity bonds and indemnification and fiduciary insurance for trustees and other fund employees, necessary in the administration of the fund, against the fund.

"(10) The trustees shall have the power to execute any instrument which they consider proper in order to carry out the provisions of the fund.

"(11) The trustees may, through any duly authorized person, vote any share of stock which the fund may hold.

"(12) The trustees may employ actuaries to such extent as they consider advisable. No actuary may be employed by the trustees under this paragraph unless such actuary is enrolled under section 3042(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1242(a)).

"(d) Nothing in this Act or in the Black Lung Benefits Reform Act of 1977 shall be construed as exempting the fund, or any of its activities or outlays, from inclusion in the Budget of the United States or from any limitations imposed thereon or as authorizing outlays by the fund or the trustees except to such extent or in such amounts as are provided in advance in appropriation acts.".

(c) Section 424 of the Act (30 U.S.C. 934) is amended to read as follows:

"SEC. 424. (a)(1) 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 a coal mine in such State shall pay premiums into the fund in amounts sufficient to ensure the payment of benefits under this part.

"(2) The initial premium rate of each operator shall be established by the Secretary as a rate per ton of coal mined by such operator. Beginning one year after the date upon which the Secretary establishes initial premium rates, the trustees may modify or adjust the premium rate per ton of coal mined to reflect the experience and expenses of the fund to the extent necessary to permit the trustees to discharge their responsibilities under this Act, except that the Secretary may further modify or adjust the premium rate to ensure that all obligations of the fund will be met. Any premium rate established under this subsection shall be uniform for all mines, mine operators, and amounts of coal mined.

"(3) For purposes of section 162(a) of the Internal Revenue Code of 1954 (relating to trade or business expenses), any premium paid by an operator of a coal mine under paragraph (1) shall be considered to be an ordinary and necessary expense in carrying on the trade or business of such operator.

"(4) For purposes of this subsection—

"(A) the term 'coal' means any material composed predominantly of hydrocarbons in a solid state;

"(B) the term 'ton' means a short ton of two thousand pounds; and

"(C) the amount of coal mined shall be determined at the first point at which such coal is weighed.

"(b) The Secretary shall advise the Secretary of the Treasury of premium rates established under subsection (a)(1). The Secretary of the Treasury shall collect all premiums due and payable by operators under subsection (a)(1), and transmit such premiums to the fund. Collections shall be effected by the Secretary of the Treasury in the same manner as, and together with, quarterly payroll reports of employers. In order to ensure the payment of premiums of all operators, the Secretary, after consultation with the Secretary of the Interior, shall certify, not less than annually, the names of all operators subject to this Act.

"(c)(1) In any case in which an operator fails or refuses to pay any premiums required to be paid under subsection (a)(1), the trustees of the fund shall bring a civil action in the appropriate United States district court to require the payment of such premium. In any such action, the court may issue an order requiring the payment of such premiums in the future as well as past due premiums, together with 9 per centum annual interest on all past due premiums.

"(2) An operator who fails or refuses to pay any premium required to be paid under subsection (a)(1) may be assessed a civil penalty by the Secretary of the Treasury in such amount as such Secretary may prescribe, but not in excess of an amount equal to the premium the operator failed or refused to pay. Such penalty shall be in addition to any other liability of the operator under this Act. Penalties assessed under this paragraph may be recovered in a civil action brought by such Secretary and penalties so recovered shall be deposited in the fund.

"(d) The Secretary shall be required to make expenditures under this part only for the purpose of carrying out his obligation to administer this part. All other expenses incurred under this part shall be borne by the fund, and if borne by the Secretary, shall be reimbursed by the fund to the Secretary.

"(e)(1) There are hereby authorized to be appropriated to the fund such sums as may be necessary to provide the fund with amounts equal to 50 per centum of the amount which the Secretary estimates is necessary for the payment of benefits under this part during the first twelve-month period after the effective date of this section. Any amounts appropriated under this paragraph may be used only for the payment of benefits under this part.

"(2)(A) Sums authorized to be appropriated by paragraph (1) shall be repayable advances to the fund.

"(B) Such advances shall be repaid with interest into the general fund of the Treasury no later than five years after the first appropriation made under paragraph (1).

"(3) Interest on such advances shall be at a rate determied by the Secretary of the Treasury taking into consideration the current average yield during the month preceeding the date of the advance involved, on marketable interest-bearing obligations of the United States of comparable maturities then forming a part of the public debt rounded to the nearest one-eighth of 1 per centum.

"(f)(1) During any period in which section 422 of this title is applicable with respect to a coal mine, an operator of such mine who, after the date of the enactment of this title, acquired such mine or susbtantially all of the assets thereof from a person (hereinafter in this paragraph referred

to 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 this section and section 423 of this title, secure the payment of all benefits for which the prior operator would have been liable under section 422 of this title with respect to miners previously employed in such mine if the acquisition had not occurred and the previous operator has continued to operate such mine.

"(2) Nothing in this subsection shall relieve any prior operator of any liability under section 422 of this title.

"(g)(1) The fund shall make an annual assessment against any operator who is liable for the payment of benefits under section 422 of this title. Such assessment against any operator of a coal mine shall be in an amount equal to the amount of benefits for which such operator is liable under section 422 of this title with respect to death or total disability due to pneumoconiosis arising out of employment in such mine, or with respect to entitlements established in paragraph (5) or paragraph (6) of section 411(c) of this title.

"(2) Any operator against whom an assessment is made under paragraph (1) shall pay the amount involved in such assessment into the fund no later than thirty days after receiving notice of such assessment.

"(3) The provisions of subsection (c) of this section shall apply in the case of any operator who fails or refuses to pay any assessment required to be paid under this subsection.".

(d) Section 421(b)(2)(E) of the Act (30 U.S.C. 931(b)(2)(E)) is amended by striking out "section 422(i)" and inserting in lieu thereof "section 424(f)".

CLINICAL FACILITIES

SEC. 10. The first sentence of section 427 (c) of the Act (30 U.S.C. 937(c)) is amended by striking out "of the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975" and inserting in lieu thereof "fiscal year".

MEDICAL CARE

SEC. 11. (a) Part C of title IV of the Act (30 U.S.C. 931 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 432. The provisions of subsections (a), (b), (c), (d), and (g) of section 7 of the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 907 (a), (b), (c), (d), and (g)) shall be applicable to persons entitled to benefits under this part on account of total disability or on account of eligibility under paragraph (5) or paragraph (6) of section 411(c), except that references in such section to the employer shall be considered to refer to the trustees of the fund.".

(b) The Secretary of Health, Education, and Welfare shall notify each miner receiving benefits under part B of the Black Lung Benefits Act on account of his total disability who the Secretary has reason to believe became eligible for medical services and supplies on January 1, 1974, of his possible eligibility for such benefits. Where the Secretary so notifies a miner, the period during which he may file a claim for medical services and supplies under part C of such Act shall not terminate before six months after such notification was made.

TRANSITIONAL PROVISIONS

SEC. 12. (a) The Secretary of Health, Education, and Welfare, and the Secretary of Labor shall disseminate to interested persons and groups the changes in the Black Lung Benefits Act made by this Act. Each such Secretary shall undertake a program to give individual notice to individuals who they believe are likely to have become eligible for benefits by reason of such changes.

(b)(1) The Secretary of Health, Education, and Welfare (with respect to part B of the Black Lung Benefits Act) shall review each claim which has been denied, and each claim which is pending, under such part, taking into account the amendments made to such part by this Act, and with respect to claims which have been denied taking into account the possibility of error or inappropriate denial of benefits in the initial processing of such claim. The Secretary shall approve any such claim forthwith if the provisions of such part, as so amended, require such approval or if in the initial processing of a denied claim there was error or inappropriate denial of benefits to such claimant.

(2) The Secretary of Labor (with respect to part C of the Black Lung Benefits Act) shall review each claim which has been denied, and each claim which is pending, under such part, taking into account the amendments made to such part by this Act, and with respect to claims which have been denied taking into account the possibility of error or inappropriate denial of benefits in the initial processing of such claims. The Secretary shall approve any such claim forthwith if the provisions of such part, as so amended, require such approval or if in the initial processing of a denied claim there was error or inappropriate denial of benefits to such claimant.

(3) Each Secretary, in undertaking the review required by paragraphs (1) and (2), shall not require the resubmission of any claim which is the subject of any such review.

SHORT TITLE FOR ACT

SEC. 13. Section 401 of the Act (30 U.S.C. 901) is amended by inserting "(a)" immediately after "SEC. 401." and by adding at the end thereof the following new subsection:

"(b) This title may be cited as the 'Black Lung Benefits Act'.".

MINE ACCIDENT WIDOWS

SEC. 14. (a) If a miner was employed for seventeen years or more in one or more underground coal mines, and died as a result of an accident in any such coal mine which occurred on or before June 30, 1971, any eligible survivor of such miner shall be entitled to the payment of benefit under part B of the Black Lung Benefits Act.

(b) For purposes of this section, benefit payments to a widow, child, parent, brother, or sister of any miner to whom subsection (a) applies shall be reduced, on a monthly or other appropriate basis, by an amount equal to any payment received by such widow, child, parent, brother, or sister under the workmen's compensation, unemployment compensation, or disability laws of the miner's State.

(c) The Secretary of Labor shall be responsible for the administration of the provisions of this section.

ADMINISTRATION OF BLACK LUNG BENEFITS ACT

SEC. 15. (a)(1) The Division of Coal Mine Workers' Compensation is hereby transferred to the Office of the Secretary of Labor.

(2) The Secretary shall act through the Division in carrying out the provisions of the Black Lung Benefits Act.

(b)(1) The Secretary, in carrying out the Black Lung Benefits Act, shall establish and operate such field offices as may be necessary to assist miners and other persons with respect to the filing of claims under such Act. Such field offices shall be established and operated in a manner which makes them reasonably accessible to such miners and other persons.

(2) The Secretary, in connection with the establishment and operation of field offices under paragraph (1), may enter into arrangements with other Federal departments and agencies, and with State agencies, for the use of existing facilities operated by such departments and agencies.

(c) For purposes of this section—

(1) the term "Division" means the Division of Coal Mine Workers' Compensation established in the Office of Workers' Compensation Programs by the Assistant Secretary of Labor for Employment Standards under the Secretary's Order No. 13-71 (36 Federal Register 8755); and

(4) the term "Secretary" means the Secretary of Labor.

EFFECTIVE DATES

SEC. 16. (a) This Act shall take effect on the date of its enactment, except that—

(1) no authority to make payments under this Act shall become effective before October 1, 1977;

(2) the amendments made by sections 2, 4, 5, and 8 shall be effective on and after December 30, 1969, except that claims approved solely because of the amendments made by such sections which were filed before the date of the enactment of this Act, shall be awarded benefits only for the period beginning on such date of enactment;

(3) the amendments made by section 6 shall not require the payment of benefits for any period before the date of the enactment of this Act; and

(4) the amendments made by section 9 shall take effect on October 1, 1977, except that (A) the Secretary of Labor shall establish initial premium rates for operators under section 424(a)(1) of the Black Lung Benefits Act, as added by section 9(c) of this Act, no later than October 1, 1977, and (B) such Secretary shall make the estimate required by section 424(e)(1) of such Act, as added by section 9(c) of this Act, as soon as practicable after the date of the enactment of this Act.

(b) In the event that the payment of benefits to miners and to eligible survivors of miners cannot be made from the Black Lung Disability Insurance Fund established by section 423(a) of the Act, as added by section 9(b) of this Act, the provisions of the Act relating to the payment of benefits to miners and to eligible survivors of miners, as in effect immediately before October 1, 1977, shall remain in force as rules and regulations of the Secretary of Labor, until such provisions are revoked, amended, or revised by law. Such Secretary shall make benefit payments to miners and to eligible survivors of miner or survivor before October 1, 1977.

(c) No benefits payable because of the enactment of this Act shall be paid to any miner or survivor before Otcober 1, 1977.

WHITE LUNG STUDY

SEC. 17. (a) The Committee on Education and Labor of the House of Representatives is authorized and directed to conduct a study of white lung disease, also known as silicosis or talcosis, including, but not limited to, the extent and severity of the disease in the United States; the relationship, if any, between white lung disease and black lung disease; the adequacy of current workman compensation programs in compensating victims of white lung disease; a review of current mine safety and Occupational Safety and Health regulations relating to talc mining to determine whether such regulations are adequate to protect the safety and health of talc miners; and the need, if any, for Federal legislation to protect the safety and health of talc miners or to provide additional compensation for the victims of white lung.

(b) The Committee shall report its findings and any legislative recommendations to the Congress not later than one year after enactment of this Act.

Mr. DUNCAN of Tennessee. Mr. Chairman, I would like to take this opportunity to voice my support for H.R. 4544, the Black Lung Benefits Reform Act of 1977.

This important piece of legislation, if enacted, will serve to correct many of the

deficiencies and inequities of the black lung program which have become apparent over the 7 years the program has been functioning.

This legislation will aso serve to further recognize the terrible human costs which deep mining exacts. It will offer a more complete and equitable mode of compensating these people and their families who pay with their lives and well-being so that we all may enjoy the energy benefits to be derived from coal. This is particularly important in this era of energy shortages and foreign dependencies when this Nation must rely more and more heavily upon her abundant coal reserves.

Coal mining is a dangerous business. Black lung is a horrible, slow death. More than 77 men die every week as a result of its ravages—over 4,000 each year. If these 77 deaths were to occur at the same place on the same day, we would undoubtedly demand immediate action to prevent future disasters of such magnitude.

In passing H.R. 4544, we will be solidifying the pledge we made in the 1969 Federal Coal Mine Health and Safety Act to appropriately compensate our coal miners for the sacrifices they make for the good of us all. I would, therefore, strongly urge my colleagues to vote in support of H.R. 4544.

Mr. GIAIMO. Mr. Chairman, I rise in support of H.R. 4544, the Black Lung Benefits Reform Act of 1977, with the substitute which will be proposed by my distinguished colleague from New Jersey. The history of this bill is a tribute to the willingness of the Education and Labor Committee, and its distinguished chairman, the gentleman from Kentucky to insure that the House lives within its budgetary targets.

In its March 15 report to the Budget Committee, the Committee on Education and Labor recommended that $306 million be included in the first budget resolution to fund liberalizations to the black lung program. This represented a significant reduction below the cost of a bill to liberalize benefits (H.R. 10760) which the House approved last year. That bill would have had an outlay impact of $547 million in the first year. The Budget Committee assumed that the cost of the liberalizations could be reduced and included $100 million in the first budget resolution.

Subsequent to submission of the March 15 report, the Education and Labor Committee reported out the bill before us today with a fiscal year 1978 cost of $359 million. Such a level would clearly breach the spending targets which we recommended in the House resolution. The Education and Labor Committee approved a committee amendment, which eliminates the retroactive payments provided for in the reported bill. This amendment reduces the cost to $122 million, the target for this program which the Education and Labor Committee imposed on itself in allocating the entitlement authority which it received after the conference agreement on the first budget resolution.

Last week, when a rule was granted, it was agreed that additional changes would be proposed that would further strengthen the bill. As reported H.R. 4544 would have provided automatic benefits to all individuals who have worked 30 years or more in an underground mine. During the deliberations on this bill with the Committee on Rules, the distinguished chairman of the Education and Labor Committee agreed to have offered a substitute bill which would eliminate this automatic eligibility provision based on length of service and would change a number of other provisions in the reported bill. I support the deletion of these provisions, particularly the elimination of the 30-year retirement provision.

The net effect of these changes is to reduce the cost of the bill below the allocation for this bill which the Education and Labor Committee made following the first budget resolution for fiscal year 1978.

I urge support of the Thompson substitute.

Mr. PERKINS. Mr. Chairman, I have no further requests for time on this side, and I understand there are no requests on the other side.

Mr. ERLENBORN. Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

Mr. PERKINS. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. All time has expired.

Pursuant to the rule, the Clerk will now read the committee amendment in the nature of a substitute recommended by the Committee on Education and Labor now printed in the reported bill as an original bill for the purpose of amendment.

The Clerk read as follows:

SHORT TITLE

SECTION 1. This Act may be cited as the "Black Lung Benefits Reform Act of 1977".

Mr. PERKINS. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker pro tempore, Mr. ALLEN, having assumed the Chair, Mr. MCKAY, 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. 4544) to amend the Federal Coal Mine Health and Safety Act to improve the black lung benefits program established under such act, and for other purposes, had come to no resolution thereon.

BLACK LUNG BENEFITS REFORM ACT OF 1977

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. 4544 to amend the Federal Coal Mine Health and Safety Act to improve the black lung benefits program established under such Act, and for other purposes.

Tht SPEAKER. The question is on the motion offered by the gentleman from Kentucky (Mr. PERKINS).

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. 4544, with Mr. McKAY in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the committee rose on Monday, July 25, 1977, the Clerk had read through line 24 on page 5.

Are there any amendments to section 1?

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. THOMPSON

Mr. THOMPSON. Mr. Chairman, I offer an amendment in the nature of a substitute.

The Clerk read as follows:

Amendment in the nature of a substitute offered by Mr. THOMPSON:

AMENDMENT IN THE NATURE OF A SUBSTITUTE

SHORT TITLE

SECTION 1. This Act may be cited as the "Black Lung Benefits Reform Act of 1977".

EMPLOYMENT BEFORE 1970

SEC. 2. Section 414(a) of the Act (30 U.S.C. 924(a)) is amended by adding at the end thereof the following new paragraph:

"(4) A claim for benefits under this part may be filed at any time on or after the date of the enactment of the Black Lung Benefits Reform Act of 1977 by a miner (or in the case of a deceased miner, the eligible survivors of such miner) if the date of the last exposed employment of such miner occurred before December 30, 1969.'".

OFFSET AGAINST WORKMEN'S COMPENSATION BENEFITS

SEC. 3. The first sentence of section 412(b) of the Act (30 U.S.C. 922(b)) is amended by inserting immediately after "disability of such miner" the following: "due to pneumoconiosis".

CURRENTLY EMPLOYED MINERS

"SEC. 4. (a) The first sentence of section 413(b) of the Act (30 U.S.C. 923(b)) is amended by inserting immediately before the period at the end thereof the following: "or solely on the basis of employment as a miner if (1) the location of such employment has recently been changed to a mine area having a lower concentration of dust particles; (2) the nature of such employment has been changed so as to involve less rigorous work; or (3) the nature of such employment has been changed so as to result in the receipt of substantially less pay".

(b) Section 413 is further amended by adding at the end thereof the following new subsection:

"(d) No miner who is engaged in coal mine employment shall (except as provided in section 411(c)(3)) be entitled to any benefits under this part while so employed. Any miner who has been determined to be eligible for benefits pursuant to a claim filed while such miner was engaged in coal mine employment shall be entitled to such benefits if his employment terminates within the year after the date such determination becomes final."

ADVISORY OPINIONS

SEC. 5. Section 413 of the Act (30 U.S.C. 923) is amended by adding at the end thereof the following new subsection:

"(e)(1) Any miner may file a claim for benefits whether or not such miner is employed by an operator of a coal mine at the time such miner files such claim.

(2) The Secretary shall notify a miner, as soon as practicable after the Secretary receives a claim for benefits from such miner, whether, in the opinion of the Secretary, such miner would be eligible for benefits, except for the circumstances of the employment of such miner at the time such miner filed a claim for benefits.

INDUSTRIAL NOTIFICATIONS

SEC. 6. Part B of title IV of the Act (30 U.S.C. 911 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 416. (a) For purposes of assuring that all individuals who may be eligible for benefits under this part are afforded an opportunity to apply for and, if entitled thereto, to receive such benefits, the Secretary shall undertake a program to locate individuals who are likely to be eligible for such benefits and have not filed a claim for such benefits.

"(b) The Secretary shall seek to determine, in cooperation with operators and with the Secretary of the Interior, the names and current addresses of individuals having long periods of employment in coal mining and, if such individuals are deceased, the names and addresses of their widows, children, parents, brothers, and sisters. The Secretary shall then directly, by mail, by personal visit by a delegate of the Secretary, or by other appropriate means, inform any such individuals (other than those who have filed a claim for benefits under this title) of the possibility of their eligibility for benefits, and offer them individualized assistance in preparing their claims where it is appropriate that a claim be filed.

"(c) Notwithstanding any other provision of this part, a claim for benefits under this part, in the case of an individual who has been informed by the Secretary under subsection (b) of the possibility of his eligibility for benefits, shall, if filed no later than six months after the date he was so informed, be considered on the same basis as if it had been filed on June 30, 1973.".

DEFINITIONS

SEC. 7. (a) Section 402(f) of the Act (30 U.S.C. 902(f)) is amended by adding at the end thereof the following new undesignated paragraph:

"With respect to a claim filed after June 30, 1973, such regulations shall not provide more restrictive criteria than those applicable to a claim filed on June 30, 1973.".

(b) Section 402 of the Act (30 U.S.C. 902) is amended by inserting immediately after paragraph (g) the following new paragraph:

"(h) The term 'fund' means the Black Lung Disability Insurance Fund established by section 423(a).".

EVIDENCE REQUIRED TO ESTABLISH CLAIM

SEC. 8. (a) Section 413(b) of the Act (30 U.S.C. 923(b)) is amended by inserting immediately after the second sentence thereof the following new sentence: "Where there is no relevant medical evidence in the case of a deceased miner, such affidavits shall be considered to be sufficient to establish that the miner was totally disabled due to pneumoconiosis or that his death was due to pneumoconiosis.".

(b) The last sentence of section 413(b) of the Act (30 U.S.C. 923(b)) is amended by striking out "and (1)," and inserting in lieu thereof "(1), and (n),".

(c) The second sentence of section 413(b) of the Act (30 U.S.C. 923(b)) is amended by striking out the period at the end thereof and inserting a colon and the following: "*Provided*, That unless the Secretary has good cause to believe (1) that an X-ray is not of sufficient quality to demonstrate the presence of pneumoconiosis, or an autopsy report is not accurate, or (2) that the condition of the miner is being fraudulently misrepresented, the Secretary shall accept such report, or in the case of the X-ray, accept the opinion of the claimant's physician, concerning the presence of the pneumonoconiosis and the stage of advancement of pneumoconiosis.".

CLAIMS FILED AFTER DECEMBER 31, 1973

SEC. 9. (a)(1) The first sentence of section 422(a) of the Act (30 U.S.C. 932(a)) is amended—

(A) by inserting immediately before the period at the end thereof the following: ", or with respect to entitlements established in paragraph (5) or paragraph (6) of section 411(c) of this title"; and

(B) by inserting immediately after "except as otherwise provided in this subsection" the following: "and to the extent consistent with the provisions of this part,".

(2) The last sentence of section 422(a) of the Act (30 U.S.C. 932(a)) is amended—

(A) by striking out "benefits" and inserting in lieu thereof "premiums and assessments"; and

(B) by striking out "to persons entitled thereto".

(3) Section 422(b) of the Act (30 U.S.C. 932(b)) is amended by inserting "(1)" immediately after "(b)", and by adding at the end thereof the following new paragraph:

"(2)(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) of this part each operator of a coal mine in such State shall secure the payment of assessments against such operator under section 424(g) of this part by (i) qualifying as a self-insurer in accordance with regulations prescribed by the Secretary; or (ii) insuring and keeping insured the payment of such assessments 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 (ii) of subparagraph (A) of this paragraph, every policy or contract of insurance shall contain—

"(i) a provision to pay assessments required under section 424(g) of this part, notwithstanding the provisions of the State workmen's compensation law which may provide for payments which are less than the amount of such assessments;

"(ii) a provision that insolvency or bankruptcy of the operator or discharge therein

(or both) shall not relieve the carrier from liability for the payment of such assessments; and

"(iii) 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 (ii) of subparagraph (A) of this paragraph 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."

(4) Section 422(b)(1) of the Act, as so redesignated by paragraph (3), is amended—

(A) by striking out "benefits" and inserting in lieu thereof "premiums and assessments"; and

(B) by striking out "section 423" and inserting in lieu thereof "section 424".

(5) Section 422(c) of the Act (30 U.S.C. 932(c)) is amended to read as follows:

"(c) Benefits shall be paid during such period under this section by the fund, subject to reimbursement to the fund by operators in accordance with the provisions of section 424(g) of this title, 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, except that (1) the Secretary may modify any such regulation promulgated by the Secretary of Health, Education, and Welfare; and (2) no operator shall be liable for the payment of any benefits (except as provided in section 424(f) of this title) on account of death or total disability due to pneumoconiosis, or account of any entitlement based upon conditions described in paragraphs (5) and (6) of section 411(c), which did not arise, at least in part, out of employment in a mine during the period when it was operated by such operator.".

(6) Section 422(e) of the Act (30 U.S.C. 932(e) is amended—

(A) by striking out "required" and inserting in lieu thereof "made"; and

(B) by adding "or" immediately after the semicolon in paragraph (1) thereof, by striking out ", or " at the end of paragraph (2) thereof and inserting in lieu thereof a period, and by striking out paragraph (3) thereof.

(7) Section 422(f)(2) of the Act (30 U.S.C. 932(f)(2)) is amended—

(A) by inserting "paragraph (4), (5), or (6) of" immediately after "eligibility under";

(B) by striking out "section 411(c)(4)" the first place it appears therein and inserting in lieu thereof "section 411(c)";

(C) by striking out "from a respiratory or pulmonary impairment"; and

(D) by striking out "section 411(c)(4) of this title, incurred as a result of employment in a coal mine" and inserting in lieu thereof "any of such paragraphs".

(8) Section 424(h) of the Act (30 U.S.C. 932(h)) is amended by striking out the first sentence thereof.

(9) Section 422(i) of the Act (30 U.S.C. 932(i)) is amended to read as follows:

"(i)(1) The Secretary shall promulgate regulations providing for the prompt and expeditious consideration of claims under this section.

"(2)(A) The Secretary shall promulgate regulations providing for the prompt and equitable hearing of appeals by claimants who are aggrieved by any decision of the Secretary.

"(B) Any such hearing shall be held no later than forty-five days after the date upon which the claimant involved requests such hearing. A hearing may be postponed at the request of the claimant involved for good cause.

"(C) Any such hearing shall be held at a time and a place convenient to the claimant requesting such hearing.

"(D) Any such hearing shall be of record and shall be subject to the provisions of sections 554, 555, 556, and 557 of title 5, United States Code.

"(3)(A) Any individual, after any final decision of the Secretary made after a hearing to which he was a party, may obtain a review of such decision by a civil action commenced no later than ninety days after the mailing to him of notice of such decision, or not later than such further time as the Secretary may allow.

"(B) Such action shall be brought in a district court of the United States in the State in which the claimant resides.

"(C) The Secretary shall file, as part of his answer, a certified copy of the transcript of the record, including the evidence upon which the findings and decision complained of are based.

"(D) The court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Secretary, with or without remanding the case for a rehearing. The findings of the Secretary as to any fact, if supported by the weight of the evidence, shall be conclusive.

"(E) The court shall, on motion of the Secretary made before he files his answer, remand the case to the Secretary for further action by the Secretary, and may, at any time, on good cause shown, order additional evidence to be taken before the Secretary, and the Secretary shall, after the case is remanded, and after hearing such additional evidence if so ordered, modify or affirm his findings of fact or his decision, or both, and shall file with the court any such additional and modified findings of fact and decision, and a transcript of the additional record and testimony upon which his action in modifying or affirming was based. Such additional or modified findings of fact and decision shall be reviewable only to the extent provided for review of the original findings of fact and decision.

"(F) The judgment of the countr shall be final, except that it shall be subject to review in the same manner as a judgment in other civil actions. Any action instituted in accordance with this paragraph shall survive notwithstanding any change in the person occupying the office of Secretary or any vacancy in such office.".

(10) In the case of any miner or any survivor of a miner who is eligible for benefits under section 422 of the Act (30 U.S.C. 932) as a result of any amendment made by any provision of this Act, such miner or survivor may file a claim for benefits under such section no later than three years after the date of the enactment of this Act, or no later than the close of the applicable period for filing claims under section 422(f) of the Act (30 U.S.C. 932(f)), whichever is later.

(b) Section 423 of the Act (30 U.S.C. 933) is amended to read as follows:

"SEC. 423. (a)(1) There is hereby established in the Treasury of the United States a trust fund to be known as the Black Lung Disability Insurance Fund. The fund shall consist of such sums as may be appropriated as advances to the fund under section 424(e)(1) of this part, the assessments paid into the fund as required by section 424(g), the premiums paid into the fund as required by section 424(a), the interest on, and proceeds from, the sale or redemption of any investment held by the fund, and any penalties recovered under section 424(c), including such earnings, income, and gains as may accrue from time to time which shall be held, managed, and administered by the trustees in trust in accordance with the provisions of this part and the fund.

"(2) Fund assets, other than such assets as may be required for necessary expenses, shall be used solely and exclusively for the purpose of discharging obligations of operators under this part. Operators shall have no right, title, or interest in fund assets, and none of the earnings of the fund shall inure to the benefit of any person, other than through the payment of benefits under this part, together with appropriate costs.

"(b)(1)(A) The fund shall have seven trustees. Except as provided in subparagraph (B), trustees shall serve for terms of four years.

"(B) Of the trustees first elected under this subsection—

"(i) four shall be elected for terms of two years; and

"(ii) three shall be elected for terms of one year.

The Secretary shall determine, before the date of the first election under this subsection, whether each trustee office involved in such election shall be for a term of one year or two years. Such determination shall be made through the use of an appropriate method of random selection, except that at least one trustee nominated under paragraph (2)(A) shall serve for a term of two years.

"(C) Any trustee may be a full-time employee of an operator, except that no more than one trustee may be employed by any one operator or any affiliate of such operator.

"(2)(A) Two trustees shall be nominated and elected by operators having an annual payroll not in excess of $1,500,000 (hereinafter referred to as 'small operators').

"(B) Five trustees shall be nominated and elected by all operators.

"(3) No later than 60 days after the date of the enactment of the Black Lung Benefits Reform Act of 1977, all operators shall certify to the Secretary their payrolls for the 12-month period ending December 31, 1976. The Secretary shall then publish a list setting forth the number of votes to which each small operator and each operator is entitled, computed on the basis of one vote for each $500,000 or fraction thereof of payroll. Trustees shall be elected no later than 180 days after the date of enactment of such act.

"(4) Candidates seeking nomination for election to the office of trustee under paragraph (2)(A) shall submit to the Secretary petitions of nomination reflecting the approval of small operators representing not less than 2 per centum of the aggregate annual payroll of all small operators. Candidates seeking such nomination under paragraph (2)(B) shall submit petitions reflecting the approval of operators representing not less than 2 per centum of the aggregate annual payroll of all operators.

"(5) The Secretary shall promulgate regulations for the nomination and election of trustees. Such regulations shall include provisions for the nomination and election of trustees, including the nomination and election of trustees to fill any vacancy caused by the death, disability, resignation, or removal of any trustee. The Secretary shall certify the results of all nominations and elections. Two or more trustees may at any time file a petition, in the United States district court where the fund has its principal office, for removal of a trustee for malfeasance, misfeasance, or nonfeasance. The cost of any such action shall be paid from the fund, and the Secretary may intervene in any such action as an interested party.

"(6) The trustees shall organize by electing a Chairman and Secretary and shall adopt such rules governing the conduct of their business as they consider necessary or appropriate. Five trustees shall constitute a quorum and a simple majority of those trustees present and voting may conduct the business of the fund.

"(c)(1) The trustees shall act on behalf of

all operators with respect to claims filed under this part.

"(2)(A) Except as provided by subparagraph (B), the fund may not participate or intervene as a party to any proceeding held for the purpose of determining claims for benefits under this part.

"(B)(i) If the fund is dissatisfied with any determination of the Secretary with respect to a claim for benefits under this part, the fund may, no later than thirty days after the date of such determination, file with the United States court of appeals for the circuit in which such determination was made a petition for review of such determination. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which he based his determination, as provided in section 2112 of title 28, United States Code.

"(ii) The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive, except that the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary thereupon may make new or modified findings of fact and may modify his previous determination, and shall certify to the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

"(iii) The court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon ceritiorari or certification as provided in section 1254 of title 28, United States Code.

"(iv) Any finding of fact of the Secretary relating to the interpretation of any chest roentgenogram or any other medical evidence which demonstrates the existence of pneumoconiosis or any other disabling respiratory or pulmonary impairment, shall not be subject to review under the provisions of this subparagraph.

"(3) No operator may bring any proceeding, or intervene in any proceeding, held for the purpose of determining claims for benefits under this part.

"(4) It shall be the duty of the trustees to report to the Secretary and to the operators no later than January 1 of each year on the financial condition and the results of the operations of the fund during the preceding fiscal year and on its expected condition during the current and ensuing fiscal year. Such report shall be included in a report to the Congress by the Secretary not later than March 1 of each year on the financial condition and the results of the operations of the fund during the preceding fiscal year and on its expected condition and operations during the current and next ensuing fiscal year. The report of the Secretary shall be printed as a House document of the session of the Congress to which the report is made.

"(5)(A) The trustees shall take control and management of the fund and shall have the authority to hold, sell, buy, exchange, invest, and reinvest the corpus and income of the fund. All premiums paid to the fund under section 424(a)(1) shall be held and administered by the trustees as a single fund, and the trustees shall not be required to segregate and invest separately any part of the fund assets which may be claimed to represent accruals or interests of any individuals. It shall be the duty of the trustees to invest such portion of the assets of the fund as is not required to meet obligations under this part, except that the trustees may not invest any advances made to the fund under section 424(e). The trustees shall make investments under this paragraph in accordance with the provisions of section 404(a)(1)(C) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104 (a)(1)(C)).

"(B) Any profit or return on any investment or reinvestment made by the trustees under subparagraph (A) shall not be considered as income for purposes of Federal or State income taxation.

"(6)(A) Amounts in the fund shall be available for making expenditures to meet obligations of the fund which are incurred under this part, including the expenses of providing medical benefits as required by section 432 of this title, and the operation, maintenance, and staffing of the office of the fund. The trustees may enter into agreements with any self-insured person or any insurance carrier who has incurred obligations with respect to claim under this part before the effective date of this paragraph, under which the fund will assume the obligations of such self-insured person or insurance carrier in return for a payment or payments to the fund in such amounts, and on such terms and conditions as will fully protect the financial interests of the fund.

"(B) Beginning on the effective date of this paragraph, payments shall be made from the fund to meet any obligation incurred by the Secretary with respect to claims under this part before such effective date. The Secretary shall cease to be subject to such obligations on such effective date.

"(7) The trustees shall keep accounts and records of their administration of the fund, which shall include a detailed account of all investments, receipts, and disbursements.

"(8) At no time during the administration of the fund shall the trustees be required to obtain any approval by any court of the United States or by any other court of any act required of them in connection with the performance of their duties or in the performance of any act required of them in the administration of their duties as trustees. The trustees shall have the full authority to exercise their judgment in all matters and at all times without any such approval of such decisions. The trustees may file an application in the United States district court where the fund has its principal office for a judicial declaration concerning their power, authority, or responsibility under this Act (other than the processing and payment of claims). In any such proceeding, only the trustees and the Secretary shall be necessary or indispensable parties, and no other person, whether or not such person has any interest in the fund, shall be entitled to participate in any such proceeding. Any final judgment entered in such proceeding shall be conclusive upon any person or other entity claiming an interest in the fund.

"(9) The trustees may employ such counsel, accountants, agents, and employees as they consider advisable. The trustees may charge the compensation of such persons and any other expenses, including the cost of fidelity bonds and indemnification and fiduciary insurance for trustees and other fund employees, necessary in the administration of the fund, against the fund.

"(10) The trustees shall have the power to execute any instrument which they consider proper in order to carry out the provisions of the fund.

"(11) The trustees may, through any duly authorized person, vote any share of stock which the fund may hold.

"(12) The trustees may employ actuaries to such extent as they consider advisable. No actuary may be employed by the trustees under this paragraph unless such actuary is enrolled under section 3042(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1242(a)).

"(d) Nothing in this Act or in the Black Lung Benefits Reform Act of 1977 shall be construed as exempting the fund, or any of its activities or outlays, from inclusion in the Budget of the United States or from any limitations imposed thereon or as authorizing outlays by the fund or the trustees except to such extent or in such amounts as are provided in advance in appropriation acts.".

(c) Section 424 of the Act (30 U.S.C. 934) is amended to read as follows:

"SEC. 424. (a)(1) 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 a coal mine in such State shall pay premiums into the fund in amounts sufficient to ensure the payment of benefits under this part.

"(2) The initial premium rate of each operator shall be established by the Secretary as a rate per ton of coal mined by such operator. Beginning one year after the date upon which the Secretary establishes initial premium rates, the trustees may modify or adjust the premium rate per ton of coal mined to reflect the experience and expenses of the fund to the extent necessary to permit the trustees to discharge their responsibilities under this Act, except that the Secretary may further modify or adjust the premium rate to ensure that all obligations of the fund will be met. Any premium rate established under this subsection shall be uniform for all mines, mine operators, and amounts of coal mined.

"(3) For purposes of section 162(a) of the Internal Revenue Code of 1954 (relating to trade or business expenses), any premium paid by an operator of a coal mine under paragraph (1) shall be considered to be an ordinary and necessary expense in carrying on the trade or business of such operator.

"(4) For purposes of this subsection—

"(A) the term 'coal' means any material composed predominantly of hydrocarbons in a solid state;

"(B) the term 'ton' means a short ton of two thousand pounds; and

"(C) the amount of coal mined shall be determined at the first point at which such coal is weighed.

"(b) The Secretary shall advise the Secretary of the Treasury of premium rates established under subsection (a)(1). The Secretary of the Treasury shall collect all premiums due and payable by operators under subsection (a)(1), and transmit such premiums to the fund. Collection shall be effected by the Secretary of the Treasury in the same manner as, and together with, quarterly payroll reports of employers. In order to ensure the payment of premiums of all operators, the Secretary, after consultation with the Secretary of the Interior, shall certify, not less than annually, the names of all operators subject to this Act.

"(c)(1) In any case in which an operator fails or refuses to pay any premiums required to be paid under subsection (a)(1), the trustees of the fund shall bring a civil action in the appropriate United States district court to require the payment of such premium. In any such action, the court may issue an order requiring the payment of such premiums in the future as well as past due premiums, together with 9 per centum annual interest on all past due premiums.

"(2) An operator who fails or refuses to pay any premium required to be paid under subsection (a)(1) may be assessed a civil penalty by the Secretary of the Treasury in such amount as such Secretary may prescribe, but not in excess of an amount equal to the premium the operator failed or refused to pay. Such penalty shall be in addition to any other liability of the operator under this Act. Penalties assessed under this paragraph may be recovered in a civil action brought by such Secretary and penalties so recovered shall be deposited in the fund.

"(d) The Secretary shall be required to make expenditures under this part only for

the purpose of carrying out his obligation to administer this part. All other expenses incurred under this part shall be borne by the fund, and if borne by the Secretary, shall be reimbursed by the fund to the Secretary.

"(e)(1) There are hereby authorized to be appropriated to the fund such sums as may be necessary to provide the fund with amounts equal to 50 per centum of the amount which the Secretary estimates is necessary for the payment of benefits under this part during the first twelve-month period after the effective date of this section. Any amounts appropriated under this paragraph may be used only for the payment of benefits under this part.

"(2)(A) Sums authorized to be appropriated by paragraph (1) shall be repayable advances to the fund.

"(B) Such advances shall be repaid with interest into the general fund of the Treasury no later than five years after the first appropriation made under paragraph (1).

"(3) Interest on such advances shall be at a rate determined by the Secretary of the Treasury taking into consideration the current average yield during the month preceeding the date of the advance involved, on marketable interest-bearing obligations of the United States of comparable maturities then forming a part of the public debt rounded to the nearest one-eighth of 1 per centum.

"(f)(1) During any period in which section 422 of this title is applicable with respect to a coal mine, an operator of such mine who, after the date of the enactment of this title, acquired such mine or substantially all of the assets thereof from a person (hereinafter in this paragraph referred to 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 this section and section 423 of this title, secure the payment of all benefits for which the prior operator would have been liable under section 422 of this title with respect to miners previously employed in such mine if the acquisition had not occurred and the previous operator has continued to operate such mine.

"(2) Nothing in this subsection shall relieve any prior operator or any liability under section 422 of this title.

"(g)(1) The fund shall make an annual assessment against any operator who is liable for the payment of benefits under section 422 of this title. Such assessment against any operator of a coal mine shall be in an amount equal to the amount of benefits for which such operator is liable under section 422 of this title with respect to death or total disability due to pneumoconiosis arising out of employment in such mine, or with respect to entitlements established in paragraph (5) or paragraph (6) of section 411(c) of this title.

"(2) Any operator against whom an assessment is made under paragraph (1) shall pay the amount involved in such assessment into the fund no later than thirty days after receiving notice of such assessment.

(d) Section 421(b)(2)(E) of the Act (30 U.S.C. 931(b)(2)(E)) is amended by striking out "section 422(1)" and inserting in lieu thereof "section 424(f)".

CLINICAL FACILITIES

SEC. 10. The first sentence of section 427 (c) of the Act (30 U.S.C. 937(c)) is amended by striking out "of the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975" and inserting in lieu thereof "fiscal year".

MEDICAL FACILITIES

SEC. 11. (a) Part C of title IV of the Act (3 U.S.C. 931 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 432. The provisions of subsections (a), (b), (c), (d) and (g) of section 7 of the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 907 (a), (b), (c), (d), and (g) shall be applicable to persons entitled to benefits under this part on account of total disability or on account of eligibility under paragraph (5) or paragraph (6) of section 411(c), except that references in such section to the employer shall be considered to refer to the trustee of the fund.".

(b) The Secretary of Health, Education, and Welfare shall notify each miner receiving benefits under part B of the Black Lung Benefits Act on account of his total disability who the Secretary has reason to believe became eligible for medical services and supplies on January 1, 1974, of his possible eligibility for such benefits. Where the Secretary so notifies a miner, the period during which he may file a claim for medical services and supplies under part C of such Act shall not terminate before six months after such notification was made.

TRANSITIONAL PROVISIONS

SEC. 12. (a) The Secretary of Health, Education, and Welfare, and the Secretary of Labor shall disseminate to interested persons and groups the changes in the Black Lung Benefits Act made by this Act. Each such Secretary shall undertake a program to give individual notice to individuals who they believe are likely to have become eligible for benefits by reason of such changes.

(b)(1) The Secretary of Health, Education, and Welfare (with respect to part B of the Black Lung Benefits Act) shall review each claim which has been denied, and each claim which is pending, under such part, taking into account the amendments made to such part by this Act, and with respect to claims which have been denied taking into account the possibility of error or inappropriate denial of benefits in the initial processing of such claim. The Secretary shall approve any such claim forthwith if the provisions of such part, as so amended, require such approval or if in the initial processing of a denied claim there was error or inappropriate denial of benefits to such claimant.

(2) The Secretary of Labor (with respect to part C of the Black Lung Benefits Act) shall review each claim which has been denied, and each claim which is pending, under such part, taking into account the amendments made to such part by this Act, and with respect to claims which have been denied taking into account the possibility of error or inappropriate denial of benefits in the initial processing of such claims. The Secretary shall approve any such claim forthwith if the provisions of such part, as so amended, require such approval or if in the initial processing of a denied claim there was error or inappropriate denial of benefits to such claimant.

(3) Each Secretary, in undertaking the review required by paragrraphs (1) and (2), shall not require the resubmission of any claim which is the subject of any such review.

SHORT TITLE FOR ACT

SEC. 13. Section 401 of the Act (30 U.S.C. 901) is amended by inserting "(a)" immediately after "SEC. 401," and by adding at the end thereof the following new subsection:

"(b) This title may be cited as the 'Black Lung Benefits Act'.".

MINE ACCIDENT WIDOWS

SEC. 14. (a) If a miner was employed for seventeen years or more in one or more underground coal mines, and died as a result of an accident in any such coal mine which occured on or before June 30, 1971, any eligible survivor of such miner shall be entitled to the payment of benefit under part B of the Black Lung Benefits Act.

(b) For purposes of this section, benefit payments to a widow, child, parent, brother, or sister of any miner to whom subsection (a) applies shall be reduced, on a monthly or other appropriate basis, by an amount equal to any payment received by such widow, child, parent, brother, or sister under the workmen's compensation, unemployment compensation, or disability laws of the miner's State.

(c) The Secretary of Labor shall be responsible for the administration of the provisions of this section.

ADMINISTRATION OF BLACK LUNG BENEFITS ACTS

SEC. 15. (a)(1) The Division of Coal Mine Workers' Compensation is hereby transferred to the Office of the Secretary of Labor.

(2) The Secretary shall act through the Division in carrying out the provisions of the Black Lung Benefits Act.

(b)(1) The Secretary, in carrying out the Black Lung Benefits Act, shall establish and operate such field offices as may be necessary to assist miners and other persons with respect to the filing of claims under such Act. Such field offices shall be established and operated in a manner which makes them reasonably accessible to such miners and other persons.

(2) The Secretary, in connection with the establishment and operation of field offices under paragraph (1), may enter into arrangements with other Federal departments and agencies, and with State agencies, for the use of existing facilities operated by such departments and agencies.

(c) For purposes of this section—

(1) the term "Division" means the Division of Coal Mine Workers' Compensation established in the Office of Workers' Compensation Programs by the Assistant Secretary of Labor for Employment Standards under the Secretary's Order No. 13-71 (36 Federal Register 8755); and

(4) the term "Secretary" means the Secretary of Labor.

EFFECTIVE DATES

SEC. 16. (a) This Act shall take effect on the date of its enactment, except that—

(1) no authority to make payments under this Act shall become effective before October 1, 1977;

(2) the amendments made by sections 2, 4, 5, and 8 shall be effective on and after December 30, 1969, except that claims approved solely because of the amendments made by such sections which were filed before the date of the enactment of this Act, shall be awarded benefits only for the period beginning on such date of enactment;

(3) the amendments made by section 6 shall not require the payment of benefits for any period before the date of the enactment of this Act; and

(4) the amendments made by section 9 shall take effect on October 1, 1977, except that (A) the Secretary of Labor shall establish initial premium rates for operators under section 424(a)(1) of the Black Lung Benefits Act, as added by section 9(c) of this Act, no later than October 1, 1977, and (B) such Secretary shall make the estimate required by section 424(e)(1) of such Act, as added by section 9(c) of this Act, as soon as practible after the date of the enactment of this Act.

(b) In the event that the payment of benefits to miners and to eligible survivors of miners cannot be made from the Black Lung Disability Insurance Fund established by section 423(a) of the Act, as added by section 9(b) of this Act, the provisions of the Act relating to the payment of benefits to miners and to eligible survivors of miners, as in effect immediately before October 1, 1977, shall remain in force as rules and regulations of the Secretary of Labor, until such provisions are revoked, amended, or revised by law. Such Secretary shall make benefit payments to miners and to eligible survivors of miner or survivor before October 1, 1977.

(c) No benefits payable because of the enactment of this Act shall be paid to any miner or survivor before October 1, 1977.

WHITE LUNG STUDY

SEC. 17. (a) The Committee on Education and Labor of the House of Representatives is authorized and directed to conduct a study of white lung disease, also known as silicosis or talcosis, including, but not limited to, the extent and severity of the disease in the United States; the relationship, if any, between white lung disease and black lung disease; the adequacy of current workman compensation programs in compensating victims of white lung disease; a review of current mine safety and Occupational Safety and Health regulations relating to talc mining to determine whether such regulations are adequate to protect the safety and health of talc miners; and the need, if any, for Federal legislation to protect the safety and health of talc miners or to provide additional compensation for the victims of white lung.

(b) The Committee shall report its findings and any legislative recommendations to the Congress not later than one year after enactment of this Act.

Mr. THOMPSON (during the reading). Mr. Chairman, I ask unanimous consent that the amendment in the nature of a substitute be considered as read, printed in the RECORD, and open to amendment at any point. It was printed in the RECORD on July 25.

The CHAIRMAN. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

Mr. THOMPSON. Mr. Chairman, I ask unanimous consent that I may proceed for 5 additional minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

(Mr. THOMPSON asked and was given permission to revise and extend his remarks.)

Mr. THOMPSON. Mr. Chairman, I have an amendment in the nature of a substitute. The amendment together with a brief statement was printed in the CONGRESSIONAL RECORD on July 25.

I talked to JOHNNY DENT in the hospital on Tuesday and this substitute has his full support. JOHNNY DENT is the father of the black lung program and only the fact that he is recuperating from a serious operation keeps him away today. It must be a serious disappointment to him that he cannot be here to manage this essential amendment to the black lung program.

I want to call the attention of all Members to the letter from the Department of Labor which gives the administration's official position, which is to oppose the Erlenborn substitute and to support the Thompson-Andrews substitute.

My substitute is identical to the committee bill with these five major changes:

First, in view of the widespread concern and apparent disagreement over that provision of the committee bill which would have created a black lung entitlement based on 30 years of service in a bituminous mine and 25 years of service in an anthracite mine——

Second, the committee bill is subject to the interpretation that a miner can receive black lung benefits while employed——

To completely eliminate the possiiblity of this, my substitute contains an absolute bar to receiving any black lung benefits as a result of the enactment of this bill while the miner is employed.

Third, much concern has been expressed about the committee bill in that it denies the Department of Health, Education, and Welfare the right to appeal from a favorable decision for a black lung claimant but permits at the same time such an appeal by the claimant when he has been denied by an administrative judge——

My substitute eliminates this provision so that an appeal may be taken by either party.

Fourth, this amendment responds to concerns expressed by the chairman of the Appropriations Committee, the gentleman from Texas (Mr. MAHON), that benefits payable from the trust fund were not subject to prior appropriations.

A provision in my substitute makes them so subject the precise language has been worked out with the Appropriations Committee.

Fifth, the final amendment responds to concerns expressed by the chairman from the House Budget Committee, the gentleman from Connecticut (Mr. GIAIMO).

A provision in my substitute brings the bill in technical compliance with section 401(b) of the Congressional Budget Act and brings the bill's cost within the ceiling imposed by the first concurrent resolution of the budget for fiscal year 1978 by prohibiting the retroactive payment of black lung benefits generated as a result of this legislation.

Mr. Chairman, the parliamentary situation is such that Members have a simple choice. They can support my substitute and make needed improvements in the program and at the same time transfer the residual cost of the part C program from the Government to the industry.

The other choice is to support the substitute of the gentleman from Illinois which terminates the program and will leave miners afflicted with black lung and widows of those who are killed by this disease to the tender mercies of State workmen's compensation laws.

I do not need to remind Members of this body that it was because these laws were so inadequate that we enacted the black lung program in the first place. At the present time no single State law meets the standards of adequacy which are prescribed in the Black Lung Act.

I trust that Members will remember that the coal on which we have relied for so large a part of our energy needs from World War II to the present was produced at the cost of crippling lung disease for those who produced it, and they deserve the fair treatment that my substitute will give them.

AMENDMENT OFFERED BY MR. ERLENBORN AS A SUBSTITUTE FOR THE AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. THOMPSON

Mr. ERLENBORN. Mr. Chairman, I offer an amendment as a substitute for the amendment in the nature of a substitute.

The Clerk read as follows:

Amendment offered by Mr. ERLENBORN as a substitute for the amendment in the nature of a substitute offered by Mr. THOMPSON: In lieu of the matter proposed to be inserted by the amendment in the nature of a substitute, insert the following:

That this Act may be cited as the "Black Lung Benefits Amendments Act of 1977".

SEC. 2. Part C of title IV of the Federal Coal Mine Health and Safety Act of 1969 is amended by striking out sections 421 through 425 and inserting in lieu thereof the following:

"SEC. 421. Claims for benefits in respect of death or total disability of any miner due to pneumoconiosis filed during the period which begins on the effective date of the Black Lung Benefits Amendments Act of 1977 and ends one year thereafter shall be paid by the Secretary in accordance with the provisions of this part. After the end of such period, claims for occupational disease or death of a coal miner may be treated in a manner similar to other claims under applicable State workers' compensation laws.

"SEC. 422. (a) Benefits shall be paid by the Secretary under this part to the categories of persons entitled to benefits under section 412(a) of this title during the same period for which those categories of persons are entitled to receive those benefits in accordance with regulations of the Secretary.

"(b) The Secretary shall by regulation prescribe standards, which may include appropriate presumptions, for determining whether a miner is totally disabled due to pneumoconiosis, whether the deatth of a miner was due to pneumoconiosis, and whether pneumoconiosis arose out of employment in a coal mine or mines.

"(c) In prescribing such standards under subsection (b), the Secretary shall not apply the interim standards prescribed under section 411(b) of this title to determine whether a miner is totally disabled due to pneumoconiosis or whether the death of a miner was due to pneumoconiosis for purposes of payments of benefits.

"SEC. 423. Benefits payable under this part shall be paid on a monthly basis and shall be equal to the amounts specified in section 412(a) of this title.

"SEC. 424. No payment of benefits shall be required under this part except pursuant to a claim filed therefor in such manner, in such form, and containing such information as the Secretary shall by regulation prescribe.

"SEC. 425. The amount of benefits payable under this part 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.".

SEC. 3. The amendment made by section 2 shall take effect with respect to claims for benefits under part C of title IV of the Federal Coal Mine Health and Safety Act of 1969 in respect of death or total disability of any miner due to pneumoconiosis filed during the period which begins on the effective date of this Act and ends one year thereafter, except that claims filed under part C as it existed before the effective date of this Act shall be paid in accordance with such part C, as amended by section 2, for periods beginning on or after the effective date of this Act.

SEC. 4. The provisions of this Act shall take effect thirty days after the date of enactment of this Act, or October 1, 1977, whichever is later.

Mr. ERLENBORN (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Illinois?

There was no objection.

(Mr. ERLENBORN asked and was given permission to revise and extend his remarks.)

claim will be able to file that claim with the Social Security Administration and have his claim treated under the liberal criteria.

Then at the end of the year the Federal program will terminate. At the end of the year this program will then be turned over to the States where workers' compensation covers these workers.

By the way, workers' compensation gives more generous benefits than does the black lung program. I will not go into great detail, but we can show here that in the coal-mining States which have workers' compensation programs the benefits are more liberal. In Pennsylvania the maximum weekly payment is $199; in West Virginia it is $208; in Kentucky, $104; and in Virginia, $175, as compared to current Federal black lung benefits of $47.40 for a claimant, $71.10 for a claimant with one dependent, and for a claimant with three dependents, $94.80. Every one of the State workers' compensation programs in force in the coal-mining States gives greater maximum weekly benefits, based, by the way, partially at least on the earnings of the coal miners, which are quite high—and, therefore, I think they would all qualify for the maximum. Every one of them give greater weekly benefits than they would get under the Federal black lung program.

So the substitute I am offering will deliver on the promise that was made. It will see that this does become a one-shot program to pick up old claims, it will be generous in the treatment of those claims and then it will see that these workers are treated just as other workers in business and industry are treated. They will have the same right to file, this will require the same quantum of proof, and the same benefits will follow.

I think this substitute does fairness and equity. If we do not adopt the substitute I am offering, we will have a big workers' compensation program for one specific disease at the Federal level, and that will lead, of course, to other diseases. It might cover those suffering from such diseases as byssinosis, for instance, because they may ask in fairness and equity that we create other Federal programs for white lung disease, for byssinosis, for asbestosis for asbestos workers, and for other diseases and injuries. I suppose that might go on until finally we may have a Federal workers' compensation program fragmented to the point where we would have separate funds for each industry. We might have something like a broken right finger injury, I suppose, in time. I do not think we want to see that happen. I do not think we want the kind of precedent this bill will set.

Mr. Chairman, I do hope that the Members will support my substitute. If they do, we will see that the promises made by the gentleman from Kentucky (Mr. PERKINS) and the gentleman from California (Mr. PHILLIP BURTON) are kept, and we will see that we do deal with all sections of business and industry in fairness and equity.

Mr. THOMPSON. Mr. Chairman, will the gentleman yield?

Mr. ERLENBORN. I would be happy to yield to the gentleman from New Jersey.

Mr. THOMPSON. Mr. Chairman, I thank the gentleman for yielding.

The gentleman from Illinois (Mr. ERLENBORN) has made reference to the original sponsors of the committee bill. I was not included among them.

After reading the committee-passed bill very seriously, the substitute which I have offered was developed to answer some of the criticisms which the gentleman has made. It is my considered judgment, with all due respect to him, that it is much more carefully worked out and much more constructive than is his substitute, which, in effect, would dump this problem into the hands of the States, not one of which can meet the criteria set forth in the existing law.

The CHAIRMAN. The time of the gentleman from Illinois (Mr. ERLENBORN) has again expired.

(By unanimous consent, Mr. ERLENBORN was allowed to proceed for 2 additional minutes.)

Mr. ERLENBORN. Mr. Chairman, I would just like to answer the gentleman's claim in that respect. He is right. The Federal program has certain presumptions in it that are not found in any State workers' compensation program; and the Department of Labor has not certified that any one of the State programs can qualify as being as liberal as our Federal program, and they never will. We just cannot afford to liberalize State workers' compensation programs to the point that we have already liberalized the black lung program. However, I see no reason that black lung victims should be treated any differently. I do not see why they should have presumptions not available to others.

Mr. THOMPSON. Mr. Chairman, will the gentleman yield further?

Mr. ERLENBORN. I yield to the gentleman from New Jersey for a very brief time.

Mr. THOMPSON. Mr. Chairman, by the gentleman's own admission his amendment would dump this program back into the hands of the States. None of the States will ever enact programs.

Mr. ERLENBORN. Mr. Chairman, I do not yield to the gentleman from New Jersey any further.

Mr. THOMPSON. In other words, the gentleman is saying that the miners will suffer forever for lack of State programs.

Mr. ERLENBORN. They already do have programs that cover pneumoconiosis. They just do not have presumptions that people have pneumoconiosis without any medical proof, and that sort of thing they are not about to adopt.

Mr. Chairman, the substitute the gentleman has offered was offered for the reason that only one member of the Committee on Rules was willing to support the committee-reported bill. We had three hearings before the Committee on Rules. The Committee on Rules almost killed this legislation, and it was only after the gentlemen from Kentucky and New Jersey offered to take out the most egregiously bad parts of the bill, the entitlement provision and the prohibition against the coal mine operators having the right of appeal, which was obviously unconstitutional, that the substitute is out here on the floor, by virtue of action of the Committee on Rules, or all of the other bad provisions would have been here. It is only because of the substitute that the Committee on Rules saw fit to send what is still a bad bill out on the floor.

Mr. FLOOD. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, here we are again considering the black lung bill.

This is not my first appearance on this bill, and I see sitting at this table and over here several Members who know that well.

At other times we have been through this matter and the Members know how and why. I stood here in this well 100 times and talked to the Members about black lung.

Mr. Chairman, I come from the hard coal fields, which produce anthracite. When anyone talks about coal down here in Washington, many people cannot spell "anthracite." Some of my friends realize that very well. It is all soft coal.

When we talk about the elements of black lung disease, hard coal, in itself, defines the danger and the evils of those black particles of dust that go into the lungs.

Mr. Chairman, there is in this bill a provision with respect to 25 years. The miner works in the mines for 25 years and he has black lung, without a doctor's examination or anything else.

Mr. Chairman, some Members should visit my district, one of the hard coal fields, in which a man has worked in the hard coal mines for 25 years, day and night.

Let me take you by his kitchen window some summer when the window is up and there you will hear him breathing in and out. You hear him gasping for breath as he is sitting by an open kitchen window.

You want a doctor? You want nine X-rays? You want 2 years of study for that? That is black lung.

Well, we have been all through that. But, of course, there is a difference this time and that is that I am standing here also without my dear friend and colleague the gentleman from Pennsylvania, JOHN DENT. All of you are aware that JOHN DENT authored the original black lung bill back in 1969. He and the gentleman from Kentucky (Mr. PERKINS) the chairman of the full committee, and I and others worked to see the enactment of that legislation into law in 1969. Now, as amended by this, we have the Federal Coal Mine Health and Safety Act. That is the official title.

We used to talk about miner's asthma. In the hard coal country it is asthma, in that small mining portion of Pennsylvania, but black lung covers some 15 States so we now talk about black lung disease. We never talked about black lung disease until we passed this law, we merely talked about asthma.

Well, as amended in 1972, this remains the premier piece of workmen's compensation legislation passed by the Congress in the history of our Nation. So we owe JOHN DENT a debt of gratitude, as does the rest of the country.

Well, as good as this law is, the Committee on Education and Labor has done a splendid job in trying to perfect it fur-

claim will be able to file that claim with the Social Security Administration and have his claim treated under the liberal criteria.

Then at the end of the year the Federal program will terminate. At the end of the year this program will then be turned over to the States where workers' compensation covers these workers.

By the way, workers' compensation gives more generous benefits than does the black lung program. I will not go into great detail, but we can show here that in the coal-mining States which have workers' compensation programs the benefits are more liberal. In Pennsylvania the maximum weekly payment is $199; in West Virginia it is $208; in Kentucky, $104; and in Virginia, $175, as compared to current Federal black lung benefits of $47.40 for a claimant, $71.10 for a claimant with one dependent, and for a claimant with three dependents, $94.80. Every one of the State workers' compensation programs in force in the coal-mining States gives greater maximum weekly benefits, based, by the way, partially at least on the earnings of the coal miners, which are quite high—and, therefore, I think they would all qualify for the maximum. Every one of them give greater weekly benefits than they would get under the Federal black lung program.

So the substitute I am offering will deliver on the promise that was made. It will see that this does become a one-shot program to pick up old claims, it will be generous in the treatment of those claims and then it will see that these workers are treated just as other workers in business and industry are treated. They will have the same right to file, this will require the same quantum of proof, and the same benefits will follow.

I think this substitute does fairness and equity. If we do not adopt the substitute I am offering, we will have a big workers' compensation program for one specific disease at the Federal level, and that will lead, of course, to other diseases. It might cover those suffering from such diseases as byssinosis, for instance, because they may ask in fairness and equity that we create other Federal programs for white lung disease, for byssinosis, for asbestosis for asbestos workers, and for other diseases and injuries. I suppose that might go on until finally we may have a Federal workers' compensation program fragmented to the point where we would have separate funds for each industry. We might have something like a broken right finger injury, I suppose, in time. I do not think we want to see that happen. I do not think we want the kind of precedent this bill will set.

Mr. Chairman, I do hope that the Members will support my substitute. If they do, we will see that the promises made by the gentleman from Kentucky (Mr. PERKINS) and the gentleman from California (Mr. PHILLIP BURTON) are kept, and we will see that we do deal with all sections of business and industry in fairness and equity.

Mr. THOMPSON. Mr. Chairman, will the gentleman yield?

Mr. ERLENBORN. I would be happy to yield to the gentleman from New Jersey.

Mr. THOMPSON. Mr. Chairman, I thank the gentleman for yielding.

The gentleman from Illinois (Mr. ERLENBORN) has made reference to the original sponsors of the committee bill. I was not included among them.

After reading the committee-passed bill very seriously, the substitute which I have offered was developed to answer some of the criticisms which the gentleman has made. It is my considered judgment, with all due respect to him, that it is much more carefully worked out and much more constructive than is his substitute, which, in effect, would dump this problem into the hands of the States, not one of which can meet the criteria set forth in the existing law.

The CHAIRMAN. The time of the gentleman from Illinois (Mr. ERLENBORN) has again expired.

(By unanimous consent, Mr. ERLENBORN was allowed to proceed for 2 additional minutes.)

Mr. ERLENBORN. Mr. Chairman, I would just like to answer the gentleman's claim in that respect. He is right. The Federal program has certain presumptions in it that are not found in any State workers' compensation program; and the Department of Labor has not certified that any one of the State programs can qualify as being as liberal as our Federal program, and they never will. We just cannot afford to liberalize State workers' compensation programs to the point that we have already liberalized the black lung program. However, I see no reason that black lung victims should be treated any differently. I do not see why they should have presumptions not available to others.

Mr. THOMPSON. Mr. Chairman, will the gentleman yield further?

Mr. ERLENBORN. I yield to the gentleman from New Jersey for a very brief time.

Mr. THOMPSON. Mr. Chairman, by the gentleman's own admission his amendment would dump this program back into the hands of the States. None of the States will ever enact programs.

Mr. ERLENBORN. Mr. Chairman, I do not yield to the gentleman from New Jersey any further.

Mr. THOMPSON. In other words, the gentleman is saying that the miners will suffer forever for lack of State programs.

Mr. ERLENBORN. They already do have programs that cover pneumoconiosis. They just do not have presumptions that people have pneumoconiosis without any medical proof, and that sort of thing they are not about to adopt.

Mr. Chairman, the substitute the gentleman has offered was offered for the reason that only one member of the Committee on Rules was willing to support the committee-reported bill. We had three hearings before the Committee on Rules. The Committee on Rules almost killed this legislation, and it was only after the gentlemen from Kentucky and New Jersey offered to take out the most egregiously bad parts of the bill, the entitlement provision and the prohibition against the coal mine operators having the right of appeal, which was obviously unconstitutional, that the substitute is out here on the floor, by virtue of action of the Committee on Rules, or all of the other bad provisions would have been here. It is only because of the substitute that the Committee on Rules saw fit to send what is still a bad bill out on the floor.

Mr. FLOOD. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, here we are again considering the black lung bill.

This is not my first appearance on this bill, and I see sitting at this table and over here several Members who know that well.

At other times we have been through this matter and the Members know how and why. I stood here in this well 100 times and talked to the Members about black lung.

Mr. Chairman, I come from the hard coal fields, which produce anthracite. When anyone talks about coal down here in Washington, many people cannot spell "anthracite." Some of my friends realize that very well. It is all soft coal.

When we talk about the elements of black lung disease, hard coal, in itself, defines the danger and the evils of those black particles of dust that go into the lungs.

Mr. Chairman, there is in this bill a provision with respect to 25 years. The miner works in the mines for 25 years and he has black lung, without a doctor's examination or anything else.

Mr. Chairman, some Members should visit my district, one of the hard coal fields, in which a man has worked in the hard coal mines for 25 years, day and night.

Let me take you by his kitchen window some summer when the window is up and there you will hear him breathing in and out. You hear him gasping for breath as he is sitting by an open kitchen window.

You want a doctor? You want nine X-rays? You want 2 years of study for that? That is black lung.

Well, we have been all through that. But, of course, there is a difference this time and that is that I am standing here also without my dear friend and colleague the gentleman from Pennsylvania, JOHN DENT. All of you are aware that JOHN DENT authored the original black lung bill back in 1969. He and the gentleman from Kentucky (Mr. PERKINS) the chairman of the full committee, and I and others worked to see the enactment of that legislation into law in 1969. Now, as amended by this, we have the Federal Coal Mine Health and Safety Act. That is the official title.

We used to talk about miner's asthma. In the hard coal country it is asthma, in that small mining portion of Pennsylvania, but black lung covers some 15 States so we now talk about black lung disease. We never talked about black lung disease until we passed this law, we merely talked about asthma.

Well, as amended in 1972, this remains the premier piece of workmen's compensation legislation passed by the Congress in the history of our Nation. So we owe JOHN DENT a debt of gratitude, as does the rest of the country.

Well, as good as this law is, the Committee on Education and Labor has done a splendid job in trying to perfect it fur-

ther. I could not have done better myself. That is indeed praise from Caesar, on black lung. But, remember this, and do not lose track of this one, the number one domestic problem facing us in the United States for the next 25 years, and beyond, is energy. The solution to this problem, and you have heard this time and time again, is coal, black gold.

On that note, you can have all of the recoverable reserves of coal in the world and if you do not have the miners to get it out of the ground, you might as well forget about it.

Last week, Jack O'Leary, just nominated to be the Deputy Secretary of Energy in the Department of Energy, traveled with me last Friday to the heart of the anthracite coal fields in Hazleton, Pa., up near Wilkes-Barre. There he addressed a special group of industrial, union people, citizen people, quite an extensive group of people, known as the Anthracite Task Force, which is a task force that was set up at our request, to those in the Department of Energy, and his message, to sum it up, without more coal in this country, this country will suffer an economic catastrophe to surpass even the Great Depression. How right he is. Remember this, in the coal fields I represent, we have anthracite coal. This is hard coal, not soft coal, and the dust particles are hard.

The CHAIRMAN. The time of the gentleman has expired.

(On request of Mr. THOMPSON, and by unanimous consent, Mr. FLOOD was allowed to proceed for 3 additional minutes.)

Mr. FLOOD. My miners worked in the days before the safety requirments of the Coal Mine Health and Safety Act of 1969, before the dust and the ventilation standards. They fed their families by inhaling these hard dust anthracite particles. You could not believe it unless you were there to see them. This is no joke. You should have heard them, you should have seen them, I wish you could have taken a look at them—doctors, X-rays? Nonsense. To demand of these families that they send their sons into the mines, like their fathers before them, without fairly administering the existing black lung compensation program, would not only be a terrible injustice, but would damage our efforts to get more miners working and get more coal from the earth.

Let me make this clear: I am for the committee bill. I worked for the committee bill. I know the importance of those sections of the committee bill which are not in the Thompson substitute. I am speaking of the entitlement provisions—30 years for bituminous coal and 25 years for anthracite coal—the ban on Federal appeals—and the other sections which I would have preferred. I have gone through this before on the black lung cases by the thousands that are not being handled by social security, or being labeled on appeal, for years, waiting 3 or 4 years to have their applications handled, and they have not been approached.

But, we all must remember that legislation is the art of compromise. Let me tell you something about the high points of the Thompson substitute. This bill would transfer the financial liability to the coal companies. If you are up in the coalfields, you know what I mean.

This bill would guarantee a reexamination of all past claims denied by the Department of Labor and the Social Security Administration. For heaven's sake, if you know the facts and the statistics on that, what could be fairer than that?

This bill would prevent six different opinions from being rendered by six different doctors on the X-ray. You do not need X-rays. Half of those old doctors did not have X-rays. They did not even keep statistics on how much food they gave to their horses driving their carts.

Most importantly, this bill would mandate that the old claims, those prior to March 30, 1973, be examined under the standards set out by the Department of Health, Education, and Welfare as originally intended by the Congress. As they would say, what could be fairer than that?

Mr. Chairman, the Erlenborn substitute, which has been circulating around these Halls now for some time, is a thin and to kill this black lung program. Do not kid the troops. You know what I mean.

The CHAIRMAN. The time of the gentleman has expired.

(At the request of Mr. SARASIN, and by unanimous consent, Mr. FLOOD was allowed to proceed for 2 additional minutes.)

Mr. SARASIN. Mr. Chairman, will the gentleman yield?

Mr. FLOOD. Yes, indeed.

Mr. SARASIN. I thank the gentleman for yielding.

I would ask the gentleman from Pennsylvania if he is aware—and I am sure that he is—that the coal workers' pneumoconiosis exists in two forms: simple and complicated?

Mr. FLOOD. Pneumoconiosis? We never heard of the word before we got here in Congress. Miners' lung and black lung, but not pneumoconiosis.

Mr. SARASIN. The gentleman is aware that pneumoconiosis is a statutory term and not a medical term?

Mr. FLOOD. It is not a barroom term in the soft coalfields.

Mr. SARASIN. Would the gentleman agree that the disease is simple or complicated? Will the gentleman agree that the disease is defined as being simple or complicated?

Mr. FLOOD. To me it is a very simple thing. You can make it complicated by the Social Security Administration.

Mr. SARASIN. Mr. Chairman, let the record show that the gentleman was unresponsive to the questions.

The CHAIRMAN. The time of the gentleman has expired.

(At the request of Mr. MCDADE, and by unanimous consent, Mr. FLOOD was allowed to proceed for 2 additional minutes.)

Mr. MCDADE. Mr. Chairman, will the gentleman yield?

Mr. FLOOD. I yield to the gentleman from Pennsylvania.

Mr. MCDADE. I thank the gentleman for yielding.

I want to commend my friend, the gentleman from Pennsylvania, who is from my neighboring congressional district for the statement he has given to the House today and for the tribute he has paid to our colleague, the gentleman from Pennsylvania (Mr. DENT) who did so much to get this program started so many years ago. I could not agree with him more when he says we have been up and down this hill 15 diffiffrent times, and I could not agree with him more when he says the Erlenborn substitute is nothing more than an effort to kill this entire program.

I have the same kind of constituency the gentleman has.

Mr. FLOOD. The gentleman is from Scranton. He was born and raised right in the middle of Scranton.

Mr. MCDADE. Right in the middle of Scranton. I see the same people coming into and going out of my office every day, some of them unable to walk up four steps because of shortness of breath, because they spent 20 years doing what the gentleman says—digging anthracite coal.

If we do not get that coal, as the gentleman has stated, this Nation is doomed on its energy program. The President of the United States wants to triple the production of coal in the United States to try to head off the devastating price runup that the Arabic nations have imposed on us. The only solution we have at hand is our own reserves. The gentleman points out that the way we can do that is to recruit miners. The way we can do that is to make it safe. We have done that in the Federal Mine Safety Act. We have to take care of this dreadful disease, both for the present victims as well as looking down the road.

I concur with everything the gentleman has said.

Mr. FLOOD. I will tell you what the attitude in Washington about coal is. When they came to me about this terrible, terrible national energy problem, they came to me from the Federal Government. They said, "Where is that coal, FLOOD? We have got to have coal to save the Nation."

I said, "What about my railroads? You have taken them." They never thought of that. How are we going to get coal moved—with carrier pigeons? Oh, they never thought about that. They never thought about that. That was the attitude here. We have to change it.

Mr. BUCHANAN. Mr. Chairman, I rise in support of the Thompson-Andrews substitute. I move to strike the requisite number of words.

Mr. Chairman, I cannot hope to match the eloquence of the two distinguished gentlemen from Pennsylvania who preceded me, but I would associate myself with their remarks, with the substance of the case they have made and with their tribute to our distinguished colleague, the gentleman from Pennsylvania, Mr. JOHN DENT.

Mr. Chairman, when the Congress passed the original black lung benefits legislation in 1969, it did so in recogni-

tion of the need for assistance for people working in the most debilitating occupation in the United States. As it was in 1969, mining remains the most dangerous profession in our Nation, not only pertaining to contraction of pneumoconiosis, but also allowing for the high incidence of death due to accidents, fires, cave-ins, slate-falls, and for bodily impairments such as loss of extremities in these accidents. The risk of death for those working in coal mines is twice that of the general population, and is higher than in any other occupational group in the United States.

During my years in the Congress, I have been approached for help by hundreds of men who have worked for decades in coal mines, and who have become sick and disabled with pneumoconiosis. Too many of these have been denied black lung benefits. The reasons given have been varied. They range from an appeal being filed after the deadline, ignorance of the opportunity to receive a hearing, or indeed to even file in the first place, to a "misreading" of X-rays made by private physicians. One particularly heartbreaking situation is when there is no existing medical evidence to prove a valid claim of a deceased miner, and survivors are not allowed to provide as proof affidavits of individuals who worked alongside the deceased miner and who could assert the validity of the claim. This fact, coupled with the dire need of the survivors for assistance, has sometimes led to the actual exhuming of bodies in order to prove disability.

It is a sad fact that of all of the persons who have contacted me since 1973 for assinstance in obtaining black lung benefits, only three have been awarded favorable decisions, and one of these has not yet received any payments.

I believe that this track record is not unique, but is indicative of the problems that miners are still facing throughout our Nation. Every one of us who has had the privilege of representing a coal mining district has witnessed the tragedy of miners who were old and ill, and for whom there was no help prior to passage of the basic black lung legislation. Some of these persons have been helped by the 1972 amendments; there are many who still are unable to receive benefits. I personally have never yet met a miner who has worked in the mines for 25 years who, in my opinion, did not have pneumoconiosis. I believe that it is only equitable that these men, who have worked for so many years in an occupation which is so important to our Nation, especially in light of today's energy problems, should be provided for in their later years.

This bill being considered today is an attempt to provide such benefits. As passed by the House Education and Labor Committee, of which I am a member, it would provide for an automatic entitlement of benefits for all miners who worked in bituminous coal mines for 30 years prior to June 30, 1971, and for all who worked in anthracite coal mines for 25 years prior to that date. There are several reasons why automatic entitlement benefits should be enacted. Under the present law, many find it extremely difficult if not impossible to receive benefits.

The validity of the Department of Health, Education, and Welfare's reliance on X-rays in some of these black lung determinations is questionable. Physicians testifying on this question have stated that though coal dust causes permanent damage to the lungs, it may not show up on X-rays for several years, if at all. One physician noted for his work in the field of radiology indicated that doctors involved in radiology and chest disease may interpret X-rays differently. Radiology is known to be an inexact science, in that it is subject to human interpretation.

This means that first, it is possible and quite probable that many persons with black lung have been denied benefits unfairly. Indeed, due to the number of awarded claims which have been reversed when "reread" by the Government's consulting radiologists, the committee has included in this bill a requirement that the Secretary of Health, Education, and Welfare accept X-rays of good quality submitted by claimants' private physicians, except where a claim has been fraudulently represented. This practice of rereading has done more to destroy the Government's credibility in this program than anything else. Second, if a person's X-rays are read incorrectly, he might have to wait for years to get benefits due to him and he may never get them. He may have to work during this time when he is medically entitled to benefits, and is unable to perform work duties adequately.

A recent black lung study showed that 52-percent of those actively working in coal mines for 11 or more years had X-ray evidence of black lung. The rate for those who have worked in the mines for over 30 years is higher. The establishment of automatic entitlement would provide for a more objective application of this program. It would streamline its administration, thus saving time and money; reduce medical disputes and litigation, such as those involving X-ray readings; and provide benefits more quickly to those in need.

In addition to including an entitlement provision, the committee bill provides that a black lung determination favorable to a claimant would not be subject to review by the Bureau of Hearings and Appeals. At the same time, a claimant's right to appeal a denial is left intact.

This provision was included to reflect the committee's concern over its finding of a very high rate of reversals of favorable decisions by the Bureau. The Subcommittee on Labor Standards received data from the Social Security Administration which substantiates this finding. It indicated that the reversal rate approached 90 percent of all of the reviews completed at that point. While I can understand that the possibility of error in a small percentage of cases, I find it impossible to believe that 90 percent of the decisions made on a lower level could be incorrect. These decisions are made after extensive and, as you all know, extremely time-consuming investigation. At least, I suppose that to be the case. I hope that the long period which lapses between decisions is not wasted, but is spent investigating these claims. If this is true, then the administrative law judges must be wrong in reversing so many cases to thoroughly researched. If it is not true, then we should insure that the Social Security Administration is overhauled and made more competent.

In any event, there is obviously error somewhere. Hence, the committee's contention that it is at the higher level, and the resultant provision of the bill which eliminates the administrative law judge's ability to reverse favorable decisions.

Another serious issue this bill addresses is the employment status of claimants. While the present law implicitly allows that a working miner is eligible to receive benefits, the committee received testimony indicating that many times claims are denied solely on the basis that the claimant was working either at the time of application or at the time the award was granted. As you are aware, these dates could span well over a year's time.

As we all know, mining is not lucrative for the miner. Retirement benefits for many miners are nonexistent and the cost of living has risen greatly over the years. These factors make working full time a necessity for most miners.

If I were to become disabled, I personally would find it difficult to be unemployed either during the period of determination of my claim, or after I began receiving benefits. I believe that miners would find it even more difficult.

Even though mining does not pay well, disability benefits would not begin to compensate the loss of a salaried position in mining. Therefore, I strongly support the committee language which prohibits the denial of a claim solely on the basis of employment as a miner at the time of filing or at death. The provision would bar denial if, First, the location of employment was, after filing, changed to an area with a lower concentration of dust particles; second, the nature of the job was changed to a less rigorous type; and third, the nature of the job was changed so as to result in substantially less pay. I believe this to be an equitable provision.

In correcting inequities found in the present black lung law, the committee felt that some of the changes made by this bill should be retroactive. This would insure an objective application of the new provisions of the law. Persons having 25 or 30 years of service and whose prior applications for benefits were denied could under this bill receive benefits from the time the amendments were passed but could not receive any benefits for the months before the amendments were passed. Workmen's compensation benefits would no longer be offset, but a miner could not recover benefits that have been offset in the past. However, those with favorable hearing decisions which were reversed by the Appeals Council, and certain widows whose claims were denied, because of lack of medical evidence or because the miner was employed when he died would be allowed to receive benefits retroactively.

In my judgment this provision reflects the concern of the committee to insure a fair and equal application of the law for all coal miners and their families.

The provisions which I have mentioned today—automatic entitlement, prohibition of an appeals review in favorable cases, employment status of claimants, and retroactivity of certain provisions—are all provisions of H.R. 4544. I would support H.R. 4544 as reported by the House Education and Labor Committee.

These provisions, however, are the very ones to which many of my colleagues object. Therefore, the Thompson-Andrews substitute amendment is being offered. The Thompson-Andrews substitute bill meets the principle criticisms of the bill raised by those opposed to it, provides a means by which to extend more help to miners and their families, and does seem to be the only vehicle we can use under the circumstances to extend more protection to the many deserving people it will affect. Though I would prefer to do more, it is clear that this is all that can possibly be passed at this point, and I, therefore, support the substitute and urge all of my colleagues to join me in support of this substitute. There is not a congressional district in the United States that does not benefit from the hazards that are undertaken from the risks that are run in the work that is done by the coal miners, no matter whose district it may be. All of the people of the United States benefit from the work of the coal miners and rely upon them to help meet our vital energy needs. Just as we all benefit, whether we have sons, or not, from those who fought for our country in time of war.

I hope that Members of this House will understand the true situation. Those Members who have coal mining areas in their congressional districts know from their own casework the reality and the need of those coal miners who have not been deemed to qualify under the present law.

We are all aware as Members of the House of Representatives that in addition to our legislative responsibilities we do have a certain ombudsman function, and when someone needs help and is upset by the giant bureaucracy of this Federal Government, often that citizen will turn to his Congressman for assistance. And we know from the cases, the heartbreaking cases of individuals, that a need exists for this legislation.

I hope that my colleagues who represent districts which have no coal mines know that this is not a fight just for those of us who do represent districts with mines. It is the fight of all Americans, who all benefit from the work of coal miners. I hope that you will join me in standing up for the rights of these people whose work is too important to all of the people of our great Nation.

Mr. SIMON. Mr. Chairman, I move to strike the requisite number of words. I rise in opposition to the Erlenborn amendment and in support of the Thompson amendment.

I shall be very brief. I concur with the comments of the gentleman from Alabama (Mr. BUCHANAN), who has just spoken. I believe the Erlenborn amendment would be a major step backward.

I would just point out one simple statistic. Thirty-five of the 49 States have a 1-year limitation on applications for workmen's compensation. In fact, if you want to kill black lung benefits, vote for the Erlenborn amendment. If you believe the coal miners deserve some fairness and equity, then we go for the Thompson amendment.

Mr. Chairman, I go with the Thompson amendment with some reluctance, because automatic entitlements are ruled out. I think we could stand up here and support that, and do the right thing, but I also know, as my colleagues on the committee and the chairman of the committee knows, that in order to pass the bill we will have to knock out the automatic enttitlements; so the Thompson compromise, the Thompson amendment, is a step forward. It does not go as far as I would like, but it at least brings some justice to the coal miners of this Nation.

My colleague, the gentleman from Illinois, and I last week were fighting together on the youth differential. I oppose the gentleman now. The gentleman speaks about giving "fairness and equity" to the coal miners. I could not agree more.

The gentleman refers to the National Science Foundation report, a report compiled by a committee, incidentally, which did have industrial representatives, but no representatives from labor on it. Despite that skewed kind of representation, the committee talks in the report about "the largely ignored sufferings of coal miners." In one section of the bill it says as follows:

> The fatal accident rate of coal miners in the U.S. remains approximately 4 to 5 times that of miners in Europe.

We are talking about an industry with the highest mortality and injury rate of any major industry in the United States, and we are talking about an industry where the President and the people in the energy field say that we have to go out and get more coal from these coal mines. When we get that coal we also ought to be getting justice for the coal miners; where those coal miners have deaths from respiratory diseases five times that of the general population. The gentleman from Pennsylvania (Mr. FLOOD) was talking about talking to coal miners. When one talks to a coal miner who has a hard time breathing and has been turned down for black lung benefits, one knows that something is wrong.

We absolutely need the coal, but we should not extricate that coal from the bowels of the Earth at the expense of the health and breath and blood of the coal miners of this Nation. We have to go ahead. We ought to turn down the Erlenborn amendment, accept the Thompson amendment, and then pass the bill and move one step forward for justice for the coal miners of this Nation.

Mr. SARASIN. Mr. Chairman, will the gentleman yield?

Mr. SIMON. I will be pleased to yield to the gentleman from Connecticut.

Mr. SARASIN. I thank the gentleman for yielding to me. I would ask him, referring to the National Academy of Sciences report, objecting to the personnel who made it, I wonder what is wrong with the Department of Geology and Geophysics, Yale University; the U.S. Geological Survey; or the other universities involved here, or what is wrong with the item on health provided by Dr. Kerr, speaking for Mr. Miller of the United Mine Workers? I do not understand why a report which was rather well documented, made by primarily academicians in the field, should somehow be suspect.

Mr. SIMON. First of all, I am aware that Dr. Kerr was permitted to testify, but if the gentleman will take a look at the membership, it is true that there are representatives of some of the universities, but when they have Anaconda, Occidental, and a petroleum consultant from New York—and it is an open secret that the oil companies own a good share of the coal mines of this Nation—it is obviously askew.

Mr. SARASIN. Out of the 15 members, I do not think that a skew of the committee by any stretch of the imagination. It is an objective report. The gentleman does not like the results of it, because it tells him, in fact, that the disease in order to be paid should be a disabling disease, and the gentleman wants to say they should be paid whether they have a disabling disease or not. That is wrong, and a very poor precedent for the future.

Mr. SIMON. Quite the contrary. I am not for paying anyone who does not have a disease.

The CHAIRMAN. The time of the gentleman from Illinois has expired.

(By unanimous consent, Mr. SIMON was allowed to proceed for 1 additional minute.)

Mr. SIMON. If we look very carefully, we can find the facts in this report, but we have to look very carefully and very hard between the lines to find what is, in fact, the condition of the Nation's coal miners.

[Mr. MURPHY of Pennsylvania addressed the Committee. His remarks will appear hereafter in the Extensions of Remarks.]

Mr. SARASIN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I think one thing we have to look at here is something which was pointed out the other day. This particular proposal was described as a model way to handle this problem. I do not think it is. The last gentleman in the well said this burden should be placed on the coal industry. I am not sure it should be. Are we then going to say, in the case of asbestosis, that the burden should be placed on the asbestos industry or the building industry? We are setting an extremely poor precedent for handling of occupational diseases with this bill. Black lung is a mistake, to start with. If we are going to continue this, it is going to come back and haunt us very quickly. The system cannot stand it. We cannot use it for the handling of byssinosis or a model for handling some of the carcinogens which are being discov-

ered today, when the employer or industry, or anyone else, did not know they existed. I think at some point we are going to have to say that this will be a burden to society.

We should handle it on a disability basis but not on the basis of either years in the mines or years in employment. We should in fact say that we will pay people if they have the disease.

This bill is a charade, because one does not have to have the disease. One does not even have to show that he has the disease, and in fact, if there is evidence to show that he does not have it, the Government or the operator is precluded from offering it. That is a little bit ridiculous, it seems to me.

No one worries about tomorrow, it seems, nor about what we are doing today in the coal industry. Most of us care about the coal industry evidently, but yet there are very few Members on the floor listening to this debate.

Where do we go tomorrow if this is going to be the great guide for the handling of occupational diseases? This would be a great disaster.

Mr. Chairman, it is for those reasons that I believe the Erlenborn substitute certainly provides the logic and the reasoning to deal with this problem, and that is why I support it.

Mr. ASHBROOK. Mr. Chairman, will the gentleman yield?

Mr. SARASIN. I yield to the gentleman from Ohio.

Mr. ASHBROOK. Mr. Chairman, I certainly associate myself with the comments of the gentleman from Connecticut (Mr. SARASIN), and I would like to ask one particular question.

After listening to the previous colloquy and the references made to the States' workmen's compensation funds, many Members might be led to believe that the State workmen's compensation funds should not be required to pay benefits. This seems like a rather strange argument. I thought that is what the State workmen's compensation funds were for.

Just over the weekend I was talking to several of my constituents who make very high contributions to the State workmen's compensation funds because they are in industries that traditionally have frequent injuries. Their risk is higher, so their contribution rate is higher.

Are we establishing the idea that State workmen's compensation funds are no longer going to be responsible for injuries or illnesses that take place in their States? The State obviously gets the benefit of the coal mines; it gets the benefit of the industry.

Are they trying to say now that we do not want the workmen's compensation funds to pay benefits for Pennsylvania or West Virginia or Ohio workers who are injured through activities that take place in those States?

The employers pay premiums into the workmen's compensation funds largely for that reason, and now we have arguments here that workmen's compensation funds should not cover this kind of an illness or injury.

I would like to have the comment of my colleague, the gentleman from Connecticut (Mr. SARASIN), who is one of the most learned members of the committee on this particular aspect in the area of workmen's compensation. I thought this was a rather curious idea, the thought that we might no longer make the workmen's compensation funds of the State pay for injuries that occur in that State. That is the usual reason for having a workmen's compensation program.

Mr. SARASIN. Mr. Chairman, that is the system under which we live now, unless we pass some of the legislation we hear about around here that would provide a Federal subsidy for workers in this circumstance.

Mr. ASHBROOK. Yes, that would be a Federal subsidy.

Mr. SARASIN. That would be a disaster, but this does the same thing indirectly, as I said, because with the Thompson substitute we would be placing on the industry that is now responsible for the State workmen's compensation premium the same kind of a burden, except that it would be under a Federal program.

I think that this goes beyond simply the placing of a burden. We are dealing again with a precedent for the State in the handling of occupational disease.

Frankly, I am not convinced that workmen's compensation is the answer, because I personally believe the workmen's compensation system fails when it comes to occupational disease. Perhaps we are getting a little off the track here.

The CHAIRMAN. The time of the gentleman from Connecticut (Mr. SARASIN) has expired.

(By unanimous consent, Mr. SARASIN was allowed to proceed for 1 additional minute.)

Mr. SARASIN. Mr. Chairman, just to complete the thought I was about to make, if one loses the tip of his finger, he know who to blame. He blames that company for which he works. But when we talk about occupational disease, which is a cumulative thing, there may also be present some great contribution to that disease by the individual himself. For example, the coal miner who smokes increases the possibility of respiratory disease, and the asbestos worker who also smokes greatly increases the possibility of occupational disease.

This is a question we have to resolve. Really the point is that usually it would require that the worker have the disease, but under that reasoning this fails, because one does not even have to have the disease to qualify for benefits.

The CHAIRMAN. The time of the gentleman from Connecticut (Mr. SARASIN) has again expired.

(On request of Mr. ASHBROOK and by unanimous consent, Mr. SARASIN was allowed to proceed for 1 additional minute.)

Mr. ASHBROOK. Mr. Chairman, will the gentleman yield further?

Mr. SARASIN. I yield to the gentleman from Ohio.

Mr. ASHBROOK. Mr. Chairman, I would just ask the gentleman from Connecticut (Mr. SARASIN) to conitnue on this same train of thought.

As I understand it, then, what we would have in States where the black lung program applies would b ae system where the coal miners and the employees would still be paying into a State workmen's compensation fund, presumably on a high level and a high-risk basis.

I know that in my own particular small business the premium amounts only to about 50 cents on a hundred dollars as a contribution. There are very few companies in that category, and the one I mentioned previously makes a $1,600 contribution.

I assume that coal mines would be in the category of high contributions, so they are then contributing to the workmen's compensation fund and now we are saying that we should not take the money out of that fund; we will let the Federal Government pay for it. So the State would get the money and yet not pay the benefits.

Mr. SARASIN. And they would be contributing again into another fund to take care of this particular provision for a very, very select category of workers in America, although the rest of the workers are not entitled to this kind of a benefit.

Mr. VOLKMER. Mr. Chairman, will the gentleman yield?

Mr. SARASIN. I yield to the gentleman from Missouri.

Mr. VOLKMER. Mr. Chairman, as I have sat and listened on the floor and tried to understand the legislation, I believe the gentleman just made one of the strongest arguments that I have ever heard against the Erlenborn amendment by any Member.

That basically is that the workmen's compensation laws do not work as far as occupational hazards are concerned.

The CHAIRMAN. The time of the gentleman from Connecticut (Mr. SARASIN) has expired.

(On request of Mr. VOLKMER and by unanimous consent, Mr. SARASIN was allowed to proceed for 2 additional minutes.)

Mr. VOLKMER. Mr. Chairman, will the gentleman yield further?

Mr. SARASIN. I yield to the gentleman from Missouri.

Mr. VOLKMER. To continue, Mr. Chairman, with respect to black lung, we do not have the incidence of a fall; we do not have the incidence of an injury, of a cut of the finger, or of a breaking of an arm. We do not have someone hit over the head. We have something which develops over a considerable period of time.

We do not know when that incident occured, or if it occurred 5 years ago or 10 years ago, and under workmen's compensation it is true that one has to file within a certain period of the incidence and that is by State law 1 or 2 years. Yet for a black lung disease we cannot say when the incedence first came about.

Mr. SARASIN. Mr. Chairman, if the gentleman wil allow me to make my point, we are establishing a very poor precedent for the handling of an occupational disease such as this one. I do feel

that the workmen's compensation system is not able to adapt itself to answer that problem. It is a mistake to assume that it has or it will.

One cannot really relate it. We cannot even relate coal mine pneumoconiosis to a particular period of employment, because it may be that the individual smokes or he does other things in his free time. Therefore, here we are trying to establish a system that ties it in and places the burden on an industry. I am not sure that that is right.

Mr. VOLKMER. Mr. Chairman, if the gentleman will yield further, right now I only have a choice on the next vote as to whether to accept the Erlenborn amendment or not accept it, and I am sure that the Erlenborn amendment is not the answer.

Mr. SARASIN. I cannot accept the Thompson amendment which compounds many of the problems in the original Perkins bill. We have the entitlement question. One is not allowed to show, in fact, that the individual does not have the disease. There is not even a requirement that he must show that he has the disease. He can do it by affidavit. It is set up to cover a particularly narrow class of workers, and that is wrong.

Mr. VOLKMER. I disagree, because I think the Thompson amendment is a lot better than what we have now.

Mr. GIAIMO. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of H.R. 4544, the Black Lung Benefits Reform Act of 1977, with the substitute which will be proposed by my distinguished colleague from New Jersey.

This bill has an estimated cost in fiscal year 1978 of $120 million in budget authority and outlays. This is the exact amount which was assumed for this bill in the conference agreement on the second budget resolution which you approved last week.

The history of this bill demonstrates the commitment of the Education and Labor Committee and its distinguished chairman, the gentleman from Kentucky, to the congressional budget process.

Last year, this House approved a bill (H.R. 10760), liberalizing benefits in the black lung program, which would have cost more than half a billion dollars in the first year. The bill reported out this spring by the Education and Labor Committee was significantly less costly than the bill approved by the House last year; yet the estimated fiscal year 1978 cost of $359 million was significantly above the estimate for the bill included in the first budget resolution. In the allocation of funds after the first budget resolution which the Education and Labor Committee made pursuant to section 302(b) of the Budget Act, that committee allocated itself $122 million for the bill.

The Education and Labor Committee subsequently adopted amendments which substantially reduced the cost of the bill; the Thompson substitute would reduce the cost even more. The result is that the Thompson substitute costs substantially less than the bill which this House approved last year and the bill which the committee reported this spring. I consider the $120 million cost in fiscal year 1978 a sound investment. The reforms included in this bill insure that benefits for most new claimants will be financed by coal mine operators, not by the American taxpayer as has been the case up to now.

I urge support of the Thompson substitute.

Mr. RAHALL. Mr. Chairman, will the gentleman yield?

Mr. GIAIMO. I yield to the gentleman from West Virginia.

Mr. RAHALL. Mr. Chairman, I would like to associate myself with the remarks of the distinguished chairman of the Committee on the Budget, the gentleman from Connecticut (Mr. GIAIMO), and express my strong support for H.R. 4544.

In the long haul, I do believe it will transfer the burden of payments from the Federal taxpayer to the coal industry where these payments of black lung benefits entirely belong.

Furthermore, Mr. Chairman, in order to be fair and equitable toward our Nation's coal miners, we ought to realize the fact that a significant number of them are impaired and are unable to continue employment in the mines. Yet, they are denied Federal black lung benefits.

It has already been well documented that delays exist in the Department of Labor and in the Social Security Administration. With those facts before us and the fact that coal miners face, as a group, eight times more the danger of not surviving each day than any other group amongst our population, that then we ought to reject the Erlenborn substitute.

Mr. Chairman, the need to pass H.R. 4544 is clear. The need for automatic entitlement is clear. The need to pass a black lung reform bill is clear. Here is an example of hundreds of letters relating problems with the present system.

Congressman RAHALL,
Washington, D.C.

DEAR MR. RAHALL: For three years my father, Mr. John Bednar, tried to get his black lung benefits. He had been a coal miner almost forty of his sixty four years. Now, that is a long time to work in the coal mines. And, until just recently, not a very safe place to work, not to mention the hazards of the inhaled coal dust. But when you have seven kids to feed you don't have much choice but to take the most ready available job around, and around here it's the coal mines. He hadn't always worked in the better mines either, sometimes he would come home soaked where he had worked in a mine with water up to has waist or complaining with his back or knees where he had worked in twelve inch coal. So, after working in these horrible mines and often get laid up with a crushed leg for months at a time, he finally got a job at the Keystone mines for about 12 to 15 years. But, in 1973, he had to stop work because of a disability. It was then that he applied for his black lung. For three years he kept writing to all the people he thought would help him get his black lung benefits, Senator Byrd, our congressman, and anyone else he could think of that might be able to help him, except the lawyers. He must have taken fifty tests given by various doctors, including his own doctor, and they all told him that he was fine.

Now, you explain to me how in heaven's name can a man, who has worked inside the coal mines for almost forty years, can have lungs that are "just fine"? Try to tell me that those criminals they call doctors are not paid off by these mining companies to keep their mouth shut, not let the patients see their records and X-rays unless they have a lawyer beside them who is getting 25$ or more of this poor fellows black lung money. Take the word honesty out of the dictionary. There's no such word anymore. It's obsolete.

Well, all the income he had for the last three years was his social security check. And then when my youngest sister turned eighteen, both my mother and my sister was taken off the check (my mother is only 54) in August 1976. That cut his check from a little over $500 to only $350 a month. No miners pension either. They were taking their time about that too. My mother doesn't work outside the home, she's a diabetic. And she doesn't drive either. So, instead of going to college, my sister gets a job to help out, which just about pays for her own keep. So, no black lung, no pension and a social security check just big enough to buy the food and pay the bills, barely.

Then, on January 28, 1977 at 3:30 a.m. in Stevens Clinic Hospital in Welch, without any bedridden illness, my father died. We haven't received the autopsy report yet. It takes a while. But what do you think he died of? Black lung? No, black lung is a slow killer, like cancer. But at 64 years old, God took him. Something killed him. What?

So where are we now? My mother a widow, not in the best of health, very little income. If not for my sister and my second eldest brother, she wouldn't even have a way to get food. So, it's too late, for my father anyway. Black lung benefits won't help him. It will never buy that workshop he wanted in the basement or fix up the house the way he had always dreamed of having it and he will never be around again to enjoy what little happiness it would have brought him.

But it would help my mother. Something besides sympathy. She's had enough sympathy. Sympathy doesn't buy food or pay the electric bill or fix the plumbing. So, if you, Mr. Rahall, think there is still such a word as honesty, how about some help? She needs it.

Yours truly,

LINDA BAILEY.

Mr. SARASIN. Mr. Chairman, if the gentlemen would yield, I would ask the gentleman that when he talks about significant involvement and personal danger, and so forth, let me say that we are talking about paying people for a disease. And I agree, let us pay those who have the disease. But, when the studies indicate that even before the dust standards were applied, that only 14.3 percent of the miners who worked in the anthracite region actually got progressive massive fibrosis, and only 2.1 percent in the Appalachian region incurred progressive massive fibrosis, then I belive that we are paying people for a disease that they do not have. And whereever you place the burden, whether on the taxpayers. on the compensation system, or the operators, I do not question paying the people who have the disease, but certainly only those people who do have it. with all of the areas for gimmicks and the liberality that exists under the Thompson substitute, which means that you will pay people who are not ill and that you will pay people who are still working in the coal mines and earning their full pay.

Mr. RAHALL. I disagree with the gentleman from Connecticut (Mr. SARASIN) in his position. I would point out that

families are affected when the coal miner is unable to continue his employment, and they are affected when he is denied benefits by his Government for the daily abuse he must undergo with these risks. I believe we must take into consideration the Government safety regulations in his behalf.

(Mr. RAHALL asked and was given permission to revise and extend his remarks.)

Mr. WAMPLER. Mr. Chairman, I move to strike the requisite number of words and I rise in opposition to the amendment.

(Mr. WAMPLER asked and was given permission to revise and extend his remarks.)

Mr. WAMPLER. Mr. Chairman, I rise in support of H.R. 4544, the Black Lung Benefits Reform Act of 1977, and urge my colleagues to support this meaningful measure. It will help to alleviate the many hardships now faced by miners afflicted with this disease, or their survivors who have lost loved ones due to the disease. These claimants now face one roadblock after another in trying to obtain the benefits to which they are entitled in order to continue their shortened lives with some measure of dignity.

Altogether too many eligible miners and widows do not receive benefit payments because of inequities and stumbling blocks in the present law, and this new legislation is designed to help these people by correcting some of these problems.

Passage of H.R. 4544, and the establishment of a permanent Federal program, would accelerate the process whereby claims for these benefits are decided. Moreover, the provisions relating to notification of miners and their survivors who may be eligible would greatly improve the effectiveness and usefulness of the program.

The committee bill also would correct a "Catch-22" situation faced by numerous miners who have applied for black lung benefits, and this problem is of great concern to me. Currently, a miner must work, due to basic economic considerations, until it is determined, over a long and arduous process, whether or not he qualifies for black lung benefits.

But if he is working, it is the rule that he cannot be declared disabled, and therefore not entitled to the benefits under the law, regardless of his medical status as to disability. H.R. 4544 would allow miners to apply for benefits while still working and be eligible for such benefits while still working. How many of us, whether sick or not, could leave a job not knowing if we would have any compensation upon leaving our place of employment, and knowing of our necessity to provide for our families.

The committee report on H.R. 10760, from the 94th Congress, includes the following statement in its discussion of current employment as a ban to benefits, section 4 of H.R. 10760, showing extremely sensitive insight into this problem:

> . . . it should be noted that the so-called "typical" coal miner, because of both the one-industry (coal) characteristic of his region and his socioeconomic circumstance, continues to engage in the rigorous activity of his employment beyond the point where prudence and human compassion would dictate otherwise. It is a sorry and unconscionable specter indeed to witness that self-destruction, which itself is most often compelled by considerations apart from the miner's control.

For the above reasons, I certainly prefer the committee bill over the Thompson-Andrews substitute being offered, since it also would prevent a miner from receiving any black lung benefits while employed.

Although the Thompson-Andrews substitute represents a compromise, which may be the best possible legislation to aid the coal miners that can win the approval of the Congress, it is not as far-reaching as the committee bill. I would prefer to see the automatic entitlements provision retained, and I do not feel that the arguments against such a provision are well founded.

It has been previously stated in debate on H.R. 4544 that black lung benefits average approximately 16 percent of a miner's earnings. I do not foresee a situation in which miners not actually suffering from this disease would try to obtain the benefits, even if they had the requisite number of years of employment for presumption of entitlement, because the average earnings of a working miner are far greater than the payments they would receive if they applied for and were approved for black lung benefits.

Our energy situation and overall coal supply can be affected by this reform measure. Coal miners are vital to this Nation and to our production of energy, and, in my opinion, they are due some assurances of protection for themselves and their families in continuing this extremely hazardous work.

I offer the following figures to show the value and importance of this program for the well-being of the coal miners in the Commonwealth of Virginia who are disabled by black lung disease.

In Virginia, from the inception of the title IV program until June 30, 1976, claims filed for black lung numbered 30,200. Approvals number 17,100 and denials number 13,100. Nine thousand three hundred miners are currently receiving benefits, with 6,400 survivors and 200 dependents receiving payments. Monthly benefits totaled $4,163,400 as of June 30, 1976, with a total of cumulative benefits paid in Virginia since the inception of the program of $244,325,000, thereby allowing these miners and their families to continue their contributions to the economy of the area and even of the Nation.

Although the Thompson-Andrews substitute would be an improvement in the program, I do not feel it goes far enough toward giving our coal miners who suffer from black lung disease the immediate and substantial relief which they deserve. If it is the best legislation we can pass, I will support it, but I would much prefer to see the Congress truly recognize the depth of the problem and compensate our coal miners accordingly by passing the committee bill.

I stated on March 2, 1976 during the debate on H.R. 10760, the Black Lung Benefits Reform Act of 1975, that "if any of my colleagues are in doubt or have second thoughts as to whether or not this bill should be enacted—I personally invite them to come to the coal mines of southwestern Virginia and see for themselves." This invitation is still open and I would welcome your participation in a visit to an underground coal mine, as I am sure would the other Members representing districts with such mining.

The dignity the black lung program offers to those disabled miners and their survivors who receive the benefits is beyond a price tag, but it is the least we can do and the price we should and must pay until the cause of black lung disease and the suffering it forces upon our miners are completely eliminated.

Mr. THOMPSON. Mr. Chairman, will the gentleman yield?

Mr. WAMPLER. I yield to the gentleman from New Jersey.

Mr. THOMPSON. I thank the gentleman for yielding.

With respect to the administration's position on this, the gentleman might not have had an opportunity to see in the RECORD of September 15 a very strong endorsement of the Thompson substitute. I think the substitute I have offered with the gentleman from North Carolina (Mr. ANDREWS) is a much better course to take. I thank the gentleman.

Mr. WAMPLER. I thank the gentleman for his contribution.

Mr. Chairman, let me close by making a statement I made when we had this matter before us previously. I recognize that those Members who do not represent coal-producing constituencies perhaps do not fully understand the uniqueness of the problems affecting the health and safety of coal miners. I believe if it were possible for every Member of this House to spend just one shift in an underground coal mine of this Nation to observe the conditions under which these men and women work, they would have a better appreciation for the danger of the work, because under ideal conditions coal mining is, indeed, a dangerous and hazardous occupation.

Mr. Chairman, in my congressional district—and I am sure this is typical of other coal-producing areas—there are hundreds of deserving individuals who, in my judgment, meet the requirements of the law but have been wrongfully denied their black lung benefits. They have become discouraged and disheartened. I believe it is up to Congress to carry out its mandates, and if we will adopt the legislation that is presently before us and reject this substitute that is now pending, offered by the gentleman from Illinois (Mr. ERLEBORN), it will go a long way toward removing these inequities and roadblocks, which have denied many of our disabled coal miners that to which the law entitles them.

Mr. BEVILL. Mr. Chairman, I move to strike the requisite number of words.

(Mr. BEVILL asked and was given permission to revise and extend his remarks.)

Mr. BEVILL. Mr. Chairman, having always been sensitive to the need for black lung benefits, I rise today to ask

the support of my colleagues for the Thompson-Andrews substitute to H.R. 4544, the Black Lung Benefits Reform Act of 1977.

This substitute addresses several controversial features of H.R. 4544, which was reported by the House Education and Labor Committee. At the same time, the Thompson-Andrews substitute leaves the basic structure of the committee bill intact, specifically the overriding theme of the legislation which is designed to transfer the responsibility for black lung benefits from the Federal Government to the coal industry through the creation of a coal industry trust fund.

The existing bill would have created black lung entitlement based on 30 years of service in a bituminous mine and 25 years of service in an anthracite mine. In view of widespread concern and disagreement over this provision, the Thompson-Andrews substitute deletes these all-inclusive entitlements.

There has been a great deal of concern as to the possibility of future interpretations of H.R. 4544 that would allow a coal miner to receive black lung benefits while still employed.

Certainly such an interpretation is not what the legislation proposes and to completely eliminate this possibility, the substitute for which I ask your support specifically bars the receiving of any black lung benefits while the miner is still employed.

Widespread concern has also arisen about language in H.R. 4544 which would prevent the Department of Health, Education, and Welfare from appealing a favorable decision for a claimant while at the same time permitting such an appeal by the claimant when he has been denied by an appropriate administrative law judge.

This substitute simply eliminates this provision so that an appeal may be taken by either party.

The question of whether or not benefits payable from the proposed trust fund are subject to prior appropriations is addressed with specific language in the Thompson-Andrews substitute, making the benefits subject. The substitute language was worked out with the Appropriations Committee.

Finally, the substitute to H.R. 4544 prohibits the retroactive payment of black lung benefits that will be generated by approval of this legislation. This provision is included in the substitute to bring the bill in compliance with the Congressional Budget Act.

Having grown up in a coal-mining community in northwest Alabama, I know firsthand of the pain many coal miners have endured as a result of black lung diseases. For many years, miners had no alternative but to accept the risk that went along with working in the dusty confines of underground mines.

The black lung benefits program, begun in 1970, has provided new hope for many miners and their families. Before the initiation of this program, many of these same people were subject to years of poverty when heads of households became unable to work as a result of black lung.

The legislation we are debating today, as you know, seeks to transfer the residual liability for black lung benefits from the Federal Government to coal operators. This is as it should be and I believe this will be a significant change for the better as far as the overall black lung program is concerned.

I am also hopeful this move will be of some help in reducing the backlog of black lung claim cases that grows daily. Thousands of deserving coal miners are finding themselves disabled with little means of financial support as a result of the tremendous amount of redtape that has become associated with black lung program in recent years.

Some people argue that the black lung benefits program is merely a pension. I strongly disagree with this theory. It has been estimated that a disabled miner who qualifies for black lung can at best expect only about 50 percent of what he would normally earn at his regular job in the mines. Furthermore, this percentage also takes into account various union pensions. So, it would seem that this estimate can be seen as a successful rebuttal to this argument.

It behooves this Congress to assist the thousands of coal miners who are afflicted with black lung diseases. These men have literally seen their lives ruined as a result of black lung.

With the grim picture of a disabled, coughing victim of black lung in mind, I ask your strong support for the Thompson-Andrews substitute to H.R. 4544. A vote for this legislation will be a vote for which thousands of families who have been affected by black lung will be forever grateful.

Mr. CORNWELL. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise to urge strong support of the Thompson substitute to H.R. 4544, the Black Lung Benefits Reform Act of 1977. If America hopes to become energy dependent we will need a sound energy policy recognizing our coal reserves. In light of the fact that coal production has not significantly increased in the past 2 years, it is important that the methods of mining coal are improved. New mines must be opened to supply our projected future needs and more men will have to be attracted to mining.

There are many things which can and should be done to reach this goal, but one thing the man in the mine must know is that he and his family will be taken care of for his efforts in breathing coal dust day after day which will ultimately ruin his health and shorten his life. Improvements, then, in the black lung benefits system are essential to our national energy commitment.

The current system is clearly in need of reform. Thousands of worthy claims remain unresolved. Dust level controls in the mines, although somewhat improved since passage of the 1969 act, remain at injurious levels so that today's coal miner is still assured that he will contract black lung disease during his dedicated years in the mines. To even consider discontinuing the Federal black lung program in 1981, as proposed by Mr. ERLENBORN, is to exhibit our callousness to the sacrifices of the men and women whose hard and dedicated work provides the basis of our Nation's strength.

It is crucial that we support and pass the Thompson substitute to this bill. The creation of an industry-financed trust fund to meet payments for disabled or deceased miners appropriately takes the responsibility for black lung benefits out of the Federal Government and places it in the hands of the coal industry. Despite the obvious fairness of placing responsibility where it belongs, the coal industry will be more likely to take necessary steps to reduce coal dust levels when it is forced to pay the black lung benefits.

In my opinion, it is unfortunate that we cannot pass H.R. 4544 as written. The bulk of medical evidence proves that miners who put in 25 years in the anthracite mine or 30 years in a bituminous mine will contract black lung. The mandatory entitlement provision of the bill is both justified and humane. Nonetheless, the Thompson substitute is a good first step. By making the program permanent and by expediting the processing of claims, we can at least assure our miners and their families that they will be compensated for their sacrifices. The Black Lung Benefits Reform Act can only help to attain our energy independence. It is a positive step forward and a rational and reasonable approach to a very serious human problem.

I urge you, my colleagues, to support the Thompson substitute and final passage of the bill.

Mr. PERKINS. Mr. Chairman. I move to strike the last word, and I rise in favor of the Thompson substitute amendment.

Mr. Chairman, I yield to the distinguished gentleman from North Carolina (Mr. ANDREWS), who is coauthor with Mr. THOMPSON of the substitute amendment.

Mr. ANDREWS of North Carolina. Mr. Chairman, I rise to associate myself with all Members who have spoken in favor of this substitute amendment. Let me say, if I may, that as a member of Chairman PERKINS' Committee on Education and Labor, it was a grievous thing to me 2 years ago not to support the black lung bill. I talked with my chairman last year, and I again had to say that with the entitlement in it, I could not support it.

The chairman and others managing the bill agreed to the substitute we now have before us, known as the Thompson-Andrews substitute, which totally modifies the objectionable portion of the bill to the end that I am proud to support it.

I might say that neither my district nor the State of North Carolina has any coal, so that I have no selfishness whatsoever in this matter. We just have a reasonable bill in the form of this substitute, which I implore everyone to support as being just that.

Mr. PERKINS. Mr. Chairman, I have been delighted this afternoon with the debate on this legislation. It proves one thing to me, that the House of Representatives, when it has complete debate on a subject matter, acts wisely. I feel con-

fident that the Thompson-Andrews substitute will be adopted. If we intend to do something about the plight of the coal miners in this country who have given their lives and their health and have been denied black lung benefits, the best solution rests with the Thompson-Andrews substitute.

The best medical experts that we could find in this country testified in favor of the entitlements; that in 80 to 90 percent of their tests, the coal miners that had worked in the mines as long as 20 years were suffering from complicated pneumoconiosis. Those entitlements were dropped out of the bill, but here we have cases of miners who have worked 40 or 50 years in the coal mines, 30 years in the coal mines, suffering from pneumoconiosis, who will not be able to collect 1 dime under the Erlenborn substitute—not 1 penny will they allow miners who worked prior to January 1, 1970. In my judgment, they will not be able to collect under the Erlenborn substitute.

But, those cases will be reviewed under the Thompson-Andrews substitute. Basically, we place the burden of cost on the coal operators in this country. The burden of cost will be borne out of the trust fund.

The question has been referred to heretofore, that there are no State Workmen's Compensation laws; limitations would bar them all. In Kentucky, one can go back 3 years from the time that the miner was exposed to coal dust, if the Erlenborn substitute is adopted—3 years. No State Compensation statutes are adequate in this country. The Thompson-Andrews substitute provides that if the States adopt compensation laws adequate to meet the standards of the Federal Government, the standards that are provided in this bill, they will later be exempt. But, here we have a situation of justice, and the only way to obtain justice is under the Thompson-Andrews substitute.

I would urge all my colleagues in this body to vote for the Thompson-Andrews substitute, in justice to the coal miners who have worked a long period of years and in justice to those coal miners who are just going into the coal mines of this country. It is the most hazardous occupation in existence today.

Concern other groups of people, if the States do not have an adequate statute that they can be compensated under, naturally they should come to the Congress. If the asbestos workers do not have a State compensation statute, we should do something about that situation.

(Mr. PERKINS 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. ERLENBORN) as a substitute for the amendment in the nature of a substitute offered by the gentleman from New Jersey (Mr. THOMPSON).

RECORDED VOTE

Mr. ERLENBORN. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 108, noes 268, answered "present" 1, not voting 57, as follows:

[Roll No. 561]

AYES—108

Abdnor	Forsythe	Pettis
Andrews, N. Dak.	Frenzel	Pike
Archer	Frey	Poage
Armstrong	Gibbons	Pritchard
Ashbrook	Goodling	Quayle
Badham	Gradison	Quie
Bauman	Grassley	Quillen
Beard, Tenn.	Guyer	Regula
Bennett	Hagedorn	Rhodes
Broomfield	Hansen	Robinson
Brown, Mich.	Hillis	Rogers
Broyhill	Holt	Rudd
Burgener	Horton	Ruppe
Burke, Fla.	Hyde	Sarasin
Burleson, Tex.	Jeffords	Satterfield
Butler	Kasten	Schulze
Caputo	Kelly	Sebelius
Cederberg	Kemp	Snyder
Clausen, Don H.	Ketchum	Spence
Cleveland	Kindness	Stangeland
Cochran	Lagomarsino	Stanton
Coleman	Latta	Steiger
Collins, Tex.	Leach	Stockman
Conable	Lent	Stratton
Conte	Livingston	Symms
Corcoran	Lott	Taylor
Cotter	McDonald	Thone
Crane	McEwen	Treen
Daniel, Dan	McKinney	Trible
Daniel, R. W.	Mann	Vander Jagt
Devine	Marks	Waggonner
Dickinson	Martin	Walker
Dornan	Michel	Wiggins
Edwards, Okla.	Montgomery	Winn
Erlenborn	Moore	Wydler
	Moorhead, Calif.	Wylie
		Young, Fla.

NOES—268

Akaka	Edwards, Calif.	Jordan
Alexander	Eilberg	Kastenmeier
Allen	Emery	Kazen
Ambro	English	Keys
Ammerman	Ertel	Kildee
Andrews, N.C.	Evans, Colo.	Kostmayer
Annunzio	Evans, Del.	Krebs
Applegate	Evans, Ind.	LaFalce
Ashley	Fary	Le Fante
Aspin	Fascell	Leggett
AuCoin	Fenwick	Lehman
Baldus	Findley	Levitas
Barnard	Fish	Lloyd, Calif.
Baucus	Fisher	Lloyd, Tenn.
Beard, R.I.	Fithian	Long, La.
Bedell	Flippo	Long, Md.
Bellenson	Flood	Lundine
Benjamin	Florio	McClory
Bevill	Flynt	McCloskey
Bingham	Foley	McCormack
Blanchard	Ford, Mich.	McDade
Blouin	Ford, Tenn.	McFall
Boggs	Fountain	McHugh
Boland	Fowler	McKay
Bonior	Fuqua	Madigan
Bonker	Gaydos	Maguire
Bowen	Gephardt	Mahon
Brademas	Giaimo	Markey
Breaux	Gilman	Marriott
Brinkley	Ginn	Mathis
Brodhead	Glickman	Mattox
Brown, Calif.	Gonzalez	Mazzoli
Buchanan	Gore	Meeds
Burke, Mass.	Gudger	Meyner
Burlison, Mo.	Hall	Mikulski
Burton, John	Hamilton	Mikva
Byron	Hammer-schmidt	Miller, Calif.
Carney		Miller, Ohio
Carr	Hanley	Mineta
Carter	Hannaford	Minish
Cavanaugh	Harkin	Mitchell, Md.
Chisholm	Harrington	Mitchell, N.Y.
Clay	Harris	Moakley
Cohen	Hawkins	Moffett
Collins, Ill.	Heckler	Mollohan
Corman	Hefner	Moorhead, Pa.
Cornell	Heftel	Moss
Cornwell	Hightower	Mottl
Coughlin	Holland	Murphy, N.Y.
Danielson	Hollenbeck	Murphy, Pa.
Davis	Howard	Murtha
de la Garza	Hubbard	Myers, Gary
Delaney	Huckaby	Myers, John
Dellums	Hughes	Myers, Michael
Derrick	Ichord	Natcher
Dicks	Ireland	Neal
Diggs	Jacobs	Nedzi
Dingell	Jenrette	Nichols
Drinan	Jones, N.C.	Nix
Duncan, Tenn.	Jones, Okla.	Nolan
Edgar	Jones, Tenn.	Nowak
O'Brien	Ryan	Tsongas
Oberstar	Santini	Tucker
Obey	Sawyer	Udall
Ottinger	Schroeder	Ullman
Panetta	Seiberling	Van Deerlin
Patten	Sharp	Vanik
Patterson	Shipley	Vento
Pattison	Shuster	Volkmer
Pease	Sikes	Walgren
Pepper	Simon	Walsh
Perkins	Sisk	Wampler
Pressler	Skelton	Watkins
Preyer	Skubitz	Waxman
Price	Slack	Weiss
Rahall	Smith, Iowa	Whalen
Railsback	Solarz	White
Rangel	Spellman	Whitley
Reuss	St Germain	Whitten
Richmond	Staggers	Wilson, C. H.
Rinaldo	Stark	Wilson, Tex.
Risenhoover	Steed	Wirth
Roberts	Steers	Wright
Rodino	Stokes	Yates
Roe	Studds	Yatron
Rooney	Stump	Young, Alaska
Rostenkowski	Teague	Young, Mo.
Roybal	Thompson	Young, Tex.
Runnels	Thornton	Zablocki
Russo	Traxler	

ANSWERED "PRESENT"—1

Bafalis

NOT VOTING—57

Addabbo	Downey	Marlenee
Anderson, Calif.	Duncan, Oreg.	Metcalfe
	Early	Milford
Anderson, Ill.	Eckhardt	Murphy, Ill.
Badillo	Edwards, Ala.	Oakar
Biaggi	Evans, Ga.	Pickle
Bolling	Flowers	Pursell
Breckinridge	Fraser	Roncalio
Brooks	Gammage	Rose
Brown, Ohio	Goldwater	Rosenthal
Burke, Calif.	Harsha	Rousselot
Burton, Phillip	Holtzman	Scheuer
Chappell	Jenkins	Smith, Nebr.
Clawson, Del	Johnson, Calif.	Weaver
Conyers	Johnson, Colo.	Whitehurst
Cunningham	Koch	Wilson, Bob
D'Amours	Krueger	Wolff
Dent	Lederer	Zeferetti
Derwinski	Lujan	
Dodd	Luken	

The Clerk announced the following pairs:

On this vote:

Mr. Brown of Ohio for, with Mr. Addabbo against.

Mr. Del Clawson for, with Mr. Eckhardt against.

Mr. Cunningham for, with Mr. Zeferetti against.

Mr. Derwinski for, with Mr. Chappell against.

Mr. Goldwater for, with Ms. Holtzman against.

Mr. Rousselot for, with Mr. Wolff against.

Mrs. Smith of Nebraska for, with Mr. Lujan against.

Mr. BROWN of Michgan and Mr. STRATTON changed their vote from "no" to "aye."

So the amendment offered as a substitute for theamendment in the nature of a substitute was rejected.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. ERLENBORN TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. THOMPSON

Mr. ERLENBORN. Mr. Chairman, I offer an amendment to the amendment in the nature of a substitute.

The Clerk read as follows:

Amendment offered by Mr. ERLENBORN to the amendment in the nature of a substitute offered by Mr. THOMPSON: Strike out section 3 of the matter proposed to be inserted by the amendment in the nature of a substitute.

Redesignate the succeeding sections an references thereto accordingly.

(Mr. ERLENBORN asked and was given permission to revise and extend his remarks.)

Mr. ERLENBORN. Mr. Chairman, this amendment would delete the language of the bill that would in addition to the Thompson susbtitute which deletes some language from the committee-reported bill. This would add to that Thompson substitute a deletion of additional language in the committee-reported bill. The language that I have reference to is that which offsets part B, black lung benefits only by State black lung benefits.

The bill, in other words, as reported would allow black lung beneficiaries to draw double compensation. That would be completely contrary to the basic tenets of our workers' compensation system. Of course, if the House wants to do what the sponsors of the bill undoubtedly want to do, that is, make this a special pension program for coal miners, then, of course, the provisions of the bill would be consistent. Obviously, I do not want to turn this Federal industrial disease compensation program into a pension program. As I have told the House on many occasions, I supported it originally and would continue to support a temporary one-shot Federal program to compensate totally disabled victims of coal workers' pneumoconiosis. I think that is what all States now will do under their workers' compensation laws if we would allow them. Consistent with their goal, though, is the concept that no claimant can be disabled more than once. If one is drawing disability compensation for being totally disabled, it seems to me he could only be totally disabled once. If the worker is totally disabled as a result of two separate, distinct injuries or diseases, he does not receive double compensation. It is a sound rule, and it is a rule that we should continue to follow.

I cannot support my coal State colleagues who want to treat their coal miner constituents differently, who want to give them double compensation, who want to say that a disabled victim who suffers from pneumoconiosis should be treated differently from someone who suffers from silicosis or from some other industrial disease or injury.

The administration has furnished me with data that indicate that this provision will cost the Federal Government an additional $22 million over the next 5 years—the provision that is in the bill. It may seem like a very small sum, and if it were required to correct an injustice, I would have no objection to spending it. But I cannot agree to use Federal tax dollars to provide a windfall for a small group of individuals who are now receiving treatment no different from that accorded to all other disabled workers.

If you want to treat coal mine workers fairly, give them disability compensation when they are disabled. Do not give them compensation for total disability twice.

I want you to also understand that these workers already are treated better than other disabled workers. Someone collecting State workmen's compensation has an offset against the social security disability; but in the 1972 amendments we already have treated these coal miners more favorably. The original bill provided such an offset against social security disability. In the 1972 amendments, we said no offset, so coal miners drawing this compensation already get total disability compensation from social security disability compensation for black lung under this program. If this provision goes through, as it is in the bill, they will be able to draw a third total disability compensation. I think that is totally ridiculous and I hope you will agree with me and adopt my amendment.

Mr. THOMPSON. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, it is somewhat strange to me that the gentleman from Illinois by this amendment is trying to knock out of my substitute a provision which was in the gentleman's substitute, which we just defeated.

This provision in my amendment merely applies to part B what already is law under part C of the existing act. In 1972 the Congress decreed that black lung compensation should not be reduced by compensation based on entirely different conditions. That would be totally unfair. The effect of this amendment would be that it would be cruel and it is redundant, because of what is already in part C of the legislation.

Mr. SIMON. Mr. Chairman, will the gentleman yield?

Mr. THOMPSON. I yield to the gentleman from Illinois.

Mr. SIMON. Mr. Chairman, I concur with my colleague, the gentleman from New Jersey.

I would point out, so there is no confusion on the part of the Members of the House, what my colleague, the gentleman from Illinois is suggesting, is that if one loses an arm in a coal mine and also has black lung, he cannot get compensated for both. I do not think that is justice for coal miners, any more than it would be justice for any other group.

Mr. PERKINS. Mr. Chairman, will the gentleman yield to me?

Mr. THOMPSON. I yield to the gentleman from Kentucky.

The CHAIRMAN. The time of the gentleman from New Jersey has expired.

(At the request of Mr. PERKINS, and by unanimous consent, Mr. THOMPSON was allowed to proceed for an additional 2 minutes.)

(Mr. THOMPSON asked and was given permission to revise and extend his remarks.)

Mr. PERKINS. Mr. Chairman, if the gentleman will yield further, in no case may a coal miner receive related double compensation. It is only unrelated matters that we are talking about. Assuming that a coal miner got an injury to his spine in the mid thirties and was compensated say at the rate of $8,000 or $10,000, compensation for permanent partial disability, and later worked in the mines another 20 years and now is suffering from black lung disease. The gentleman from Illinois (Mr. ERLENBORN) is asking us to go back and deduct from the miner's black lung payments if he is found to have black lung disease today, to deduct those old workmen's compensation payments that are completely unrelated.

Now, if they are related compensation payments, we know that is unfair. We provide that any compensation that a miner may previously have received for related matters, even if it is unemployment compensation, certainly will be deducted as long as it is related to pneumoconiosis.

Mr. THOMPSON. Mr. Chairman, the chairman is exactly correct. Section 425 (a) of the Erlenborn substitute says that the amount of benefits payable under this section shall be reduced on a monthly or other appropriate basis by the amount of compensation received under or pursuant to any Federal or State workmen's compensation law because of death or disability due to pneumoconiosis.

So, the effect, as the gentleman from Illinois (Mr. SIMON) pointed out, is a potential amount of cruelty which is totally and absolutely unnecessary.

I urge the defeat of the amendment.

Mrs. FENWICK. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I would like to ask some questions. I would like to ask the gentleman from New Jersey or the gentleman from Illinois if I understand the provision correctly. There is great cogency in the argument that one cannot be permanently, totally disabled twice. Now, for example, suppose one had received an injury which resulted in total, permanent disability. One could not work for 20 years in the mines after having received permanent, total disability under a previous injury.

But, if I understood the gentleman from Kentucky correctly, and the gentleman from New Jersey, a partial injury such as the loss of two fingers, for which a person had received compensation, might well be followed by 20 years work in the mines, in which the person could be totally disabled by black lung disease. Then, of course I suppose the total disability would overcome the two finger partial disability and it would still happen even with the Erlenborn amendment. Am I correct in that?

Mr. THOMPSON. The gentlewoman is absolutely correct. There are all sorts of industrial injuries in mines. A person might have lost a couple of fingers in a factory, then go to a mine. This would deprive him of his disability to which he is entitled for a previous injury.

Mrs. FENWICK. Yes, but when he gets his total disability from black lung, he would lose his partial disability. He would not have to pay back, of course, but he would lose that partial disability.

Mr. ERLENBORN. Mr. Chairman, will the gentlewoman yield?

Mrs. FENWICK. I yield.

Mr. ERLENBORN. That is exactly what they do not want to have happen. That is why they have a provision in this bill stating that the only State benefits they can offset against black lung provisions are those that have been given to the man because of black lung disease. But, if we are discussing benefits for the loss of a leg, total, permanent disability,

let us say there is an accident and a person files a claim and gets total, permanent disability for having lost his leg. He starts drawing that from the State, and then they can turn around and file a claim for black lung disease and get total, permanent disability compensation.

Mrs. FENWICK. If the gentleman will yield back my time, I would just like to say that a human being is more than a walking catalogue of disease. It just does not make sense to have continuing compensation for an earlier accident resulting in partial disability if one is now involved in a total disability situation. Obvously. total disability is paramount. One does not have to pay back because one has endured it all those years, but one should get permanent, total disability when it comes and not carry more than one disability payment.

Mr. PERKINS. Mr. Chairman, will the gentlewoman yield?

Mrs. FENWICK. Yes indeed.

Mr. PERKINS. Up until a few years ago, in my home State a total disability claim amounted to only about $10,000. A death benefit claim amounted to about $10,000. Under the Thompson-Andrews substitute not in one case out of a thousand will we have a total disability award on one cause and then a total disability for pneumoconiosis on top of it.

Mrs. FENWICK. Of course not, because if one is totally disabled, he could not be working in a mine.

Mr. PERKINS. The gentlewoman is exactly correct. We have drafted this legislation carefully. Unemployment compensation and any related workmen's compensation, insofar as pneumoconiosis is concerned, will be deducted, but not unrelated compensation.

Mrs. FENWICK. I thank the gentleman.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Illinois (Mr. ERLENBORN) to the amendment in the nature of a substitute offered by the gentleman from New Jersey (Mr. THOMPSON).

The question was taken; and on a division (demanded by Mr. ERLENBORN) there were—ayes 14, noes 54.

Mr. ERLENBORN. Mr. Chairman, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

The CHAIRMAN. The Chair will count. One hundred twelve Members are present, a quorum.

RECORDED VOTE

The CHAIRMAN. The pending business is the demand of the gentleman from Illinois (Mr. ERLENBORN) for a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 106, noes 268, answered "present" 1, not voting 59, as follows:

[Roll No. 562]

AYES—106

Abdnor	Bauman	Burke, Fla.
Andrews, N. Dak.	Beard, Tenn.	Burleson, Tex.
Archer	Bedell	Butler
Armstrong	Bennett	Caputo
Ashbrook	Brown, Mich.	Cederberg
Badham	Broyhill	Clausen, Don H.
	Burgener	
Cleveland	Ichord	Regula
Cochran	Jeffords	Rhodes
Coleman	Kelly	Rinaldo
Collins, Tex.	Kemp	Robinson
Conable	Ketchum	Ruid
Conte	Kindness	Sarasin
Corcoran	LaFalce	Satterfield
Coughlin	Lagomarsino	Schulze
Crane	Latta	Sebelius
Daniel, R. W.	Leach	Spence
Devine	Lent	Stangeland
Dickinson	Livingston	Stanton
Dornan	Lott	Steiger
Edwards, Okla.	McDonald	Stockman
Erlenborn	McEwen	Stratton
Evans, Colo.	McKinney	Symms
Evans, Del.	Mann	Taylor
Fenwick	Marriott	Thone
Forsythe	Martin	Treen
Frenzel	Michel	Trible
Frey	Moore	Vander Jagt
Gibbons	Moorhead, Calif.	Walker
Glickman	Myers, Gary	Wiggins
Goodling	Pease	Winn
Grassley	Pettis	Wydler
Hagedorn	Poage	Wylie
Hansen	Quayle	Young, Alaska
Heckler	Quie	Young, Fla.
Holt	Railsback	
Hughes		

NOES—268

Akaka	Fithian	Madigan
Alexander	Flippo	Maguire
Allen	Flood	Mahon
Ambro	Florio	Markey
Ammerman	Flowers	Marks
Andrews, N.C.	Flynt	Mathis
Annunzio	Foley	Mattox
Applegate	Ford, Mich.	Meeds
Ashley	Ford, Tenn.	Meyner
Aspin	Fountain	Mikulski
AuCoin	Fowler	Mikva
Baldus	Fuqua	Miller, Calif.
Barnard	Gaydos	Miller, Ohio
Baucus	Gephardt	Mineta
Beard, R.I.	Giaimo	Minish
Bellenson	Gilman	Mitchell, N.Y.
Benjamin	Ginn	Moakley
Bevill	Gonzalez	Moffett
Bingham	Gore	Mollohan
Blanchard	Gradison	Montgomery
Blouin	Gudger	Moorhead, Pa.
Boggs	Guyer	Moss
Boland	Hall	Mottl
Bonior	Hamilton	Murphy, N.Y.
Bonker	Hammer-schmidt	Murphy, Pa.
Bowen		Murtha
Brademas	Hanley	Myers, John
Breaux	Hannaford	Myers, Michael
Breckinridge	Harkin	Natcher
Brinkley	Harrington	Neal
Brodhead	Harris	Nedzi
Brown, Calif.	Hawkins	Nichols
Buchanan	Hefner	Nix
Burke, Mass.	Heftel	Nolan
Burlison, Mo.	Hightower	Nowak
Burton, John	Hillis	O'Brien
Byron	Holland	Oberstar
Carney	Hollenbeck	Obey
Carr	Howard	Ottinger
Carter	Hubbard	Panetta
Cavanaugh	Huckaby	Patten
Chisholm	Hyde	Patterson
Clay	Ireland	Pattison
Cohen	Jacobs	Pepper
Collins, Ill.	Jenrette	Perkins
Corman	Jones, N.C.	Pike
Cornell	Jones, Okla.	Pressler
Cornwell	Jones, Tenn.	Preyer
Cotter	Jordan	Price
Daniel, Dan	Kasten	Pritchard
Danielson	Kastenmeier	Quillen
Davis	Kazen	Rahall
de la Garza	Keys	Rangel
Delaney	Kildee	Reuss
Dellums	Kostmayer	Richmond
Derrick	Krebs	Risenhoover
Dicks	Le Fante	Roberts
Diggs	Lederer	Rodino
Dingell	Leggett	Roe
Drinan	Lehman	Rogers
Duncan, Tenn.	Levitas	Rooney
Edgar	Lloyd, Calif.	Rostenkowski
Edwards, Calif.	Lloyd, Tenn.	Roybal
Ellberg	Long, La.	Runnels
Emery	Long, Md.	Ruppe
English	Lundine	Russo
Ertel	McClory	Ryan
Evans, Ind.	McCloskey	Santini
Fary	McCormack	Sawyer
Fascell	McDade	Schroeder
Findley	McFall	Seiberling
Fish	McHugh	Sharp
Fisher	McKay	Shipley
Shuster	Stump	Watkins
Sikes	Teague	Waxman
Simon	Thompson	Weiss
Sisk	Thornton	Whalen
Skelton	Traxler	White
Slack	Tsongas	Whitley
Smith, Iowa	Tucker	Whitten
Snyder	Udall	Wilson, C. H.
Solarz	Ullman	Wilson, Tex.
Spellman	Van Deerlin	Wirth
St Germain	Vanik	Wright
Staggers	Vento	Yates
Stark	Volkmer	Yatron
Steed	Waggonner	Young, Mo.
Steers	Walgren	Young, Tex.
Stokes	Walsh	Zablocki
Studds	Wampler	

ANSWERED "PRESENT"—1

Bafalis

NOT VOTING—59

Addabbo	Downey	Mazzoli
Anderson, Calif.	Duncan, Oreg.	Metcalfe
Anderson, Ill.	Early	Milford
Badillo	Eckhardt	Mitchell, Md.
Biaggi	Edwards, Ala.	Murphy, Ill.
Bolling	Evans, Ga.	Oakar
Brooks	Fraser	Pickle
Broomfield	Gammage	Pursell
Brown, Ohio	Goldwater	Roncalio
Burke, Calif.	Harsha	Rose
Burton, Phillip	Holtzman	Rosenthal
Chappell	Horton	Rousselot
Clawson, Del	Jenkins	Scheuer
Conyers	Johnson, Calif.	Skubitz
Cunningham	Johnson, Colo.	Smith, Nebr.
D'Amours	Koch	Weaver
Dent	Krueger	Whitehurst
Derwinski	Lujan	Wilson, Bob
Dodd	Luken	Wolff
	Marlenee	Zeferetti

The Clerk announced the following pairs:

On this vote:

Mr. Broomfield for, with Mr. Luken against.

Mr. Brown of Ohio for, with Ms. Oakar against.

Mr. Del Clawson for, with Mrs. Burke of California against.

Mr. Cunningham for, with Mr. Addabbo against.

Mr. Derwinski for, with Mr. Zeferetti against.

Mr. Goldwater for, with Mr. Mitchell of Maryland against.

Mr. Rousselot for, with Mr. Badillo against.

Mrs. Smith of Nebraska for, with Mr. Lujan against.

Mr. Horton for, with Mr. Biaggi against.

Messrs. CAVANAUGH, KASTEN, UDALL, and FOUNTAIN changed their vote from "aye" to "no."

So the amendment to the amendment in the nature of a substitute was rejected.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. ERLENBORN TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. THOMPSON

Mr. ERLENBORN. Mr. Chairman, I offer an amendment to the amendment in the nature of a substitute.

The Clerk read as follows:

Amendment offered by Mr. ERLENBORN to the amendment in the nature of a substitute offered by Mr. THOMPSON: Strike out subsection (c) of section 8 of the matter proposed to be inserted by the amendment in the nature of a substitute.

Mr. ERLENBORN. Mr. Chairman, first let me say that I do not want to take a good deal more time of the House. I sense that the House is anxious to move on to voting on this bill and other business. But I thought I would just try once more to see if anybody is listening or if they care.

The bill before us says that if the claimant's own family physician says he

has the disease, the Government cannot reread the X-ray to question that and possibly deny the claim. They must just go ahead and take the claimant's family physician's word for it.

In other words, it is just another one of those provisions to make sure that every claim that is filed gets allowed and that triple compensation, which is the last amendment, will be then awarded to the claimant. I just think it makes no sense at all to prohibit the Government from protecting itself and to prohibit the coal-mine operator from protecting himself.

Mr. Chairman, I would hope that this amendment would be adopted to allow the law to remain as it is today, to let the Government read the X-rays and decide whether it is a valid claim, or to let the mine operator's attorney under the part C claim, if he is trying to resist the claim, have a physician reread the X-ray to see if it is a valid claim or not. We will try this and see how the Members like the idea of some limited amount of fairness on behalf of the Government and the coal-mine operators.

Mr. THOMPSON. Mr. Chairman, I rise in opposition to the amendment.

I would like to assure my distinguished friend and colleague, the gentleman from Illinois (Mr. ERLENBORN), that we were listening and that we do care. We care so much that we want this amendment in all fairness to be defeated so that miners will get the fair treatment to which they are entitled.

Nothing has slowed down the claims processing time of the Department of Labor more than insistence on sending X-rays from one doctor to another doctor all around the country. The gentleman can have them sent all over the place and add at least 200 days to the time. The committee has made it plain time after time that the X-ray is only one of a number of diagnostic tools to determine the existence of black lung, and we hope that the provision will, first, speed up the processing of claims and, second, insure that other diagnostic tools are more regularly used to determine the presence of this disabling disease.

Mr. SEIBERLING. Mr. Chairman, will the gentleman yield?

Mr. THOMPSON. I yield to the gentleman from Ohio.

Mr. SEIBERLING. I thank the gentleman for yielding.

I was listening to the gentleman from Illinois. I would appreciate it if he would listen to me.

I doubt if there is a single Member of this House who has any coal miners or former coal miners in his district who has not, from personal experience, seen case after case of people whose family doctors and other doctors, have certified from X-rays and other examinations that they had black lung and somehow or other the bureaucracy manages to ignore them, and you have these people year after year being denied meritorious claims. Finally, they go to their Congressman and he tries, usually unsuccessfully, to reverse the process, because the system is stacked against the miner.

It is time we re-stack it just a little bit in favor of the coal miner, instead of waiting until he dies of black lung and frustration, then trying to help his family resurrect the claim.

Mr. THOMPSON. Mr. Chairman, on page 12 of the bill there is a proviso which provides perfectly adequate protection. It says:

. . . That unless the Secretary has good cause to believe (1) that an X-ray is not of sufficient quality to demonstrate the presence of pneumoconiosis, or an autopsy report is not accurate, or (2) that the condition of the miner is being fraudulently misrepresented, the Secretary shall accept such report, . . .

In other words, there are safeguards there which the gentleman from Ohio was trying to cite.

Mr. PERKINS. Mr. Chairman, will the gentleman yield?

Mr. THOMPSON. I yield to the gentleman from Kentucky.

Mr. PERKINS. Mr. Chairman, the section that the gentleman from New Jersey read absolutely protects the Department. It protects the public in every respect.

Now, if the Secretary has doubt about the sufficiency of the X-ray and the quality, if it is not readable or if there is any fraud in any respect, then he can order another X-ray. But to send sick and old miners all around the country for one X-ray right after another and make it take 18 months to process his claim, this is the real reason we put this provision in here, so that we can get expeditious processing of the claim.

Mr. Chairman, this amendment should be voted down.

Mr. THOMPSON. Mr. Chairman, in conclusion, with the protections which are there, this could be characterized in one of two ways. This is either an anti-family doctor amendment or a fatten-up-the-radiologist amendment and it should be defeated.

Mr. FRENZEL. Mr. Chairman, I move to strike the requisite number of words. I rise in support of the amendment.

Mr. Chairman, in addition to my support of the pending Erlenborn amendment, I am concerned by this vast expansion of the black lung program. It is a program which should be a part of the worker compensation plan.

Instead it is a special interest program laid on the general taxpayers; first, out of the general treasury, and, now, from a consumer tax on electric consumption.

Also, this bill takes us another step forward in the proponents attempts to make black lung benefits automatic to any miner. One of this year's changes eliminates the current requirement that the Government review the X-rays of claimants.

I think the bill should be defeated, and black lung benefits become a part of the worker compensation program like benefits for other occupational injuries, diseases and disabilities.

I yield to the gentleman from Illinois (Mr. ERLENBORN).

Mr. ERLENBORN. Mr. Chairman, I thank the gentleman for yielding.

Let me take just one moment to say this. The gentleman from Ohio talks about how great the difficulty is in having claims approved.

I remember in 1969 the sponsors of the original coal mine health and safety law said there would be 30 or 40 or 50,000 claims, that it could not cost more than $50 million a year and this really was not going to be a very extensive program, we were going to control coal dust in the mines and claims would be eliminated in the future by this temporary program.

Well, the coal dust is down. The program is now present law. There are over 500,000 claims approved. There is over $1 billion here going out of the Federal Treasury, not the $40 or $50 million that our friends claimed there would be.

We have in the part B administration a total of 80 percent of all claims that were filed were approved, even though the National Academy of Science tells us that nationwide there are only about 14 percent who could possibly qualify.

All I am saying is if the program is working that well, those half million claimants are getting that money and $1 billion is flowing out of the Treasury, we ought not to open it up that much more to see who is going to have a say about who is being compensated, except the family physician. Once the physician reads this under this bill and it becomes law finally, it will just increase the number of claims, regardless of whether these people have a decision or not.

If that is what we want, I suppose we should have gone in the initial instance in making this a pension plan, which is what the gentleman from Kentucky wanted, which is what the Rules Committee resisted. We are moving ever more inexorably toward making this a program, not for compensation, but a program to give benefits to ex-coal miners. This is one of the ways of doing it, unless the Members support my amendment to keep this on a medically sound basis.

Mr. FRENZEL. I thank the gentleman for his contribution.

Mr. PERKINS. Mr. Chairman, will the yield?

Mr. FRENZEL. I yield to the distinguished gentleman from Kentucky.

Mr. PERKINS. Mr. Chairman, first let me state that the gentleman from Illinois has been inaccurate on the cost of this program. The main thrust of the Thompson amendment is to make sure that miners disabled because of black lung get fair treatment in an expeditious manner.

In this amendment offered by Mr. ERLENBORN, he advances a proposal contrary to his own substitute, because it would have provided that the cost be paid directly out of the U.S. Treasury for 1 year. Then it would have been turned over to the States. So, the gentleman from Illinois is inconsistent.

But my great concern lies in the older miner who filed under part B. In most cases he spent 30 or more years in the mine. There is no way that State workmen's compensation or any other compensation program can reach his needs. He cannot find any responsible operator and he is barred by statutes of limitations. The reforms we make to part B in the Thompson-Andrews substitute is his only hope.

Mr. Chairman, let me emphasize that the Thompson-Andrews substitute re-

tains those elements of reform to the black lung program which will result, in my judgment, in the approval of thousands of claims of miners suffering from pneumoconiosis who have previously been denied benefits.

In this regard I view as extremely important that the provisions of section 12(b) require the Secretary of Health, Education, and Welfare to review each claim which has been denied and each claim which is pending under part B "taking into account the amendments made to such part by this act, and with respect to claims which have been denied taking into account the possibility of error or inappropriate denial of benefits in the initial processing of such claim. The Secretary shall approve any such claim forthwith if the provisions of such part, as so amended, require such approval or if in the initial processing of a denied claim there was error or inappropriate denial of benefits to such claimant."

Mr. Chairman, I anticipate that there will be no delay in paying out of the Federal Treasury those miners who will now become eligible because of the reforms we will enact today. There are thousands of them and their widows who have filed prior to 1973 who by any equitable standard should already have been compensated.

(Mr. FRENZEL 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. ERLENBORN) to the amendment in the nature of a substitute offered by the gentleman from New Jersey (Mr. THOMPSON).

The question was taken; and the Chairman announced that the ayes appeared to have it.

RECORDED VOTE

Mr. ERLENBORN. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 136, noes 242, present 1, not voting 55, as follows:

[Roll No. 563]

AYES—136

Abdnor	Daniel, R. W.	Kemp
Andrews, N. Dak.	de la Garza	Ketchum
Archer	Devine	Kindness
Armstrong	Dickinson	LaFalce
Ashbrook	Dornan	Lagomarsino
Badham	Edwards, Okla.	Latta
Bauman	Emery	Leach
Beard, Tenn.	Erlenborn	Lent
Bedell	Evans, Del.	Livingston
Bowen	Fenwick	Lott
Brown, Mich.	Fish	McClory
Broyhill	Forsythe	McCloskey
Burgener	Fountain	McDonald
Burke, Fla.	Frenzel	McEwen
Burleson, Tex.	Frey	McKinney
Butler	Gilman	Mann
Caputo	Goodling	Marks
Cederberg	Gradison	Marriott
Clausen, Don H.	Grassley	Martin
Cleveland	Gudger	Michel
Cochran	Hagedorn	Mitchell, N.Y.
Cohen	Hansen	Montgomery
Coleman	Heckler	Moore
Collins, Tex.	Hillis	Moorhead, Calif.
Conable	Hollenbeck	Mottl
Conte	Holt	Myers, Gary
Corcoran	Hughes	Pease
Cotter	Hyde	Pettis
Coughlin	Jeffords	Pike
Crane	Kasten	Poage
Daniel, Dan	Kastenmeier	Pressler
	Kazen	Pritchard
	Kelly	
Quayle	Sebelius	Trible
Quie	Skubitz	Vander Jagt
Regula	Snyder	Waggonner
Rhodes	Spence	Walker
Rinaldo	Stangeland	Walsh
Roberts	Stanton	Whitley
Robinson	Steiger	Wiggins
Rogers	Stockman	Winn
Rudd	Stratton	Wydler
Ruppe	Stump	Wylie
Sarasin	Symms	Young, Alaska
Satterfield	Taylor	Young, Fla.
Sawyer	Thone	
Schulze	Treen	

NOES—242

Akaka	Gaydos	Nedzi
Alexander	Gephardt	Nichols
Allen	Giaimo	Nix
Ambro	Gibbons	Nolan
Ammerman	Ginn	Nowak
Andrews, N.C.	Glickman	O'Brien
Annunzio	Gonzalez	Oberstar
Applegate	Gore	Obey
Ashley	Guyer	Ottinger
Aspin	Hall	Panetta
AuCoin	Hamilton	Patten
Baldus	Hammer-schmidt	Patterson
Barnard	Hanley	Pattison
Baucus	Hannaford	Pepper
Beard, R.I.	Harkin	Perkins
Bellenson	Harrington	Preyer
Benjamin	Harris	Price
Bennett	Hawkins	Quillen
Bevill	Hefner	Rahall
Bingham	Heftel	Railsback
Blanchard	Hightower	Rangel
Blouin	Holland	Reuss
Boggs	Horton	Richmond
Boland	Howard	Risenhoover
Bonior	Hubbard	Rodino
Bonker	Huckaby	Roe
Brademas	Ireland	Rooney
Breaux	Jacobs	Rostenkowski
Breckinridge	Jenrette	Roybal
Brinkley	Jones, N.C.	Runnels
Brodhead	Jones, Okla.	Russo
Brown, Calif.	Jones, Tenn.	Ryan
Buchanan	Jordan	Santini
Burke, Mass.	Keys	Scheuer
Burlison, Mo.	Kildee	Schroeder
Burton, John	Kostmayer	Seiberling
Byron	Krebs	Sharp
Carney	Le Fante	Shipley
Carr	Lederer	Shuster
Carter	Leggett	Sikes
Cavanaugh	Lehman	Simon
Chappell	Levitas	Sisk
Chisholm	Lloyd, Calif.	Skelton
Clay	Lloyd, Tenn.	Slack
Collins, Ill.	Long, La.	Smith, Iowa
Conyers	Long, Md.	Solarz
Corman	Lundine	Spellman
Cornell	McCormack	St Germain
Cornwell	McDade	Staggers
Danielson	McFall	Stark
Davis	McHugh	Steed
Delaney	McKay	Steers
Dellums	Madigan	Stokes
Derrick	Maguire	Studds
Dicks	Mahon	Thompson
Dingell	Markey	Thornton
Drinan	Mathis	Traxler
Duncan, Tenn.	Mattox	Tsongas
Edgar	Mazzoli	Tucker
Edwards, Calif.	Meeds	Udall
Eilberg	Meyner	Ullman
English	Mikulski	Van Deerlin
Ertel	Mikva	Vanik
Evans, Colo.	Miller, Calif.	Vento
Evans, Ga.	Miller, Ohio	Volkmer
Evans, Ind.	Mineta	Walgren
Fary	Minish	Wampler
Fascell	Mitchell, Md.	Watkins
Findley	Moakley	Waxman
Fisher	Moffett	Weiss
Fithian	Mollohan	Whalen
Flippo	Moorhead, Pa.	White
Flood	Moss	Wilson, C. H.
Florio	Murphy, N.Y.	Wilson, Tex.
Flowers	Murphy, Pa.	Wirth
Flynt	Murtha	Wright
Foley	Myers, John	Yates
Ford, Mich.	Myers, Michael	Yatron
Ford, Tenn.	Natcher	Young, Mo.
Fowler	Neal	Young, Tex.
Fuqua		Zablocki

ANSWERED "PRESENT"—1

Bafalis

NOT VOTING—55

Addabbo	Badillo	Broomfield
Anderson, Calif.	Biaggi	Brown, Ohio
Anderson, Ill.	Bolling	Burke, Calif.
	Brooks	Burton, Phillip
Clawson, Del	Harsha	Pickle
Cunningham	Holtzman	Pursell
D'Amours	Ichord	Roncalio
Dent	Jenkins	Rose
Derwinski	Johnson, Calif.	Rosenthal
Diggs	Johnson, Colo.	Rousselot
Dodd	Koch	Smith, Nebr.
Downey	Krueger	Teague
Duncan, Oreg.	Lujan	Weaver
Early	Luken	Whitehurst
Eckhardt	Marlenee	Whitten
Edwards, Ala.	Metcalfe	Wilson, Bob
Fraser	Milford	Wolff
Gammage	Murphy, Ill.	Zeferetti
Goldwater	Oakar	

The Clerk announced the following pairs:

On this vote:

Mr. Brown of Ohio for, with Mr. Rosenthal against.

Mr. Del Clawson for, with Mr. Luken against.

Mr. Cunningham for, with Ms. Oakar against.

Mr. Derwinski for, with Mr. Biaggi against.

Mr. Goldwater for, with Mr. Wolff against.

Mr. Rousselot for, with Mr. Addabbo against.

Mrs. Smith of Nebraska for, with Mr. Eckhardt against.

Mr. Teague for, with Mr. Zeferetti against.

Mr. Broomfield for, with Ms. Holtzman against.

So the amendment to the amendment in the nature of a substitute was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN. The question is on the amendment in the nature of a substitute offered by the gentleman from New Jersey (Mr. THOMPSON).

The amendment in the nature of a substitute was agreed to.

Mr. AMMERMAN. Mr. Chairman, the bill which the House is considering today, H.R. 4544, is the most important piece of legislation affecting coal miners to come before the House since the inception of the black lung program. As the representative of a district with hundreds of victims of this tragic disease, I am all too familiar with the deficiencies and inequities which now characterize this program and provide the impetus for consideration of the Black Lung Benefits Reform Act of 1977.

There are 1,402 residents of the 23d District of Pennsylvania who have claims pending with the Department of Labor under part C of the black lung benefits program as of August 6, 1977. In the 9 months since I came to Congress, I have heard from about 300 of them, as well as from a few who still have claims pending with the Social Security Administration which were filed prior to 1973. All told, I have been contacted by 305 of my constituents concerning black lung benefits. Of that number, just 24 have had their claims approved. And, of course, the experience of my district with this program is surpassed by those of several of my colleagues—at least in terms of claims filed. I am sure there are a number of congressional districts with more claims, though I doubt that many of them have had an appreciably higher proportion of them approved.

The conspicuous failures of this program have been well documented in the work of the Labor Standards Subcommittee of the House Committee on Education and Labor over the past 3 years. They led me and many other Members

to support a major initiative in H.R. 4544. as it emerged from committee. As reported, the bill would establish a fundamental new principle in the law concerning black lung. It is that a certain period of employment would be accepted as sufficient evidence of lung damage from coal mining to qualify the miner for benefits. Under this provision, miners employed for 25 years in an anthracite coal mine or 30 years in a bituminous coal mine would automatically be entitled to disability benefits. In establishing their periods of service, miners could count only time in the mines prior to June 30, 1971, the date when Federal dust standards became fully effective.

I believe that accepting a certain period of service in the mines as an irrebuttable presumption of lung damage would be both fair and humane. This approach conforms with the overwhelming bulk of the evidence in terms of both the effects of mining on the lungs and the great burden of complexity which the current program places on our mining families. Such a provision would be simple to administer and would save both Government funds and the efforts of administrators, medical examiners, and miners.

Mr. Chairman, while the equity of such a principle of law is clear to many of us, it has also aroused great controversy. Much opposition has been registered to an approach which would base findings of occupational disability on length of service in the occupation in question rather than medical proof of the disability. Our committee now feels constrained to offer a substitute bill which excludes this and certain other provisions. I have decided to support the amendment in the nature of a substitute in the interest of securing passage of other needed reforms in the black lung benefits program because a head count shows that we cannot get the bill passed without yielding on this point, and, obviously, a half a loaf is better than none.

And it is also clear to me that, even as modified by the substitute, H.R. 4544 will provide some important reforms. One of its key provisions would establish a Federal trust fund to support the benefit payments. This black lung disability insurance fund would be financed by the assessments and premiums paid by coal operators and would be managed by trustees elected by the operators. The premium would be established by the Secretary of Labor as a rate per ton of coal mined.

The law would also be clarified to enable more of the widows of afflicted coal miners to qualify for benefits after their deaths. H.R. 4544 provides that, where there is no medical evidence of the miner's condition, affidavits could be accepted to establish the existence of the disease and the widow's claim.

I would note, in addition, that section 7 on medical standards will make it easier for miners to demonstrate that they have the disease and thus to some extent serve the purpose which was to have been fulfilled by the provision establishing the "irrebuttable presumption" based on length of service, which was dropped from the substitute. This section mandates that medical standards be applied to part C claims—those filed after 1973—which are no more stringent than the "interim" standards which are applicable to part B claims filed between 1969 and 1973. This provision should prevent the routine rereading of X-rays which has been the basis of many claim denials.

Mr. Chairman, there are many other provisions of this bill that are worthy of mention. Suffice it to say that H.R. 4544 will improve black lung benefits and will make permanent a program which would otherwise expire in 1981. Passage of such a law will demonstrate that we value the lives of those who mine the coal at least as much as we do the energy which that coal provides. I urge my colleagues to fulfill that commitment and support House Resolution 4544.

Mr. DRINAN. Mr. Chairman, I rise in support of the Black Lung Benefits Reform Act, H.R. 4544, as amended in the form of a substitute by the Committee on Education and Labor. In doing so, I am honored to join thousands of American coal miners and their families in seeking to provide an assured means of medical and financial support for those mineworkers disabled by pneumoconiosis—more commonly known as black lung.

Though opponents of this legislation have gone so far as to suggest that black lung does not exist, the experience is all too real for those thousands of mineworkers who must retire prematurely and agonize over their family's financial security. Black lung cripples and kills some of the proudest and hardest working members of our labor force—it is not a figment of someone's imagination.

Overwhelming medical evidence and decades of experience indicate that virtually all mineworkers who have worked in an underground coal mine for 20 years or longer have contracted pneumoconiosis or a similar chronic respiratory disease. We must confront the fact that for decades, coal mine operators refused to admit that black lung even existed, and refused to provide adequate workmen's compensation or consider it as a legitimate cost of doing business.

Blame is by no means limited to the coal industry, however, and to characterize as shameful the Federal Government's history of assisting black-lung victims is a generous assessment. As documented by GAO, the Nixon and Ford administrations were not only content to allow a backlog of 50,000 black-lung claims, but simultaneously transferred black-lung benefit funds to uses not authorized or intended by Congress. In the past 3 years of our existing black-lung benefit program, the Department of Labor has failed to make even an initial claim determination in 50 percent of the cases filed. Of those decided upon, 19 out of 20 applications for benefits were denied.

Knowing that it typically requires 18 to 24 months to get even an initial claims decision by the Federal Government, a mineworker with family responsibilities will stay on the job—contrary to a doctor's advice—because he cannot afford a year or more without income. It is even more difficult to discontinue minework for health reasons when the prospect of receiving benefits is marginal at best.

Mr. Chairman, the legislation before the House is not a giveaway, as its critics have suggested, but a means of providing compensation quickly and equitably to those who are diagnosed as victims of black lung. By haggling over burdens of proof, we ignore our overwhelming burden of social responsibility. H.R. 4544 deserves the support of my colleagues, and I urge its passage.

Mr. MURTHA. Mr. Chairman, at long last, our Nation's leaders have realized the importance of coal as its primary energy mineral. Numerous studies have been prepared by both private firms and the Government to determine the amount of coal in the ground, the amount of coal that can be considered environmentally acceptable, and the tonnages of coal that must be mined in order to meet both "business-as-usual" and "accelerated" production goals. Unfortunately for the coal industry and America as well, many of these analysts mainly think all that is needed is recognition of the importance of the mineral and speculation about the production levels that will be necessary to achieve energy independence. Notwithstanding all of the recognition and the speculation, coal would never be moved to the boilers if it were not for the individual coal miner, the primary and indispensible link in the production chain.

A report coal availability prepared by the National Petroleum Council in 1974 stated that the future overall ability of the coal industry to supply its share of U.S. energy supplies will depend on its ability to produce coal from deep mines. This conclusion is consistent with that of the recent comprehensive study prepared by the Workshop on Alternative Energy Strategies at the Massachusetts Institute of Technology. According to the figures in that report, the United States will require, in addition to 75 new Eastern surface mines and 232 new Western surface mines, the output of 377 new Eastern underground mines in order to meet the cumulative coal requirements by the year 2000.

The WAES study shows that development of high-cost underground coal is consistent with the rising energy price scenarios. Because of increasingly stringent mine safety regulations, associated declines in underground mining productivity, and the gradual depletion of readily accessible reserves, the relative costs of underground coal may continue to rise. The report concluded that development of Eastern underground coal would stimulate employment and economic activity in a region of the country that has had chronic economic development and employment problems for many years.

Several estimates of the manpower needs that will be generated by this increase in coal demand have been made. Because of the uncertainties associated with falling productivity in the deep mines, however, it is impossible to accurately determine the actual number of miners that will be needed.

One of these estimates, which was con-

tained in a 1975 report on "An Analysis of Constraints on Increased Coal Production" by the Mitre Corporation, cast three demand scenarios for manpower in the underground coal mining industry in 1980 and 1985 business as usual, intermediate, and accelerated. In the first scenario, which assumes no significant expansion in the earlier years, because of the long leadtimes, manpower demand in the deep mining industry was projected to be approximately 145,000. In the intermediate demand scenario, which was "conditioned by the more realistic assumption that the estimates for the 'accelerated scenario' represented the maximum that could be expected under the most favorable circumstances" the report projected a slightly greater demand of 155.000 men. A demand of 220,000 miners by 1980 was projected in the "accelerated scenario," which assumed some relaxation of pollution control regulations, including variances, public land leasing practices as neeedd, and no seriously adverse limitations on surface mining. These same scenarios projected a demand for miners of approximately 170,000; 190,000; and 340,000 respectively in 1985.

The WAES study projects an increase in the requirements for underground miners from 50,000 man years per year in 1975 to 110,000 man years per year in 2000.

Although these manpower estimates vary, the fact remains that significantly greater numbers of underground miners will be needed to mine the coal. In order to recruit the necessary numbers, coal mining must be perceived as a more desirable profession by the young labor force that will be gradually replacing large numbers of older miners soon scheduled for retirement. According to the MITRE study:

Public opinion is negative toward underground mining as a prospective profession. Adverse publicity resulting from mining disasters constitutes the major source of information to the average layman. Attention is also focused on the inconvenience generated by strikes when the mine workers dispute the provisions of both existing contracts and those under negotiation for renewal.

It would appear from this narrow view of the mining industry that miners are either in constant danger of their lives or they are in constant conflict with the mine operators. It does not seem that this image will change in the near future unless a concerted effort is made to mount a public relations campaign which will be aimed at all public sectors, especially those in which potential new miners may be sought.

The recently enacted Surface Mining Control and Reclamation Act contains provisions for the establishment of mining research institutes in qualified colleges and universities around the United States and for the training of mining engineers, but little attention at the Federal level has been paid to the development of facilities for training actual equipment operators in the underground mines. Some States which have been sensitive to the immediate and long-range needs have already initiated programs in various vocational technical schools to prepare entrants into the mining profession for safe, challenging, and productive careers. With the cooperation of the mining industry, such schools offer courses in such crucial subjects as roof-bolting and equipment operation both in the classroom and in mining simulation setups, with the concept of "hands-on" training being emphasized. Through these efforts, the motivation and morale of the individual miner and, in turn, the mine productivity can be uplifted.

If this small and select segment of the total labor force is expected to serve as the keystone for our energy future, the profession must be afforded the respect that it rightfully deserves. Miners must be guaranteed safe working conditions and adequate health and retirement benefits. A fair black lung benefits program that is shorn of redtape and delay and adequately compensates a miner for the disabling effect of pneumoconiosis is essential. This legislation, H.R. 4544, therefore, becomes a must if we expect to be fair in our treatment of miners and attract the needed manpower to produce this abundant fuel for our national needs.

Mr. McDADE. Mr. Chairman, I rise in support of H.R. 4544, the Black Lung Benefit Reform Act of 1977 and to urge that the House give it quick and overwhelming approval.

This legislation is the product of a great deal of compromise which has become necessary in order to make some very basic improvements to existing law. It contains some reforms which have concerned the Members of this House since the enactment of the program some 8 years ago. It represents our best efforts to provide simple justice to a small group of Americans who have nowhere else to turn for relief.

Mr. Chairman, this bill finally transfers responsibility for past claims from the taxpayers to the coal industry. Such a transfer is not only proper, it is long overdue. The responsibility for providing the health benefits of coal workers belongs to the coal industry itself. Such was the original intent of Congress when the Coal Mine Health and Safety Act was first enacted.

I intend to support, and I urge my colleagues to do likewise, the Thompson-Andrews substitute which will be offered to the committee bill. These changes should answer all of the objections raised to the original bill. They will remove the automatic entitlement provisions. They will conform the bill to the Appropriations and Budget Committee guidelines. They will prohibit miners from obtaining benefits while working. And they will allow appeals on both denials and approvals by the claimant and HEW. Again, these provisions are far from perfect, and I worked for, supported, and would support today the committee bill. But there must be compromise.

Mr. Chairman, our Nation's history of neglect of the men who gave their health and in many cases their lives to mine coal is a well known and well documented fact. This program has provided very small compensation for thousands of families in the Nation's coalfields who have received a very small benefit to compensate them for the ravages to their health or the loss of loved ones.

Even if we pass this bill, inequities still remain. Miners are being denied benefits through no fault of their own, because the coal company never kept records or because a potentially eligible miner was killed in a mine accident or because the miner may have had black lung but his family doctor is deceased. These are not isolated incidents, they are common throughout the Appalachian coal region. These people have turned to the industry for help and they have been given a deaf ear. So they turned to the Congress and we have tried to care for them. And this program has helped them to live their lives with greater dignity than would be possible without our help.

I trust that the Members of this House will not turn their backs upon the thousands of families who are dependent upon this bill. I urge its immediate approval.

I urge the defeat of the Erlenborn amendment.

BLACK LUNG BENEFITS REFORM ACT

Mr. CARTER. Mr. Chairman, I would like to insert into the RECORD my remarks on the House floor during last year's debate on the Black Lung Benefits Reform Act. I believe that they are very appropriate to today's discussion of this important matter.

Mr. ERLENBORN. Mr. Chairman, I yield 5 minutes to the gentleman from Kentucky (Mr. CARTER).

(Mr. CARTER asked and was given permission to revise and extend his remarks.)

Mr. CARTER. Mr. Chairman, on December 3, 1970, I received an urgent call from Harlan, Ky. There had been a mine disaster. That night I was there. I saw them as they brought 38 blackened and burned bodies out of that coal mine. I heard the distressed cries of the widows and orphans. I want to say that it is the most hazardous profession that we have in the United States today.

In Lynch, Ky., the United States Steel Co. has a mine which goes back under the mountains from 6 to 9 miles. These people go back there each day and stay 8 hours under that maintain back in that black hole. Any man in this country who has served 25 years back in a mine, back in a hole, deserves something for having done that. I think any miner who goes back under the mountains of Kentucky and digs coal to keep us warm in the winter, a man who stays there for 30 years, does deserve something.

I feel that, without a doubt, each one of these men in Kentucky or Pennsylvania, or wherever it may be, will show an X-ray with stippling and fibrosis in the lungs, which shows he has pneumoconiosis.

Over the years I have visited throughout the mining area of my State and it is just a very common thing when I see hands on those men with a missing finger or two fingers. I see them often with only one leg. I see them walking on crutches as the result of slate falls.

Just last week I saw a miner in Whittey leity, Ky., which is in McCreary County. The man was disabled. I noticed his heaving respiration. His wife was with him and they thanked me for assisting them in getting their benefits.

His wife told me:

"My father was killed in a mine. My two brothers were killed in the mines."

This is what happens to so many of our people. They are killed. This is the most

hazardous occupation that we have, from the viewpoint of accidents, accidental death, terrible death, fire, gas, cave-ins, slate falls; there is nothing to compare with it.

Now, I would hope that this House in its good judgment would not be so cold and calculating as to deny these people who go down into the bowels of the Earth to get the energy by which we keep warm in the winter, I hope that they will not be so cold as to forget these men who each day work that we may be warm or that we have the energy that we consume every day. As we know, the future of the energy supply of this country depends upon coal. As one of my good friends from Pennsylvania said, "C–O–A–L, coal."

We have not gone to the gasification, to the liquefaction of coal, but we must do so immediately so that this country can be eternally independent of the OPEC nations. Coal is the source of our future supply of energy. Why this House has delayed passing the gasification and liquefaction bill is beyond me. We must protect those men who supply our source of energy at the risk every day of their lives.

Mr. ALLEN. Mr. Chairman, will the distinguished gentleman from Kentucky yield?

Mr. CARTER. I am happy to yield to my good friend from Nashville.

Mr. ALLEN. Mr. Chairman, I would like to associate myself with the remarks of a man who not only is a distinguished Member of this body, but who is a distinguished member of the medical profession and a man who knows whereof he speaks. I concur 100 percent in the sentiments and remarks he has expressed before this Committee.

Mr. CARTER. I want to thank the distinguished gentleman for his very kind remarks.

Mr. BUCHANAN. Mr. Chairman, will the gentleman yield?

Mr. CARTER. I am happy to yield to the gentleman from Alabama.

Mr. BUCHANAN. Mr. Chairman, I too would like to associate myself with the remarks made by the distinguished gentleman from Kentucky. He has spoken with wisdom and with compassion. I fully support his case, and associate myself with him.

Every one of us who has had the privilege of representing a coal mining district has had the experience of witnessing the human tragedy of miners who were old and who were ill, for whom there was no help prior to the passage of this basic legislation There are still people in need whose needs will be met by the strengthening of this legislation, which we can do this day.

I believe the gentleman to be speaking the truth medically. I have never known a person who has worked for 25 or 30 years in a coal mine who did not have a health problem or a breathing problem. Perhaps it can be so, but I have never met that man.

Mr. CARTER. I must agree with the distinguished gentleman from Alabama. I do not believe it is possible for a man to work 25 years in an anthracite mine or 30 years in a bituminous mine without severe pneumoconiosis.

Mr. BUCHANAN. I thank the gentleman for his remarks.

Mr. DENT. Mr. Chairman, I yield 3 minutes to the gentleman from Illinois (Mr. SIMON).

(Mr. SIMON asked and was given permission to revise and extend his remarks.)

Mr. SIMON. Mr. Chairman and my colleagues of the House, I join my distinguished predecessor from Kentucky (Mr. CARTER), who hit it right on the head, along with the gentleman from Alabama. I heard my colleague from Pennsylvania (Mr. GOODLING)—I do not see him right now—say that this is an issue where there should be no emotionalism. It is pretty hard for me not to get a little emotional when I talk to coal miners who worked 20, 25 years, and they have health problems. There is just no question about it.

My friends who do not represent coal mining areas can talk in theory; I am talking facts.

But, let us talk statistics then if we want to avoid emotionalism. One is the reality mentioned by the gentleman from Kentucky (Mr. CARTER), Mr. Chairman. that coal mining is dangerous. There are 160,000 coal miners, roughly, in this country. Last year, 155 coal miners died. That means that one out of every thousand died in a coal mine accident. Further, 16,000—1 out of every 10—were injured in one way or another. Nine thousand—1 out of every 17—suffered a disabling injury. This is aside from pneumoconiosis, black lung, and this is January through October 1975 on injuries.

We are talking about a serious problem aside from black lung. Now, my good friend from Connecticut has said that this is unsound financially. The reality is, we are proposing a program that is eminently sound financially. The black lung recipient receives $2,800 a year against an average of $14,000 if he is mining. No one who is in good health is going to choose $2,800 in income when in fact he could otherwise get $14,000 in income. This bill does it in a sound way, putting it on a ton of coal mined, 14 cents a ton. Let us just assume that we are 100 percent wrong in that assessment of what the cost would be.

Let us assume that it is 28 cents a ton. So it is 28 cents a ton. Is that a reason to deny justice to people who eminently deserve that justice?

The CHAIRMAN pro tempore (Mr. LLOYD of California). The time of the gentleman from Illinois has expired.

Mr. DENT. Mr. Chairman, I yield 1 additional minute to the gentleman from Illinois (Mr. SIMON).

Mr. SIMON. Mr. Chairman, I will close in 1 minute.

The national coal workers autopsy study—and that is the real way to find out whether there is a problem—shows that 90 to 95 percent of the coal miners, where an autopsy has been performed, who had worked at least 20 years. had pneumoconiosis. I have some other facts here, but I would finally close with just an appeal that was sent to me by a Federal judge. who said:

"Somehow, something has to be done. I have to rule against these coal miners and their widows, when I know that simple justice requires just the contrary."

Mr. CARTER. Mr. Chairman, will the gentleman yield?

Mr. ASHBROOK. I yield to the gentleman from Kentucky.

Mr. CARTER. Mr. Chairman. I would like to ask my distinguished friend. the gentleman from Illinois (Mr. ERLENBORN), how many able-bodied miners he knows, miners of either anthracite or bituminous coal. who have worked in the mines 25 or 30 years and who are still able to go about their business and to work at anything, let alone work in the depth of a mine.

Mr. ERLENBORN. Mr. Chairman, will the gentleman yield so I may reply?

Mr. ASHBROOK. I yield to my colleague, the gentleman from Illinois.

Mr. ERLENBORN. Mr. Chairman, I think the question the gentleman from Kentucky should more properly be zeroing in on is the question of whether or not these people are entitled to a pension after working for long periods of time, and I think, yes. perhaps they should be. The simple justice of the situation would indicate that a pension should be made available to those who have spent long years in the coal mines. and many of the arguments that have been made on the floor have been made on that basis.

If we were talking about a coal mine pension bill and it were a bill that gave equal justice to all who worked in hazardous occupations. we might have some reason to be conducting this debate. But the fact is, Mr. Chairman, that all the medical evidence before our committee indicates that periods of service in the coal mines bear no relation to disability based on complicated pneumoconiosis.

Mr. CARTER. Mr. Chairman, the gentleman has not yet answered my question as to how many able-bodied men he knows of who have worked for 25 years in an anthracite mine or for 30 years in a bituminous mine. If he can show me one. I would like to see him. and I would like to see one who is not disabled. I would like to locate that one man. It is my feeling that 25 years as an anthracite miner or 30 years as a bituminous miner will cause pneumoconiosis.

Mr. Chairman, if only some of you could see these men that we are trying to help here. They are good men. Men who have no other work besides the work that their region of the country gives them. Coal mining is a dangerous occupation. The coal dust, the long hours in the dark and the knowledge that they can expect to die from black lung early in their life or suffer from the various diseases associated with mining.

Mr. Chairman, another year has gone by without help to these miners. Why? In the Fifth District of Kentucky, we have had 3,000 black lung cases pending under the Labor Department since 1973. Only 17 cases have been approved, 8 have been initially approved and 3 are on pay status. This is far below even the poor national approval rate of 7 percent. Why has the Labor Department been so slow in its approval of black lung benefits?

Once again, I rise in support of H.R. 4544, the Black Lung Benefits Reform Act of 1977. It is a good bill which will finally bring help to these people. The bill should not be weakened.

Mr. PERKINS. Mr. Chairman, I move to strike the last word.

Mr. FLOWERS. Mr. Chairman, will the gentleman yield?

Mr. PERKINS. I yield to the gentleman from Alabama.

(Mr. FLOWERS asked and was given permission to revise and extend his remarks.)

Mr. FLOWERS. Mr. Chairman, I have a problem which I would like to bring to the attention of the committee.

Mr. Chairman, many of my fellow Alabamians who have spent their lives mining coal are benefiting from black lung legislation, and I am grateful for that. I have supported this legislation in the past and I will do so again here today.

But there are many other men in my region who have spent years in underground mining but who are not eligible for benefits under this legislation. I am speaking of those who were engaged in the mining of iron ore and who are afflicted with red lung disease as a result.

You do not hear as much about red lung because iron ore mining is more regional in scope than coal mining. but let me assure you that those with red lung suffer terribly, just as do those with black lung.

It is also important to consider the fact that because we no longer mine iron ore in the United States, most of the people I am talking about are quite old. Unless we help them soon, there will be no one left to help other than their widows and children.

I have a difficult time, Mr. Chairman, trying to explain to red lung victims why they cannot get benefits while black lung victims can. I hope I will not have to try much longer.

I note that the Senate has added language in their bill calling for a study of red lung disease.

Would the gentleman from Kentucky be disposed toward going along with the Senate provisions in this regard?

Mr. PERKINS. Mr. Chairman, let me say to the distinguished gentleman from Alabama that I have discussed this particular amendment with the gentleman from New Jersey (Mr. THOMPSON) and other members of the Committee on Education and Labor and I know of no opposition to this particular study. It is in the Senate bill. I personally will vote to retain the study in the conference between the House and the Senate.

Mr. BUCHANAN. Mr. Chairman, will the gentleman yield?

Mr. PERKINS. I yield to the distinguished gentleman from Alabama (Mr. BUCHANAN).

Mr. BUCHANAN. Mr. Chairman, as a member of the Committee on Education and Labor, I simply wish to associate myself strongly with the concern of my colleague, the gentleman from Alabama (Mr. FLOWERS). This is a very serious problem.

Mr. Chairman, I thank the gentleman for yielding.

The CHAIRMAN. The question is on the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. MCKAY, Chairman of the Committee of the Whole House on the State of the Union, reported that the Committee, having had under consideration the bill (H.R. 4544) to amend the Federal Coal Mine Health and Safety Act to improve the black lung benefits program established under such Act, and for other purposes, pursuant to House Resolution 702, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER. Under the rule, the previous question is ordered.

Is a separate vote demanded on the amendment to the committee amendment in the nature of a substitute adopted by the Committee of the Whole? If not, the question is on the amendment.

The amendment was 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. ERLENBORN

Mr. ERLENBORN. Mr. Speaker, I offer a motion to recommit.

The SPEAKER. Is the gentleman opposed to the bill?

Mr. ERLENBORN. I am, Mr. Speaker.

The SPEAKER. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. ERLENBORN moves to recommit the bill H.R. 4544 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. ERLENBORN. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 283, nays 100, answered "present" 1, not voting 50, as follows:

[Roll No. 564]

YEAS—283

Akaka	Evans, Colo.	Levitas
Alexander	Evans, Del.	Lloyd, Calif.
Allen	Evans, Ga.	Lloyd, Tenn.
Ambro	Evans, Ind.	Long, La.
Ammerman	Fary	Long, Md.
Andrews, N.C.	Fascell	Lujan
Annunzio	Fenwick	Lundine
Applegate	Findley	McClory
Ashley	Fish	McCloskey
Aspin	Fisher	McCormack
AuCoin	Fithian	McDade
Baldus	Flippo	McFall
Barnard	Flood	McHugh
Baucus	Florio	McKay
Beard, R.I.	Flowers	McKinney
Bedell	Foley	Madigan
Beilenson	Ford, Mich.	Maguire
Benjamin	Ford, Tenn.	Mahon
Bevill	Fountain	Markey
Bingham	Fowler	Marks
Blanchard	Fuqua	Mathis
Blouin	Gaydos	Mattox
Boggs	Gephardt	Mazzoli
Boland	Giaimo	Meeds
Bonior	Gibbons	Meyner
Bonker	Gilman	Mikulski
Bowen	Ginn	Mikva
Brademas	Glickman	Miller, Calif.
Breaux	Gonzalez	Miller, Ohio
Breckinridge	Goodling	Mineta
Brinkley	Gore	Minish
Brodhead	Gudger	Mitchell, Md.
Brown, Calif.	Guyer	Mitchell, N.Y.
Buchanan	Hall	Moakley
Burke, Mass.	Hamilton	Moffett
Burlison, Mo.	Hammer-schmidt	Mollohan
Burton, John	Hanley	Moorhead, Pa.
Byron	Hannaford	Moss
Caputo	Harkin	Mottl
Carney	Harrington	Murphy, N.Y.
Carr	Harris	Murphy, Pa.
Carter	Hawkins	Murtha
Cavanaugh	Heckler	Myers, John
Chappell	Hefner	Myers, Michael
Chisholm	Heftel	Natcher
Clausen, Don H.	Hightower	Neal
Clay	Holland	Nedzi
Cohen	Hollenbeck	Nichols
Coleman	Howard	Nix
Collins, Ill.	Hubbard	Nolan
Conyers	Hughes	Nowak
Corman	Hyde	O'Brien
Cornell	Jacobs	Oakar
Cornwell	Jenrette	Oberstar
Coughlin	Jones, N.C.	Obey
Danielson	Jones, Okla.	Ottinger
Davis	Jones, Tenn.	Panetta
de la Garza	Jordan	Patten
Delaney	Kastenmeier	Patterson
Dellums	Kazen	Pattison
Derrick	Keys	Pease
Dicks	Kildee	Pepper
Dingell	Kindness	Perkins
Drinan	Kostmayer	Pike
Duncan, Tenn.	Krebs	Pressler
Edgar	LaFalce	Preyer
Edwards, Calif.	Le Fante	Price
Eilberg	Leach	Pritchard
Emery	Lederer	Quillen
English	Leggett	Rahall
Ertel	Lehman	Railsback
Regula	Sikes	Rangel
Reuss	Simon	Van Deerlin
Richmond	Sisk	Vanik
Rinaldo	Skelton	Vento
Risenhoover	Slack	Volkmer
Rodino	Smith, Iowa	Walgren
Roe	Solarz	Wampler
Rogers	Spellman	Watkins
Roncalio	St Germain	Waxman
Rooney	Staggers	Weiss
Rostenkowski	Stanton	Whalen
Roybal	Stark	White
Runnels	Steed	Whitley
Ruppe	Steers	Whitten
Russo	Stokes	Wilson, C. H.
Santini	Studds	Wilson, Tex.
Sawyer	Thompson	Wirth
Scheuer	Thornton	Wright
Schroeder	Traxler	Wylie
Seiberling	Tsongas	Yates
Sharp	Tucker	Yatron
Shipley	Udall	Young, Mo.
Shuster	Ullman	Young, Tex.
		Zablocki

NAYS—100

Abdnor	Frenzel	Poage
Andrews, N. Dak.	Frey	Quayle
Archer	Gradison	Quie
Armstrong	Grassley	Rhodes
Ashbrook	Hagedorn	Roberts
Badham	Hansen	Robinson
Bauman	Hillis	Rudd
Beard, Tenn.	Holt	Ryan
Bennett	Horton	Sarasin
Brown, Mich.	Huckaby	Satterfield
Broyhill	Ichord	Schulze
Burgener	Ireland	Sebelius
Burke, Fla.	Jeffords	Skubitz
Burleson, Tex.	Kasten	Snyder
Butler	Kelly	Spence
Cederberg	Kemp	Stangeland
Cleveland	Ketchum	Steiger
Cochran	Lagomarsino	Stockman
Collins, Tex.	Latta	Stratton
Conable	Lent	Stump
Conte	Livingston	Symms
Corcoran	Lott	Taylor
Cotter	McDonald	Thone
Crane	McEwen	Treen
Daniel, Dan	Mann	Trible
Daniel, R. W.	Marriott	Vander Jagt
Devine	Martin	Waggonner
Dickinson	Michel	Walker
Dornan	Montgomery	Walsh
Edwards, Okla.	Moore	Wiggins
Erlenborn	Moorhead, Calif.	Winn
Flynt	Myers, Gary	Wydler
Forsythe	Pettis	Young, Alaska
		Young, Fla.

ANSWERED "PRESENT"—1

Bafalis

NOT VOTING—50

Addabbo	Diggs	Luken
Anderson, Calif.	Dodd	Marlenee
Anderson, Ill.	Downey	Metcalfe
Badillo	Duncan, Oreg.	Milford
Biaggi	Early	Murphy, Ill.
Bolling	Eckhardt	Pickle
Brooks	Edwards, Ala.	Pursell
Broomfield	Fraser	Rose
Brown, Ohio	Gammage	Rosenthal
Burke, Calif.	Goldwater	Rousselot
Burton, Phillip	Harsha	Smith, Nebr.
Clawson, Del	Holtzman	Teague
Cunningham	Jenkins	Weaver
D'Amours	Johnson, Calif.	Whitehurst
Dent	Johnson, Colo.	Wilson, Bob
Derwinski	Koch	Wolff
	Krueger	Zeferetti

The Clerk announced the following pairs:

On this vote:

Mr. Addabbo for, with Mr. Broomfield against.

Mr. Eckhardt for, with Mr. Del Clawson against.

Mr. Luken for, with Mr. Cunningham against.

Mr. Zeferetti for, with Mr. Rousselot against.

Mr. Wolff for, with Mrs. Smith of Nebraska against.

Mr. Biaggi for, with Mr. Teague against.

Until further notice:

Mr. Badillo with Mr. Anderson of California.

Mr. D'Amours with Mr. Brown of Ohio.

Ms. Holtzman with Mr. Dent.
Mr. Dodd with Mr. Anderson of Illinois.
Mr. Weaver with Mr. Diggs.
Mr. Early with Mr. Duncan of Oregon.
Mr. Gammage with Mr. Fraser.
Mr. Brooks with Mr. Goldwater.
Mr. Jenkins with Mr. Derwinski.
Mr. Downey with Mr. Pickle.
Mrs. Burke of California with Mr. Whitehurst.
Mr. Johnson of California with Mr. Edwards of Alabama.
Mr. Phillip Burton with Bob Wilson.
Mr. Koch with Mr. Harsha.
Mr. Krueger with Mr. Johnson of Colorado.
Mr. Metcalfe with Mr. Marlenee.
Mr. Murphy of Illinois with Mr. Milford.
Mr. Rosenthal with Mr. Rose.

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. PERKINS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

Calendar No. 401

95TH CONGRESS
1ST SESSION

H. R. 4544

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 19, 1977
Received; read twice and ordered to be placed on the calendar

AN ACT

To amend the Federal Coal Mine Health and Safety Act to improve the black lung benefits program established under such Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Black Lung Benefits Reform Act of 1977".

EMPLOYMENT BEFORE 1970

SEC. 2. Section 414 (a) of the Act (30 U.S.C. 924 (a)) is amended by adding at the end thereof the following new paragraph:

"(4) A claim for benefits under this part may be filed at

any time on or after the date of the enactment of the Black Lung Benefits Reform Act of 1977 by a miner (or in the case of a deceased miner, the eligible survivors of such miner) if the date of the last exposed employment of such miner occurred before December 30, 1969.".

OFFSET AGAINST WORKMEN'S COMPENSATION BENEFITS

SEC. 3. The first sentence of section 412 (b) of the Act (30 U.S.C. 922 (b)) is amended by inserting immediately after "disability of such miner" the following: "due to pneumoconiosis".

CURRENTLY EMPLOYED MINERS

SEC. 4. (a) The first sentence of section 413 (b) of the Act (30 U.S.C. 923 (b)) is amended by inserting immediately before the period at the end thereof the following: "or solely on the basis of employment as a miner if (1) the location of such employment has recently been changed to a mine area having a lower concentration of dust particles; (2) the nature of such employment has been changed so as to involve less rigorous work; or (3) the nature of such employment has been changed so as to result in the receipt of substantially less pay".

(b) Section 413 is further amended by adding at the end thereof the following new subsection:

"(d) No miner who is engaged in coal mine employment shall (except as provided in section 411 (c) (3)) be

entitled to any benefits under this part while so employed. Any miner who has been determined to be eligible for benefits pursuant to a claim filed while such miner was engaged in coal mine employment shall be entitled to such benefits if his employment terminates within one year after the date such determination becomes final.".

ADVISORY OPINIONS

SEC. 5. Section 413 of the Act (30 U.S.C. 923) is amended by adding at the end thereof the following new subsection:

"(e) (1) A miner may file a claim for benefits whether or not such miner is employed by an operator of a coal mine at the time such miner files such claim.

"(2) The Secretary shall notify a miner, as soon as practicable after the Secretary receives a claim for benefits from such miner, whether, in the opinion of the Secretary, such miner would be eligible for benefits, except for the circumstances of the employment of such miner at the time such miner filed a claim for benefits.

INDIVIDUAL NOTIFICATIONS

SEC. 6. Part B of title IV of the Act (30 U.S.C. 911 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 416. (a) For purposes of assuring that all individuals who may be eligible for benefits under this part

are afforded an opportunity to apply for and, if entitled thereto, to receive such benefits, the Secretary shall undertake a program to locate individuals who are likely to be eligible for such benefits and have not filed a claim for such benefits.

"(b) The Secretary shall seek to determine, in cooperation with operators and with the Secretary of the Interior, the names and current addresses of individuals having long periods of employment in coal mining and, if such individuals are deceased, the names and addresses of their widows, children, parents, brothers, and sisters. The Secretary shall then directly, by mail, by personal visit by a delegate of the Secretary, or by other appropriate means, inform any such individuals (other than those who have filed a claim for benefits under this title) of the possibility of their eligibility for benefits, and offer them individualized assistance in preparing their claims where it is appropriate that a claim be filed.

"(c) Notwithstanding any other provision of this part, a claim for benefits under this part, in the case of an individual who has been informed by the Secretary under subsection (b) of the possibility of his eligibility for benefits, shall, if filed no later than six months after the date he was so informed, be considered on the same basis as if it had been filed on June 30, 1973.".

DEFINITIONS

SEC. 7. (a) Section 402 (f) of the Act (30 U.S.C. 902 (f)) is amended by adding at the end thereof the following new undesignated paragraph:

"With respect to a claim filed after June 30, 1973, such regulations shall not provide more restrictive criteria than those applicable to a claim filed on June 30, 1973.".

(b) Section 402 of the Act (30 U.S.C. 902) is amended by inserting immediately after paragraph (g) the following new paragraph:

"(h) The term 'fund' means the Black Lung Disability Insurance Fund established by section 423 (a).".

EVIDENCE REQUIRED TO ESTABLISH CLAIM

SEC. 8. (a) Section 413 (b) of the Act (30 U.S.C. 923 (b)) is amended by inserting immediately after the second sentence thereof the following new sentence: "Where there is no relevant medical evidence in the case of a deceased miner, such affidavits shall be considered to be sufficient to establish that the miner was totally disabled due to pneumoconiosis or that his death was due to pneumoconiosis.".

(b) The last sentence of section 413 (b) of the Act (30 U.S.C. 923 (b)) is amended by striking out "and (l)," and inserting in lieu thereof "(l), and (n),".

(c) The second sentence of section 413(b) of the Act (30 U.S.C. 923(b)) is amended by striking out the period at the end thereof and inserting a colon and the following: "*Provided*, That, unless the Secretary has good cause to believe (1) that an X-ray is not of sufficient quality to demonstrate the presence of pneumoconiosis, or an autopsy report is not accurate, or (2) that the condition of the miner is being fraudulently misrepresented, the Secretary shall accept such report, or, in the case of the X-ray, accept the opinion of the claimant's physician, concerning the presence of pneumoconiosis and the stage of advancement of pneumoconiosis.".

CLAIMS FILED AFTER DECEMBER 31, 1973

SEC. 9. (a) (1) The first sentence of section 422(a) of the Act (30 U.S.C. 932(a)) is amended—

(A) by inserting immediately before the period at the end thereof the following: ", or with respect to entitlements established in paragraph (5) or paragraph (6) of section 411(c) of this title"; and

(B) by inserting immediately after "except as otherwise provided in this subsection" the following: "and to the extent consistent with the provisions of this part,".

(2) The last sentence of section 422(a) of the Act (30 U.S.C. 932(a)) is amended—

(A) by striking out "benefits" and inserting in lieu thereof "premiums and assessments"; and

(B) by striking out "to persons entitled thereto".

(3) Section 422 (b) of the Act (30 U.S.C. 932 (b)) is amended by inserting "(1)" immediately after "(b)", and by adding at the end thereof the following new paragraph:

"(2) (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) of this part each operator of a coal mine in such State shall secure the payment of assessments against such operator under section 424 (g) of this part by (i) qualifying as a self-insurer in accordance with regulations prescribed by the Secretary; or (ii) insuring and keeping insured the payment of such assessments 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 (ii) of subparagraph (A) of this paragraph, every policy or contract of insurance shall contain—

"(i) a provision to pay assessments required under section 424 (g) of this part, notwithstanding the provisions of the State workmen's compensation law which

may provide for payments which are less than the amount of such assessments;

"(ii) a provision that insolvency or bankruptcy of the operator or discharge therein (or both) shall not relieve the carrier from liability for the payment of such assessments; and

"(iii) 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 (ii) of subparagraph (A) of this paragraph 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.".

(4) Section 422(b)(1) of the Act, as so redesignated by paragraph (3), is amended—

(A) by striking out "benefits" and inserting in lieu thereof "premiums and assessments"; and

(B) by striking out "section 423" and inserting in lieu thereof "section 424".

(5) Section 422(c) of the Act (30 U.S.C. 932(c)) is amended to read as follows:

"(c) Benefits shall be paid during such period under

this section by the fund, subject to reimbursement to the fund by operators in accordance with the provisions of section 424 (g) of this title, 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, except that (1) the Secretary may modify any such regulation promulgated by the Secretary of Health, Education, and Welfare; and (2) no operator shall be liable for the payment of any benefit (except as provided in section 424 (f) of this title) on account of death or total disability due to pneumoconiosis, or on account of any entitlement based upon conditions described in paragraphs (5) and (6) of section 411 (c), which did not arise, at least in part, out of employment in a mine during the period when it was operated by such operator.".

(6) Section 422 (e) of the Act (30 U.S.C. 932 (e)) is amended—

(A) by striking out "required" and inserting in lieu thereof "made"; and

(B) by adding "or" immediately after the semicolon in paragraph (1) thereof, by striking out ", or" at the end of paragraph (2) thereof and inserting in lieu thereof a period, and by striking out paragraph (3) thereof.

(7) Section 422 (f) (2) of the Act (30 U.S.C. 932 (f) (2)) is amended—

(A) by inserting "paragraph (4), (5), or (6) of" immediately after "eligibility under";

(B) by striking out "section 411 (c) (4)" the first place it appears therein and inserting in lieu thereof "section 411 (c)";

(C) by striking out "from a respiratory or pulmonary impairment"; and

(D) by striking out "section 411 (c) (4) of this title, incurred as a result of employment in a coal mine" and inserting in lieu thereof "any of such paragraphs".

(8) Section 424 (h) of the Act (30 U.S.C. 932 (h)) is amended by striking out the first sentence thereof.

(9) Section 422 (i) of the Act (30 U.S.C. 932 (i)) is amended to read as follows:

"(i) (1) The Secretary shall promulgate regulations providing for the prompt and expeditious consideration of claims under this section.

"(2) (A) The Secretary shall promulgate regulations providing for the prompt and equitable hearing of appeals by claimants who are aggrieved by any decision of the Secretary.

"(B) Any such hearing shall be held no later than forty-five days after the date upon which the claimant in-

volved requests such hearing. A hearing may be postponed at the request of the claimant involved for good cause.

"(C) Any such hearing shall be held at a time and a place convenient to the claimant requesting such hearing.

"(D) Any such hearing shall be of record and shall be subject to the provisions of sections 554, 555, 556, and 557 of title 5, United States Code.

"(3) (A) Any individual, after any final decision of the Secretary made after a hearing to which he was a party, may obtain a review of such decision by a civil action commenced no later than ninety days after the mailing to him of notice of such decision, or no later than such further time as the Secretary may allow.

"(B) Such action shall be brought in a district court of the United States in the State in which the claimant resides.

"(C) The Secretary shall file, as part of his answer, a certified copy of the transcript of the record, including the evidence upon which the findings and decision complained of are based.

"(D) The court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Secretary, with or without remanding the case for a rehearing. The findings

of the Secretary as to any fact, if supported by the weight of the evidence, shall be conclusive.

"(E) The court shall, on motion of the Secretary made before he files his answer, remand the case to the Secretary for further action by the Secretary, and may, at any time, on good cause shown, order additional evidence to be taken before the Secretary, and the Secretary shall, after the case is remanded, and after hearing such additional evidence if so ordered, modify or affirm his findings of fact or his decision, or both, and shall file with the court any such additional and modified findings of fact and decision, and a transcript of the additional record and testimony upon which his action in modifying or affirming was based. Such additional or modified findings of fact and decision shall be reviewable only to the extent provided for review of the original findings of fact and decision.

"(F) The judgment of the court shall be final, except that it shall be subject to review in the same manner as a judgment in other civil actions. Any action instituted in accordance with this paragraph shall survive notwithstanding any change in the person occupying the office of Secretary or any vacancy in such office.".

(10) In the case of any miner or any survivor of a miner who is eligible for benefits under section 422 of the Act (30 U.S.C. 932) as a result of any amendment made by any

provision of this Act, such miner or survivor may file a claim for benefits under such section no later than three years after the date of the enactment of this Act, or no later than the close of the applicable period for filing claims under section 422 (f) of the Act (30 U.S.C. 932 (f)), whichever is later.

(b) Section 423 of the Act (30 U.S.C. 933) is amended to read as follows:

"SEC. 423. (a) (1) There is hereby established in the Treasury of the United States a trust fund to be known as the Black Lung Disability Insurance Fund. The fund shall consist of such sums as may be appropriated as advances to the fund under section 424 (e) (1) of this part, the assessments paid into the fund as required by section 424 (g), the premiums paid into the fund as required by section 424 (a), the interest on, and proceeds from, the sale or redemption of any investment held by the fund, and any penalties recovered under section 424 (c), including such earnings, income, and gains as may accrue from time to time which shall be held, managed, and administered by the trustees in trust in accordance with the provisions of this part and the fund.

"(2) Fund assets, other than such assets as may be required for necessary expenses, shall be used solely and exclusively for the purpose of discharging obligations of oper-

ators under this part. Operators shall have no right, title, or interest in fund assets, and none of the earnings of the fund shall inure to the benefit of any person, other than through the payment of benefits under this part, together with appropriate costs.

"(b) (1) (A) The fund shall have seven trustees. Except as provided in subparagraph (B), trustees shall serve for terms of four years.

"(B) Of the trustees first elected under this subsection—

"(i) four shall be elected for terms of two years; and

"(ii) three shall be elected for terms of one year. The Secretary shall determine, before the date of the first election under this subsection, whether each trustee office involved in such election shall be for a term of one year or two years. Such determination shall be made through the use of an appropriate method of random selection, except that at least one trustee nominated under paragraph (2) (A) shall serve for a term of two years.

"(C) Any trustee may be a full-time employee of an operator, except that no more than one trustee may be employed by any one operator or any affiliate of such operator.

"(2) (A) Two trustees shall be nominated and elected by operators having an annual payroll not in excess of $1,500,000 (hereinafter referred to as 'small operators').

"(B) Five trustees shall be nominated and elected by all operators.

"(3) No later than sixty days after the date of the enactment of the Black Lung Benefits Reform Act of 1977, all operators shall certify to the Secretary their payrolls for the twelve-month period ending December 31, 1976. The Secretary shall then publish a list setting forth the number of votes to which each small operator and each operator is entitled, computed on the basis of one vote for each $500,000 or fraction thereof of payroll. Trustees shall be elected no later than one hundred and eighty days after the date of the enactment of such Act.

"(4) Candidates seeking nomination for election to the office of trustee under paragraph (2) (A) shall submit to the Secretary petitions of nomination reflecting the approval of small operators representing not less than 2 per centum of the aggregate annual payroll of all small operators. Candidates seeking such nomination under paragraph (2) (B) shall submit petitions reflecting the approval of operators representing not less than 2 per centum of the aggregate annual payroll of all operators.

"(5) The Secretary shall promulgate regulations for the nomination and election of trustees. Such regulations shall include provisions for the nomination and election of trustees, including the nomination and election of trustees to fill any

vacancy caused by the death, disability, resignation, or removal of any trustee. The Secretary shall certify the results of all nominations and elections. Two or more trustees may at any time file a petition, in the United States district court where the fund has its principal office, for removal of a trustee for malfeasance, misfeasance, or nonfeasance. The cost of any such action shall be paid from the fund, and the Secretary may intervene in any such action as an interested party.

"(6) The trustees shall organize by electing a Chairman and Secretary and shall adopt such rules governing the conduct of their business as they consider necessary or appropriate. Five trustees shall constitute a quorum and a simple majority of those trustees present and voting may conduct the business of the fund.

"(c) (1) The trustees shall act on behalf of all operators with respect to claims filed under this part.

"(2) (A) Except as provided by subparagraph (B), the fund may not participate or intervene as a party to any proceeding held for the purpose of determining claims for benefits under this part.

"(B) (i) If the fund is dissatisfied with any determination of the Secretary with respect to a claim for benefits under this part, the fund may, no later than thirty days after the date of such determination, file with the United States court

of appeals for the circuit in which such determination was made a petition for review of such determination. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which he based his determination, as provided in section 2112 of title 28, United States Code.

"(ii) The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive, except that the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary thereupon may make new or modified findings of fact and may modify his previous determination, and shall certify to the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

"(iii) The court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject 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.

"(iv) Any finding of fact of the Secretary relating to the interpretation of any chest roentgenogram or any other medical evidence which demonstrates the existence of pneu-

moconiosis or any other disabling respiratory or pulmonary impairment, shall not be subject to review under the provisions of this subparagraph.

"(3) No operator may bring any proceeding, or intervene in any proceeding, held for the purpose of determining claims for benefits under this part.

"(4) It shall be the duty of the trustees to report to the Secretary and to the operators no later than January 1 of each year on the financial condition and the results of the operations of the fund during the preceding fiscal year and on its expected condition during the current and ensuing fiscal year. Such report shall be included in a report to the Congress by the Secretary not later than March 1 of each year on the financial condition and the results of the operations of the fund during the preceding fiscal year and on its expected condition and operations during the current and next ensuing fiscal year. The report of the Secretary shall be printed as a House document of the session of the Congress to which the report is made.

"(5) (A) The trustees shall take control and management of the fund and shall have the authority to hold, sell, buy, exchange, invest, and reinvest the corpus and income of the fund. All premiums paid to the fund under section 424(a) (1) shall be held and administered by the trustees as a single fund, and the trustees shall not be required to

segregate and invest separately any part of the fund assets which may be claimed to represent accruals or interests of any individuals. It shall be the duty of the trustees to invest such portion of the assets of the fund as is not required to meet obligations under this part, except that the trustees may not invest any advances made to the fund under section 424(e). The trustees shall make investments under this paragraph in accordance with the provisions of section 404 (a) (1) (C) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104(a) (1) (C)).

"(B) Any profit or return on any investment or reinvestment made by the trustees under subparagraph (A) shall not be considered as income for purposes of Federal or State income taxation.

"(6) (A) Amounts in the fund shall be available for making expenditures to meet obligations of the fund which are incurred under this part, including the expenses of providing medical benefits as required by section 432 of this title, and the operation, maintenance, and staffing of the office of the fund. The trustees may enter into agreements with any self-insured person or any insurance carrier who has incurred obligations with respect to claims under this part before the effective date of this paragraph, under which the fund will assume the obligations of such self-insured person or insurance carrier in return for a payment or payments to the

fund in such amounts, and on such terms and conditions as will fully protect the financial interests of the fund.

"(B) Beginning on the effective date of this paragraph, payments shall be made from the fund to meet any obligation incurred by the Secretary with respect to claims under this part before such effective date. The Secretary shall cease to be subject to such obligations on such effective date.

"(7) The trustees shall keep accounts and records of their administration of the fund, which shall include a detailed account of all investments, receipts, and disbursements.

"(8) At no time during the administration of the fund shall the trustees be required to obtain any approval by any court of the United States or by any other court of any act required of them in connection with the performance of their duties or in the performance of any act required of them in the administration of their duties as trustees. The trustees shall have the full authority to exercise their judgment in all matters and at all times without any such approval of such decisions. The trustees may file an application in the United States district court where the fund has its principal office for a judicial declaration concerning their power, authority, or responsibility under this Act (other than the processing and payment of claims). In any such proceeding, only the trustees and the Secretary shall be necessary or indispensable

parties, and no other person, whether or not such person has any interest in the fund, shall be entitled to participate in any such proceeding. Any final judgment entered in such proceeding shall be conclusive upon any person or other entity claiming an interest in the fund.

"(9) The trustees may employ such counsel, accountants, agents, and employees as they consider advisable. The trustees may charge the compensation of such persons and any other expenses, including the cost of fidelity bonds and indemnification and fiduciary insurance for trustees and other fund employees, necessary in the administration of the fund, against the fund.

"(10) The trustees shall have the power to execute any instrument which they consider proper in order to carry out the provisions of the fund.

"(11) The trustees may, through any duly authorized person, vote any share of stock which the fund may hold.

"(12) The trustees may employ actuaries to such extent as they consider advisable. No actuary may be employed by the trustees under this paragraph unless such actuary is enrolled under section 3042 (a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1242 (a)).

"(d) Nothing in this Act or in the Black Lung Benefits Reform Act of 1977 shall be construed as exempting the fund, or any of its activities or outlays, from inclusion in

the Budget of the United States or from any limitations imposed thereon or as authorized outlays by the fund or the trustees except to such extent or in such amounts as are provided in advance in appropriation acts.".

(c) Section 424 of the Act (30 U.S.C. 934) is amended to read as follows:

"SEC. 424. (a) (1) 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 a coal mine in such State shall pay premiums into the fund in amounts sufficient to ensure the payment of benefits under this part.

"(2) The initial premium rate of each operator shall be established by the Secretary as a rate per ton of coal mined by such operator. Beginning one year after the date upon which the Secretary establishes initial premium rates, the trustees may modify or adjust the premium rate per ton of coal mined to reflect the experience and expenses of the fund to the extent necessary to permit the trustees to discharge their responsibilities under this Act, except that the Secretary may further modify or adjust the premium rate to ensure that all obligations of the fund will be met. Any premium rate established under this subsection shall be uniform for all mines, mine operators, and amounts of coal mined.

"(3) For purposes of section 162 (a) of the Internal

Revenue Code of 1954 (relating to trade or business expenses), any premium paid by an operator of a coal mine under paragraph (1) shall be considered to be an ordinary and necessary expense in carrying on the trade or business of such operator.

"(4) For purposes of this subsection—

"(A) the term 'coal' means any material composed predominantly of hydrocarbons in a solid state;

"(B) the term 'ton' means a short ton of two thousand pounds; and

"(C) the amount of coal mined shall be determined at the first point at which such coal is weighed.

"(b) The Secretary shall advise the Secretary of the Treasury of premium rates established under subsection (a)(1). The Secretary of the Treasury shall collect all premiums due and payable by operators under subsection (a)(1), and transmit such premiums to the fund. Collections shall be effected by the Secretary of the Treasury in the same manner as, and together with, quarterly payroll reports of employers. In order to insure the payment of premiums by all operators, the Secretary, after consultation with the Secretary of the Interior, shall certify, not less than annually, the names of all operators subject to this Act.

"(c)(1) In any case in which an operator fails or refuses to pay any premium required to be paid under sub-

section (a) (1), the trustees of the fund shall bring a civil action in the appropriate United States district court to require the payment of such premium. In any such action, the court may issue an order requiring the payment of such premiums in the future as well as past due premiums, together with 9 per centum annual interest on all past due premiums.

"(2) An operator who fails or refuses to pay any premium required to be paid under subsection (a) (1) may be assessed a civil penalty by the Secretary of the Treasury in such amount as such Secretary may prescribe, but not in excess of an amount equal to the premium the operator failed or refused to pay. Such penalty shall be in addition to any other liability of the operator under this Act. Penalties assessed under this paragraph may be recovered in a civil action brought by such Secretary and penalties so recovered shall be deposited in the fund.

"(d) The Secretary shall be required to make expenditures under this part only for the purpose of carrying out his obligation to administer this part. All other expenses incurred under this part shall be borne by the fund, and if borne by the Secretary, shall be reimbursed by the fund to the Secretary.

"(e) (1) There are hereby authorized to be appropriated to the fund such sums as may be necessary to provide

the fund with amounts equal to 50 per centum of the amount which the Secretary estimates is necessary for the payment of benefits under this part during the first twelve-month period after the effective date of this section. Any amounts appropriated under this paragraph may be used only for the payment of benefits under this part.

"(2) (A) Sums authorized to be appropriated by paragraph (1) shall be repayable advances to the fund.

"(B) Such advances shall be repaid with interest into the general fund of the Treasury no later than five years after the first appropriation made under paragraph (1).

"(3) Interest on such advances shall be at a rate determined by the Secretary of the Treasury taking into consideration the current average yield during the month preceding the date of the advance involved, on marketable interest-bearing obligations of the United States of comparable maturities then forming a part of the public debt rounded to the nearest one-eighth of 1 per centum.

"(f) (1) During any period in which section 422 of this title is applicable with respect to a coal mine, an operator of such mine who, after the date of the enactment of this title, acquired such mine or substantially all of the assets thereof from a person (hereinafter in this paragraph referred to 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 this section and section 423 of this title, secure the payment of all benefits for which the prior operator would have been liable under section 422 of this title with respect to miners previously employed in such mine if the acquisition had not occurred and the previous operator had continued to operate such mine.

"(2) Nothing in this subsection shall relieve any prior operator of any liability under section 422 of this title.

"(g) (1) The fund shall make an annual assessment against any operator who is liable for the payment of benefits under section 422 of this title. Such assessment against any operator of a coal mine shall be in an amount equal to the amount of benefits for which such operator is liable under section 422 of this title with respect to death or total disability due to pneumoconiosis arising out of employment in such mine, or with respect to entitlements established in paragraph (5) or paragraph (6) of section 411(c) of this title.

"(2) Any operator against whom an assessment is made under paragraph (1) shall pay the amount involved in such assessment into the fund no later than thirty days after receiving notice of such assessment.

"(3) The provisions of subsection (c) of this section shall apply in the case of any operator who fails or refuses

to pay any assessment required to be paid under this subsection.".

(d) Section 421 (b) (2) (E) of the Act (30 U.S.C. 931 (b) (2) (E)) is amended by striking out "section 422 (i)" and inserting in lieu thereof "section 424 (f)".

CLINICAL FACILITIES

SEC. 10. The first sentence of section 427 (c) of the Act (30 U.S.C. 937 (c)) is amended by striking out "of the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975" and inserting in lieu thereof "fiscal year".

MEDICAL CARE

SEC. 11. (a) Part C of title IV of the Act (30 U.S.C. 931 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 432. The provisions of subsections (a), (b), (c), (d), and (g) of section 7 of the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 907 (a), (b), (c), (d), and (g)) shall be applicable to persons entitled to benefits under this part on account of total disability or on account of eligibility under paragraph (5) or paragraph (6) of section 411 (c), except that references in such section to the employer shall be considered to refer to the trustees of the fund.".

(b) The Secretary of Health, Education, and Welfare shall notify each miner receiving benefits under part B of the

Black Lung Benefits Act on account of his total disability who the Secretary has reason to believe became eligible for medical services and supplies on January 1, 1974, of his possible eligibility for such benefits. Where the Secretary so notifies a miner, the period during which he may file a claim for medical services and supplies under part C of such Act shall not terminate before six months after such notification was made.

TRANSITIONAL PROVISIONS

SEC. 12. (a) The Secretary of Health, Education, and Welfare, and the Secretary of Labor shall disseminate to interested persons and groups the changes in the Back Lung Benefits Act made by this Act. Each such Secretary shall undertake a program to give individual notice to individuals who they believe are likely to have become eligible for benefits by reason of such changes.

(b) (1) The Secretary of Health, Education, and Welfare (with respect to part B of the Black Lung Benefits Act) shall review each claim which has been denied, and each claim which is pending, under such part, taking into account the amendments made to such part by this Act, and with respect to claims which have been denied taking into account the possibility of error or inappropriate denial of benefits in the initial processing of such claim. The Secretary shall approve any such claim forthwith if the provisions of such

part, as so amended, require such approval or if in the initial processing of a denied claim there was error or inappropriate denial of benefits to such claimant.

(2) The Secretary of Labor (with respect to part C of the Black Lung Benefits Act) shall review each claim which has been denied, and each claim which is pending, under such part, taking into account the amendments made to such part by this Act, and with respect to claims which have been denied taking into account the possibility of error or inappropriate denial of benefits in the initial processing of such claim. The Secretary shall approve any such claim forthwith if the provisions of such part, as so amended, require such approval or if in the initial processing of a denied claim there was error or inappropriate denial of benefits to such claimant.

(3) Each Secretary, in undertaking the review required by paragraphs (1) and (2), shall not require the resubmission of any claim which is the subject of any such review.

SHORT TITLE FOR ACT

SEC. 13. Section 401 of the Act (30 U.S.C. 901) is amended by inserting "(a)" immediately after "SEC. 401." and by adding at the end thereof the following new subsection:

"(b) This title may be cited as the 'Black Lung Benefits Act'.".

MINE ACCIDENT WIDOWS

SEC. 14. (a) If a miner was employed for seventeen years or more in one or more underground coal mines, and died as a result of an accident in any such coal mine which occurred on or before June 30, 1971, any eligible survivor of such miner shall be entitled to the payment of benefit under part B of the Black Lung Benefits Act.

(b) For purposes of this section, benefit payments to a widow, child, parent, brother, or sister of any miner to whom subsection (a) applies shall be reduced, on a monthly or other appropriate basis, by an amount equal to any payment received by such widow, child, parent, brother, or sister under the workmen's compensation, unemployment compensation, or disability laws of the miner's State.

(c) The Secretary of Labor shall be responsible for the administration of the provisions of this section.

ADMINISTRATION OF BLACK LUNG BENEFITS ACT

SEC. 15. (a) (1) The Division of Coal Mine Workers' Compensation is hereby transferred to the Office of the Secretary of Labor.

(2) The Secretary shall act through the Division in carrying out the provisions of the Black Lung Benefits Act.

(b) (1) The Secretary, in carrying out the Black Lung Benefits Act, shall establish and operate such field offices as may be necessary to assist miners and other persons with

respect to the filing of claims under such Act. Such field offices shall be established and operated in a manner which makes them reasonably accessible to such miners and other persons.

(2) The Secretary, in connection with the establishment and operation of field offices under paragraph (1), may enter into arrangements with other Federal departments and agencies, and with State agencies, for the use of existing facilities operated by such departments and agencies.

(c) For purposes of this section—

(1) the term "Division" means the Division of Coal Mine Workers' Compensation established in the Office of Workers' Compensation Programs by the Assistant Secretary of Labor for Employment Standards under the Secretary's Order No. 13–71 (36 Federal Register 8755) ; and

(2) the term "Secretary" means the Secretary of Labor.

EFFECTIVE DATES

SEC. 16. (a) This Act shall take effect on the date of its enactment, except that—

(1) no authority to make payments under this Act shall become effective before October 1, 1977;

(2) the amendments made by sections 2, 4, 5, and 8 shall be effective on and after December 30, 1969, ex-

cept that claims approved solely because of the amendments made by such sections which were filed before the date of the enactment of this Act, shall be awarded benefits only for the period beginning on such date of enactment;

(3) the amendments made by section 6 shall not require the payment of benefits for any period before the date of the enactment of this Act; and

(4) the amendments made by section 9 shall take effect on October 1, 1977, except that (A) the Secretary of Labor shall establish initial premium rates for operators under section 424 (a) (1) of the Black Lung Benefits Act, as added by section 9 (c) of this Act, no later than October 1, 1977, and (B) such Secretary shall make the estimate required by section 424 (e) (1) of such Act, as added by section 9 (c) of this Act, as soon as practicable after the date of the enactment of this Act.

(b) In the event that the payment of benefits to miners and to eligible survivors of miners cannot be made from the Black Lung Disability Insurance Fund established by section 423 (a) of the Act, as added by section 9 (b) of this Act, the provisions of the Act relating to the payment of benefits to miners and to eligible survivors of miners, as in effect imme-

diately before October 1, 1977, shall remain in force as rules and regulations of the Secretary of Labor, until such provisions are revoked, amended, or revised by law. Such Secretary shall make benefit payments to miners and to eligible survivors of miners in accordance with such provisions.

(c) No benefits payable because of the enactment of this Act shall be paid to any miner or survivor before October 1, 1977.

WHITE LUNG STUDY

SEC. 17. (a) The Committee on Education and Labor of the House of Representatives is authorized and directed to conduct a study of white lung disease, also known as silicosis or talcosis, including, but not limited to, the extent and severity of the disease in the United States; the relationship, if any, between white lung disease and black lung disease; the adequacy of current workman compensation programs in compensating victims of white lung disease; a review of current mine safety and Occupational Safety and Health regulations relating to talc mining to determine whether such regulations are adequate to protect the safety and health of talc miners; and the need, if any, for Federal legislation to protect the safety and health of talc miners or to provide additional compensation for the victims of white lung.

(b) The Committee shall report its findings and any legislative recommendations to the Congress not later than one year after enactment of this Act.

Passed the House of Representatives September 19, 1977.

Attest: EDMUND L. HENSHAW, JR.,
Clerk.

By BENJAMIN J. GUTHRIE,
Assistant to the Clerk.

Calendar No. 401

95TH CONGRESS
1ST SESSION

H. R. 4544

AN ACT

To amend the Federal Coal Mine Health and Safety Act to improve the black lung benefits program established under such Act, and for other purposes.

SEPTEMBER 19, 1977

Received; read twice and ordered to be placed on the calendar

Calendar No. 183

95TH CONGRESS
1st Session

SENATE

REPORT
No. 95-209

BLACK LUNG BENEFITS REFORM ACT OF 1977

MAY 16, 1977.—Ordered to be printed

Mr. RANDOLPH, from the Committee on Human Resources, submitted the following

REPORT

[To accompany 1538]

The Committee on Human Resources, reports an original bill bill (S. 1538) to amend title IV of the Federal Coal Mine Health and Safety Act to improve the black lung benefits program established thereunder, to impose an excise tax on the sale or use of coal, and for other purposes and recommends that the bill do pass.

SUMMARY

The broad purposes of the bill reported by the Committee on Human Resources are to remove certain eligibility restrictions for the victims of Black Lung disease and their survivors who should be entitled to benefits; to reaffirm the legislative intent with respect to certain provisions which have been administratively misinterpreted; and to assure that coal mine operators assume full financial responsibility for the Black Lung Benefits program.

The program has been far-reaching—over 500,000 beneficiaries are receiving benefits. Some $5 billion in benefits have been disbursed since the program's inception in 1970. The fact that the program has benefited many is no consolation to those whose benefits have been denied, however. Based on evidence presented to the Committee, it is apparent that there are many denied claims which should have been allowed under the 1972 amendments to Title IV of the Federal Coal Mine Health and Safety Act of 1969.

The provisions of the Committee bill will do much to eliminate from the Black Lung Benefits program the very real difficulties encountered by thousands of old and sick miners and their widows in their efforts to obtain what they believe are their well-deserved benefits.

89-010—77——1

The Committee's bill provisions, in brief outline, are as follows:

The term "pneumoconiosis" is modified to include sequelae of chronic lung disease and respiratory and pulmonary impairments, arising out of coal mine employment.

The term "miner" is expanded to include workers around a coal mine, processors and transporters of coal, and coal mine construction workers.

The term "total disability" is amended to provide that a miner's employment at the time of death is not to be used as conclusive evidence that the miner was not totally disabled. Where ability to perform usual coal mine work is reduced, a miner's employment may not be used as conclusive evidence that the miner is not totally disabled. The provision also authorizes the Secretary of Labor to write regulations for part C and requires him to establish medical test criteria appropriate to disability in coal miners.

A survivor is entitled to benefits if the miner died on or before the date of enactment of the bill, and worked 25 years in mine employment prior to June 30, 1971, unless it is established that the miner was not partially or totally disabled due to pneumoconiosis.

A working miner may file and obtain a benefit determination, and may rece ve benefits if he terminates h s coal mine employment within a year after the determination is made.

The offset of black lung benefits against workers' compensation is limited to those cases where the State compensation is for disability due to pneumoconiosis.

Chest X-rays must be accepted as evidence if they are of acceptable quality, if they are interpreted by a qualified radiologist and were taken by a qualified person, and if there is no fraud involved.

Where there is no medical evidence, or where such evidence is insufficient, in the case of a deceased miner, a claim shall be approved if other evidence, including affidavits, supports the claim.

Each miner claimant is to be provided an opportunity to substantiate a claim through a complete pulmonary evaluation.

A government trust fund is established, to be supported by an excise tax on coal to finance the cost of claims where last employment was before January 1, 1970, other claims for which no responsible operator has been identified, and for administration expenses. Operators of current coal mining operations who have acquired coal mining operations on or after January 1, 1970 will be responsible for black lung claims which arise with respect to the acquired predecessor operator, and the Secretary may go behind corporate reorganizations, mergers, etc. to assign responsibility.

Part C of the program is made permament.

A widow or other survivor may file a claim at any time after the death of the miner, without the current three-year limitation.

A permanent $10 million per year authorization is provided for black lung clinical facilities.

The date of employment limitation (June 30, 1971) relating to the 15 year rebuttable presumption under part C for miners with a totally disabling lung impairment is eliminated.

Labor Department field offices to assist claimants are authorized, and HEW and Labor are required to provide information and assistance to potential beneficiaries.

Part B and part C claimants who have been finally denied are to be notified individually, and upon simple refiling shall have their claims reviewed under Part C.

The Labor Department is to conduct an 18 month study of all occupationally related respiratory and pulmonary diseases.

Penalties are imposed on operators who fail to secure benefits, withhold information, or refuse to submit reports.

Background

Title IV of the Federal Coal Mine Health and Safety Act of 1969, the "Black Lung Benefits" title, represented the first Federal legislative expression that existing compensation for disability in coal miners due to an occupationally related lung disease was inadequate. In 1969 it was estimated that as many as 100,000 active and inactive coal miners had been afflicted with coal workers' pneumoconiosis.

We now know that the number of disabled miners far exceeds that earlier estimate. Although it is not a specific indicium of the incidence of black lung, the number of claims filed does suggest the magnitude of the problem. At the time the 1972 amendments were enacted, some 360,000 claims had been filed under part B (part C had not yet become operational). Currently, there are about 562,000 claims on file under part B, and about 110,000 under part C. By comparison, there are approximately 180,000 active coal miners in the United States today.

The 1972 amendments attempted to redress the unforeseen inadequacies of the 1969 Act. For example, denial of a claim based solely on a negative chest X-ray (one that did not exhibit pneumoconiosis) was prohibited. Respiratory and pulmonary impairments in coal miners other than coal workers' pneumoconiosis per se, were for the first time brought into the program as compensable under certain conditions. Widows were aided in several ways: Affidavits could be used to substantiate a claim; a widow could collect benefits if her miner husband was totally disabled by pneumoconiosis when he died, and not only when his death was due to pneumoconiosis. The definition of total disability was modified to reflect the reality of the coal fields—a coal miner is totally disabled when he is unable to work as a miner, not when he is unable to work at all. The offset of black lung benefits against Social Security Disability benefits was eliminated. Surface miners were allocated benefits under certain conditions.

The above recitation indicates the thoroughness with which this Committee and the House Education and Labor Committee reviewed the operation of the Black Lung Benefits program, and the extent to which they went to correct the inequities in the 1969 Act and its administration.

As early as one year following the enactment of the 1972 amendments there were strong indications that there were many disabled miners and their widows whose claims continued to be delayed or denied. The House Committee held several days of hearings. Hearings continued through 1974 and 1975, and a corrective bill was brought through Committee. H.R. 10760 was passed by the House of Repre-

sentatives on March 2, 1976, by a vote of 210 yeas, 183 nays, and 2 voting present.

Following this thorough, extensive study by the House, the Senate Subcommittee on Labor held hearings on March 23, March 26, and April 2, 1976. The Subcommittee on Labor met in executive session for the purpose of considering H.R. 10760 and S. 3183 on June 25, 1976 and favorably reported an amended H.R. 10760 to the full committee on August 31, 1976.

The Committee on Labor and Public Welfare met on September 14, 1976 and agreed to report the Black Lung Benefits Reform Act of 1976 to the Senate.

The bill was re-referred to the Committee on Finance, which held a hearing and reported the measure with amendments to the trust fund and financing provisions on September 24, 1976. Although H.R. 10760 was laid down for consideration, the managers of the bill were unable to proceed to its consideration in the Senate prior to the adjournment of the 94th Congress, and the bill therefore died.

In the 95th Congress, several bills were introduced in the House of Representatives, and hearings were held by the Education and Labor Committee of that body in March, 1977. A bill, H.R. 4544, was favorably reported by the Committee on March 31, 1977. That measure could not, because of Budget Act restrictions, be considered by the House of Representatives until after May 15.

The Subcommittee on Labor of the newly-designated Committee on Human Resources held hearings on the administration and operation of title IV of the Federal Coal Mine Health and Safety Act on April 4 and April 6, 1977. Witnesses included Representative John Erlenborn; Bedford Bird, Kenneth Yablonski, and Andrew Morris, and on medical matters, Lorin Kerr, M.D., all of the United Mine Workers of America; Anise Floyd, President, West Virginia Miners' Wives and Widows; Willie Anderson, Logan County, W. Va. Black Lung Association; Donald Bryant, President, West Virginia Black Lung Association, and Edgar Workman, a disabled miner; Carl Bagge, President, and John Gibson, Legislative Representative, National Coal Association, accompanied by Robert Bein, Johnson & Higgins consultants; Robert Flockhart, Counsel, and James L. Kimble, Associate Counsel, American Insurance Association; Andre Maisonpierre, Vice President, and John D. Stringer, Counsel, American Mutual Insurance Alliance; Donald Elisburg, Assistant Secretary for Employment Standards, Department of Labor, accompanied by June Patron and Mark Solomons of the Department; Richard Warden, Assistant Secretary for Legislation, Department of Health, Education, and Welfare, accompanied by Elmer Smith, Associate Commissioner, Social Security Administration, and William J. Rivers, Director, Bureau of Disability Insurance, Social Security Administration; James Owens, Acting Assistant Commissioner for Accounts, Collection, and Taxpayer Services, Internal Revenue Service; Herbert Blumenfeld, M.D., Chief Medical Consultant, Bureau of Disability Insurance, Social Security Administration, on medical matters; and John Kilcullen, Counsel, National Independent Coal Operators Association. A statement for the Record was also submitted by the American College of Radiology.

The Subcommittee on Labor met in executive session on May 4, 1977, and agreed to report favorably to the full Committee on Human Resources a Committee Print, or draft bill.

The Committee on Human Resources met on May 12, 1977, and agreed to report favorably to the Senate the Black Lung Benefits Reform Act of 1977 as an original bill. Several amendments to the Committee Print reported by the Subcommittee on Labor were considered: (1) An amendment by Senator Javits to prohibit the filing of new claims for benefits under part C after December 31, 1981, defeated by a vote of 4 yeas, 7 nays; (2) An amendment by Senator Javits to strike the provisions of section 5(a) of the bill relating to the acceptance of X-ray interpretations, defeated by a vote of 5 yeas, 6 nays; (3) An amendment by Senator Javits to modify the "widows' entitlement" provision of section 7(b) of the bill to reinstate the provision of H.R. 10760 as reported by the Committee on Labor and Public Welfare, adopted by voice vote; (4) An amendment by Senator Javits to strike section 3 of the bill, relating to offset limitations, defeated by a vote of 4 yeas, 7 nays; (5) An amendment by Senator Javits to add a new subsection (f) to section 424 in section 6 of the bill to permit the trust fund to assume responsibility for claims as a last resort insurer, accepted by voice vote.

Summary of Current Law

The Farmington Disaster—an explosion on November 20, 1968, at Consolidation Coal Company's No. 9 mine near Farmington, West Virginia, which took the lives of 78 miners—was the tragic catalyst that brought into being the 1969 Federal Coal Mine Health and Safety Act. In addition to the creation of an instrument to protect the lives of coal miners, the 1969 Act in light of the failure of State Workers' compensation programs to provide adequate coverage of black lung disease, established a Federal system of benefits for miners who had been totally disabled by coal workers' pneumoconiosis, and for the widows of such miners.

The Surgeon General identified this dread disease as—

> 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.
>
> * * * * *
>
> 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 ventilation 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.

In general, title IV provides benefits for miners totally disabled by pneumoconiosis, and for their eligible survivors, including widows, children, and dependent parents and siblings. A miner with pneumoconiosis who worked ten or more years in the mines is presumed to have contracted the pneumoconiosis in his coal mine employment. A miner with complicated pneumoconiosis is irrebuttably presumed to be totally disabled. A deceased miner who worked ten or more years in the mines and died from a respiratory disease is presumed to have died due to pneumoconiosis. A miner with 15 or more years in an underground coal mine (or in a surface mine with comparable dust conditions) whose chest X-ray is negative for complicated pneumoconiosis, and who has or had a totally disabling respiratory or pulmonary impairment, is presumed to be tatally disabled due to pneumoconiosis.

Title IV consists of two separate benefits programs: part B and part C. Part B, administered by the Secretary of Health, Education, and Welfare, is a Federal program under which successful claimants who filed on or before June 30, 1973 are entitled to the payment of benefits by the Federal government for life, or for as long as they remain eligible.

Part C is administered by a State workers' compensation agency meeting minimum standards, or by the Secretary of Labor where such standards are not met. No States have as yet met the minimum requirements. The responsible coal operator pays benefits as in traditional workers' compensation programs. Under the law, the coal industry is liable for claims filed after June 30, 1973, for payment on and after January 1, 1974. The Department of Labor is responsible for paying benefits when the responsible operator cannot be determined, which is the case currently in about 75 percent of approved claims. The law as amended in 1972 terminates employer liability for claims after December 30, 1981.

The 1972 amendments resulted from the inadequacy and inequities of the law and its administration. A greater percentage of claims was allowed under part B as a consequence of the 1972 amendments, and certain injustices were rectified; yet many problems continue to plague the program. More importantly, these problems translate into frustrating delay and perpetual hardship for thousands of disabled coal miners and the widows of those who died producing this vital energy resource for the Nation. These continuing problems are reviewed in the discussion portion of this Report entitled "Summary of Major Provisions," infra.

Summary of Major Provisions

TRUST FUND

While payment of claims under the part B program was to have been the government's responsibility, the intention of Congress was that part C claims were to have been the responsibility of the operators. In actuality however, under part C fewer than 200 claims are being paid by operators, while over 2,000 are being paid by the Secretary of Labor. Further, industry is contesting 97 percent of the claims for which the Secretary has determined operator liability.

One of the principal features of the bill is a provision which finally shifts the burden of the part C program which has heretofore been borne by the government back to the industry.

Section 6 of the Committee bill establishes a trust fund in the U.S. Treasury administered by the Secretaries of Labor, HEW and the Treasury. The Secretary of the Treasury is to be the managing trustee. The fund will be used to pay (1) benefits where there is no responsible operator, or where an operator is in default, (2) benefits with respect to all claims in which the miner's last coal mine employment was before January 1, 1970, (3) into the Treasury, amounts expended by the Secretary of Labor for benefits, and advances to the fund necessary to meet obligations of the fund, and (4) all expenses of operation and administration under part C, including those of the Departments of Labor, Treasury, and Health, Education, and Welfare.

The fund corpus is to be supported principally through an excise tax on the first sale or constructive sale (use) of coal. Rates vary according to the British thermal unit value of the coal. There is a rough correlation between Btu value and the market price of coal. Tax rates are: 30 cents per ton of coal with an average Btu value per pound of 11,000 or more; 15 cents per ton of coal with an average Btu value per pound of 8,000 to 11,000; and 7.5 cents per ton of coal with an average Btu value per pound of 8,000 or less. The Committee has imposed a higher excise tax on types of coal which produce a higher Btu per pound, on the basis of a relationship between price and Btu level, and because the mining of higher Btu level coal produces a higher incidence of black lung as a general proposition. The cost estimate of the Congressional Budget Office indicates that this tax level will be adequate to sustain all trust fund costs over a three year period, with the expectation that an adjustment would be made for the fourth and succeeding years which would in all likelihood reduce the tax rate by 50 per cent.

While operators, by means of the tax levied against the sale or use of the coal they produce, pay into the fund, the operators are to have no title or interest in the fund assets; and operators will have no right to litigate any questions concerning the assignment of claims to the fund or the payment of benefits out of the fund's assets.

In addition, the bill provides that where a responsible operator has not made arrangements for the payment of benefits arising from claims assigned to him, pursuant to Section 423 of the Act; or where the operator fails to commence payment of such benefits within 30 days after the Secretary's initial determination of a responsible operator, the Secretary shall commence the payment of such benefits out of the

fund. In such cases, the Secretary of the Treasury is authorized to bring a civil action to recover such amounts paid by the fund from the responsible operator. It is the Committee's expectation that by this mechanism, the appropriate forum for the litigation of the questions of the claimant's eligibility and the responsibility of the operator is provided; while prompt payment of benefits to claimants during the pendency of such litigation is assured.

For the most part, the Committee bill's trust fund provisions were taken from those developed by the Committee on Finance for H.R. 10760 as reported by that Committee last year, in deference to the recognized expertness of that Committee in dealing with such matters. The Committee notes that the Internal Revenue Service has, by communication to the Committee subsequent to its appearance for the presentation of testimony on the administration and operation of the Black Lung Benefits Program, expressed support for the structure of the trust fund and collection and enforcement provisions embodied in the Committee bill.

A new provision adopted by the Committee would permit the trust fund to provide standby, or last resort, insurance coverage of claims.

Under present law the Secretary of Labor has the authority to prescribe provisions for approving insurance policies which cover black lung under Part C. However, there is no authority in present law to enable a Secretary to deal with the problem of unavailability of insurance coverage, excessive cost coverage, or technical problems which may preclude some state insurance funds from writing insurance to cover a federal workers' compensation program.

Under this provision (new subsection (f) of section 424), the trust fund would have standby authority to provide insurance coverage for employers. Nothing in the provision would require the fund to provide such coverage. Inasmuch as the Secretary has complete authority over all other aspects of the compensation program for black lung victims under Part C of this Title it is appropriate that the federal government also have at least standby authority to provide insurance coverage as required under Part C.

Nothing in this provision would derogate from the existing authority of the states to regulate private insurance carriers or premium rates charged by such carriers.

SUCCESSOR AND FORMER OPERATORS

When the black lung benefits provision of the Federal Coal Mine Health and Safety Act of 1969 were first enacted, it was the expectation of the Congress that after the Federally financed portion of the program terminated, individual coal mine operators would assume the liability for benefits either under an approved state workers' compensation program or under Part C of the Federal Act. In order to facilitate the assessment of liability against coal mine operators, Section 422(i) prohibited the avoidance of such liability by coal mine operators through the mechanism of a post enactment transfer of assets. Further, the history of the 1969 Act clearly specifies that the operator liability provisions of the Act were to be liberally construed in favor of finding such operator liability. These provisions and this intent remained unchanged by the 1972 amendments.

The experience of the Department of Labor to date indicates that Congressional intent in this regard has not been effectuated. Only approximately 25% of all approved Department of Labor claims are being assessed against coal mine operators, and many current and prior coal mine operators have been able to avoid liability altogether as a result of changed operations and various corporate transactions. It is the Committee's opinion that many of these business entities should be required to bear the cost of disability and death arising out of employment in their mines, regardless of changes in existing corporate frameworks.

During the last two decades, the coal industry has undergone major structural changes. Of the 50 largest coal companies, 29 have become captive of other industries such as oil, steel, public utilities and other large industrial corporations. In most instances these acquisitions transferred intact the ownership of the mines and operations of existing coal producers to the larger and more diversified parent corporations. It must be noted that frequently the management, employees, mines and type of mining operations remained unchanged by the merger, acquisition of assets or other type of corporate transaction in question. In addition, a number of business entities which previously engaged in extensive coal mining operations, although no longer directly involved in the extraction of coal, still derive substantial revenues from the leasing of coal properties, the sale and processing of coal, and the like. It was originally the intent of Congress that such entities should bear the liability for black lung disease arising out of employment in their mines.

The bill amends Section 422(i) to correct the inequities which have developed under existing law. Many coal operators have avoided liability for claims arising out of employment in their mines because of various corporate transactions and changes in corporate operations This provision is not intended to require the payment of benefits by corporations who, since prior to January 1, 1970, have not derived revenues from the sale, mining, preparation, transportation or processing of coal or from the leasing of coal lands, mines, or facilities. It is intended that a prior operator still deriving revenues from coal holdings, however, should be liable for black lung claims arising out of employment in his mines, and the Secretary may wish to investigate the possibility of designing special self-insurance provisions under Section 423 of the Act to avoid any undue hardship to such prior operators.

It is further the intention of this section, with respect to claims related to which the miner worked on or after January 1, 1970, to ensure that individual coal operators rather than the trust fund bear the liability for claims arising out of such operator's mines, to the maximum extent feasible.

Section 422(i)(1) provides that any coal mine operator which acquired its coal mining business on or after January 1, 1970 through the corporate transaction known as a transfer of assets shall be responsible for those claims which the seller would have been required to pay if such transfer had not occurred. A transfer of assets which was completed prior to January 1, 1970 shall not transfer liability to the successor.

Paragraph (2) of section 422(i) provides that no prior coal mine operator either as that term is defined in paragraph (1) of this section or as that term may be otherwise defined shall be relieved of liability arising out of employment in such prior operator's mines. It is the intention of this section to require the payment of benefits by the prior operator where, for example, such operator now derives revenues from the leasing of coal mines or from the sale, processing, or transportation of coal, or where there is indirect mining of coal through a related business entity. The January 1, 1970 limitation contained in paragraph 1 of this section is not available as a defense to liability by such prior operator, in any case.

Paragraph (3) of section 422(i) enumerates certain corporate transactions other than a transfer of assets and provides that such transactions also may not be utilized by a coal operator as a defense to liability for black lung benefits arising from employment prior to such transactions.

Paragraph (4) of section 422(i) makes clear that the subsection is not intended to impose liability for claims where such liability has been imposed on the trust fund. A new subsection is added to section 422 which further clarifies the responsibilities of the fund as opposed to those of responsible operators. It is intended that the subrogation right provided by the pre-amended section 424 to obtain repayment of benefits paid on behalf of a coal operator shall continue and shall be vested in the fund under the new section 422(j).

X-RAY REREADING

The Committee bill requires the Secretary to accept a board certified or board eligible radiologist's interpretation of a miner's chest X-ray if the X-ray is of a quality sufficient to demonstrate the presence of pneumoconiosis and if it was taken by a qualified technician except where the Secretary has reason to believe that a claim has been fraudulently represented.

Both the Department of Health, Education, and Welfare and the Department of Labor have (without legislative direction) established X-ray quality control procedures under which government contract radiologists provide their own interpretations of X-rays submitted in connection with black lung claims. This procedure has elicited deep resentment among claimants, who believe strongly that the government readers are utilized solely for the purpose of denying claims.

While the Committee does not concur in this belief, it is concerned that this procedure alone has done more to destroy the credibility of the Federal government's administration of this program among miners and widows than any other factor. The Committee does agree with the statement of Dr. Edgar L. Dessen, chairman of the Task Force on Pneumoconiosis of the American College of Radiology that "we would doubt that radiology will become a statistically exact science." Clearly, the Departments administering this program have in the past placed far too much reliance on the X-ray in the determination of benefits.

The Department of Labor acknowledges that more than 60 percent of the X-rays which are submitted as positive for pneumoconiosis are re-read by the government's consulting radiologists as negative. As a

general proposition reasonable men can differ, and this holds true for radiographic interpretations as well as for other fields of endeavor. The imperfection of this art is also indicated in cases of miners whose X-rays were interpreted as negative and who have, on autopsy, been revealed to have suffered from varying stages of pneumoconiosis.

There is little reason, as a matter of policy, for the government to interpose panels of second-guessers, particularly where the original interpreter of a claimant's X-ray was a qualified radiologist. If, in the case of a claim by a living miner, an X-ray is objectively determined not to be of acceptable quality, the Secretary shall request that another X-ray be taken. Where fraud is suspected, the Committee expects the Secretary to take such action as may be appropriate. This authority is to be used only in cases where there is good reason to make such a finding.

In order to meet the needs of providing more specially trained practitioners to examine coal workers for pneumoconiosis, and make those judgments, it is recommended by the Committee that the National Institute for Occupational Safety and Health increase its efforts and activities to work with the appropriate organizations and physicians familiar with the particular problems diagnosing black lung, to further develop a program to assist physicians in this regard.

The Committee has provided the Secretary with authority to establish requirements for the techniques to be used in taking roentgenograms of the chest in connection with the submission of medical evidence in support of claims filed subsequent to the establishment of such requirements. It is contemplated that this will provide the Secretary with quality control adequate to meet the need in determining future claims.

AFFIDAVIT EVIDENCE

The Committee has restated its intent that affidavits are acceptable as evidence in the case of a deceased miner. The Committee bill provides that where there is no medical evidence, or where such evidence is inconclusive, in the case of a deceased miner, the claim shall nevertheless be approved if other evidence in the record, including affidavits, taken as a whole establishes that the miner was totally disabled due to pneumoconiosis or that his death was due to pneumoconiosis.

Evidence available to a miner's widow is often incomplete, inadequate, or nonexistent. The miner may have been ill, but refused to see a doctor for fear that the doctor's diagnosis could result in the termination of his employment, and with it, his ability to support his family. As previously suggested, diagnoses were in years gone by far less sophisticated or knowledgeable than is presently the case. Even in more recent times, a coal field doctor in 1968 had no particular reason for identifying his miner-patient's illness as coal workers' pneumoconiosis. Prior to the enactment of the Federal Coal Mine Health and Safety Act, such a doctor may not have searched beyond a finding of chronic bronchitis, emphysema, tuberculosis, or right ventricular heart disease. A death certificate might not give any hint of the presence or occupationally related lung disease; again, "heart attack," "myocardial infarction," and "heart failure" may describe the immediate cause of death, but the underlying etiology too often remained undiscovered or unmentioned.

Existing law provides that affidavits may be used, along with other evidence, to substantiate a claim for benefits. Section 411(c)(4) further states that—

> In the case of a *living miner*, a wife's affidavit may not be used by itself to establish the [15 year rebuttable] presumption. (Emphasis supplied.)

Conversely then, in the case of a *deceased* miner, a widow's affidavit may be used by itself to establish the presumption. Further, it is implicit that since affidavits are "revelant evidence" under section 413(b), and all relevant evidence shall be considered in determining a claim's validity, where affidavits are the *only* evidence, that evidence may be sufficient to establish a claim within the framework of the presumptions of section 411.

It has been asserted that the existing law in this matter on occasion has been ignored. This assertion has been disputed by those agencies which administer the Act. In either case, the Committee clearly restates its intention in this legislation with respect to affidavit evidence, so that no misapprehension by the administering agencies will be possible.

DEFINITION—TOTAL DISABILITY

The Committee bill modifies the definition of total disability in several respects. First, it establishes dual authority for regulation writing: the Secretary of Health, Education, and Welfare with respect to part B claims, and the Secretary of Labor with respect to part C claims, and makes both subject to relevant provisions of subsections (b) and (d) of section 413. Second, it provides that a miner's employment in a mine at the time of death shall not be used as conclusive evidence that the miner was not totally disabled. As was pointed out in earlier discussions of certain "widows' provisions," miners have in the past (as many continue to do) forced themselves to work even though they could and should have been determined to be disabled, in order to be able to continue to support their families. Prior to 1969, of course, there was no Black Lung Benefits program to give such miners an opportunity to quit work before they died or became totally incapacitated.

Under current law, a widow whose husband was working in a mine at the time he died is likely to be precluded from obtaining benefits unless she is fortunate enough to be able to take advantage of the conclusive presumption of total disability where complicated pneumoconiosis can be proved.

Third, and directly related to the matter discussed immediately above, in the case of a living miner whose employment circumstances have changed to indicate reduced ability to perform usual coal mine work, the miner's employment shall not be used as conclusive evidence that the miner is not totally disabled. Just as the decedent of the widow claimant worked beyond the time he should have, so do contemporary miners continue to work, saddled with debilitating illness, to support their families. This provision, coupled with section 4 (entitled "Benefit Determination for Employed Miners") discussed below, will permit a working miner to file for benefits and have his claim determined.

The revised definition of total disability also provides that the Secretary, in consultation with NIOSH, shall establish criteria for all medical tests which accurately reflect total disability in coal miners. A draft bill developed last year for consideration by the Subcommittee on Labor required that standards in effect for claims filed after June 30, 1973 not be more restrictive than standards that were utilized on or before June 30, 1973 (interim standards). Such a provision is included in H.R. 4544, the reported House bill. The so-called "interim standards" used by Social Security under part B are far less stringent than the 1969 "permanent standards" which HEW promulgated for use under part C.

As was the case with the 1972 amendments to Title IV, the Committee is not qualified to assess the appropriateness of medical test standards to be used to determine disability in coal miners. It is for this reason that the Secretary, in consultation with NIOSH, is given the authority to establish the criteria for all medical tests.

Social Security maintains that the interim standards do not accurately determine actual disability, that they were used under part B only to clear away the backlog of claims arising from the 1972 amendments, and that the permanent standards more accurately identify disabling respiratory and pulmonary functions in coal miners.

The United Mine Workers, along with a number of pulmonary specialists who routinely examine coal miners for disability, believe that even the interim standards are too stringent, since these were based on the Kory-AMA values which are in turn based on a norm taken from examining the pulmonary capacities of hospital workers, and not coal miners. The UMWA much prefers the ILO standards which were established for strenuous, heavy work. Normal functional levels for moderately active persons are substantially lower than the functional levels demanded by the strenuous exertion of coal mine work. Nevertheless, they believe that the interim (Kory-AMA) standards are (albeit inadequate) certainly not as bad as the permanent standards.

In 1972, the Committee stressed that, in interpreting the amendments, the miner should have the benefit of any doubt. The Committee underscores and reaffirms this position taken in 1972 with respect to the 1977 amendments, and specifically in this context, expresses its expectation that the Secretary of Labor will promulgate standards which give the benefit of any doubt to the coal miner.

It is the Committee's belief that the Secretary of Labor should have sufficient statutory authority, which he does not now possess, to establish eligibility criteria which are in conformity with the amendments contained in this Act, and which permit adequate flexibility to be exercised in the adjudication of individual claims. It is intended that pursuant to this authority the Secretary of Labor will make every effort to incorporate within his regulations among other things, provisions which take into consideration the difficulties involved in the testing of miners who lived and worked in high altitude areas, and to the extent feasible the advances made by medical science in the diagnosis and treatment of pneumoconiosis and related diseases and conditions since the promulgation in 1972 of the Secretary of HEW's medical eligibility criteria. It is also intended that traditional workers' compensation principles such as those, for example,

which permit a finding of eligibility where the totally disabling condition was significantly related to or aggravated by the occupational exposure be included within such regulations. Moreover, such regulations may contain provisions which provide for the reasonable quality control of medical test results submitted by either a claimant or an operator in connection with a claim.

This section does not require nor preclude the blanket incorporation of any provision now a part of the existing HEW medical eligibility regulations (subpart D, 20 CFR Part 410). It is not intended that any changes in existing regulations be applied retroactively to previously adjudicated claims, although such application will be appropriate to claims still in the adjudication process, and, of course, to those claims which are filed under Part C pursuant to Section 10 of the Committee bill.

BENEFIT DETERMINATION FOR EMPLOYED MINERS

Section 4 of the bill adds a new subsection (d) to section 413 of the Act to provide that no miner engaged in coal mine employment (other than those who are irrebuttably presumed to be totally disabled by complicated pneumoconiosis pursuant to section 411(c)(3)) shall be entitled to benefits while still employed. Any miner, the provision continues, who has been determined to be eligible while working shall be entitled to benefits if he stops working within one year after the determination.

Any person may file a claim at any time. This section, coupled with the new section 402(f)(2)(B) added by the bill, insures that a miner may be determined to be eligible for benefits while he is working. The reason for this provision is compelling. The Committee notes that there are many miners who believe they are disabled and are entitled to benefits, but who will not file claims because they fear their claims will be denied, or they do not choose to terminate their employment and wait for months on end for the determination of their claims. It is unfair to place potentially eligible working miners in such an uncomfortable dilemma. The Committee bill provides a viable alternative to this predicament, and directs the Secretary to deal with claims filed pursuant to this new provision as expeditiously as possible. Miners who do not meet the test of changed circumstances of employment indicative of reduced ability to perform usual coal mine work will not be able to utilize this provision.

OTHER EVIDENCE

The Committee bill adds a sentence to section 413(b) of the Act to require that each miner who files a claim be provided an opportunity to substantiate the claim by means of a complete pulmonary evaluation.

The Committee expressly intends that the term "complete pulmonary evaluation" include a physical examination, ventilatory studies (spirometry), a chest X-ray, and an arterial blood gas test at exercise, except where such exercise is medically contraindicated. No claim should be disallowed on the ground that the miner was unable to complete the exercise test. Often this is the clearest demonstration of total disability.

This provision is intended to complement that portion of the existing section 413(b) which requires that in determining the validity of claims, all relevant evidence is to be considered. The elements of the complete pulmonary evaluation identified above are included as relevant evidence, and the Committee in the instant provision intends that each miner claimant, to the extent feasible, be permitted the opportunity of such an evaluation.

The Committee takes notice of the fact that available facilities for the conduct of arterial blood gas tests are limited. That fact must not be used in the Black Lung Benefits program as a justification to deny miner claims on the grounds that he or she did not take such tests. The Committee is disappointed that funds available for clinical facilities under section 427(c) of the Act have not been used in part for blood gas testing facilities, and it expects that in light of the importance attached by the Committee to the establishment of such facilities (including personnel) to meet the additional demand occasioned by the enactment of this provision, such funds will be so utilized.

OFFSET LIMITATION

The Committee bill contains a provision (section 3) which limits the offset, or reduction, of Federal black lung benefits under part B from benefits received for workers' compensation disability, to those cases in which the State compensation is awarded for disability due to pneumoconiosis.

Part B of current law (section 412(b)) requires the reduction of Federal black lung benefits in an amount equal to any workers' compensation payments received. Part C, however, specifies in section 422(g) that such offset shall be made only to the extent that workers compensation payments are made for disability due to pneumoconiosis. Thus, section 3 of the bill conforms part B to that of existing law in part C.

The Committee acknowledges that an offset should be applied where an award is made for the same disability both by the Federal Government and by the State. If, in addition to being disabled due to pneumoconiosis a miner has lost a leg or injured his back, however, he should not be penalized for incurring multiple injuries. Such a burden of bodily damage has compounded the miner's health problems, and his ability to function normally in society. In workers' compensation, awards increase in accordance with the severity of the injury. The same concept should be applied with respect to the program under consideration.

EXPEDITED REVIEW, TRANSFER, AND PROCESSING OF DENIED CLAIMS

The Committee bill includes a new section 432 of the Act which permits any individual whose claim has been denied to refile under part C.

The Committee believes that this provision is consistent with the complete transition of part C to an industry supported program and will, at the same time, eliminate a significant part of the remaining burden on the Federal Treasury. The provision does not mandate that persons with claims pending under part B must file a new claim under

part C. This may be advantageous to a claimant whose claim has not been finally determined to exhaust administrative remedies under part B, particularly in light of the reform provisions of the bill.

The phrase "finally adjudicated as denied" means that administrative remedies have been exhausted, and the only remaining option is to allow the administrative determination to stand, or to seek judicial review. Such a claim filed under part B which is adjudicated by the courts will, if allowed, be payable under part B.

The Committee, in providing for expedited processing of refiled claims under this provision, contemplates that the Secretary of Labor will notify each individual whose claim has been denied under part B and part C, the Committee expects the claimant at the time of notification to be provided a simple form or even a post card, on which the claimant will indicate whether or not he or she wishes the claim to be reviewed. If the claimant thus requests a review, this will also constitute a refiling of the claim under part C, although the claimant may wish to file more recent medical and other evidence. Claims filed under this section and all pending part C claims, are to be subject to the new medical criteria for total disability established by the Secretary of Labor under section 402(f)(4). Any available information pertaining to claims denied under the title IV are to be transferred forthwith from the Department of Health, Education, and Welfare to the Department of Labor. The Committee expects the two Departments to come to a speedy agreement on the means of implementing this provision.

Benefits hereunder are to be awarded as follows: with respect to refiled part B denied claims which have been finally adjudicated as denied by the Social Security Administration, benefits are to be paid retroactive to January 1, 1974; with respect to section 415 and part C denied claims, which have been finally adjudicated as denied by the Department of Labor, benefits are to be paid retroactive to January 1, 1974, or the date the original claim was filed, whichever is later. It is not possible to award benefits to be paid for periods prior to January 1, 1974, since part C (and the trust fund established by the bill) payments may only be made for periods after that date.

MISCELLANEOUS

Several important provisions are contained in section 7 of the reported bill under the heading "miscellaneous." Among these, subsections (d) and (h) eliminate the existing law's limitation on the filing of a claim by a widow or other survivor.

Section 421 (b)(2)(D) of existing law requires that a State workman's compensation law approved by the Secretary provide that a claim is timely filed if filed within three years of the discovery of total disability due to pneumoconiosis, or the date of such death, as the case may be. Section 422(f)(1) imposes the same general requirement on the Secretary of Labor, and subsection (f)(2) further states that any claim based on eligibility under section 411(c)(4) (the 15-year rebuttable presumption) shall be filed within three years after last exposed employment in a coal mine for living miners, and for a survivor, such claim must be filed within fifteen years from the date of the miner's last exposed employment.

These provisions have exerted an extreme and unnecessary hardship on many widows who, for one reason or another, did not file claims under part B. The Committee is informed that more widows' claims have been denied solely because of this arbitrary "statute of limitations" provision than for any other reason. This is a tragic and unintended result which must be corrected forthwith. The Committee bill thus altogether removes these artificial limitations on filing of claims by widows.

Subsection (b) of section 7 of the bill establishes an entitlement to benefits for survivors of miners who worked in the mines for 25 years or more prior to June 30, 1971, and who died on or before the date of enactment of the 1977 amendments, unless it is established that the miner was not partially or totally disabled due to pneumoconiosis when he died. Upon request by the Secretary, survivors are to provide available evidence respecting the miner's health at the time of his death.

The House Committee on Education and Labor was persuaded that there is a link of causality between time employed in the mines and the incidence of pneumoconiosis. The report of the House Committee states that "80.89 percent of the claims involving miners with a known coal mining employment experience of 30 or more years have been allowed under part B of the program", and that "In recognition of the historically demonstrated and exceedingly high probability of total disability . . . and out of concern for an equally probable risk of error in the remaining cases, an objective test was established to simply provide part B benefits payments to all claimants whose claims had been denied and who could demonstrate 30 or more years of underground mining experience." Dr. Murray B. Hunter, director of the Fairmont Clinic in Fairmont, West Virginia, testified that "It is exposure over time that produces coal workers' pneumoconiosis and the enactment of a reasonable presumption that thus and so many years of exposure to coal mine dust . . . represents sound social policy."

Although no extant medical study demonstrates conclusively the prevalence of pneumoconiosis and job-related respiratory and pulmonary impairments, and although the estimates of such prevalence vary widely from study to study, it is interesting to note that partial data from the National Coal Workers' Autopsy Study conducted by the Appalachian Laboratory for Occupationally Related Diseases (ALFORD) of the National Institute for Occupational Safety and Health indicate that of 1,299 cases, coal workers' pneumoconiosis was mentioned in 1,175, or more than 90 percent of these. On the other hand, other evidence available to the Committee indicates that there is no clear causal relationship between duration of employment and the incidence of total disability due to pneumoconiosis.

Nevertheless, it is clear to the Committee, just as it was in 1972, when those remedial amendments were enacted, that many disabled miners' claims have been denied, partly because the state of the medical art is not sufficiently advanced to unequivocally identify occupationally related disability in coal miners. This problem is markedly exacerbated in the case of deceased miners, particularly those who had the misfortune of dying at a time when medical knowledge of coal workers' pneumoconiosis was far scantier.

It is clear that complicated pneumoconiosis is a progressive and irreversible disease, and that the incidence of simple penumoconiosis, along with other serious respiratory impairments—which some believe also to be progressive—increases in relation to duration of coal mine employment. However, these indicators are not so clear and compelling as to be persuasive that miners be entitled to benefits solely on the basis of years of service without a showing of disability.

The Committee believes that its approach through this provision is a reasonable extension of the presumptions established in the 1969 Act and in the 1972 amendments. Section 411(c) provides that pneumoconiosis in a miner with ten or more years of coal mine employment is presumed to have arisen out of such employment; that a miner with complicated pneumoconiosis is irrebuttably presumed to be totally disabled; that a deceased miner with ten or more years in the mines who died from a respiratory disease is presumed to have died due to pneumoconiosis; and that a miner with 15 or more years of mining who has a negative X-ray with respect to complicated pneumoconiosis but who has a totally disabling respiratory or pulmonary impairment is presumed to be totally disabled due to pneumoconiosis

Widows have perhaps been even more adversely and wrongfully affected by black lung claim denials than living miners, for in all too many instances the probative value of the widow's evidence submitted in support of a claim is not good. It is not her fault. Medical records may have been lost or destroyed. The miner may have been lost forever in an underground mine explosion. He may have died so long ago that clinical knowledge of the day did not include pneumoconiosis—the cause of death was simplistically attributed to "heart failure." For these and other reasons the Committee believes that concern for the welfare of these widows, whose husbands gave their physical strength, their bodies and their lives to this most difficult occupation, should override any professed need to demonstrate a clinically precise association between years worked and totally disabling lung disease. This provision, and others contained in the bill, give the benefit of any doubt to the miner's widow. Any burden is on the Secretary to show that the miner was not partially or totally disabled.

Subsection (c) of section 7 of the bill corrects another hardship now being visited on recent widows. The Social Security Act allows survivors to negotiate disability checks where the beneficiary dies. This provision is incorporated by reference in section 413(b) of the Black Lung Law.

Subsection (e) makes clear that any and all amendments to the Longshoremen's and Harbor Workers' Compensation Act (to the extent specified in section 422(a)) shall be applied to claims proceedings under part C. This includes the 1972 amendments relating to the use of Administrative Law Judges in claims adjudication. This provision should be read in conjunction with subsection (l), which permits hearing officers to continue to adjudicate claims for one year following enactment of the 1977 amendments.

Subsection (f) amends section 422(c) to correct an egregious inequity which has arisen under part C. The provision would prohibit any requirement that a widow or other survivor refile or otherwise revalidate an approved miner's claim when the miner dies.

Subsection (g) of section 7 of the bill eliminates paragraph (3) of section 422(e) of the Act, which provides that no benefit payments shall be required under part C for any period after twelve years after the date of enactment of the Act. This period expires on December 30, 1981. By eliminating this termination date, the Committee thus conforms part C to part B, under which benefits are to be paid for life, or for the period during which the beneficiaries are entitled to benefits.

The Committee strongly believes that the part C program should not be terminated, even with respect to new claims, as an amendment proposed in the markup of the bill sought to do. No one can insure that there will be no compensable black lung cases after 1981. Pneumoconiosis is a progressive disease, and a miner who is not disabled today may very well be eligible for benefits after 1981. If miners continue to be disabled because of their coal mine employment, they should be compensated, no matter what the year.

Subsection (i) eliminates the year-by-year authorization of appropriations for black lung clinical facilities under section 427(c) of the Act by making the authorization of $10 million per year permanent. Additional clinical facilities for the analysis, examination, and treatment of disabled coal miners are desperately needed. Past years' appropriations have been far less than the amount authorized.

Subsection (j) sets forth the means by which computations are made to determine years of service in coal mine employment for benefit purposes under title IV. Credit shall be given for portions of years worked.

Subsection (k) of section 7 of the bill makes the amendments to part B made by the Black Lung Benefits Reform Act of 1977 applicable to part C. The subsection also eliminates the provision of section 430 of the Act which prohibits the consideration of any employment after June 30, 1971 in determining whether a miner was employed at least fifteen years with respect to claims based on the presumption of section 411(c)(4).

June 30, 1971, is specified in the Coal Mine Health and Safety Act as the date by which underground coal mines must have attained a level of respirable dust of not more than 3 milligrams per cubic meter. A temporary waiver of the date requirement is provided for in the law.

Although the Department of the Interior has maintained that 94 percent of the nation's active underground coal mine sections are meeting the later two milligram standard, the General Accounting Office, in a report entitled "Improvements Still Needed in Coal Mine Dust-Sampling Program and Penalty Assessments and Collections" dated December 31, 1975, said that "GAO found many weaknesses in the dust-sampling program affecting the accuracy and validity of results and making it virtually impossible to determine how many mine sections were in compliance."

Corroboration of the GAO position is to be found in an internal memorandum from a research supervisor of the Bureau of Mines concerning the review of current Mine Enforcement and Safety Administration (MESA) dust enforcement program in coal mining operations. That memorandum states unequivocally that "it is evident that a grave health hazard still exists in our coal mine environments." Further, the memorandum indicates "As a result of this (MESA's) inadequate enforcement program, our coal mine personnel are being

subjected to flagrantly hazardous environments, despite public reports to the contrary."

The Committee is persuaded by this and other evidence that compliance with Federal dust standards is not universal, that miners are continuing to contact black lung disease, and that the 1971 cutoff date thus has no particular significance for the purpose of section 430 of the Act.

OCCUPATIONAL DISEASE STUDY

The Committee bill includes a section which mandates a study by the Department of Labor, in cooperation with the National Institute for Occupational Safety and Health (NIOSH), of all occupationally related pulmonary and respiratory diseases.

The Committee believes that a comprehensive study such as this, with its specific objectives, would provide much valuable new and additional information on the status of job-induced lung diseases in the United States. We have accumulated a considerable body of knowledge about coal workers' pneumoconiosis, and have embarked on a program of treatment and benefits for its sufferers. The same cannot be said of many other industry-caused pulmonary and respiratory diseases. The Committee recognizes that occupational disease is emerging as a serious and complex matter to be addressed through control of toxic substances, occupational safety and health regulation, including mine health and safety, the workers' compensation system and other programs. This study will assist in formulating improvements and reforms in such programs.

Although the Committee understands that a thorough study of the subject matter would be expensive, it expects the Department of Labor and NIOSH to utilize existing studies and research materials already available to the extent possible.

OTHER PROVISIONS

Definition of pneumoconiosis.—The Committee bill expands the definition of pneumoconiosis to include the sequelae of the disease (such as cor pulmonale) and respiratory and pulmonary impairments arising out of coal mine employment.

Although it is the understanding of the Committee that it has been the practice of the Social Security Administration to encompass these additional impairments in the allowance of claims, it is appropriate for the Committee specifically to include them in law, in order to preserve continuity in their application.

Definition of miner.—The term is expanded in the Committee bill to include additional workers. Existing law limits the term miner to "any individual who is or was employed in a coal mine." The expanded definition in the Committee bill includes those managers or owners of very small mining operations who themselves work or have worked in the extraction of coal. The number of such individuals is very small—not more than 500—and the number of these who are totally disabled because of their work in a mine must be far smaller; but the Committee believes that they should be permitted to apply for benefits by virtue of their work as coal miners.

Also included in the definition are those who work or worked in a coal preparation facility or who transport coal, so that "outside men"—

workers at the tipple and preparation plant workers, for example, are clearly covered as miners. The term includes coal mine construction workers when they work in conditions substantially similar to conditions in underground coal mines. The provision does not contemplate inclusion of those workers employed by a railroad, trucking company, or barge line unless such company also operates a mine. Nor does it include such individuals not directly related to the production of coal such as coke oven workers. These exclusions are not the result of any judgment that such workers should not be compensated for occupational disease—they are merely beyond the scope of this legislation.

Field offices.—The Committee believes there is a clear need for the Labor Department to do more to assist Black Lung Benefits claimants with their claim filing and processing in the field. Such field offices should be located in proximity to active coal mining areas, and in areas from which it is anticipated that substantial numbers of claims will emanate. It would, of course, be a misuse of funds to establish field offices in locations far from the coal fields, except in population centers which can be expected to generate claims.

Information to potential beneficiaries.—The bill reported by the Committee would require general dissemination of information on the changes in the law made by the 1976 amendments to interested persons and groups (such as labor unions, coal mine operators, and black lung representatives) who in turn would widely re-disseminate such information to potential claimants. To the extent appropriate, this process should be coordinated with the effort under section 10 of the bill to notify denied claimants of their rights to refile a claim under part C. The requirement to provide individual assistance in preparing and processing claims contemplates aid in securing evidence to support a claim, assembling such evidence, including medical evidence and evidence of employment history, and any other assistance necessary for the full preparation of a claim up to the point of filing such claim. The Department is expected to make available such personnel as are necessary for responding to claimants' inquiries about their claims.

Effective dates.—The provisions of the bill take effect on the date of their enactment, except that the trust fund, the excise taxes imposed by section 6A of the bill, and any necessary appropriations, take effect on and after October 1, 1977. Likewise, no benefits awarded due to the operation of the 1977 amendments may be paid until October 1, 1977. The Committee anticipates that time will be needed to establish the trust fund and hire essential personnel. It is for this reason that it is to begin operation as of October 1, 1977. The Committee expects that there will be claims awaiting payment by the trust fund on that date, and thus urges prompt action by the designated trustees to prepare for its operation. The other provisions described above have been delayed until October 1, 1977 because of Budget Act limitations.

Secretary to be a party.—New section 422(k) of the Act, as added by section 6(d) of the Committee bill, makes the Secretary of Labor a party in all adjudication proceedings relating to claims for benefits filed and adjudicated under Section 415 and part C of the Act. Some question has arisen as to whether the adjudication procedures

applicable to black lung claims incorporating various sections of the amended Longshoremen's and Harbor Workers' Compensation Act confers standing upon the Secretary of Labor or his designee to appear, present evidence, file appeals or respond to appeals filed with respect to the litigation and appeal of claims. In establishing the Longshore Act procedures it was the intent of this Committee to afford the Secretary the right to advance his views in the formal claims litigation context whether or not the Secretary had a direct financial interest in the outcome of the case. The Secretary's interest as the officer charged with the responsibility for carrying forth the intent of Congress with respect to the Act should be deemed sufficient to confer standing on the Secretary or such designee of the Secretary who has the responsibility for the enforcement of the Act, to actively participate in the adjudication of claims before the Administrative Law Judge, Benefits Review Board, and appropriate United States Courts. This participation is especially significant in black lung claims when, for example, the claimant has been unable to obtain legal representation or where significant issues relating to the interpretation of the Act are to be determined.

Penalty provisions.—In order to insure conscientious adherence to the law by coal mine operators and claimants alike, the Committee has included in the bill several provisions which impose civil and criminal penalties for certain acts or omissions. These provisions are adapted from the Longshoremen's and Harbor Workers' Compensation Act.

CLARIFICATIONS OF LEGISLATIVE INTENT

Acceptance of Certain Evidence Under Part B

The Committee understands that the Department of Health, Education, and Welfare has violated the intent of Congress by adopting regulations which preclude the taking of new evidence in a part B claim after June 30, 1973 before the Department has made its final determination of eligibility for benefits. The regulations assert that a claim is not "effectively filed" unless all evidence is submitted prior to that date.

The Committee wishes to inform the Department that such a construction is incorrect, and is in conflict with the intent, if not the letter, of the law. Section 414(b) of the Federal Coal Mine Health and Safety Act states only that "No benefits shall be paid under this part after December 31, 1973, if the claim therefor was filed after June 30, 1973." When a claim has been submitted to the Social Security Administration under part B, it is filed for purposes of section 414(b), even though additional evidence has been submitted before a final administrative determination of eligibility.

The processing of a claim quite naturally may include the taking of evidence in addition to that initially submitted with the claim. As a rule, a disabled miner or widow does not have at his or her disposal a plethora of legal assistance to aid in the accumulation of all tests and documentation necessary for the determination of a claim when it is filed. The imposition of such an arbitrary and stern requirement on such claimants cannot be countenanced by this Committee, and to deny a claim which was filed by June 30, 1973 but not "effectively

filed" until sometime after that date and before the final administrative determination of eligibility is a perverse interpretation of the law which is cruel and unjust.

It is the Committee's understanding that literally hundreds of black lung cases are tied up in Federal District Courts because of this one issue—whether medical evidence taken after June 30, 1973 with respect to a claim filed by June 30, 1973 is admissible in determining part B claims. The Committee expects that its clear expression of legislative intent herein will result in the modification of the regulations referred to, as well as in the clarification of the law for the benefit of the courts.

Claims Under Section 415

Some confusion has arisen over the nature of the Section 415 transition provisions and their applicability to claims filed between July 1 and December 31, 1973. The Committee does not feel that amendments to Section 415 are necessary; however, a clarification of the meaning of this section is in order. Of greatest significance is the point that we did not intend that survivors of miners would file claims pursuant to Section 415. It was intended that survivors claims filed between July 1, and December 31 would be filed, processed and paid by the Social Security Administration pursuant to Sections 411–414 of the Act, and the practices and regulations of both the Departments of Labor and Health, Education, and Welfare correctly reflect this intent. In addition, it was intended that claims filed during this period would be subject to the adjudicatory provision of Section 422 of Part C and the eligibility provisions of Part B. Section 415 was placed in Part B and specifically incorporated the adjudication provision of Section 422 to effect this purpose. Finally, it was intended that claims filed during the period would be the liability of coal operators for all periods of eligibility beginning on January 1, 1974.

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 to report an original bill was adopted by a vote of 11 yeas, 0 nays, as follows:

Yeas—11

Williams	Javits
Randolph	Schweiker
Pell	Stafford
Kennedy	Chaffee
Cranston	
Hathaway	
Riegle	

nays—0

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:

CONGRESSIONAL BUDGET OFFICE,
U.S. CONGRESS,
Washington, D.C., May 16, 1977.

Hon. HARRISON A. WILLIAMS, JR.,
Chairman, Committee on Human Resources, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act 1974, the Congressional Budget Office has prepared the attached cost estimate for S. ----, the Black Lung Benefits Reform Act of 1977.

Should the Committee so desire, we would be pleased to provide further details on the attached cost estimate.

Sincerely,

JAMES BLUM,
(For Alice M. Rivlin, Director).

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill Number: S.
2. Bill Title: Black Lung Benefits Reform Act of 1977.
3. Bill Purpose: This bill provides for the following changes to the Federal Coal Mine Health and Safety Act of 1969 and the 1972 amendments to that Act:

A. The definition of miner has been amended to include any individual who works or has worked in or around a coal mine or a coal-preparation facility and was exposed to coal dust in his or her employment period.

B. The definition of the term "total disability" as it relates to Part C claims was made subject to regulation by the Secretary of Labor.

C. Beneficiaries receiving awards under Part B are now allowed to also receive full benefits under workmen's compensation (where eligible) where the disability involved is not related to pneumoconiosis.

D. Current law is amended to allow miners who are currently engaged in coal mine employment to file for benefits and that their employment status shall not be used as a bar to rejecting that claim. Also, miners who were working at the time of their deaths shall not be automatically rejected for benefits based solely on their employment status at the time of death.

E. The Secretary of Labor is now required to accept a board-certified or board-eligible radiologist's interpretation on a chest x-ray if it is of sufficient quality in order to demonstrate the presence of pneumoconiosis. This provision applies both to existing Part B claims that were rejected on the basis of a rereading and to past and future Part C claims.

F. The liability of mine operators in paying a claim is more clearly stipulated in this bill with regard to cases where operators have merged or liquidated into another corporation or have reorganized.

G. The bill provides for the establishment of a trust fund to be financed through a tax on the sale of coal. This trust fund will pay all claims under Part C.

H. Where a miner was employed for 25 years or more in a mine prior to June 30, 1971, the eligible survivors of that miner will be entitled to the payment of black lung benefits.

I. The Secretary of Labor is now authorized to establish and operate field offices for the purpose of assisting miners and survivors in the filing and processing of claims.

J. The bill provides for the extension of authorization for the clinical facilities program.

4. Cost Estimate:

[In millions]

	1978	1979	1980	1981	1982
Section:					
2(b)—Definition	$0.3	$1.3	$1.3	$1.4	$1.5
2(c)—Interim standards	16.2	69.2	22.3	23.7	25.2
3—Workmen's compensation offsets	8.0	8.5	8.7	9.2	9.8
4—Employment bar	3.1	13.3	4.7	5.1	5.3
5—X-Ray rereadings	16.8	71.7	46.2	49.1	52.2
6(b)—Operator liability	−1.4	−6.8	−2.5	−2.6	2.8
7(b)—25-year presumption	23.3	99.1	31.3	33.3	35.4
7(i)—Clinical facilities	10.0	10.0	10.0	10.0	10.0
8—Field offices	2.6	2.8	3.0	3.1	3.3
Total costs	76.8	269.0	125.0	132.3	139.9
Revenues	202.0	[1] 265.6	225.0	184.9	192.1

[1] Includes a repayable advance from general revenues of $52,600,000.

5. Basis for Estimate: For the purposes of this estimate, the annual average benefit (for miners and their survivors) is assumed to be $3,460 in fiscal year 1978 with increases in subsequent years based upon CBO estimates for rises in the federal pay schedule. For retroactive benefits back to 1974, the first year retroactive award is $11,140 if made in fiscal year 1978 and $14,600 if made in fiscal year 1979. It is assumed that 25 percent of the claims filed under this bill will be completed in 1978 and the remainder in 1979. Lastly, based upon the clarification of mine operators' liability, it is assumed that the identification rate for responsible mine operators will increase from approximately 25 to 30 percent. Thus, the federal costs associated with the provisions of this bill are assumed to be 70 percent of the total additional liability. These costs would be picked up by the trust fund established under this measure.

The following represents a section-by-section analysis of the costs of the various provisions:

Section 2—The definition of miner would provide, according to testimony of independent coal operators, an additional 500 potential beneficiaries among the small coal mine operators. The outyear estimates of the costs of this section (and subsequent sections) also assume a projected mortality rate of 7.6 percent in 1978 (and an additional .3 percent per year) for miners and 4.4 percent (an additional .2 percent per year) for survivors. These mortality rates were provided by the Social Security Administration.

Also under Section 2, it is assumed that the regulations regarding what constitutes "total disability", which will be promulgated by the Secretary of Labor, will be equivalent to the interim medical standards. According to earlier estimates of the Department of Labor, this would increase the number of potential beneficiaries by

8,325 and additional costs are calculated using that base and assuming retroactivity back to 1974.

Section 3—Provides for the elimination of offsets to workmen's compensation benefits for the black lung program. Based upon Social Security estimates, this would affect approximately 3,300 beneficiaries and would increase costs only under Part B. For this section, it is assumed that 100 percent of the adjustments would be made in fiscal year 1978.

Section 4 both eliminates the current employment bar to filing claims for living miners and would allow survivors of claimants who were employed at the time of their death and whose claims were rejected on that basis to have those claims rereviewed. In the case of deceased miners, it is estimated that an additional 1,500 claims could now be approved under this provision. For miners currently employed, an additional 600 would be allowed. However, because the employee must terminate his employment within one year after the date that the determination of a successful claim has become final, it is assumed that only half, or 300 miners, would actually become eligible under this provision. In the case of deceased miners, benefits would be paid retroactively.

Under Section 5, which provides that the Secretary shall accept the opinion of a board-certified or board-eligible radiologist with regard to the reading of a chest x-ray, a total of 17,265 additional beneficiaries would become eligible. This would include an additional 11,340 who had filed under Part B and had originally been rejected and 5,925 Part C recipients with benefits paid on the basis of retroactivity (where applicable).

Under Section 6, which both establishes the trust fund and clarifies the conditions under which an operator can be found liable for claims, it is assumed, as stated before, that there would be approximately a 5 percent increase in the number of responsible mine operators identified. Thus, there is a potential savings for claims that would be filed under current law where an additional 5 percent would be paid by a mine operator rather than by the federal government through the trust fund. Based upon the Department of Labor's projection that the federal government will pay $27 million in claims in 1978, the savings would be approximately $1.4 million in that fiscal year. In future years, based on more sizable numbers of beneficiaries receiving awards, this savings would increase.

Under Section 7, which provides for an automatic entitlement for the widows of miners who had died before the enactment of this measure and who had completed 25 or more years of employment in the mines prior to June 30, 1971, an additional 11,925 beneficiaries would become eligible. Costs for this section also assume retroactivity back through 1974.

Section 7 also provides for the continuation of $10 million in authorization for the clinical facilities program. For the purposes of this estimate, it is assumed that the full amount will be appropriated and spent out at the rate of 100 percent in the year the funds are obligated.

Section 8 authorizes the Secretary of Labor to establish and operate field offices. It is calculated, that in 1978, the cost of operating these field offices will be approximately $2.6 million. Increases in later years to maintain the same level of services while accounting for inflation are calculated using the GNP deflator.

In calculating the necessary revenues to support the trust fund established under Section 6, the following assumptions were made:

1. The total revenues necessary to pay all liabilities for the trust fund for the first three years would be spread over that period with the same assessments being made in each of those years.

2. A ratio of 1:2:4 would be used to calculate the per ton tax rates for coal rated at less than 8,000 BTUs, 8,000 to 11,000 BTUs, and over 11,000 BTUs, respectively.

3. Projected production levels for each BTU value were based upon information provided through the Bureau of Mines in the Department of the Interior.

Based both on liabilities under current law and those added by this bill, the trust fund would need $83.2 million in fiscal year 1978, $384.4 million in fiscal year 1979, and $171.4 million in fiscal year 1980. Using the projected tonnage levels for the three different BTU value groupings, a tonnage rate of 7.5 cent with less than 8,000 BTUs per ton was calculated, and 15 cents and 30 cents for the other two values. This would generate in additional revenues $202 million in 1978, and $213 million and $225 million in the subsequent two years. Thus, a balance of $118.8 million would be available at the end of the first year, but, combining this with $213 million raised in taxes in the following year, would still fall $52.6 million short of meeting the fiscal year 1979 requirements, thus requiring an advance of that amount. In the final year, there would be sufficient funds to meet that year's obligations, plus the component of the previous year's advance. In 1981 and 1982, tax rates of approximately 6 cents, 12 cents, and 25 cents for the three groups would be needed to meet the projected requirements of the fund.

6. Estimate Comparison: Not applicable.

7. Previous CBO Estimate: None.

8. Estimate prepared by: Jeffrey Merrill.

9. Estimate Approved by: James L. Blum, Assistant Director for Budget Analysis.

Regulatory Impact

In accordance with paragraph 5 of rule XXIX of the Standing Rules of the Senate, the following statement of the regulatory impact of the bill is made.

The overall effect of the bill is to ease the difficulties encountered by disabled miners and widows in obtaining benefits and to insure that the liability for such benefits is secured by those intended by Congress in the 1969 Act to have such liability. Except for the establishment of a Federally-operated trust fund to handle the bulk of part C claims and the creation of a new tax on coal production, there is little change to the law which will have a regulatory impact.

Although the Committee anticipates an increased burden on the Department of Labor, the Internal Revenue Service, and to a lesser extent, the Department of Health, Education, and Welfare, the additional workload on these agencies will not have a corresponding impact on the affected coal mine operators. There are an estimated 5,000 coal mine operators in the United States, each of which will, to some extent, be affected by the bill. Operators currently are expending considerable time and resources in the controversion of Black Lung Benefit claims. Because the trust fund in the future

will be responsible for the large majority of those claims, these expenditures of time and resources should be materially reduced. The trust fund is to assume liability for all claims in which the miner's last coal mine employment was prior to January 1, 1970.

The bill will have an impact on coal mine employers in two areas: (1) they will be required to file tax returns and pay taxes on the first sale or use of the coal they produce, and (2) the Secretary of Labor is authorized to require the filing of reports under new section 434 of the Act with respect to employees who may be or are entitled to benefits, including the date of commencement and cessation of benefits and the amount. It is anticipated that the Secretary of Labor will promulgate rules or guidelines which protect the privacy of the employees involved, as is currently done with respect to medical evidence submitted in conjunction with a claim determination.

Since the coal tax imposed in the bill is an excise tax, it is added to the price of coal to the first purchaser thereof. Once the initial period for the retroactive payment of benefits is over, the impact on the consumer will be minimal—less than one percent of the cost of coal may be attributed to the tax. Currently, the general Treasury is responsible for most benefit payments. The cost impact of Black Lung Benefits claims will thus be shifted gradually from the whole population to the coal consumer.

Section-by-Section Analysis

SECTION 1—SHORT TITLE

Cites the bill as the "Black Lung Benefits Reform Act of 1977".

SECTION 2—DEFINITIONS

(a) "Pneumoconiosis" definition in the Act is amended to mean a chronic dust disease of the lung and the sequelae of such disease, including respiratory and pulmonary impairments, arising out of coal mine employment.

(b) "Miner" definition is amended to include any individual who works or has worked in or around a coal mine or coal preparation facility in coal extraction, preparation, or transportation. The term also includes those engaged in coal mine construction when exposed to coal dust.

(c) "Total disability" definition provides that the Secretary of HEW for part B, and the Secretary of Labor for part C, are to promulgate regulations, subject to appropriate provisions of section 413 (b) and (d) of the Act, except that (1) a living miner is totally disabled when pneumoconiosis prevents employment similar to coal mine work in which he was regularly engaged, (2) the fact that a deceased miner was working at the time of death shall not be conclusive evidence that he was not totally disabled, and if, in the case of a living miner, work conditions are changed to indicate reduced ability to do coal mine work, such a miner's employment is not conclusive evidence that the miner is not totally disabled, (3) regulations shall not be more restrictive than those applying to section 223(d) of the Social Security Act, and (4) the Secretary, in consultation with NIOSH, is to establish medical criteria which accurately reflect total disability in coal miners.

Sections 421 and 422 are also amended to eliminate any HEW regulatory authority over part C, and section 421 is further amended to ease the qualification requirement for State compensation laws to eliminate the need for such laws to provide retroactive benefits.

(d) "Fund" means the trust fund (Black Lung Disability Fund) established under section 424.

SECTION 3—OFFSET LIMITATION

This section limits in part B the offset (reduction) of Black Lung Benefits against workers' compensation benefits to cases where compensation payments are made for disability due to pneumoconiosis.

SECTION 4—BENEFIT DETERMINATION FOR EMPLOYED MINERS

Section 413 of the Act is amended by adding a new subsection (d) which prohibits benefit payments to working miners except those qualified under section 411(c)(3) (complicated pneumoconiosis), and authorizes benefit payments where miner terminates coal employment within one year after final benefit determination.

SECTION 5—EVIDENCE REQUIRED TO ESTABLISH CLAIM

(a) Section 413(b) is amended to insert a proviso which requires the Secretary to accept an interpretation of an X-ray submitted in support of a claim if such interpretation was made by a board certified or board eligible radiologist, if the X-ray is of a quality sufficient to demonstrate pneumoconiosis and if the X-ray was taken by a radiologist or qualified radiologic technologist or technician, except where the Secretary has reason to believe the claim is fraudulent. The Secretary of Labor may by regulation establish standards for taking chest X-rays.

A new sentence immediately follows the above proviso, which provides that where there is no medical evidence, or where such evidence is inconclusive, a claim shall be approved if other evidence, including affidavits, establishes that the deceased miner was totally disabled.

(b) Section 413(b) is further amended by adding a new sentence which requires that each miner claimant shall be provided an opportunity to substantiate his or her claim by means of a complete pulmonary evaluation.

SECTION 6—TRUST FUND AND OPERATOR LIABILITY

(a) Section 424 of the Act is amended to provide for the establishment of a Black Lung Disability Fund, the managing trustee of which is the Secretary of the Treasury. The Secretaries of Labor and Health, Education, and Welfare are also trustees.

The fund is to contain appropriations equivalent to coal excise taxes received, appropriated repayable advances, and interest on investments.

The Sectretary of the Treasury is to hold the fund and report to the Congress each year on the condition of the fund, expected condition, and on any proposed adjustment in the tax rate. He is to

invest such portion of the fund as is not needed for current withdrawals, and may buy or sell U.S. obligations. Interest and proceeds from sales go to the fund.

The fund is to be available for payment of (1) benefits under section 422, where an operator is in default or where there is no responsible operator, (2) claim obligations of the Secretary of Labor for pre-1970 employment benefits and repayment to the Treasury of amounts paid on part C claims by the Secretary of Labor, (3) benefits for which the fund has assumed insurer liability, (4) repayment of advances, with interest, and (5) all operating and administrative expenses.

Where an individual operator is responsible for a claim, such operator shall reimburse the fund for payments of benefits by the fund. No operator shall have standing in a claim determination proceeding other than with respect to a claim for which the Secretary of Labor finds him responsible under section 422 and 423. Where there is no responsible operator, the Secretary's determination that the fund is liable is final. A liable operator who refuses to pay shall have a lien placed on all his property and property rights, such lien to have the same priority as a Federal tax lien. The Secretary of the Treasury may bring a civil action to enforce such a lien.

The fund is authorized to enter into agreements to assume liability for claims of an operator subject to payment therefor by such operator.

(b) Section 422(i) of the Act is amended to impose claim liability on any operator who acquired a mine from a prior operator on or after January 1, 1970, with respect to benefits to miners previously employed by a prior operator, as if the acquisition had not occurred. No prior operator is relieved of any liability as a result of this provision. In addition, if an operator reorganizes to change its identity, form, or place of organization; is liquidated into a parent corporation; or ceases to exist because of a sale of assets, is merged, consolidated, or divided, the successor operator or corporation is subject to this provision. The amended section 422(i) does not apply to claims for which the fund is responsible.

(c) Section 422 is amended by adding a new subsection (j) to conform that section to section 424 regarding liability of the fund for claims (1) for which there is no responsible operator, (2) with respect to which an operator is in default, and (3) where the miner's last coal mine employment occurred prior to January 1, 1970.

(d) Section 422 is further amended by adding a new subsection (k) to make the Secretary of Labor a party in any claim proceeding.

Section 6A—Excise Tax on Coal

Subsection (a) of this section amends the Internal Revenue Code of 1954 by inserting a new subchapter B of Chapter 32, section 4121, to impose a tax on the sale or use of coal by the producer at the rate of (1) 30 cents per ton of coal which has an average British thermal unit value of 11,000 or more per pound, (2) 15 cents per ton of coal between 8,000 and 11,000 Btu per pound, and (3) 7.5 cents per ton for coal with 8,000 Btu per pound or less. The rated Btu value is assigned by the Bureau of Mines to the affected coal field or seam. "Ton" is defined as 2,000 pounds.

Subsections (b) and (c) make conforming changes to the Internal Revenue Code in sections 4221, 4293, and 4217(a), and the table of subchapters of Chapter 32.

Subsection (d) makes the section effective with respect to sales on and after October 1, 1977.

SECTION 7—MISCELLANEOUS

(a) Provides that title IV may be cited as the "Black Lung Benefits Act."

(b) Adds a paragraph (5) to section 411(c) providing that the eligible survivors of a miner who dies on or before the date of enactment of the 1977 bill and who was a miner for twenty-five (25) years or more prior to June 30, 1971, are entitled to benefits, unless it is established that the miner was not partially or totally disabled. The claimant shall furnish any available evidence of the health of the miner on request of the Secretary.

(c) Authorizes a disabled miner's widow to negotiate the miner's benefit checks.

(d) Removes time limitation of filing of a claim by a widow in section 421 (requiring certain provisions to be contained in State laws approved by the Secretary).

(e) Makes clear that the Longshoremen's and Harbor Workers' Compensation Act, including any amendments thereto, applies to claims procedures under part C.

(f) Amends section 422(c) to make clear that eligible survivors of eligible miners need not file a new claim when the miner dies, or otherwise revalidate the claim.

(g) Eliminates from section 422(e) the provision which terminates the payment of claims after twelve years following enactment of the 1969 Act, thus making part C permanent.

(h) Removes time limitation on filing of a claim by a widow in section 422(f).

(i) Authorizes under section 427(c) $10 million each fiscal year for black lung clinical facilities.

(j) Provides criteria for determining years of coal mine employment for purposes of eligibility for benefits.

(k) Section 430 of the Act is modified to make the amendments made by the Black Lung Benefits Reform Act of 1977 to part B applicable to part C, and to eliminate the June 30, 1971 employment cutoff applicable to part C claims under section 411(c)(4).

(l) Provides that individuals appointed to hear claims pursuant to P.L. 94–504 may continue to do so for one year after enactment.

SECTION 8—FIELD OFFICES

(a) Authorizes the Secretary of Labor to establish necessary field offices to assist claimants with filing and processing. Such offices are to be reasonably accessible to claimants, and the Secretary may make any arrangements necessary with other Federal or State agencies to use their personnel and facilities.

(b) Such sums as may be necessary are authorized for the purposes of subsection (a).

SECTION 9—INFORMATION TO POTENTIAL BENEFICIARIES

The Secretaries of Labor and HEW shall jointly disseminate changes in the law made by the bill, and an explanation thereof, to interested persons and groups, and shall notify, through appropriate organizations, individuals who may be eligible for benefits by reason of the changes. Assistance in preparing and processing claims shall be given to each potential beneficiary.

SECTION 10—EXPEDITED REVIEW, TRANSFER, AND PROCESSING OF DENIED CLAIMS

A new section 432 is added to part C which allows any individual whose claim has been denied under part B or part C of the Act to have such claims reviewed by the Secretary of Labor in light of amendments made by the 1977 bill, subject to request for review submitted on a simple form supplied by the Secretary within six months after the form is supplied. Claims are to be processed in accordance with total disability medical criteria established by the Secretary of Labor, and regulations are to be prescribed to expedite processing of claims filed under this section. Claims originally filed under part B are to be approved for payment as of January 1, 1974. Claims filed under section 415 or part C are paid as of January 1, 1974 or the date originally filed, whichever is later.

SECTION 11—EFFECTIVE DATES

(a) The Act takes effect on the date of enactment, except as specified in subsections (b) and (c).

(b) The Black Lung Disability Fund is to take effect on October 1, 1977.

(c) Tax revenues and appropriations shall accrue as of October 1, 1977, and no benefits awarded pursuant to this Act are to be paid until October 1, 1977.

SECTION 12—OCCUPATIONAL DISEASE STUDY

(a) Requires the Secretary of Labor, with the Director of NIOSH, to study all occupationally related lung diseases in the United States, to include analyses of factors similar to coal workers' pneumoconiosis and its sequelae; the adequacy of workers' compensation programs for such diseases; and the status and adequacy of Federal health and safety laws and regulations relating to industries with which such diseases are associated.

(b) The study is to be completed and a report submitted to the President and to the appropriate Committees of the Congress within 18 months after enactment.

SECTION 13—PENALTY: FAILURE TO SECURE BENEFITS

Section 423 is amended by adding a new subsection (d) to impose a civil penalty of up to $1,000 per day for failure of an employer to secure benefits, and makes corporate officers jointly and severally liable. The subsection also imposes criminal liability for certain acts of an employer to avoid payment of benefits.

SECTION 14—PENALTIES: FALSE STATEMENTS AND REPORTS

Two new sections are added to title IV. Section 433 imposes criminal penalties on any person who willfully makes a false or misleading statement to obtain benefits. Section 434 authorizes the Secretary to require employer reports on miners who may be or are entitled to benefits, but prohibits the use of such reports as evidence in any disability proceeding. Failure or refusal to file such reports is subject to civil penalty.

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 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 to which no change is proposed is shown in roman):

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969, AS AMENDED

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".

* * * * * * *

TITLE IV—BLACK LUNG BENEFITS

PART A—GENERAL

SEC. 401. (*a*) 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 coal mines; that there are a number of survivors of coal miners whose deaths were due to this 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 who are totally disabled due to pneumoconiosis and to the surviving dependents of miners whose death was due to such 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.

(*b*) *This title may be cited as the "Black Lung Benefits Act."*

SEC. 402. For purposes of this title—

(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.

(b) The term "pneumoconiosis" means a chronic dust disease of the lung [arising out of employment in a coal mine.] *and its sequelae, including respiratory and pulmonary impairments, arising out of coal mine employment.*

(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 coal mine.]

(d) The term "miner" means any individual who works or has worked in or around a coal mine or coal preparation facility in the extraction, preparation, or transportation of coal. Such term also includes an individual who works or has worked in coal mine construction during any period such individual was exposed to coal dust in his or her employment.

(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.

[(f) 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.]

(f) The term "total disability" has the meaning given it by regulation of the Secretary of Health, Education, and Welfare for part B claims, and

by regulation of the Secretary of Labor for part C claims, subject to the relevant provisions of subsections (b) and (d) of section 413, except that—

(1) in the case of a living miner, 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;

(2) such regulations shall provide that (A) a deceased miner's employment in a mine at the time of death shall not be used as conclusive evidence that the miner was not totally disabled; and (B) in the case of a living miner, if there are changed circumstances of employment indicative of reduced ability to perform his or her coal mine work, such miner's employment in a mine shall not be used as conclusive evidence that the miner is not totally disabled;

(3) such regulations shall not provide more restrictive criteria than those applicable under section 223(d) of the Social Security Act; and

(4) the Secretary, in consultation with the Director of the National Institute for Occupational Safety and Health, shall establish criteria for all appropriate medical tests under this subsection which accurately reflect total disability in coal miners as defined in paragraph (1).

(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

(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.

(h) The term "fund" means the Black Lung Disability Fund established pursuant to section 424.

Part B—Claims for Benefits Filed on or Before December 31, 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 to total disability of any miner due to pneumoconiosis, and in respect to the death of any miner whose death was due to 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 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 coal mines and died from a respirable disease there shall be a rebuttable presumption that his death was due to pneumoconiosis;

(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; [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 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.] *mine; and*

(5) in the case of a miner who dies on or before the date of enactment of the Black Lung Benefits Reform Act of 1977 who was employed for 25 years or more in one or more coal mines prior to June 30, 1971, the eligible survivors of such miner shall be entitled to the payment of benefits, unless it is established that at the time of his death such miner was not partially or totally disabled due to pneumoconiosis. Eligible survivors shall, upon request by the Secretary, furnish such evidence as is available with respect to the health of the miner at the time of his death.

(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 benefit 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).

(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 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.

(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.

(b) Notwithstanding subsection (a), benefit payments under this section to a miner or his 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, 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 *due to pneumoconiosis*, 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. 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, 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, 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: *Provided, That the Secretary shall accept a board certified or board eligible radiologist's interpretation of a chest roentgenogram which is of a quality sufficient to demonstrate the presence of pneumoconiosis submitted in support of a claim for benefits under this title if such roentgenogram has been taken by a radiologist or qualified radiologic technologist or technician, except where the Secretary has reason to believe that the claim has been fraudulently represented. In order to insure that any such roentgenogram is of adequate quality to demonstrate the presence of pneumoconiosis, and in order to provide for uniform quality in the roentgenograms, the Secretary of Labor may, by regulation, establish specific requirements for the techniques used to*

take roentgenograms of the chest. In the case of a deceased miner, where there is no medical evidence, or where such evidence is inconclusive, a claim shall nevertheless be approved if other evidence in the record, including affidavits, taken as a whole establishes that the miner was totally disabled due to pneumoconiosis or that his death was due to pneumoconiosis.

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),] *(l) and (n)*, 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. *Each miner who files a claim for benefits under this title shall be provided an opportunity to substantiate his or her claim by means of a complete pulmonary evaluation.*

(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 by 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.

(d) No miner who is engaged in coal mine employment shall (except as provided in section 411(c)(3)) be entitled to any benefits under this part while so employed. Any miner who has been determined to be eligible for benefits pursuant to a claim filed while such miner was engaged in coal mine employment shall be entitled to such benefits if his employment terminates within one year after the date such determination becomes final.

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, 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, 1973, 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 field 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 estab-

lished 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 6 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, 1973, if the claim therefor was filed after June 30, 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, 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, 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 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—

(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.

PART C—CLAIMS FOR BENEFITS AFTER DECEMBER 31, 1973

SEC. 421. (a) On and after January 1, 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, *except that such law shall not be required to provide such benefits where the miner's last employment in a coal mine terminated prior to the Secretary's approval of the State law pursuant to this section;*

(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 section 402(f) of this title and to those standards established under [part B] *part C* 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;] *after a medical determination of total disability due to pneumoconiosis;*

(E) there are in effect provisions with respect to prior and successor operators which are substantially equivalent to the provisions contained in section 522(i) of this part; and

(F) there are applicable such other provisions, regulations or interpretation, 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 State 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 sixth month following the month in which such amendments are enacted.

SEC. 422. (a) During any period after December 31, 1973, 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, *and as it may be amended from time to time*, (other than the provisions contained in sections, 1, 2, 3, 4, 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 a coal mine in such State with respect to death or tota 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 *a period after December 31, 1969* [the period] when it was operated by such operator. *In no case shall the eligible survivors of a miner who was determined to be eligible to receive benefits under this title at the time of his death, be required to file a new claim for benefits, or refile or otherwise revalidate the claim of such miner.*

(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 therefore 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, [1974; or] *1974.*

[(3) for any period after twelve years after the date of enactment of this Act.]

(f) [(1)] Any claim for benefits *by a miner* 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.] *after a medical determination of total disability due to pneumoconiosis.*

[(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 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 respest 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.]

(i)(1) During any period in which this section is applicable to the operator of a coal mine or mines who on or after January 1, 1970, acquired such mine or mines 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 or mines, or owner of such assets on or after January 1, 1970, such operator 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 by such prior operator as if the acquisition had not occurred and the prior operator had continued to be a coal mine operator.

(2) Nothing in this subsection shall relieve any prior operator of any liability under this section.

(3) For purposes of paragraph (1) of this subsection, the following shall apply to corporate reorganizations, liquidations, and such other transactions as are enumerated in this paragraph, irrespective of the date such transaction occurred:

(A) If an operator ceases to exist by reason of a reorganization which involves a change in identity, form, or place of business or organization, however effected, the successor operator or other corporate or business entity resulting from such reorganization shall be treated as the operator to whom this section applies.

(B) If an operator ceases to exist by reason of a liquidation into a parent corporation, the parent or successor corporation shall be treated as the operator to whom this section applies.

(C) If an operator ceases to exist by reason of a sale of substantially all its assets or merger or consolidation, or division, the successor operator or corporation, or business entity shall be treated as the operator to whom this section applies.

(4) Nothing in this subsection shall be construed to require the payment of benefits by or on behalf of an operator where liability for the claim is the responsibility of the fund under section 424 of this part.

(j) Notwithstanding the provisions of this section, section 424 shal govern the payment of benefits in cases in which—

(1) an operator liable for the payment of 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 thirty days of an initial determination of eligibility by the Secretary, or

(2) there is no operator who is required to secure the payment of such benefits, or

(3) the miner's last coal mine employment was prior to January 1, 1970.

(k) The Secretary shall be a party in any proceeding relating to a claim for benefits under this part.

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 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 payment; 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.

(d) (1) Any employer required to secure the payment of compensation under this section who fails to secure such compensation shall be subject to a civil penalty of not more than $1,000 for each day during which such failure occurs; and in any case where such employer is a corporation, the president, secretary, and treasurer thereof shall be also severally liable to such civil penalty as herein provided for the failure of such corporation to secure the payment of compensation; and such president, secretary, and treasurer shall be severally personally liable, jointly with such corporation, for any compensation or other benefit which may accrue under said Act in respect to any injury which may occur to any employee of such corporation while it shall so fail to secure the payment of compensation as required by this section.

(2) Any employer who knowingly transfers, sells, encumbers, assigns, or in any manner disposes of, conceals, secretes, or destroys any property belonging to such employer, after one of his employees has been injured within the purview of this Act, and with intent to avoid the payment of compensation under this Act to such employee or his dependents, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than $1,000, or by imprisonment for not more than one year, or by both such fine and imprisonment; and in any case where such employer is a corporation, the president, secretary, and treasurer thereof shall be also severally liable to such penalty of imprisonment as well as jointly liable with such corporation for such fine.

(3) This section shall not affect any other liability of the employer under this part.

[SEC. 424. If a totally disabled miner or a 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, child, parent, brother, or sister under this title.]

SEC. 424. (a)(1) There is hereby established on the books of the Treasury of the United States a trust fund to be known as the Black Lung Disability Fund (hereinafter referred to as the "fund"). The fund shall remain available without fiscal year limitation and shall consist of such amounts as may be appropriated to it and deposited in it as provided in subsection (b).

(2) The trustees of the fund shall be the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health, Education, and Welfare. The Secretary of the Treasury shall be the managing trustee and shall hold, operate, and administer the fund.

(b)(1) There are hereby appropriated to the fund, out of any money in the Treasury not otherwise appropriated, amounts equivalent to the taxes received in the Treasury under section 4121 of the Internal Revenue Code of 1954.

(2) There are authorized to be appropriated to the fund, as repayable advances, such sums as may from time to time be necessary to meet obligations incurred under subsection (d) of this section. Advances made pursuant to this paragraph shall be repaid, and interest on such advances shall be paid, to the general fund of the Treasury when the Secretary of the Treasury determines that moneys are available in the fund for such repayments. Interest on such advances shall be at rates computed in the same manner as provided in subsection (c)(2).

(c)(1) The Secretary of the Treasury shall hold the trust fund and (after consultation with the other trustees of the fund) shall report to the Congress not later than the first day of April of each year on the financial condition and the results of the operations of the fund during the preceding fiscal year, on its expected condition and operations during the fiscal year in which the report is made, and on any proposed adjustment in the rate of tax imposed pursuant to section 4121 of the Internal Revenue Code of 1954. The report shall be printed as a House document of the session of the Congress to which the report is made.

(2) It is the duty of the Secretary of the Treasury to invest such portion of the 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 the issue price, or (B) by purchase of outstanding obligations at the market place. The purposes for which obligations the United States may be issued under the Second Liberty Bond Act are hereby extended to authorize the issuance at par of special obligations exclusively to the trust fund. The special obligations shall bear interest at a rate equal to the average rate of interest, computed as to the end of the calendar month

next preceding the date of such issue, borne by all marketable interest-bearing obligations of the United States then forming a part of the public debt. Where such average rate is not a multiple of one-eight of 1 per centum, the rate of interest of such special obligations shall be the multiple of one-eighth of 1 per centum nearest such average rate. Such special obligations shall be issued only if the Secretary of the Treasury determines that the purchase of other interest-bearing obligations of the United States, or of obligations guaranteed as to both principal and interest by the United States on original issue or at the market price, is not in the public interest.

(3) Any obligation acquired by the fund (except special obligations issued exclusively to the fund) may be sold by the Secretary of the Treasury at the market price and such special obligations may be redeemed at par plus accrued interest.

(4) The interest on, and the proceeds from the sale or redemption of, any obligations held in the fund shall be credited to and form a part of the fund.

(d) Amounts in the fund shall be available for the payment of—

(1) benefits under section 422 in cases in which the Secretary determines that—

(A) an operator liable for the payment of 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 thirty days of an initial determination of eligibility by the Secretary, or

(B) there is no operator who is required to secure the payment of such benefits, and

(2) obligations incurred by the Secretary of Labor with respect to all claims of miners or their survivors in which the miner's last coal mine employment was prior to January 1, 1970, and for the repayment into the Federal Treasury of an amount equal to the sum of the amounts expended by the Secretary for such claims which were paid prior to the date of enactment of the Black Lung Benefits Reform Act of 1977, except that the fund shall not be obligated to pay or reimburse for benefits for any period of eligibility prior to January 1, 1974,

(3) benefits under section 422 for which the fund has assumed liability under subsection (f),

(4) repayments of, and interest on, advances to the fund under subsection (b)(2), and

(5) all expenses of operation and administration under this part, including those of the Department of Labor.

(e)(1) If an amount is paid out of the fund to an individual entitled to benefits under section 422 and the Secretary determines, under the provisions of sections 422 and 423, that an operator was required to secure the payment of all or a portion of such benefits, the operator is liable to the United States for repayment to the fund of the amount of such benefits the payment of which is properly attributed to him. No operator or representative of operators may bring any proceeding, or intervene in any proceedings, held for the purpose of determining claims for benefits to be paid by the fund, except that nothing in this section shall affect the rights, duties, or liabilities of any operator in proceedings under section 422 or section 423 of this title. In a case where no operator responsibility is assigned pursuant to sections 422 and 423 of this title, a determination by the Secretary that the fund is liable for the payment of benefits shall be final.

(2) If any operator liable to the fund under paragraph (1) refuses to pay, after demand, the amount of such liability (including interest) there shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such operator. The lien arises on the date on which such liability is determined, and continues until it is satisfied or becomes unenforceable by reason of lapse of time.

(3)(A) Except as otherwise provided under this subsection, the priority of the lien shall be determined in the same manner as under section 6323 of the Internal Revenue Code of 1954. That section shall be applied for such purposes by substituting "lien imposed by section 424(e)(2) of the Federal Coal Mine Health and Safety Act of 1969" for "lien imposed by section 6321"; "operator liability lien" for "tax lien"; "operator" for "taxpayer"; "lien arising under section 424(e)(2) of the Federal Coal Mine Health and Safety Act of 1969" for "assessment of the tax"; and "payment of the liability is made to the Black Lung Disability Fund" for "satisfaction of a levy pursuant to section 6332(b)" each place such terms appear.

(B) In the case of a bankruptcy or insolvency proceeding, the lien imposed under paragraph (2) shall be treated in the same manner as a tax due and owing to the United States for purposes of the Bankruptcy Act or section 3466 of the Revised Statutes (31 U.S.C. 191).

(C) For purposes of applying section 6323(a) of the Internal Revenue Code of 1954 to determine the priority between the lien imposed under paragraph (2) and the Federal tax lien, each lien shall be treated as a judgment lien arising as of the time notice of such lien is filed.

(D) For purposes of this subsection, notice of the lien imposed under paragraph (2) shall be filed in the same manner as under section 6323 (f) and (g) of the Internal Revenue Code of 1954.

(4)(A) In any case where there has been a refusal or neglect to pay the liability imposed under paragraph (2), the Secretary of the Treasury may bring a civil action in a district court of the United States to enforce the lien of the United States under this section with respect to such liability or to subject any property, of whatever nature, of the operator or, in which he has any right, title, or interest, to the payment of such liability.

(B) The liability imposed by paragraph (1) may be collected at a proceeding in court if the proceeding is commenced within six years after the date upon which payment of the liability was first due, or prior to the expiration of any period for collection agreed upon in writing by the operator and the United States before the expiration of such six-year period. The period of limitation provided under this subparagraph shall be suspended for any period during which the assets of the employer are in the custody or control of any court of the United States, or of any State, or the District of Columbia, and for six months thereafter, and for any period during which the operator is outside the United States if such period of absence is for a continuous period of at least six months.

(f) The fund may enter into agreements with operators who may be liable for the payment of benefits under section 422 of this part, under which the fund will assume the liability of such operator in return for payment or payments to the fund, and on such terms and conditions, as will fully protect the financial interests of the fund. During any period in which such agreement is in effect the operator shall be deemed to be in compliance with the requirements of section 423 of this part.

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, 1974, 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.] *fiscal year*. 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. 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 part to enable the parties to present information relating to such violations. 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 title 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.

(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 *and by the Black Lung Benefits Reform Act of 1977* 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.] *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.

SEC. 432. (a) Any individual who has filed a claim for benefits under this title and whose claim has been denied, may file a new claim for benefits under this part. Except as otherwise provided in subsection (c) of this section, a claim for benefits filed pursuant to this subsection shall be treated as a new claim for benefits filed under section 422. An individual who has filed a claim which has been denied under part B of this title and who has filed a new claim under part C of this title, including a claim filed under this section, shall be deemed to have met the requirements of section 422 (f).

(b) (1) The Secretary shall promptly prescribe such regulations as are necessary to provide for the expedited processing of any claim filed under subsection (a) of this section. Such claims, and any pending claims, shall be reviewed in light of the amendments made by the Black Lung Benefits Reform Act of 1977.

(2) Submission by an individual to the Secretary of a request for review shall constitute the filing of a claim under subsection (a). The Secretary shall provide simple forms for such purpose, postage paid, to each individual described in subsection (a).

(3) The Secretary of Health, Education, and Welfare shall promptly furnish to the Secretary all pertinent information in his possession relating to claims denied under part B of this title. If the evidence on file is sufficient for approval of a claim in light of the amendments made by the Black Lung Benefits Reform Act of 1977, no further evidence shall be required. If such evidence on file is not sufficient for approval of a claim, the Secretary may, in the case of a living miner, require the taking of additional medical evidence, including the administration of a roentgenogram and pulmonary function tests. Claims filed under subsection (a) of this section, as well as all other claims pending under part C of this title, shall be processed in accordance with criteria established pursuant to section 402(f) (4) of this title.

(c)(1) Any individual whose claim is approved pursuant to this section who filed a claim for benefits under part B of this title, and whose claim has been finally adjudicated as denied by the Social Security Administration, shall be awarded benefits as if such claim were filed on January 1, 1974.

(2) Any individual whose claim is approved pursuant to this section who filed a claim for benefits under section 415 or part C of this title, and whose claim has been finally adjudicated as denied by the Department of Labor, shall be awarded benefits as of the date such claim was originally filed, or January 1, 1974, whichever is later.

SEC. 433. Any person who willfully makes any false or misleading statement or representation for the purpose of obtaining any benefit or payment under this Act shall be guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not to exceed $1,000 or by imprisonment of not to exceed one year, or by both such fine and imprisonment.

SEC. 434. (a) The Secretary may by regulation require employers to file reports concerning employees who may be or are entitled to benefits under this part, including the date of commencement and cessations of benefits and the amount of such benefits. Any such report shall not be evidence of any fact stated therein in any proceeding relating to death or total disability due to pneumoconiosis of the employee or employees to which such report relates.

(b) Any employer who fails or refuses to file any report required of such employer under this section shall be subject to a civil penalty not to exceed $500 for each such failure or refusal.

INTERNAL REVENUE CODE OF 1954

CHAPTER 32—MANUFACTURERS EXCISE TAXES

SUBCHAPTER B—COAL

SEC. 4121. Imposition of tax.

(a) In General.—There is hereby imposed on the sale of coal by the producer a tax at the rate of—

(1) 30 cents per ton of coal which has an average rated British thermal unit (hereinafter "Btu") value of 11,000 or more per pound;

(2) 15 cents per ton of coal which has an average rated Btu value of less than 11,000 per pound but more than 8,000 per pound; and

(3) 7.5 cents per ton of coal which has an average rated Btu value of 8,000 per pound or less.

For the purpose of this section, the term "sale" includes the production of coal by a producer for its own use, and the rated Btu value of coal per pound shall be that Btu value assigned by the United States Bureau of Mines to the coal field or coal seam from which the coal is extracted.

(b) Definition of Ton.—For purposes of this section, the term "ton" means 2,000 pounds.

* * * * * * *

SEC. 4217. Leases.

(a) Lease Considered as Sale.—For purposes of this chapter, the lease of an article *other than coal* (including any renewal or any extension of a lease or any subsequent lease of such article) by the manufacturer, producer, or importer shall be considered a sale of such article.

(b) * * *
(c) * * *
(d) * * *

* * * * * * *

SEC. 4221. Certain Tax-Free Sales.

(a) General Rule.—Under regulations prescribed by the Secretary, no tax shall be imposed under this chapter (*other than under section 4121*) on the sale by the manufacturer of an article—

(1) for use by the purchaser for further manufacture, or for resale by the purchaser to a second purchaser for use by such second purchaser in further manufacture,

(2) for export, or for resale by the purchaser to a second purchaser for export,

(3) for use by the purchaser as supplies for vessels or aircraft,

(4) to a State or local government for the exclusive use of a State or local government, or

(5) to a nonprofit educational organization for its exclusive use, but only if such exportation or use is to occur before any other use.

(b) * * *
(c) * * *
(d) * * *
(e) * * *

* * * * * * *

SEC. 4293. Exemption for United States and Possessions.

The Secretary of the Treasury may authorize exemption from the taxes imposed by chapters 31 and 32 (*other than under section 4221*) and subchapter B of chapter 33, as to any particular article, or service or class of articles or services, to be purchased for the exclusive use of the United States, if he determines that the imposition of such taxes with respect to such articles or services, or class of articles or services will cause substantial burden or expense which can be avoided by granting tax exemption and full benefit of such exemption, if granted, will accrue to the United States.

○

95TH CONGRESS
1ST SESSION

S. 1538

[Report No. 95–209]

IN THE SENATE OF THE UNITED STATES

APRIL 16, 1977

Mr. RANDOLPH, from the Committee on Human Resources, reported the following original bill; which was read twice and ordered to be placed on the calendar

MAY 26 (legislative day, MAY 18), 1977

Referred to the Committee on Finance with instructions that the bill be ordered reported no later than July 1, and reported to the Senate no later than July 12, by unanimous consent

A BILL

To amend title IV of the Federal Coal Mine Health and Safety Act to improve the black lung benefits program established thereunder, to impose an excise tax on the sale or use of coal, 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 "Black Lung Benefits Reform Act of 1977".

DEFINITIONS

SEC. 2. (a) Section 402 (b) of the Federal Coal Mine Health and Safety Act of 1969, as amended (30 U.S.C. 801–960) (hereinafter in this Act referred to as the "Act"), is amended to read as follows:

"(b) The term 'pneumoconiosis' means a chronic dust disease of the lung and its sequelae, including respiratory and pulmonary impairments, arising out of coal mine employment."

(b) Section 402 (d) of the Act is amended to read as follows:

"(d) The term 'miner' means any individual who works or has worked in or around a coal mine or coal preparation facility in the extraction, preparation, or transportation of coal. Such term also includes an individual who works or has worked in coal mine construction during any period such individual was exposed to coal dust in his or her employment.".

(c) (1) Section 402 (f) of the Act is amended to read as follows:

"(f) The term 'total disability' has the meaning given it by regulation of the Secretary of Health, Education, and Welfare for part B claims, and by regulation of the Secretary of Labor for part C claims, subject to the relevant provisions of subsections (b) and (d) of section 413, except that—

"(1) in the case of a living miner, 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;

"(2) such regulations shall provide that (A) a deceased miner's employment in a mine at the time of death shall not be used as conclusive evidence that the miner was not totally disabled; and (B) in the case of a living miner, if there are changed circumstances of employment indicative of reduced ability to perform his or her usual coal mine work, such miner's employment in a mine shall not be used as conclusive evidence that the miner is not totally disabled;

"(3) such regulations shall not provide more restrictive criteria than those applicable under section 223 (d) of the Social Security Act; and

"(4) the Secretary, in consultation with the Director of the National Institute for Occupational Safety and Health, shall establish criteria for all appropriate medical tests under this subsection which accurately reflect total disability in coal miners as defined in paragraph (1).".

(2) Section 421 (b) (2) (A) of the Act is amended by inserting immediately before the semicolon the following: ", except that such law shall not be required to provide such benefits where the miner's last employment in a coal mine

terminated prior to the Secretary's approval of the State law pursuant to this section".

(3) Section 421 (b) (2) (C) of the Act is amended by striking out "part B" and inserting in lieu thereof "part C", and by striking out "of Health, Education, and Welfare".

(4) Section 422 (c) of the Act is amended by (A) deleting "and the Secretary of Health, Education, and Welfare"; and (B) inserting in the proviso "a period after December 31, 1969" in lieu of "the period".

(5) Section 422 (h) of the Act is amended by striking out the first sentence thereof.

(d) Section 402 of the Act is further amended by adding at the end thereof the following new paragraph:

"(h) The term 'fund' means the Black Lung Disability Fund established pursuant to section 424.".

OFFSET LIMITATION

SEC. 3. The first sentence of section 412 (b) of the Act (30 U.S.C. 922 (b)) is amended by inserting immediately after "disability of such miner" the following: "due to pneumoconiosis".

BENEFIT DETERMINATION FOR EMPLOYED MINERS

SEC. 4. Section 413 of the Act is amended by adding at the end thereof the following new subsection:

"(d) No miner who is engaged in coal mine employ-

ment shall (except as provided in section 411(c)(3)) be entitled to any benefits under this part while so employed. Any miner who has been determined to be eligible for benefits pursuant to a claim filed while such miner was engaged in coal mine employment shall be entitled to such benefits if his employment terminates within one year after the date such determination becomes final.".

EVIDENCE REQUIRED TO ESTABLISH CLAIM

SEC. 5. (a) Section 413(b) of the Act is amended by inserting immediately before the period at the end of the second sentence thereof a colon and the following: ": *Provided*, That the Secretary shall accept a board certified or board eligible radiologist's interpretation of a chest roentgenogram which is of a quality sufficient to demonstrate the presence of pneumoconiosis submitted in support of a claim for benefits under this title if such roentgenogram has been taken by a radiologist or qualified radiologic technologist or technician, except where the Secretary has reason to believe that the claim has been fraudulently represented. In order to insure that any such roentgenogram is of adequate quality to demonstrate the presence of pneumoconiosis, and in order to provide for uniform quality in the roentgenograms, the Secretary of Labor may, by regulation, establish specific requirements for the techniques used to take roentgenograms of the chest. In the case of a deceased miner,

where there is no medical evidence, or where such evidence is inconclusive, a claim shall nevertheless be approved if other evidence in the record, including affidavits, taken as a whole establishes that the miner was totally disabled due to pneumoconiosis or that his death was due to pneumoconiosis".

(b) Section 413 (b) of the Act is further amended by adding at the end thereof the following: "Each miner who files a claim for benefits under this title shall be provided an opportunity to substantiate his or her claim by means of a complete pulmonary evaluation.".

TRUST FUND AND OPERATOR LIABILITY

SEC. 6. (a) Section 424 of the Act is amended to read as follows:

"SEC. 424. (a) (1) There is hereby established on the books of the Treasury of the United States a trust fund to be known as the Black Lung Disability Fund (hereinafter referred to as the 'fund'). The fund shall remain available without fiscal year limitation and shall consist of such amounts as may be appropriated to it and deposited in it as provided in subsection (b).

"(2) The trustees of the fund shall be the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health, Education, and Welfare. The Secretary of the

Treasury shall be the managing trustee and shall hold, operate, and administer the fund.

"(b) (1) There are hereby appropriated to the fund, out of any money in the Treasury not otherwise appropriated, amounts equivalent to the taxes received in the Treasury under section 4121 of the Internal Revenue Code of 1954.

"(2) There are authorized to be appropriated to the fund, as repayable advances, such sums as may from time to time be necessary to meet obligations incurred under subsection (d) of this section. Advances made pursuant to this paragraph shall be repaid, and interest on such advances shall be paid, to the general fund of the Treasury when the Secretary of the Treasury determines that moneys are available in the fund for such repayments. Interest on such advances shall be at rates computed in the same manner as provided in subsection (c) (2).

"(c) (1) The Secretary of the Treasury shall hold the trust fund and (after consultation with the other trustees of the fund) shall report to the Congress not later than the first day of April of each year on the financial condition and the results of the operations of the fund during the preceding fiscal year, on its expected condition and operations during the fiscal year in which the report is made, and on

any proposed adjustment in the rate of tax imposed pursuant to section 4121 of the Internal Revenue Code of 1954. The report shall be printed as a House document of the session of the Congress to which the report is made.

"(2) It is the duty of the Secretary of the Treasury to invest such portion of the 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 the issue price, or (B) by purchase of outstanding obligations at the market price. The purposes for which obligations the United States may be issued under the Second Liberty Bond Act are hereby extended to authorize the issuance at par of special obligations exclusively to the trust fund. The special obligations shall bear interest at a rate equal to the average rate of interest, computed as to the end of the calendar month next preceding the date of such issue, borne by all marketable interest-bearing obligations of the United States then forming a part of the public debt. Where such average rate is not a multiple of one-eighth of 1 per centum, the rate of interest of such special obligations shall be the multiple of one-eighth of 1 per centum nearest such average rate. Such special obligations shall

be issued only if the Secretary of the Treasury determines that the purchase of other interest-bearing obligations of the United States, or of obligations guaranteed as to both principal and interest by the United States on original issue or at the market price, is not in the public interest.

"(3) Any obligation acquired by the fund (except special obligations issued exclusively to the fund) may be sold by the Secretary of the Treasury at the market price and such special obligations may be redeemed at par plus accrued interest.

"(4) The interest on, and the proceeds from the sale or redemption of, any obligations held in the fund shall be credited to and form a part of the fund.

"(d) Amounts in the fund shall be available for the payment of—

"(1) benefits under section 422 in cases in which the Secretary determines that—

"(A) an operator liable for the payment of 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 thirty days of an initial determination of eligibility by the Secretary, or

"(B) there is no operator who is required to secure the payment of such benefits, and

"(2) obligations incurred by the Secretary of Labor with respect to all claims of miners or their survivors in which the miner's last coal mine employment was prior to January 1, 1970, and for the repayment into the Federal Treasury of an amount equal to the sum of the amounts expended by the Secretary for such claims which were paid prior to the date of enactment of the Black Lung Benefits Reform Act of 1977, except that the fund shall not be obligated to pay or reimburse for benefits for any period of eligibility prior to January 1, 1974,

"(3) benefits under section 422 for which the fund has assumed liability under subsection (f),

"(4) repayments of, and interest on, advances to the fund under subsection (b) (2), and

"(5) all expenses of operation and administration under this part, including those of the Department of Labor.

"(e) (1) If an amount is paid out of the fund to an individual entitled to benefits under section 422 and the Secretary determines, under the provisions of sections 422 and 423, that an operator was required to secure the payment of all or a portion of such benefits, the operator is liable to the United States for repayment to the fund of the amount of such benefits the payment of which is properly attributed

to him. No operator or representative of operators may bring any proceeding, or intervene in any proceedings, held for the purpose of determining claims for benefits to be paid by the fund, except that nothing in this section shall affect the rights, duties, or liabilities of any operator in proceedings under section 422 or section 423 of this title. In a case where no operator responsibility is assigned pursuant to sections 422 and 423 of this title, a determination by the Secretary that the fund is liable for the payment of benefits shall be final.

"(2) If any operator liable to the fund under paragraph (1) refuses to pay, after demand, the amount of such liability (including interest) there shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such operator. The lien arises on the date on which such liability is determined, and continues until it is satisfied or becomes unenforceable by reason of lapse of time.

"(3) (A) Except as otherwise provided under this subsection, the priority of the lien shall be determined in the same manner as under section 6323 of the Internal Revenue Code of 1954. That section shall be applied for such purposes by substituting 'lien imposed by section 424(e) (2) of the Federal Coal Mine Health and Safety Act of 1969' for 'lien imposed by section 6321'; 'operator liability lien' for 'tax

lien'; 'operator' for 'taxpayer'; 'lien arising under section 424(e)(2) of the Federal Coal Mine Health and Safety Act of 1969' for 'assessment of the tax'; and 'payment of the liability is made to the Black Lung Disability Fund' for 'satisfaction of a levy pursuant to section 6332(b)' each place such terms appear.

"(B) In the case of a bankruptcy or insolvency proceeding, the lien imposed under paragraph (2) shall be treated in the same manner as a tax due and owing to the United States for purposes of the Bankruptcy Act or section 3466 of the Revised Statutes (31 U.S.C. 191).

"(C) For purposes of applying section 6323(a) of the Internal Revenue Code of 1954 to determine the priority between the lien imposed under paragraph (2) and the Federal tax lien, each lien shall be treated as a judgment lien arising as of the time notice of such lien is filed.

"(D) For purposes of this subsection, notice of the lien imposed under paragraph (2) shall be filed in the same manner as under section 6323 (f) and (g) of the Internal Revenue Code of 1954.

"(4)(A) In any case where there has been a refusal or neglect to pay the liability imposed under paragraph (2), the Secretary of the Treasury may bring a civil action in a district court of the United States to enforce the lien of

the United States under this section with respect to such liability or to subject any property, of whatever nature, of the operator or, in which he has any right, title, or interest, to the payment of such liability.

"(B) The liability imposed by paragraph (1) may be collected at a proceeding in court if the proceeding is commenced within six years after the date upon which payment of the liability was first due, or prior to the expiration of any period for collection agreed upon in writing by the operator and the United States before the expiration of such six-year period. The period of limitation provided under this subparagraph shall be suspended for any period during which the assets of the employer are in the custody or control of any court of the United States, or of any State, or the District of Columbia, and for six months thereafter, and for any period during which the operator is outside the United States if such period of absence is for a continuous period of at least six months.

"(f) The fund may enter into agreements with operators who may be liable for the payment of benefits under section 422 of this part, under which the fund will assume the liability of such operator in return for a payment or payments to the fund, and on such terms and conditions, as will fully protect the financial interests of the fund. During any period

in which such agreement is in effect the operator shall be deemed to be in compliance with the requirements of section 423 of this part.".

(b) Subsection (i) of section 422 of the Act is amended to read as follows:

"(i) (1) During any period in which this section is applicable to the operator of a coal mine or mines who on or after January 1, 1970, acquired such mine or mines 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 or mines, or owner of such assets on or after January 1, 1970, such operator 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 by such prior operator as if the acquisition had not occurred and the prior operator had continued to be a coal mine operator.

"(2) Nothing in this subsection shall relieve any prior operator of any liability under this section.

"(3) For purposes of paragraph (1) of this subsection, the following shall apply to corporate reorganizations, liquidations, and such other transactions as are enumerated in this paragraph:

"(A) If an operator ceases to exist by reason of a

reorganization or other transaction or series of transactions which involves a change in identity, form, or place of business or organization, however effected, the successor operator or other corporate or business entity resulting from such reorganization or change shall be treated as the operator to whom this section applies.

"(B) If an operator ceases to exist by reason of a liquidation into a parent corporation, the parent or successor corporation shall be treated as the operator to whom this section applies.

"(C) If an operator ceases to exist by reason of a sale of substantially all its assets or merger or consolidation, or division, the successor operator or corporation, or business entity shall be treated as the operator to whom this section applies.

"(4) Nothing in this subsection shall be construed to require the payment of benefits by or on behalf of an operator where liability for the claim is the responsibility of the fund under section 424 of this part.".

(c) Section 422 of the Act is amended by adding the following new subsection:

"(j) Notwithstanding the provisions of this section, section 424 shall govern the payment of benefits in cases in which—

"(1) an operator liable for the payment of 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 thirty days of an initial determination of eligibility by the Secretary, or

"(2) there is no operator who is required to secure the payment of such benefits, or

"(3) the miner's last coal mine employment was prior to January 1, 1970.".

(d) Section 422 of the Act is further amended by adding the following new subsection:

"(k) The Secretary shall be a party in any proceeding relating to a claim for benefits under this part.".

EXCISE TAX ON COAL

SEC. 6A. (a) Chapter 32 of the Internal Revenue Code of 1954 (relating to manufacturers excise taxes) is amended by inserting after subchapter A the following new subchapter:

"Subchapter B—Coal

"SEC. 4121. IMPOSITION OF TAX.

"(a) IN GENERAL.—There is hereby imposed on the sale of coal by the producer a tax at the rate of—

"(1) 30 cents per ton of coal which has an average rated British thermal unit (hereinafter 'Btu') value of 11,000 or more per pound;

"(2) 15 cents per ton of coal which has an average rated Btu value of less than 11,000 per pound but more than 8,000 per pound; and

"(3) 7.5 cents per ton of coal which has an average rated Btu value of 8,000 per pound or less.

For the purpose of this section, the term 'sale' includes the production of coal by a producer for its own use, and the rated Btu value of coal per pound shall be that Btu value assigned by the United States Bureau of Mines to the coal field or coal seam from which the coal is extracted.

"(b) DEFINITION OF TON.—For purposes of this section, the term 'ton' means 2,000 pounds.".

(b) (1) (A) Section 4221 of such Code (relating to certain tax-free sales) is amended by inserting "(other than under section 4121)" after "this chapter".

(B) Section 4293 of such Code (relating to exemption for United States and possessions) is amended by inserting "(other than under section 4221)" after "chapters 31 and 32".

(2) Section 4217(a) of such Code (relating to lease considered as sale) is amended by inserting "other than coal" after "article" the first time it appears.

(c) The table of subchapters for chapter 32 of such Code is amended by inserting after the item relating to subchapter A the following new item:

"SUBCHAPTER B. Coal.".

(d) The amendments made by this section apply to sales on and after October 1, 1977.

MISCELLANEOUS

SEC. 7. (a) Section 401 of the Act is amended by inserting "(a)" immediately following "SEC. 401." and by adding at the end thereof the following new subsection:

"(b) This title may be cited as the 'Black Lung Benefit Act'.".

(b) Section 411(c) of the Act is amended by striking out "and" at the end of paragraph (3) thereof, by striking out the period at the end thereof, by inserting in lieu thereof "; and", and by adding at the end thereof the following new paragraph:

"(5) in the case of a miner who dies on or before the date of enactment of the Black Lung Benefits Reform Act of 1977 who was employed for 25 years or more in one or more coal mines prior to June 30, 1971, the eligible survivors of such miner shall be entitled to the payment of benefits, unless it is established that at the time of his death such miner was not partially or totally disabled due to pneumoconiosis. Eligible survivors shall, upon request by the Secretary, furnish such evidence as is available with respect to the health of the miner at the time of his death.".

(c) Section 413(b) of the Act is amended (1) by

striking out "(f)," and (2) by striking out "and (l)," in the last sentence thereof and by inserting in lieu thereof "(l) and (n),".

(d) Section 421(b)(2)(D) of the Act is amended to read as follows:

"(D) any claim for benefits on account of total disability of a miner due to pneumoconiosis is deemed to be timely filed if such claim is filed within three years after a medical determination of total disability due to pneumoconiosis;".

(e) Section 422(a) of the Act is amended by inserting immediately after the words "as amended" in the first sentence thereof the following: ", and as it may be amended from time to time,".

(f) Section 422(c) of the Act is amended by adding at the end thereof the following new sentence: "In no case shall the eligible survivors of a miner who was determined to be eligible to receive benefits under this title at the time of his death, be required to file a new claim for benefits, or refile or otherwise revalidate the claim of such miner.".

(g) Section 422(e) of the Act is amended by inserting "or" at the end of paragraph (1) thereof; by striking out "; or" at the end of paragraph (2) thereof and by inserting in lieu thereof a period; and by striking out paragraph (3) in its entirety.

(h) Section 422 (f) of the Act is amended to read as follows:

"(f) Any claim for benefits by a miner under this section shall be filed within three years after a medical determination of total disability due to pneumoconiosis.".

(i) Section 427 (c) of the Act is amended by striking out "of the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975" and by inserting in lieu thereof "fiscal year".

(j) For the purpose of determining eligibility for benefits under title IV of the Act, a miner will be deemed to have engaged in coal mine employment for any year in which—

(1) he has four quarters of coverage, as defined in section 213 of the Social Security Act, as a miner; or

(2) he was continuously on the payroll of a coal company and was employed as a miner; or

(3) the Secretary of Labor determines on the basis of other evidence that he was employed as a miner.

In determining the number of years of a miner's coal mine employment, the Secretary of Labor shall give the miner appropriate credit for that portion of any year in which he or she worked only part of a year.

(k) Section 430 of the Act is amended by—

(1) inserting "and by the Black Lung Benefits Reform Act of 1977" immediately after "1972"; and

(2) striking out the colon and all the language that follows it and inserting in lieu thereof a period.

(l) Notwithstanding the provisions of section 422 (a), individuals appointed to hear claims pursuant to Public Law 94–504 may continue to adjudicate such claims until one year after enactment of this Act.

FIELD OFFICES

SEC. 8. (a) The Secretary of Labor is authorized to establish and operate such field offices as necessary to assist miners and survivors in the filing and processing of claims under title IV of the Federal Coal Mine Health and Safety Act of 1969. Such field offices shall, to the extent feasible, be reasonably accessible to such miners and survivors. The Secretary of Labor may, in the establishment of such field offices, enter into such arrangements as he deems necessary with the heads of other Federal departments, agencies, and instrumentalities, and with State agencies, for the use of existing facilities and personnel under their control.

(b) There are authorized to be appropriated for the purposes of subsection (a) such sums as may be necessary.

INFORMATION TO POTENTIAL BENEFICIARIES

SEC. 9. The Secretary of Health, Education, and Welfare and the Secretary of Labor shall jointly disseminate to interested persons and groups the changes in title IV of the Federal Coal Mine Health and Safety Act made by this

Act, together with an explanation of such changes, and shall undertake, through appropriate organizations, groups, and coal mine operators, to notify individuals who are likely to have become eligible for the benefits by reason of such changes. Individual assistance in preparing and processing claims shall be offered and provided to potential beneficiaries.

EXPEDITED REVIEW, TRANSFER, AND PROCESSING OF DENIED CLAIMS

SEC. 10. Title IV of the Act is further amended by adding at the end thereof the following new section:

"SEC. 432. (a) Any individual who has filed a claim for benefits under this title and whose claim has been denied, may file a new claim for benefits under this part. Except as otherwise provided in subsection (c) of this section, a claim for benefits filed pursuant to this subsection shall be treated as a new claim for benefits filed under section 422. An individual who has filed a claim which has been denied under part B of this title and who has filed a new claim under part C of this title, including a claim filed under this section, shall be deemed to have met the requirements of section 422 (f).

"(b) (1) The Secretary shall promptly prescribe such regulations as are necessary to provide for the expedited processing of any claim filed under subsection (a) of this section. Such claims, and any pending claims, shall be reviewed in

light of the amendments made by the Black Lung Benefits Reform Act of 1977.

"(2) Submission by an individual to the Secretary of a request for review shall constitute the filing of a claim under subsection (a). The Secretary shall provide simple forms for such purpose, postage paid, to each individual described in subsection (a).

"(3) The Secretary of Health, Education, and Welfare shall promptly furnish to the Secretary all pertinent information in the possession of the Department of Health, Education, and Welfare relating to claims denied under this title. If the evidence on file is sufficient for approval of a claim in light of the amendments made by the Black Lung Benefits Reform Act of 1977, no further evidence shall be required. If such evidence on file is not sufficient for approval of a claim, the Secretary may, in the case of a living miner, require the taking of additional medical evidence, including the administration of a roentgenogram and pulmonary function tests. Claims filed under subsection (a) of this section, as well as all other claims pending under part C of this title, shall be processed in accordance with criteria established pursuant to section 402 (f) (4) of this title.

"(c) (1) Any individual whose claim is approved pursuant to this section who filed a claim for benefits under

part B of this title, and whose claim has been finally adjudicated as denied by the Social Security Administration, shall be awarded benefits as if such claim were filed on January 1, 1974.

"(2) Any individual whose claim is approved pursuant to this section who filed a claim for benefits under section 415 or part C of this title, and whose claim has been finally adjudicated as denied by the Department of Labor, shall be awarded benefits as of the date such claim was originally filed, or January 1, 1974, whichever is later.".

EFFECTIVE DATES

SEC. 11. (a) Except as provided in subsections (b) and (c) of this section, this Act shall take effect on the date of its enactment.

(b) The amendments made by section 6 of this Act relative to the establishment of the Black Lung Disability Fund shall take effect on October 1, 1977.

(c) Appropriations and tax revenues to the trust fund established pursuant to sections 6 and 6A of this Act shall accrue on and after October 1, 1977, and no benefits awarded due to the operation of this Act shall be paid until October 1, 1977.

OCCUPATIONAL DISEASE STUDY

SEC. 12. (a) The Secretary of Labor, in cooperation with the Director of the National Institute for Occupational

Safety and Health, shall conduct a study of all occupationally related pulmonary and respiratory diseases, including the extent and severity of such diseases in the United States. Such study shall further include analyses of (1) any etiologic, symptomatologic, and pathologic factors which are similar to such factors in coal workers' pneumoconiosis and its sequelae; (2) the adequacy of current workers' compensation programs in compensating persons with such diseases; and (3) the status and adequacy of Federal health and safety laws and regulations relating to the industries with which such diseases are associated.

(b) The study required by subsection (a) of this section shall be completed and a report thereon submitted to the President and the appropriate committees of the Congress within eighteen months after the date of enactment of this Act.

PENALTY: FAILURE TO SECURE BENEFITS

SEC. 13. Section 423 of the Act is amended by adding the following new subsection:

"(d) (1) Any employer required to secure the payment of compensation under this section who fails to secure such compensation shall be subject to a civil penalty of not more than $1,000 for each day during which such failure occurs; and in any case where such employer is a corporation, the president, secretary, and treasurer thereof shall be also

severally liable to such civil penalty as herein provided for the failure of such corporation to secure the payment of compensation; and such president, secretary, and treasurer shall be severally personally liable, jointly with such corporation, for any compensation or other benefit which may accrue under said Act in respect to any injury which may occur to any employee of such corporation while it shall so fail to secure the payment of compensation as required by this section.

"(2) Any employer who knowingly transfers, sells, encumbers, assigns, or in any manner disposes of, conceals, secretes, or destroys any property belonging to such employer, after one of his employees has been injured within the purview of this Act, and with intent to avoid the payment of compensation under this Act to such employee or his dependents, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than $1,000, or by imprisonment for not more than one year, or by both such fine and imprisonment; and in any case where such employer is a corporation, the president, secretary, and treasurer thereof shall be also severally liable to such penalty of imprisonment as well as jointly liable with such corporation for such fine.

"(3) This section shall not affect any other liability of the employer under this part.".

PENALTIES: FALSE STATEMENTS AND REPORTS

SEC. 14. Title IV of the Act is further amended by adding after new section 432 the following new sections:

"SEC. 433. Any person who willfully makes any false or misleading statement or representation for the purpose of obtaining any benefit or payment under this Act shall be guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not to exceed $1,000 or by imprisonment of not to exceed one year, or by both such fine and imprisonment.

"SEC. 434. (a) The Secretary may by regulation require employers to file reports concerning employees who may be or are entitled to benefits under this part, including the date of commencement and cessations of benefits and the amount of such benefits. Any such report shall not be evidence of any fact stated therein in any proceeding relating to death or total disability due to pneumoconiosis of the employee or employees to which such report relates.

"(b) Any employer who fails or refuses to file any report required of such employer under this section shall be subject to a civil penalty not to exceed $500 for each such failure or refusal.".

95TH CONGRESS
1ST SESSION

S. 1538

[Report No. 95–209]

A BILL

To amend title IV of the Federal Coal Mine Health and Safety Act to improve the black lung benefits program established thereunder, to impose an excise tax on the sale or use of coal, and for other purposes.

By Mr. RANDOLPH

MAY 16, 1977
Read twice and ordered to be placed on the calendar

MAY 26 (legislative day, MAY 18), 1977
Referred to Committee on Finance with instructions that the bill be ordered reported no later than July 1, and reported to the Senate no later than July 12, by unanimous consent

Calendar No. 312

95TH CONGRESS
1st Session

SENATE

REPORT
No. 95-336

BLACK LUNG BENEFITS REVENUE ACT OF 1977

JULY 12, 1977.—Ordered to be printed

Mr. LONG, from the Committee on Finance,
submitted the following

REPORT

[To accompany S. 1538]

The Committee on Finance, to which was referred the bill (S. 1538) to amend title IV of the Federal Coal Mine Health and Safety Act to improve the black lung benefits program established thereunder, to impose an excise tax on the sale or use of coal, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

I. SUMMARY

S. 1538, the Black Lung Benefits Reform Act of 1977, was referred to the Committee on Finance after having been reported by the Committee on Human Resources on May 16, 1977 (S. Rept. 95–209). Because the bill, as reported by that Committee, establishes a coal tax and trust fund to finance the Black Lung Benefits Program, the bill was referred to the Committee on Finance.

Benefit provisions.—The bill, as reported by the Committee on Human Resources, would modify a number of the eligibility criteria with respect to benefits under the black lung benefits program and in particular cases some of the evidentiary requirements. The Committee on Finance has not made any modifications to these aspects of the legislation.

Financing provisions.—Under the present law and under S. 1538, as reported by the Committee on Human Resources, a part of the cost of black lung benefits is charged directly against the former employer of the beneficiary when liability can be established under certain statutory criteria. Where this is not possible, the present law provides for the costs of benefits to be financed out of Federal general revenues. The Human Resources Committee bill would impose an excise tax on the producer's sale of coal, at a rate determined by the coal's British thermal unit (Btu) value. Revenues from this tax would be auto-

matically appropriated to a trust fund, which would pay benefits in cases where there is no "responsible operator" and with respect to all claims in which the miner's last coal mine employment was before January 1, 1970.

The Committee on Finance has modified the excise tax and trust fund provisions of the bill, converting the tax into a tax on coal (other than lignite) at the rate of one percent of the price for which it is sold, and terminating the tax and trust fund provisions after 5 years. In addition, the Finance Committee has added provisions amending the tax status of operators' self-insurance trusts.

The committee recognizes that S. 1538, as a bill originated in the Senate, is not a proper vehicle for a revenue measure such as is recommended in the committee amendment. The committee expects that, if the Senate agrees to those revenue provisions, it will incorporate them as an amendment to a House-originated revenue bill.

II. GENERAL STATEMENT

A. Black Lung Benefits

Present law

The present black lung benefits program provides benefits to miners totally disabled by black lung disease (pneumoconiosis) and to their dependents and survivors.

For claims filed on or before June 30, 1973, benefits are paid out of general revenues and administered by the Social Security Administration. This program (the "part B" program) is permanent; that is, a successful claimant under this program is entitled to benefits for life, or for as long as the claimant remains eligible.

For claims filed after June 30, 1973, for payment on or after January 1, 1974 (the "part C" program, administered by the Department of Labor), benefits are payable by the responsible coal operator (as in traditional workers' compensation programs), if such an operator can be identified, and otherwise from the general revenues.[1] Under this part C program, both the Labor Department's liabilities and the responsible operators' liabilities are terminated after December 30, 1981.

In practice, about 75 percent of the claims filed after June 30, 1973, are being paid from the general revenues. In addition, although the Department of Labor has assigned individual operator responsibility for claims in the remaining 25 percent of the cases, about 200 claims are being paid by operators, as contrasted to some 4,000 being paid by the Department of Labor. Coal companies are contesting 97 percent of the black lung benefits claims for which they have been determined responsible by the Department of Labor. As a result, substantially all of the costs of the part C program are being borne by the general fund of the Treasury.

Amendments by Committee on Human Resources

In addition to making a basic change in the method of financing the black lung benefits program (discussed below, in "B. Taxes, Trust

[1] Under the statute, this program is to be administered by State workers' compensation agencies in those States that have workers' compensation statutes that meet certain minimum standards, or by the Secretary of Labor where such standards are not met. No States have as yet met the minimum requirements; thus, the entire part C program is administered by the Secretary of Labor.

Fund, Etc."), S. 1538, as reported by the Committee on Human Resources, significantly liberalizes benefit provisions so as to increase estimated total part C benefit costs by an average $262 million per year over the next 5 years, provides for the repayment of certain past costs to the general fund of the Treasury, and shifts certain liabilities from the Federal Government to individual mine operators, and vice versa. The most significant of these provisions affecting program costs are described below.

One of these changes would prohibit the Department of Labor from challenging the interpretation of an X-ray submitted by a claimant in support of the claim if read by a Board-eligible or Board-certified radiologist. The Department of Labor would retain the right to challenge an X-ray if there was reason to suspect fraud or if the quality of the X-ray was insufficient to permit a determination. However, in the absence of these factors, the Department would be required to accept the findings as to whether or not the X-ray established the existence of black lung disease, if those findings were made by any Board-certified or Board-eligible radiologist. Under current practice, the findings of the claimant's radiologist may be challenged by a radiologist on behalf of the Labor Department. This change is estimated to increase annual benefit costs by an average of $50 million over the next 5 years (see table 1, below).

A second benefit change in S. 1538 would create a presumption of eligibility for survivors of miners who worked for 25 years or more in coal mining prior to June 30, 1971 and who die on or before the date of enactment of the bill. Benefits would be payable to such survivors unless the Department of Labor establishes that the miner, at the time of his death, was neither totally disabled nor partially disabled from black lung disease. This provision has an estimated average annual benefit cost of $35 million over the next 5 years (see table 1, below).

Title I of the bill includes many other changes to the black lung benefits program. The more significant changes (the additional costs of which are presented in table 1, below) are:

(*1*) *Refiling of previously denied claims.*—The bill would simplify and expedite the refiling of claims under the revised benefit standards by individuals whose claims were previously denied. These claims could be filed without regard to certain time limitations otherwise applicable and could have retroactive effect to the time of the initial claim (but not before January 1, 1974). The cost of this provision has not been separately calculated but is included in the cost estimates for the various benefit liberalizations. Because of the retroactivity involved, those changes are shown as having substantially higher costs in the first 3 years than in later years.

(*2*) *Changes in definitions.*—The bill would modify the definitions of "pneumoconiosis" and "miner". The change in definition of pneumoconiosis is estimated to have no cost. The change in definition of miner would expand the coverage of the program to include workers around a coal mine, processors and transporters of coal, and coal mine construction workers. This has an estimated average cost of about $1 million per year over the next 5 years.

(*3*) *Evidence of disability.*—S. 1538 provides for the Secretary of Labor to revise the regulations defining what constitutes disability

for purposes of the black lung program and setting forth the criteria for determining whether the definition is met. The estimated average cost over the next five years of these new standards is $160 million per year. The bill also includes a number of specific provisions related to eligibility determination. For example, it would prohibit a finding that a miner was not disabled at the time of his death solely on the basis that he was actually employed at that time. Similarly, a miner would be permitted to apply for benefits while still employed (although he would not be permitted to receive the benefits until after his employment terminates). Another provision would permit the use of affidavits in determining the disability of deceased miners in the absence of other sufficient evidence.

(*4*) *Field offices.*—The bill would authorize the establishment of Labor Department field offices to assist claimants with their claim filing and processing in the field. The estimated average annual cost of this provision is approximately $3 million. The cost of this program would be paid for directly from the Black Lung Disability Fund established by the bill.

(*5*) *Clinical facilities.*—The bill would make permanent a $10 million annual authorization for the establishment and operation of clinical facilities for the treatment and examination of miners with respiratory impairments. The cost of this program would be paid for directly from the general fund of the Treasury and not from the Black Lung Disability Fund established by the bill. However, medical benefits payable to disabled workers under section 422 may be paid by the Fund to such clinics.

(*6*) *Responsible operator liability.*—The bill would provide that the Black Lung Disability Fund would pay all eligible claims with respect to miners whose last coal mine employment was before January 1, 1970. In addition, the bill would provide that the Federal Government be reimbursed (from the Fund) for all previous part C payments. The bill also includes a provision which expands the situations under which coal mine operators who acquire mines from previous operators would be required to assume liability (concurrently with the prior operator) for the payment of black lung benefits to individuals previously employed in the mine. This provision has retroactive effect, applying to changes in ownership taking place since December 31, 1969.

Estimates of costs

The estimates of those costs of title I of the bill that are payable from the trust fund are shown below, in table 1. It is estimated that the total costs of the black lung benefits program (part C) under present law (most of which are borne by the Federal Government and part of which are borne by responsible operators) will average $36 million per year over the next 5 years. Title I of the bill is estimated to increase these average annual costs by $262 million over the next 5 years, an increase of more than 620 percent. It is estimated that the average annual expenditures from the Black Lung Disability Fund during the next 5 years would be $242 million, under the bill as reported by the Committee on Human Resources.

The Committee on Finance, though concerned with the additional cost resulting from the benefit liberalizations proposed by the Committee on Human Resources, made no change in these provisions.

Table 1. Estimated trust fund costs of title I of S. 1538, as compared to present costs: fiscal years 1978–1982

[In millions of dollars]

Provision	1978	1979	1980	1981	1982	5-year total
Expanded definition of coal miner	0.3	1.3	1.3	1.4	1.5	5.8
Revised disability standards	105.1	197.6	266.2	112.9	118.7	800.5
Prohibition against reinterpreting X-rays [1]	36.0	69.1	76.9	33.4	34.6	250.0
Presumption of eligibility after 25 years of work	24.9	47.6	61.7	21.2	21.5	176.9
Changed cutoff date for operator liability	3.4	3.8	4.1	0	0	11.3
Medical evaluations	3.6	4.8	3.6			12.0
Administrative costs	14.0	12.0	12.0	7.0	7.0	52.0
Total new costs (operator and Federal)	**187.3**	**336.2**	**425.8**	**175.9**	**183.3**	**1,308.5**
Current law costs (operator and Federal)	34.3	38.8	40.2	34.0	34.0	181.3
Operator liability	−40.2	−70.9	−89.2	−60.9	−63.1	−324.3
Repayment from trust fund to general fund for past Labor Department costs	45.2					45.2
Trust fund liability under S. 1538	**226.6**	**304.1**	**376.8**	**149.0**	**154.2**	**1,201.7**

[1] The Department of Labor previously estimated the 5-year cost of this provision at $832 million. The reduction in this estimate by the Department is based on an assumption that the X-ray interpretations submitted by claimants' radiologists in the future will be more accurate than was previously the case, as a result of training and other technical assistance provided by the Department of Labor.

B. Taxes, Trust Fund, Etc.

1. Tax on Coal (sec. 202 of the bill and new sec. 4121 of the Code)

Present law

Present law does not include any Federal tax on coal extraction or sales, as such. (Profits are, of course, subject to income taxation and, in that context, there are several provisions of particular application to coal.)

Reasons for change

The committee agrees that, in general, the costs of the part C black lung program should be borne by the coal industry. As indicated above, a portion of these costs will continue to be borne by those coal mine operators who are determined by the Secretary of Labor to be "responsible operators" with respect to specific claimants. The remaining costs, in general, are to be borne by the coal mine industry as a whole, through the imposition of an earmarked tax.

The committee amendment imposes a one-percent *ad valorem* tax primarily for the following reasons:

(1) An *ad valorem* tax of this character is relatively simple to administer. This is not to say that such a tax is simple in the abstract, but rather that the Internal Revenue Service and many industries have had extensive experience with such a tax and its imposition here does not appear to present any new problems. In this respect, it was concluded that an *ad valorem* tax would be simpler to administer, both from the point of view of the taxpayers and of the Internal Revenue Service, than any of the other alternatives presented to the committee.[1]

(2) The committee was informed that, in general, the more expensive grades of coal appear to be associated with higher incidences of pneumoconiosis. In general, then, under an *ad valorem* tax, those parts of the coal industry which appear to have greater responsibility for the black lung problem, would be contributing more heavily toward payment of black lung benefits.

(3) The third major reason for the committee's choice of an *ad valorem* tax is that such a tax, especially at the level of one percent, would be unlikely to create any competitive disadvantages among producers of different types of coal.

The committee's amendment exempts lignite from this tax because it was concluded that there is little or no evidence to connect lignite mining with incidence of pneumoconiosis. Also, the small amount of lignite that is mined at present (or is expected to be mined within the next few years) would produce very little revenue for the black lung disability fund, even if lignite were subject to the tax.

---

[1] S. 1538, as reported by the Committee on Human Resources, would impose a manufacturers excise tax upon the producer's sale of coal at a rate determined by the coal's heat value per ton. The tax would be 30 cents per ton on coal which has a British Thermal Unit (Btu) value of 11,000 or more per pound, 15 cents per ton on coal which has a Btu value of more than 8,000 and less than 11,000 per pound, and 7.5 cents per ton on coal which has a Btu value of 8,000 per pound or less. Under that proposal, the Btu value would be determined by the Bureau of Mines. Both the Bureau of Mines and the Treasury Department urged the Committee on Finance not to base the tax on Btu value, because of difficulties of administration.

Although the tax provided in the committee's amendment is expected to produce, over the next 5 years, approximately the same revenue as would have been produced under the tax provisions in the bill as reported by the Committee on Human Resources, this revenue is likely to be insufficient, by almost $300 million, to meet the expected obligations of the trust fund for the next 5 years. The committee notes, however, that the revenues generated by the amendment are sufficient to meet trust fund obligations other than obligations arising from two provisions which the Administration has urged be deleted from the bill but which involve the benefit structure of the program rather than its tax and trust fund aspects. These provisions which are opposed by the Administration and for which funding is not provided through the tax on coal in the committee amendment are:

(1) the prohibition against reinterpreting X-rays and
(2) the presumption of eligibility after 25 years' work.

Explanation of the provision

The committee's amendment imposes a one-percent *ad valorem* manufacturers excise tax on the sale of coal by the producer.

Most of the rules generally applicable to manufacturers excise taxes, including the collection provisions, apply to this coal tax. However, the following exemptions which apply to other manufacturers excise taxes do not apply to this tax on coal: sales for further manufacturing, for export, for use as supplies for vessels or aircraft, for the use of a State or local government, or for the use of a nonprofit educational organization. Discretionary authority now granted to the Secretary of the Treasury to exempt sales for the use of the United States from this manufacturers excise tax will not be available in the case of this tax.

As under the general rule applicable to manufacturers excise taxes, use by a producer is treated as a sale by the producer.

Under the general rules applicable to manufacturers excise taxes (sec. 4216(a)), the tax base for coal sold by a producer (rather than used by the producer, as in a manufacturing process) is the sale price f.o.b. mine (or cleaning plant). This is true even if the producer sells on the basis of a delivered price. Where a producer uses coal mined by the producer in a manufacturing process, the tax base will be a constructive price based on sales made f.o.b. mine or cleaning plant by other producers (sec. 4218(e)). For such a producer, the constructive sale price for purposes of the manufacturers excise tax will normally be the same as the constructive price used by the producer for purposes of determining the deduction for percentage depletion.

This tax does not apply to lignite, which is generally the softest and least expensive of the types of coal. The committee intends this exemption to apply to "lignite" as defined in accordance with the standard specifications for the classification of coals by rank of the American Society for Testing and Materials (p. 214, 1976 Annual Book of ASTM Standards, Part 26, D 388).

Effective dates

This tax will apply to coal sold by a producer after September 30, 1977, and before October 1, 1982.

Revenue effect

It is estimated that the tax imposed by this provision will produce revenues of $145 million in fiscal 1978, $170 million in fiscal 1979, $185 million in fiscal 1980, $205 million in fiscal 1981, and $225 million in fiscal 1982, for a total of $930 million in the next 5 years.

2. Black Lung Disability Fund (sec. 203 of the bill)

Present law

Present law does not include a trust fund for financing black lung benefits. The Federal Government's share of the costs of the present part C program is paid directly out of appropriations from the general fund of the Treasury.

Reasons for change

The Committee on Finance agrees with the Committee on Human Resources that if costs of the part C black lung benefits program are largely to be paid for by a tax on the coal industry, then the tax should be "earmarked" by appropriating the revenues from that tax to a trust fund and then paying for the program out of that trust fund. This is the method now used by the Congress under the Airport and Airway Trust Fund, the Highway Trust Fund, the Unemployment Insurance Trust Fund, and the Social Security Trust Fund.

Explanation of the provision

The committee's amendment establishes a trust fund (the "Black Lung Disability Fund") and automatically appropriates to it amounts equal to the revenues from the coal tax described above. In addition, the amendment appropriates to the trust fund any revenues from the penalty taxes imposed on coal mine operators' trusts, described below.[1] Since those taxes are imposed only if certain statutory standards are violated by those trusts, negligible revenues can be expected from that source. Also, the trust fund is to retain reimbursements from coal mine operators whose obligations are paid by the trust fund, as well as earnings on any trust fund investments. Finally, as in the Human Resources Committee bill, the amendment authorizes appropriations from general revenues as advances to be repaid from later coal tax revenues. Such advances are required since the trust funds' obligations are greatest in the first few years of its existence while the revenues from the coal tax will be lower at the beginning of the 5-year period and higher at the end. It is not the committee's intent that this authorization be viewed as permitting "advances" in excess of what can be expected to be repaid out of the coal tax revenues provided for under the committee amendment.

The fund is required to pay benefits if there is no "responsible operator," or if the operator is in default, and would be required to pay benefits with respect to all claims in which the miner's last coal mine employment was before January 1, 1970. In cases in which the Government has already paid benefits for periods of eligibility since January 1, 1974, the fund must reimburse the Government for these payments. This, in effect, transfers those costs from the Government

[1] The bill as reported by the Committee on Human Resources did not have the penalty tax provisions.

to the industry (by way of the trust fund revenues from the tax on coal).

The expenses of the Department of Labor (and, to a limited extent, where appropriate, the Department of Health, Education and Welfare) in operating and administering the claims program to be financed through the fund are to be paid by the fund. The fund also is to bear the costs of its own administration, as well as the costs incurred by the Treasury Department in collecting the coal tax and administering the provisions of the Internal Revenue Code with respect to that tax. The annual report of the fund is to include a full accounting of these administrative costs and of the personnel required for administration.[2]

The committee's amendment removes from the bill any authority for the trust fund to pay benefits under standby insurance provisions. As described below ("5. Standby Insurance Authority"), the committee concluded that the trust fund should not provide insurance. The committee's amendment also makes it clear that the trust fund is not to pay for the clinical facilities program under section 427(a) of the Federal Coal Mine Health and Safety Act of 1969, since title I (sec. 7(i)) of the bill authorizes a separate appropriation ($10 million per year) for that purpose. This is consistent with the intent of the Committee on Human Resources.

Under the committee's amendment, if the Secretary of Labor determines (in accordance with existing procedures, which provide for administrative and judicial appeals) that a coal mine operator is responsible for the payment of certain benefits, but those benefits have in fact been paid out of the fund, then the coal mine operator is obligated to reimburse the fund. If the operator refuses to reimburse the fund, then a lien is to arise in favor of the United States for the entire amount that the operator is required to repay. This lien attaches to all the assets of the coal mine operator and is given generally the same status as a Federal tax lien. If the operator initiates administrative or judicial appeals as provided under present law, then the lien is not to attach until the termination of the review proceedings.

The committee's amendment authorizes the Secretary of Labor to bring suit in any Federal district court to enforce this lien.[3]

The trustees of the fund are the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health, Education, and Welfare; the Secretary of the Treasury is to be the managing trustee. Receipts of the fund in excess of amounts needed to meet current withdrawals are to be invested only in public debt securities with maturities suitable for the needs of the fund and bearing interest at prevailing market rates. The fund's earnings from these investments are to be credited to and form a part of the fund. The Secretary of the Treasury,

[2] Although these provisions of the committee's amendment are not precisely the same as the trust fund provisions reported by the Committee on Human Resources, the Committee on Finance has concluded that they are essentially consistent with those provisions.

[3] The bill as reported by the Committee on Human Resources authorized the Secretary of the Treasury to bring such suits. The Treasury Department pointed out to the committee that such suits, in the case of actual tax liens, are brought by the Justice Department and not by the Treasury Department. The Labor Department urged that it be given authority to bring such lien enforcement suits, since it was the agency concerned with the general administration of the black lung program and the determinations of liability giving rise to these liens.

in making such investments, is, of course, acting as fiduciary of the fund and is to focus upon the needs of the fund in choosing which investments are appropriate.[4]

Such investments are not to be made unless the fund has sufficient assets to meet current withdrawals, including satisfaction of any obligation of the fund to repay amounts that may have been appropriated from the general fund as "repayable advances". The committee, in authorizing the Secretary to invest in securities bearing interest at prevailing market rates, recognizes that the interest rates on investments by the fund may be different from the interest that the fund is to pay to the general fund of the Treasury on such repayable advances. By requiring that the fund repay those advances before it is free to make investments, the committee's amendment avoids the possibility of "arbitrage situations" arising from possible differences in interest rates.[5]

The committee's amendment removes the proposed standby authority for the fund to provide insurance for coal mine operators to cover their liabilities under the part C black lung benefits program. In the place of that provision, the committee has provided that the Department of Labor itself is to have essentially the same standby authority. The revenues from the coal tax and the other assets of the fund will not be available to pay any insurance liabilities under such a program. These insurance provisions are described below.

Effective dates

The fund is to be established on October 1, 1977, and to pay out obligations on and after that date. Since the coal tax expires on September 30, 1982, the fund will continue in existence for a short time after that date to receive the amounts collected on account of coal tax liabilities which are not paid until after that date. As a practical matter, the fund can be expected to expire shortly thereafter, since the fund would quickly exhaust its revenues.

Revenue effect

The Black Lung Disability Fund provisions will have no effect on the revenues. The revenue effects of the taxes to be appropriated to this fund are shown in connection with the discussions of those taxing provisions.

3. Operators' Trusts for Contingent Liabilities (sec. 204 of the bill and new secs. 501(c)(21), 192, 4985, 4986, and 4987 of the Code)

Present law

As a general rule, the income tax law does not give a taxpayer current deductions for amounts set aside in a self-insurance fund to

---

[4] The Secretary of the Treasury is given somewhat broader powers, under the committee's amendment, than under the trust fund provisions reported by the Committee on Human Resources. However, the Committee on Finance concluded that the effect of thus broadening the powers of the Secretary of the Treasury in this instance would be to enhance the earnings potential of the fund without impairing its safety.

[5] The requirement that the fund repay advances to it before it can make investments was not set forth explicitly in the bill as reported by the Committee on Human Resources. However, this requirement is consistent with the bill as reported by the Committee on Human Resources.

satisfy contingent liabilities which may arise in the future. A coal mine operator who cannot deduct amounts set aside in a trust fund or reserve account for liabilities under black lung benefits laws until such amounts are actually used to pay claims, finds that the operator generally can take current deductions for premiums paid on commercial insurance policies covering such contingent liabilities.[1]

Also under present law, a trust established to provide funds to satisfy contingent liabilities does not qualify for tax-exempt status. Thus, the tax law does not provide an exemption for income on assets set aside by a coal mine operator to satisfy liabilities for black lung benefits. By way of comparison, it should be noted that to the extent income and net short-term capital gain on reserves held under a noncancellable accident and health insurance policy issued by a life insurance company are required to be added to the reserve in order to satisfy contingent liabilities, the income and gains are not taxed to the insurer.[2]

In general, private employee welfare plans must comply with Federal standards regarding fiduciaries, investments, and self-dealing or other prohibited transactions, pursuant to the Employee Retirement Income Security Act of 1974 (ERISA). Plans maintained for workmen's compensation or disability insurance purposes are not subject to ERISA.

Reasons for change

Because black lung benefits are payable to both miners and their survivors, the obligation to provide benefits with respect to an employee may continue for a considerable period. It has been estimated by some that the cost of providing these benefits may be between $1.35 and $5.00 per ton of coal (depending upon such factors as the amount of recoverable coal and the age of the miners).

Under the Federal black lung benefits statute, a coal mine operator in a State not deemed to provide adequate workmen's compensation coverage for pneumoconiosis must secure the payment of benefits for which the operator may be found liable under the statute, either through procuring commercial insurance or through self-insuring. At present, no State laws are deemed adequate for this purpose; hence, all operators subject to liability under the statute must obtain insurance or self-insure.

Commercial insurance premiums for a policy covering an employer's liability under black lung laws may cost as much as 25 percent of payroll for an underground mine and 5–10 percent of payroll for a strip mine. Because the insurance policies now available are cancellable by the insurers, an employer cannot be assured that the insurance will remain in force if the insurer determines that the risk of loss is higher than initially contemplated. Consequently, some mine operators wish to self-insure for this liability.

---

[1] Insurance premiums may generally be deducted as ordinary and necessary expenses of a trade or business (sec. 162). Health insurance premiums may be deducted (within limits) as medical expenses by individuals who itemize deductions (sec. 213).

[2] Net long-term capital gain is taken into account in computing life insurance company taxable income but may be wholly or partially offset by special deductions allowed to life insurance companies.

In view of the unavailability or high cost of such insurance, the committee has concluded that coal mine operators should be permitted to set up self-insurance programs for contingent liabilities under black lung benefits laws, with similar tax consequences (from the point of view of the operator) as would result if the operator had purchased noncancellable accident and health insurance.[3] In light of the investment limitations plus the self-dealing and other restrictions which are imposed under the committee's amendments to assure that funds held by self-insurance trusts are used exclusively for the required purposes, it is contemplated that the Secretary of Labor will give appropriate credit for amounts so held in trust in determining whether an operator satisfies the requirements of section 423 of the Federal Coal Mine Health and Safety Act of 1969, that the operator either qualify as a self-insurer or obtain insurance to cover its contingent black lung benefit liabilities.[4]

Explanation of the provision

The committee's amendment provides (1) income tax exemption for a qualifying trust used by a coal mine operator to self-insure for liabilities under Federal and State black lung benefits laws and (2) deductions (within certain limits) for amounts contributed to the trust by the operator.

Trusts—Qualification

The bill adds a paragraph (21) to section 501(c) of the Code, describing certain trusts which would qualify for exemption from Federal income taxation. To so qualify, the trust must be created or organized in the United States exclusively for the following purposes: (a) to satisfy in whole or in part the operator's liabilities for black

[3] The bill's treatment of black lung self-insurance trusts, while a departure from existing general rules, would not represent a unique treatment of contingent liability funds. The Internal Revenue Code includes special provisions permiting life insurance companies to deduct amounts held in reserve for contingent liabilities under life insurance or noncancellable accident and health insurance policies (sec. 801 et seq.). Generally, income earned on assets held in a life insurance company's reserve for policyholder claims is not taxed to the company if the income is required to be added to the reserve.

In addition, the provisions allowing current deductions for contributions to tax-qualified pension plans (especially defined benefit plans) may be regarded as bearing similarities to the concept of deductions for contributions to contingent liability funds. Since the effective date of the relevant provisions of the Employee Retirement Income Security Act of 1974, the pension plan provisions may be regarded as in many respects substantially on a par with contingent liability provisions.

The committee also notes that for a brief period, the Internal Revenue Code of 1954 permitted taxpayers to deduct additions to reserves for estimated expenses (sec. 462). The provision was included in the 1954 Code as originally enacted, but was retroactively repealed in 1955, when it was determined that the revenue loss for the transition period would be excessive. At the time section 462 was repealed, the Secretary of the Treasury noted that the concept of a nontaxable fund for reserves for contingent liabilities was a useful concept, and that the section was being repealed only because of the revenue losses.

[4] The provisions of this bill are not intended to derogate from the authority and responsibility of the Secretary of Labor to prescribe regulations under section 423 of the Federal Coal Mine Health and Safety Act of 1969 as to qualification of an operator as a self-insurer for purposes of that statute.

lung benefits arising under Federal or State statutes;[5] (b) to purchase insurance for the purpose of covering such liabilities in whole or in part; and (c) to pay the administrative and incidental costs of the trust (such as legal, accounting, actuarial, and trustee expenses) incurred in connection with operation of the trust or the processing of black lung claims against the operator.

A section 501(c)(21) trust may pay premiums for insurance to cover the operator's black lung benefits liabilities (1) if the insurance solely covers such liabilities and no other risks or (2) if not, only to the extent of that portion of the premium which has been separately allocated and stated by the insurer as attributable solely to coverage of the operator's black lung benefits liabilities.

The administrative and incidental expenses properly payable by the trust include any excise taxes imposed on the trust under the taxable expenditures provisions (discussed below), plus expenses (such as legal fees), reasonable in amount, incurred by the trust in connection with assertion against the trust of liability for these taxes. A section 501(c)(21) trust may not pay any excise taxes imposed under the self-dealing or excess contributions provisions (discussed below) or any excise taxes imposed on trustees under the taxable expenditures provisions, nor may the trust pay any expenses incurred in connection with assertions of liability for such taxes.

The trust must be irrevocable, with no right or possibility of reversion (either of corpus or income) to the coal mine operator (except for the recovery of excess contributions by the operator, as described below, under *Deductions*). The trust must be established and maintained pursuant to a written instrument. The trust instrument must provide that no part of the corpus or income may be used for purposes other than:

(*a*) those purposes described above,

(*b*) certain permitted investments (described in detail below), or

(*c*) payment into the Black Lung Disability Fund or into the general fund of the Treasury.

If the trust qualifies, its income is not taxable to the operator making contributions to the trust,[6] nor is the income taxable to the trust (except to the extent it is subject to the tax imposed by section 511 on "unrelated business taxable income").

---

[5] A section 501(c)(21) trust may be organized and operated for the purpose of satisfying the following liabilities of a coal mine operator, and none other: (1) the operator's liabilities on or with respect to claims for compensation for disability or death due to pneumoconiosis arising under part C of title IV of the Federal Coal Mine Health and Safety Act of 1969 and (2) the operator's liabilities on or with respect to claims for compensation for disability or death due to pneumoconiosis arising under State statutes. Thus, a liability of an operator with respect to a claim for compensation for the disability or death of a miner arising under a State workmen's compensation law which provides compensation for disability or death due to other causes as well as pneumoconiosis can be satisfied out of a section 501(c)(21) trust only if and only to the extent that the liability is attributable to disability or death due to pneumoconiosis.

[6] A trust will not qualify under section 501(c)(21) if it receives any contributions from an insurance company.

Trusts—Status under ERISA

The committee has been informed by the Department of Labor that, in the Department's opinion, a section 501(c)(21) trust would be excluded from coverage under title I of ERISA (the so-called "labor law" provisions) because of ERISA section 4(b)(3), which exempts employee benefit plans "maintained solely for the purpose of complying with applicable workmen's compensation laws or * * * disability insurance laws * * *." The committee agrees with this interpretation.

The committee's amendment imposes certain investment limitations and prohibitions on "self-dealing" and "taxable expenditures" which the committee believes are appropriate to prevent abuses of section 501(c)(21) trusts.

Investment limitations

Under the committee's amendment, a qualifying trust may invest its funds only in the following: (a) public debt securities of the United States; (b) obligations of a State or local government, other than any such obligation which is in default as to either principal or interest; or (c) time or demand deposits in a bank (as defined in section 581) or an insured credit union (within the meaning of sec. 101(6) of the Federal Credit Union Act). The bank or credit union, as the case may be, must be located in the United States. These investment restrictions are intended to preclude speculative or other investments of corpus or income which might jeopardize the carrying out of the trust's exempt purposes and permit the committee to simplify the self-dealing restrictions and avoid the necessity of certain other restrictions to prevent potential abuses.

Under the self-dealing restrictions applicable to these trusts, if a bank or an insured credit union is a trustee of the trust or otherwise is a "disqualified person" with respect to the trust (for example, if it owns or is owned by the coal mine operator maintaining the trust) no funds of the trust may be held or invested in checking accounts, savings accounts, certificates of deposit, or other time or demand deposits in that bank or credit union.

"Self-dealing" prohibitions

The bill prohibits any direct or indirect "self-dealing", a comprehensively defined term, between a section 501(c)(21) trust and any "disqualified person" with respect to that trust.

The following transactions are prohibited by the bill:

(1) the sale, exchange, or leasing of property between the trust and any disqualified person (including certain transfers to the trust of property subject to a lien);

(2) the lending of money or other extension of credit between the trust and any disqualified person;

(3) the furnishing of goods, services, or facilities between the trust and any disqualified person (unless furnished to the trust, without charge, exclusively for proper trust purposes);

(4) payment of compensation by the trust to any disqualified person (except for compensation, not excessive in amount, paid for personal services which are reasonable and necessary to carrying out the trust's permitted purposes); and

(5) the transfer to, or use by or for the benefit of, any disqualified person of the income or assets of the trust.

Payments by a section 501(c)(21) trust for purposes of satisfying the operator's liabilities for black lung benefits arising under Federal or State statutes, or to purchase insurance exclusively covering such liabilities, do not constitute either prohibited self-dealing or taxable expenditures (described below). Similarly, payments by an insurance company for purposes of satisfying the operator's black lung benefits liabilities do not constitute prohibited self-dealing merely because the premiums for such insurance have been paid by the trust. If an insurance company constitutes a disqualified person with respect to the trust, however, the self-dealing rules would prohibit the trust from purchasing any insurance from that company.

For purposes of the self-dealing rules, the term "disqualified person" includes (i) a coal mine operator contributing any amount to the trust; (ii) an officer, director, or employee of the operator; (iii) a trustee of the trust (or any person having powers or responsibilities with respect to the trust similar to those of trustees); (iv) a person owning more than 10 percent of an operator in category (i); (v) a member of the family of any individual described in any of the first four categories; and (vi) any entity in which persons described in any of the first five categories own or hold certain specified percentages of voting power or profits or beneficial interest.

Any violation of the prohibitions against self-dealing transactions gives rise automatically to an initial excise tax on the self-dealer (the disqualified person who violated the restrictions), equal to 10 percent of the "amount involved". In addition, an initial excise tax (equal to 2½ percent of the amount involved) is also to be imposed on any trustee or other manager of the trust who participated in the taxable act, but only if the manager participated knowing the act was taxable and if the manager's participation was willful and not due to reasonable cause. In the case of either the trust or the manager, a second level of excise tax at higher rates (100 percent and 50 percent, respectively) is to be imposed if the act is not undone or otherwise "corrected" after issuance of a deficiency notice from the Internal Revenue Service.

"Correction" consists of "undoing" the transaction or (if undoing is not possible) making the trust whole or giving the trust the benefit of the bargain within 90 days after the mailing of the deficiency notice with respect to the first level of tax. For purposes of this sanction, the amount involved is the highest fair market value of the property involved in the transaction during the period within which the transaction may be undone. This provision is intended to impose all market fluctuation risks upon the self-dealer who refuses to comply and to give the trust the benefit of the best bargain it could have made at any time during the period.

The second-level excise tax sanction, imposed only after a notice of deficiency and adequate opportunity for court review and undoing the self-dealing transaction, is intended to be sufficiently heavy to compel voluntary compliance (at least after court review). The committee expects application of this sanction to be rare, but where the parties refuse to undo the transaction, it is expected that this sanction will be applied.

These taxes are treated like income, estate, and gift taxes in the sense that the Internal Revenue Service is required to send deficiency

notices to the self-dealer and the trustee who then have 90 days to petition the Tax Court. The usual statute of limitations for assessment applies—3 years unless there is a substantial omission of tax on the return filed by the trust (6-year statute of limitations) or no return has been filed (assessment at any time). The 90-day period for petitioning the Tax Court and the statute of limitations for assessing and collecting the tax are suspended during any extension by the Service of the time for correcting the self-dealing.

Refund suits for first- or second-level taxes may be brought in the Court of Claims or in a district court (but only if there has been no prior court review of the prohibited act). Also, any refund suit is treated as disposing of all issues relating to any first- or second-level tax arising out of that prohibited act. An opportunity is provided for one court review of a self-dealing transaction, but no more than one review.

The provisions in the bill as to "self-dealing" generally correspond to certain of the restrictions imposed on private foundations by section 4941 of the Code. Accordingly, authorized interpretations of the latter provision may provide general guidance to interpretation of the self-dealing prohibitions under the committee's amendment.[7]

Prohibitions on taxable expenditures

The bill prohibits any expenditures, payments, or investments by a section 501(c)(21) trust other than for proper payment of (a) black lung benefits, (b) administrative expenses, or (c) premiums for insurance covering liabilities for black lung benefits; for permitted investments of trust funds; or for transfer of assets to the Black Lung Disability Fund or to the general fund of the Treasury.

Any violation of the prohibition against "taxable expenditures" will give rise automatically to an initial excise tax imposed on the trust, equal to 10 percent of the amount of the improper expenditure. Since this tax is payable by the trust, the committee's amendment appropriates to the Black Lung Disability Fund amounts equivalent to any amount collected under this tax, and also under the 100-percent second-level tax, described below. In addition, an initial excise tax (equal to 2½ percent of the amount involved) also is to be imposed on any trustee or other manager of the trust who participated in the taxable act, but only if the manager participated knowing the act was taxable and if the manager's participation was willful and not due to reasonable cause. In the case of either of the trust or the manager, a second level of excise tax at higher rates (100 percent and 50 percent, respectively) is to be imposed if the improper expenditure is not recaptured or otherwise "corrected" after issuance of a deficiency notice from the Internal Revenue Service.

The same correction and judicial review provisions apply under the taxable expenditures provision as apply under the self-dealing provision.

---

[7] As noted above, the committee intends that a bank-trustee may not invest the funds of a section 501(c)(21) trust in the bank's savings accounts, checking accounts, or certificates of deposit, whether or not such investments would be permitted under section 4941 to a bank-trustee or a private foundation.

Trusts—Returns

A trust qualifying under section 501(c)(21) is required to file annual returns with the Internal Revenue Service pursuant to section 6033. Because such returns would include confidential financial data relating to coal mine operators, the committee's amendment exempts such returns from public inspection under section 6104(b). For the same reason, the bill exempts applications for exemption under section 501(c)(21) from public inspection pursuant to section 6104(a)(1).

Deductions for contributions to the trust

Contributions by a coal mine operator to a trust described in section 501(c)(21) will be deductible by the operator for Federal income tax purposes under new section 192, but not in excess of the maximum amount as determined under that section for the operator's taxable year. The amendment provides that, as in the case of employer contributions to qualified trusts for contingent pension plan liabilities, the operator's contributions to the section 501(c)(21) trust are deductible with respect to a particular taxable year (subject to a maximum deduction limitation) if actually made during that taxable year or if contributed on account of that taxable year and actually paid to the trust not later than the time prescribed for filing the operator's income tax return for that year (including extensions thereof). To be deductible, the operator's contribution must be made either in cash or in property of the type which the trust is permitted to hold as an investment (e.g., public debt securities of the United States). If the operator makes a permitted contribution of property, the transfer will constitute a sale or exchange of the property for purposes of the operator's Federal income tax, and the fair market value of the property at the date of transfer will constitute the amount realized. (However, the operator's transfer of such property without consideration will not constitute a sale or exchange of property within the meaning of the self-dealing rules unless the property is subject to a mortgage or similar lien.) A contribution to the trust of the operator's note or other evidence of indebtedness of the operator to the trust does not constitute the making of a contribution by the operator and will not entitle the operator to any deduction.[8]

The operator's deduction for contributions to the trust for the taxable year cannot exceed the *greater* of the following two amounts:

(1) the amount needed for the purposes of the trust described in section 501(c)(21)(A) [9] for the operator's taxable year, reduced by the fair market value of trust assets at the beginning of that taxable year; *or*

[8] The transfer to the trust of any such evidence of operator indebtedness will constitute an act of self-dealing in that it constitutes an extension of credit between the trust and a "disqualified person" (the operator).

[9] These purposes are to satisfy the operator's liabilities for black lung benefits arising under Federal or State statutes, to purchase insurance exclusively covering such liabilities in whole or in part, and to pay proper administrative and incidental costs of the trust. However, only payments with respect to amounts to be paid by the trust are to be taken into account; payments to be made directly by the operator or through insurance obtained by the operator outside the trust are not to be taken into account.

(2) the sum of an amount equal to all proper administrative and incidental expenses of the trust for the operator's taxable year, *plus* the lesser of—

(a) the amount needed to fully fund all expected future black lung benefit payments [10] with respect to approved claims and claims filed and pending as of the end of the operator's taxable year, reduced by the fair market value of the trust assets at the beginning of said taxable year, or

(b) two times the amount needed to fully fund all expected future black lung benefit payments [11] with respect to either claims approved or claims filed during any one of the current and three preceding taxable years. Under this alternative, the operator may base the limit either on claims approved or on claims filed (and still pending as of the end of the year), whichever produces the greater contribution limit.

The amounts described shall be determined using reasonable actuarial assumptions not inconsistent with Treasury regulations. It is intended that the amount necessary to provide the expected future payments due to a claim which is pending and not approved will be determined as the amount necessary to provide the payments expected for an approved claim multiplied by the expected approval rate of pending claims. The expected approval rate of pending claims is to be consistent with the approval rate experienced by the Department of Labor or the State workmen's compensation system, depending on where the claim is pending, unless the operator or the Service can show that a different expected approval rate is justified for that operator, based on sufficient experience to justify such a different rate.

The first of these limitations above assures that the operator in any event will be permitted to contribute to the trust and deduct current expenditures in excess of trust assets at the beginning of the year.

The second limitation has two alternatives. The first of these alternatives allows full establishment of the current values of current claims, both those approved and those filed and still pending. However, in order to prevent an operator from taking a disproportionately large deduction in establishing the trust or from skipping contributions for several years for purposes of building a disproportionately large deduction, the second alternative provides that the deductible amount cannot exceed two times the amount needed to fully fund all future payments with respect to either claims approved or claims filed during the operator's current taxable year or any one of the three prior taxable years, whichever produces the largest amount.

If an operator makes otherwise deductible trust contributions which exceed the maximum limitation for that year, the following rules will

---

[10] For purposes of this computation, the term "black lung benefit payments" means payments to satisfy the operator's liabilities for black lung benefits arising under Federal or State statutes, taking into account only payments to be made by the trust, and does not include either payments to purchase insurance covering such liabilities in whole or in part or payments for administrative or incidental costs of the trust.

[11] See footnote [10].

apply under the amendment with respect to the amount of excess contributions:

(*a*) An excise tax (under new sec. 4987) equal to 5 percent of the excess contribution will be imposed on the operator.

(*b*) At the request of the operator, the trust shall repay to the operator an amount not exceeding the excess contribution amount (and that payment shall not constitute either an act of self-dealing or a taxable expenditure), but that repayment to the operator will not avoid the imposition of the excise tax.

(*c*) If the operator does not recapture all of the excess contribution, the remaining excess may be carried over to succeeding taxable years and deducted at that time, subject to the maximum deduction limitation applicable to the particular carryover year.

(*d*) If any portion of that excess contribution cannot be deducted in the particular carryover year because of the maximum deduction limitation for that year, the 5-percent excise tax will be imposed for that carryover year on the portion that remains in excess. This tax on excess contributions is designed to eliminate the advantage the operator otherwise would have from the fact that the trust's earnings on the excess contribution are exempt from income tax.

Effective date

The coal mine operators' trust provisions are effective for taxable years beginning after December 31, 1977. These provisions apply to existing trusts, as well as those created after this date.

Revenue effect

The revenue effect of this provision depends primarily on the extent to which coal mine operators will elect to establish operator trust funds. There is no adequate information available as to the extent to which operators will make such election. Assuming that these operators establishing trust funds deposit $100 million in the fund annually in excess of their current payment for black lung benefits, their tax liabilities will be reduced by approximately $40 million annually.

4. Disclosure of Address Information to National Institute of Occupational Safety and Health (sec. 205 of the bill and sec. 6103(m) of the Code)

Present law

Under section 6103 of the Code, as recently amended by the Tax Reform Act of 1976, taxpayer return information (which includes the address supplied by the taxpayer on his or her income tax return) is treated as confidential information not subject to disclosure by the Internal Revenue Service, except as specifically provided in section 6103. While, in certain instances, section 6103 would allow the disclosure of address information supplied by the taxpayer, no provision is made for the disclosure of this information to the National Institute of Occupational Safety and Health ("NIOSH") for any purpose, including that of locating persons previously employed in occupations in which they were, or may have been, exposed to known or suspected hazardous substances.

Reasons for change

The committee recognizes the importance of the notification program conducted by NIOSH in locating, notifying and referring for appropriate medical treatment persons who, in their occupations, are, or may have been, exposed to hazardous substances (such as carcinogens). The committee has been made aware of the substantial increase in cost per capita that would be incurred if NIOSH were not allowed to continue receiving addresses of these persons from the Internal Revenue Service, as it did prior to the passage of the Tax Reform Act of 1976.

In light of the very limited disclosure involved in relation to the continued conduct at a reasonable cost level of a very significant human health program, the committee decided to allow the disclosure of mailing addresses by the Internal Revenue Service to NIOSH solely for the purpose of locating and determining the vital status of a person who is, or may have been, exposed to a hazardous substance and referring the person for medical treatment.

Explanation of provision

Upon written request, the Secretary of the Treasury would be authorized to disclose mailing addresses to officers and employees of NIOSH solely for the purposes of locating and determining the vital status (i.e., whether alive or dead) of persons who, in their occupations, are, or may have been, exposed to a hazardous substance and, if they are alive, to refer them, if necessary, for medical care and treatment.

This amendment is not intended to allow the disclosure of the mailing address of taxpayers for any other studies that have been or will be undertaken by NIOSH, except for the purposes stated above.

Effective date

The amendment made by this section becomes effective on the date of its enactment.

Revenue effect

This provision will have no effect on the revenues.

5. Standby Insurance Authority (sec. 15 of the bill and new sec. 435 of the Federal Coal Mine Health and Safety Act of 1969)

Present law

Present law has no provision for authority for any Government agency to provide insurance for the black lung benefit program liabilities of coal mine operators.

Reasons for change

The provisions reported by the Committee on Human resources would provide authority to the Black Lung Disability Fund to issue insurance policies to cover coal mine operators' black lung disability benefits obligations. The Finance Committee was concerned that the assets of the disability fund not be diverted to any such insurance program. Consequently, the Finance Committee's amendment preserves the standby insurance option, but only under authority of the Secretary of Labor as a separate insurance fund and entirely outside of the disability fund.

Explanation of the provision

The Secretary of Labor is authorized to establish and carry out a black lung insurance program to enable operators to purchase insurance to cover some or all of their obligations under the part C benefits program. An insurance program may be established only if the Secretary of Labor determines that insurance coverage is not available, at reasonable cost, to operators. The Secretary of Labor is granted authority to provide by agreement that an insured operator is deemed in compliance with the requirements of section 423 of the Federal Coal Mine Health and Safety Act of 1969, to enter into reinsurance agreements, to provide by regulation for general terms and conditions of insurability, to set premium rates and classes of coverage, and otherwise to manage the program based on accepted actuarial principles. All premiums received by the Secretary are to be paid into the Black Lung Compensation Insurance Fund, which is to be available to pay claims, to pay administrative expenses of carrying out the insurance program and to repay the Secretary of the Treasury for any funds borrowed, at interest, from the general fund of the Treasury. The fund is to be credited with all premiums, fees, or other charges collected in connection with insurance coverage, amounts advanced to the fund from appropriations, and income earned on investments of the fund of moneys in excess of current needs in public debt securities.

Effective date

This provision will take effect on the date of enactment of the bill.

Revenue effect

If this standby authority is exercised, it will produce revenues and expenditures. Since this is only a standby authority, no estimate can be made at this point because of the uncertainty as to when (or whether) the authority will be exercised and the manner in which it would be exercised.

III. COSTS OF CARRYING OUT THE BILL AND VOTE OF THE COMMITTEE IN REPORTING S. 1538, AS AMENDED

Budgetary Impact of the Bill

In compliance with sections 308 and 403 of the Congressional Budget Act of 1974 and section 252 of the Legislative Reorganization Act of 1970, the following statements are made relative to the budgetary import of S. 1538, as reported by the Committee on Finance.

Inasmuch as the bill was before the Finance Committee only for consideration of its tax and trust fund aspects, the committee believes it appropriate to limit its discussion of budgetary impact to those aspects. The Committee on Finance did not make any provision for this legislation in its budget allocation report relative to the first concurrent resolution on the budget for fiscal year 1978 pursuant to section 302 of the Congressional Budget Act of 1974, since the expenditures under this program arise from benefit provisions within the jurisdiction of the Committee on Human Resources.

The trust fund costs of the program are displayed in table 1, which appears earlier in this report. Budget authority and outlays under the trust fund part of the program for the period 1978–82 should, on the

basis of the bill's benefit provisions, correspond with total trust fund liability as shown on the bottom line of that table. In fiscal year 1978 total budget authority and outlays for budgetary purposes should be reduced to $181.4 million, since $45.2 million represents an interfund transfer having no net impact on the consolidated Federal budget.

Consultation With Congressional Budget Office and Department of Labor on Budget Estimate

The committee's estimates, as shown in table 1, are based primarily on estimates submitted by the Department of Labor on June 21, 1977. The following adjustments have, however, been made: (1) estimated costs relating to clinical facilities and field offices have been deleted since the bill provides for funding these provisions from general revenues and the committee understands and intends that trust fund monies are not to be used for these purposes, whether or not appropriations are subsequently provided; (2) items not included in the Labor Department estimates have been added, namely, administrative costs, medical evaluations, and the repayment from the trust fund to the general fund of past Labor Department costs. The costs of these additional items were estimated by the Congressional Budget Office.

The committee has also received estimates from the Congressional Budget Office. In the main, the most recent estimates of the two agencies are consistent except that the Congressional Budget Office has estimated a significantly lower cost for the provision under which the Labor Department will revise the disability standards of the program. (The CBO estimates of this provision are $170 million lower over the 5-year period and $23.9 million lower in fiscal 1978 than the Department's estimates.) The committee feels it is more appropriate to accept the view of the agency which will be charged with developing and applying the new standards, particularly since the Department supports the legislation with the exception of two provisions the costs of which are not in question.

The committee states that the bill involves individual benefit entitlement and does not provide any financial assistance to States or localities.

Estimates received from the Department of Labor and the Congressional Budget Office are printed below:

U.S. DEPARTMENT OF LABOR,
OFFICE OF THE ASSISTANT SECRETARY FOR
EMPLOYMENT STANDARDS,
Washington, D.C., June 21, 1977.

Hon. HARRY F. BYRD,
U.S. Senate,
Washington, D.C.

DEAR SENATOR BYRD: This letter is for the purpose of clarifying cost estimates related to S. 1538—the Black Lung Reform Act of 1977.

As you noted at the hearing on June 17 before your Subcommittee, the original cost estimates provided by the Congressional Budget Office and the preliminary estimates made by the Department of Labor differed markedly in several respects. After discussion with the Congressional Budget Office, the Department of Labor has recalculated its estimates for the 5-year period—Fiscal 1978–1982. For purposes of these estimates the annual average benefit for miners and their sur-

vivors is assumed to be $3,970 in Fiscal Year 1978 with 5 percent increases in subsequent years. In addition, all SSA claims found eligible under the provisions of this bill will be paid benefits retroactive to January 1, 1974. Department of Labor claims found eligible under this bill will receive retroactive benefits based on their year of filing under Part C (no earlier than January 1, 1974). For retroactive benefits back to 1974, as of October 1, 1977, the award is $12,800. For benefits back to 1975 the award is $9,820 and back to 1976 it is $6,400. It is assumed that 30 percent of the claims filed under this bill will be completed in 1978, 40 percent in 1979 and the backlog eliminated in 1980.

Section 2(b)

This provision would expand the definition of "miner" and add 500 potential beneficiaries. The estimated cost is $5.8 million.

Section 2(c)

Under this section, the Secretary of Labor will promulgate new regulations regarding total disability. These standards may not be as liberal as the interim medical standards in certain respects. The exact effect of the new standards is difficult to estimate since they have not been developed. However, it was previously estimated that the impact of applying the interim standards to claims denied by DOL would increase the DOL approval rate from the current 7 percent to 37 percent, a difference of 30 percent. Based on the assumption that the impact of the new standards will be somewhere between the current and interim standards, we estimate that at least 15 percent of the claims denied by DOL will be approved under this provision. We have also used the same 15 percent assumption in relation to new claims that will be filed through 1982. Since the SSA population was denied under the interim standards, it is assumed that the only impact of this provision on that group would be caused by the passage of time and the progression of ill health. Therefore, to take account of these factors, it was estimated that 5 percent of denied claims would be approved. Based on these assumptions of the new beneficiaries, 24,200 will come from the 258,000 denied claimant population under parts B and C and 7,500 from the estimated 54,000 new filings through 1982. The total cost is estimated to be $800.5 million.

Section 3

This section provides for the elimination of offsets to workers' compensation benefits for the black lung program. Based upon Social Security estimates, this would affect approximately 3,300 beneficiaries and would increase costs only under part B. Therefore, this provision will have no effect on either the Trust Fund or operator liability.

Section 4

This section requires the review of all claims denied solely because the miner was working and prohibits the denial of those claims solely on that basis. This provision, in and of itself, will not increase the approval rate. Claims that are determined to be approvable based on this review are counted in other sections which provide the basis for their approval.

Section 5

This section provides that the Secretary of Labor shall accept the opinion of a board-certified or board-eligible radiologist with regard

to the reading of a chest X-ray. Our initial estimate was based on various assumptions gained from current experience with reading and reviewing X-rays. However, the Secretary will be given new authority under this bill to establish medical standards for testing and the Department plans to make a concerted effort to provide opportunities for physicians to obtain specialized information and guidance regarding the diagnosis of pneumoconiosis. We have therefore revised our estimates to take these factors into consideration. In addition, it is assumed that all X-rays will be read by radiologists. Within these parameters, the number of positive readings will be significantly lower than assumed in our previous estimate. On the other hand, it is assumed that the number of positive readings by these radiologists will be slightly higher than is our current experience utilizing expert readers. Based on these assumptions, we estimate that 2 percent of the DOL denied and new claims and 5 percent of the SSA denied claims will be approved. The total number of new beneficiaries will be 8500—7700 from the denied and pending DOL and SSA populations and 800 from new filings. The total cost is estimated to be $250 million.

Section 6

This section both establishes the trust fund and clarifies the conditions under which an operator can be found liable for claims. Although identification of responsible operators will be facilitated because of this section, the establishment of the January 1, 1970 employment cutoff date will significantly decrease the number of claims for which a responsible operator will be sought. Under the current law, it is estimated that responsible operators can be identified in 30 percent of approved claims. The cutoff date will reduce this percentage to 20 percent in 1978 through 1980. The additional cost to the trust fund due to this provision will be $11.3 million.

Section 7(b)

This section provides for an entitlement for widows of miners who worked 25 years in the mines prior to June 30, 1971. Data on DOL denials have shown that 17.4 percent have alleged 25 or more years of coal mine employment. Applying this percentage to both the DOL and SSA widow denial populations, it is estimated that 3500 DOL survivor claimants and 5100 SSA survivor claimants will be allowed under this provision. Because the 25 years must have occurred before June 30, 1971, the percentage applied to new claims was significantly decreased to 5 percent of the prospective widow claimants, resulting in an estimated 500 beneficiaries. The total cost of this provision is estimated at $176.9 million.

Section 7(i)

This section authorizes $10 million each year for black lung clinical facilities. Thus, the total for the 5-year period is $50 million.

Section 8

This section authorizes the Secretary of Labor to establish necessary field offices to assist claimants with filing and processing. The total cost is estimated to be $14.8 million.

Total costs

The incremental costs of the provisions of the bill for the 5 years from 1978 through 1982 is slightly over $1.3 billion. This amount does not include estimates of increased administrative costs as a result of this bill. (Our preliminary estimates indicate that the administrative costs will range from $15 to $20 million per year. These costs will include the review of pending and denied cases and transfer of cases to the Department of Labor from the Social Security Administration.) In addition, there is a current program cost of $181.3 million over the 5-year period, a proportion of which will have to be assumed by the trust fund. Of the total of nearly $1.5 billion, responsible operators will assume costs totalling $324.3 million. Thus. the amount the trust fund will be responsible for will be close of $1.2 billion.

Sincerely,

DONALD ELISBURG,
Assistant Secretary.

Cost estimates of S. 1538 [1]

[In millions of dollars]

	1978	1979	1980	1981	1982	Total 5-yr costs
Section:						
2(b)—Definition of coal miner	0.3	1.3	1.3	1.4	1.5	5.8
2(c)—New medical standards set by DOL	105.1	197.6	266.2	112.9	118.7	800.5
5—Limitation on X-ray rereadings	36.0	69.1	76.9	33.4	34.6	250.0
6—Date of last employment for individual operator liability	3.4	3.8	4.1	0	0	11.3
7(b)—25 yr presumption for survivors	24.9	47.6	61.7	21.2	21.5	176.9
7(i)—Clinical facilities	10.0	10.0	10.0	10.0	10.0	50.0
8—Establishment of DOL field offices	2.6	2.8	3.0	3.1	3.3	14.8
Total new bill costs	182.3	332.2	423.2	182.0	189.6	1,309.3
Current law costs	34.3	38.8	40.2	34.0	34.0	181.3
Operator liability	−40.2	−70.9	−89.2	−60.9	−63.1	−324.3
Total trust fund costs	176.4	300.1	374.2	155.1	160.5	1,166.3

[1] Does not include increased administrative costs which would result from this bill.

Revenue effect of tax and trust fund provisions

The budget effects of section 202 of this bill, which imposes the tax on coal, is estimated to produce revenues of $145 million in fiscal 1978, $170 million in fiscal 1979, $185 million in fiscal 1980, $205 million in fiscal 1981, and $225 million in 1982.

The revenue effect of section 204 of the bill, relating to operator's trusts for contingent liabilities depend primarily on the extent to which coal mine operators will elect to establish operator trust funds. There is no adequate information available as to the extent to which operators will make such election. Assuming that these operators establishing trust funds deposit $100 million in the fund annually in excess of their current payment for black lung benefits, it is estimated that revenues will be reduced by approximately $40 million annually. Section 203 of the bill, relating to the Black Lung Disability Fund, and section 205 of the bill relating to disclosure of information to the National Institute of Occupational Safety and Health are estimated to have no revenue impact.

Tax expenditures

In compliance with section 308(a)(2) of the Budget Act with respect to tax expenditures, and after consultation with the Director of the Congressional Budget Office, the committee makes the following statement. The changes made by this bill involve increased tax expenditures for operators' trusts for contingent liabilities. The increased tax expenditures depend primarily on the extent to which coal mine operators will elect to establish operator trust funds. There is no adequate information available as to the extent to which operators will make such election. Assuming that these operators establishing trust funds deposit $100 million in the fund annually in excess of their current payment for black lung benefits, tax expenditures will be increased by approximately $40 million annually.

Vote of the Committee

In compliance with section 133 of the Legislative Reorganization Act of 1946, the following statement is made relative to the vote by the committee on the motion to report the bill. S. 1538, as amended by the committee, was ordered favorably reported by voice vote.

IV. REGULATORY IMPACT OF THE BILL

In compliance with paragraph (5) of Rule XXIX of the Standing Rules of the Senate, the committee makes the following statement concerning the regulatory impact that might be incurred in carrying out the provisions of S. 1538, as amended.

A. *Numbers of individuals and businesses who would be regulated.*—The committee estimates that 5,000 coal mine operators in the United States will be affected by this bill.

B. *Economic impact of regulation on individuals, consumers, and business affected.*—Section 202 of the bill imposes an *ad valorem* tax on the sale of coal by the producer. Since the coal tax is an excise tax, it is added to the price of coal to the first purchaser. The impact of the tax on the consumer will be an increase in price of up to one per-

cent of the value of coal (at the minehead) used to produce goods and services.

Currently, the general Treasury is paying for most black lung benefit payments. To the extent this bill shifts this cost to the Black Lung Trust Fund, the cost of black lung benefits is shifted from the general taxpayer to the coal-consuming public.

C. *Impact on personal privacy.*—The provisions of this bill make negligible changes in those provisions of Federal law affecting the personal privacy of taxpayers except for section 205 of the bill, which would authorize the Secretary of the Treasury, upon written request, to disclose mailing addresses to officers and employees of the National Institute of Occupational Safety and Health (NIOSH) solely for the purposes of locating and determining the vital status (i.e., whether alive or dead) of persons who, in their occupations, are, or may have been, exposed to a hazardous substance and, if they are alive, to refer them, if necessary, for medical care and treatment.

Except for the purposes stated above, this amendment is not intended to allow the disclosure of the mailing address of taxpayers for any studies that have been or will be undertaken by NIOSH.

Determination of the amount of paperwork.—The bill will require coal mine operators to file tax returns and pay taxes on the first sale or use of the coal they produce. In addition, operators who choose to take advantage of the provisions of section 204 of the bill, relating to operators' trusts for contingent liabilities, will have to keep records and file return information relating to such trusts.

V. CHANGES IN EXISTING LAW MADE BY THE BILL

In the opinion of the committee, it is necessary, in order to expedite the business of the Senate, to dispense with the requirements of subsection 4 of rule XXIX of the Standing Rules of the Senate (relating to the showing of changes in existing law made by the committee amendment, as reported).

○

Calendar No. 312

95TH CONGRESS
1ST SESSION

S. 1538

[Report No. 95–209]

[Report No. 95–336]

IN THE SENATE OF THE UNITED STATES

MAY 16, 1977

Mr. RANDOLPH, from the Committee on Human Resources, reported the following original bill; which was read twice and ordered to be placed on the calendar

MAY 26 (legislative day, MAY 18), 1977

Referred to the Committee on Finance with instructions that the bill be ordered reported no later than July 1, and reported to the Senate no later than July 12, by unanimous consent

JULY 12 (legislative day, MAY 18), 1977

Reported by Mr. LONG, with amendments to the text

[Omit the part struck through and insert the part printed in italic]

A BILL

To amend title IV of the Federal Coal Mine Health and Safety Act to improve the black lung benefits program established thereunder, to impose an excise tax on the sale or use of coal, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—BLACK LUNG BENEFITS REFORM ACT OF 1977

SHORT TITLE

~~That this Act~~ *SEC. 101. This title* may be cited as the "Black Lung Benefits Reform Act of 1977".

DEFINITIONS

SEC. ~~2.~~ *102.* (a) Section 402 (b) of the Federal Coal Mine Health and Safety Act of 1969, as amended (30 U.S.C. 801-960) (hereinafter in this ~~Act~~ *title* referred to as the "Act"), is amended to read as follows:

"(b) The term 'pneumoconiosis' means a chronic dust disease of the lung and its sequelae, including respiratory and pulmonary impairments, arising out of coal mine employment."

(b) Section 402 (d) of the Act is amended to read as follows:

"(d) The term 'miner' means any individual who works or has worked in or around a coal mine or coal preparation facility in the extraction, preparation, or transportation of coal. Such term also includes an individual who works or has worked in coal mine construction during any period such individual was exposed to coal dust in his or her employment.".

(c) (1) Section 402 (f) of the Act is amended to read as follows:

"(f) The term 'total disability' has the meaning given it by regulation of the Secretary of Health, Education, and Welfare for part B claims, and by regulation of the Secretary of Labor for part C claims, subject to the relevant provisions of subsections (b) and (d) of section 413, except that—

"(1) in the case of a living miner, 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;

"(2) such regulations shall provide that (A) a deceased miner's employment in a mine at the time of death shall not be used as conclusive evidence that the miner was not totally disabled; and (B) in the case of a living miner, if there are changed circumstances of employment indicative of reduced ability to perform his or her usual coal mine work, such miner's employment in a mine shall not be used as conclusive evidence that the miner is not totally disabled;

"(3) such regulations shall not provide more restrictive criteria than those applicable under section 223 (d) of the Social Security Act; and

"(4) the Secretary, in consultation with the Director of the National Institute for Occupational Safety and Health, shall establish criteria for all appropriate medical tests under this subsection which accurately reflect total disability in coal miners as defined in paragraph (1).".

(2) Section 421 (b) (2) (A) of the Act is amended by inserting immediately before the semicolon the following: ", except that such law shall not be required to provide such benefits where the miner's last employment in a coal mine terminated prior to the Secretary's approval of the State law pursuant to this section".

(3) Section 421 (b) (2) (C) of the Act is amended by striking out "part B" and inserting in lieu thereof "part C", and by striking out "of Health, Education, and Welfare".

(4) Section 422 (c) of the Act is amended by (A) deleting "and the Secretary of Health, Education, and Welfare"; and (B) inserting in the proviso "a period after December 31, 1969" in lieu of "the period".

(5) Section 422 (h) of the Act is amended by striking out the first sentence thereof.

~~(d) Section 402 of the Act is further amended by adding at the end thereof the following new paragraph:~~

~~"(h) The term 'fund' means the Black Lung Disability Fund established pursuant to section 424.".~~

OFFSET LIMITATION

SEC. ~~3.~~ *103*. The first sentence of section 412 (b) of the Act (30 U.S.C. 922 (b)) is amended by inserting immediately after "disability of such miner" the following: "due to pneumoconiosis".

BENEFIT DETERMINATION FOR EMPLOYED MINERS

SEC. ~~4.~~ *104.* Section 413 of the Act is amended by adding at the end thereof the following new subsection:

"(d) No miner who is engaged in coal mine employment shall (except as provided in section 411 (c) (3)) be entitled to any benefits under this part while so employed. Any miner who has been determined to be eligible for benefits pursuant to a claim filed while such miner was engaged in coal mine employment shall be entitled to such benefits if his employment terminates within one year after the date such determination becomes final.".

EVIDENCE REQUIRED TO ESTABLISH CLAIM

SEC. ~~5.~~ *105.* (a) Section 413 (b) of the Act is amended by inserting immediately before the period at the end of the second sentence thereof a colon and the following: ": *Provided,* That the Secretary shall accept a board certified or board eligible radiologist's interpretation of a chest roentgenogram which is of a quality sufficient to demonstrate the presence of pneumoconiosis submitted in support of a claim for benefits under this title if such roentgenogram has been taken by a radiologist or qualified radiologic technologist or technician, except where the Secretary has reason to believe that the claim has been fraudulently represented. In order to insure that any such roentgenogram is of adequate

quality to demonstrate the presence of pneumoconiosis, and in order to provide for uniform quality in the roentgenograms, the Secretary of Labor may, by regulation, establish specific requirements for the techniques used to take roentgenograms of the chest. In the case of a deceased miner, where there is no medical evidence, or where such evidence is inconclusive, a claim shall nevertheless be approved if other evidence in the record, including affidavits, taken as a whole establishes that the miner was totally disabled due to pneumoconiosis or that his death was due to pneumoconiosis".

(b) Section 413 (b) of the Act is further amended by adding at the end thereof the following: "Each miner who files a claim for benefits under this title shall be provided an opportunity to substantiate his or her claim by means of a complete pulmonary evaluation.".

~~TRUST FUND AND OPERATOR LIABILITY~~

~~SEC. 6. (a) Section 424 of the Act is amended to read as follows:~~

~~"SEC. 424. (a)(1) There is hereby established on the books of the Treasury of the United States a trust fund to be known as the Black Lung Disability Fund (hereinafter referred to as the 'fund'). The fund shall remain available without fiscal year limitation and shall consist of such~~

amounts as may be appropriated to it and deposited in it as provided in subsection (b).

"(2) The trustees of the fund shall be the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health, Education, and Welfare. The Secretary of the Treasury shall be the managing trustee and shall hold, operate, and administer the fund.

"(b)(1) There are hereby appropriated to the fund, out of any money in the Treasury not otherwise appropriated, amounts equivalent to the taxes received in the Treasury under section 4121 of the Internal Revenue Code of 1954.

"(2) There are authorized to be appropriated to the funds, as repayable advances, such sums as may from time to time be necessary to meet obligations incurred under subsection (d) of this section. Advances made pursuant to this paragraph shall be repaid, and interest on such advances shall be paid, to the general fund of the Treasury when the Secretary of the Treasury determines that moneys are available in the fund for such repayments. Interest on such advances shall be at rates computed in the same manner as provided in subsection (c)(2).

"(c)(1) The Secretary of the Treasury shall hold the trust fund and (after consultation with the other trustees of

the fund) shall report to the Congress not later than the first day of April of each year on the financial condition and the results of the operations of the fund during the preceding fiscal year, on its expected condition and operations during the fiscal year in which the report is made, and on any proposed adjustment in the rate of tax imposed pursuant to section 4121 of the Internal Revenue Code of 1954. The report shall be printed as a House document of the session of the Congress to which the report is made.

"(2) It is the duty of the Secretary of the Treasury to invest such portion of the 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 the issue price, or (B) by purchase of outstanding obligations at the market price. The purposes for which obligations the United States may be issued under the Second Liberty Bond Act are hereby extended to authorize the issuance at par of special obligations exclusively to the trust fund. The special obligations shall bear interest at a rate equal to the average rate of interest, computed as to the end of the calendar month next preceding the date of such issue, borne by all marketable interest-bearing obligations of

the United States then forming a part of the public debt. Where such average rate is not a multiple of one-eighth of 1 per centum, the rate of interest of such special obligations shall be the multiple of one-eighth of 1 per centum nearest such average rate. Such special obligations shall be issued only if the Secretary of the Treasury determines that the purchase of other interest-bearing obligations of the United States, or of obligations guaranteed as to both principal and interest by the United States on original issue or at the market price, is not in the public interest.

"(3) Any obligation acquired by the fund (except special obligations issued exclusively to the fund) may be sold by the Secretary of the Treasury at the market price and such special obligations may be redeemed at par plus accrued interest.

"(4) The interest on, and the proceeds from the sale or redemption of, any obligations held in the fund shall be credited to and form a part of the fund.

"(d) Amounts in the fund shall be available for the payment of—

"(1) benefits under section 422 in cases in which the Secretary determines that—

"(A) An operator liable for the payment of 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 thirty days of an initial determination of eligibility by the Secretary, or

"(B) there is no operator who is required to secure the payment of such benefits, and

"(2) obligations incurred by the Secretary of Labor with respect to all claims of miners or their survivors in which the miner's last coal mine employment was prior to January 1, 1970, and for the repayment into the Federal Treasury of an amount equal to the sum of the amounts expended by the Secretary for such claims which were paid prior to the date of enactment of the Black Lung Benefits Reform Act of 1977, except that the fund shall not be obligated to pay or reimburse for benefits for any period of eligibility prior to January 1, 1974,

"(3) benefits under section 422 for which the fund has assumed liability under subsection (f),

"(4) repayments of, and interest on, advances to the fund under subsection (b)(2), and

"(5) all expenses of operation and administration under this part, including those of the Department of Labor.

"(c)(1) If an amount is paid out of the fund to an individual entitled to benefits under section 422 and the

Secretary determines, under the provisions of sections 242 and 423, that an operator was required to secure the payment of all or a portion of such benefits, the operator is liable to the United States for repayment to the fund of the amount of such benefits the payment of which is properly attributed to him. No operator or representative of operators may bring any proceeding, or intervene in any proceedings, held for the purpose of determining claims for benefits to be paid by the fund, except that nothing in this section shall affect the rights, duties, or liabilities of any operator in proceedings under section 422 or section 423 of this title. In a case where no operator responsibility is assigned pursuant to sections 422 and 423 of this title, a determination by the Secretary that the fund is liable for the payment of benefits shall be final.

"(2) If any operator liable to the fund under paragraph (1) refuses to pay, after demand, the amount of such liability (including interest) there shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such operator. The lien arises on the date on which such liability is determined, and continues until it is satisfied or becomes unenforceable by reason of lapse of time.

"(3)(A) Except as otherwise provided under this subsection, the priority of the lien shall be determined in the

same manner as under section 6323 of the Internal Revenue Code of 1954 .That section shall be applied for such purposes by substituting 'lien imposed by section 424(c)(2) of the Federal Coal Mine Health and Safety Act of 1969' for 'lien imposed by section 6321'; 'operator liability lien' for 'tax lien'; 'operator' for 'taxpayer'; 'lien arising under section 424(c)(2) of the Federal Coal Mine Health and Safety Act of 1969' for 'assessment of the tax'; and 'payment of the liability is made to the Black Lung Disability Fund' for 'satisfaction of a levy pursuant to section 6332(b)' each place such terms appear.

"(B) In the case of a bankruptcy or insolvency proceeding, the lien imposed under paragraph (2) shall be treated in the same manner as a tax due and owing to the United States for purposes of the Bankruptcy Act or section 3466 of the Revised Statutes (31 U.S.C. 191).

"(C) For purposes of applying section 6323(a) of the Internal Revenue Code of 1954 to determine the priority between the lien imposed under paragraph (2) and the Federal tax lien, each lien shall be treated as a judgment lien arising as of the time notice of such lien is filed.

"(D) For purposes of this subsection, notice of the lien imposed under paragraph (2) shall be filed in the same manner as under section 6323 (f) and (g) of the Internal Revenue Code of 1954.

"(4) (A) In any case where there has been a refusal or neglect to pay the liability imposed under paragraph (2), the Secretary of the Treasury may bring a civil action in a district court of the United States to enforce the lien of the United States under this section with respect to such liability or to subject any property, of whatever nature, of the operator, or in which he has any right, title, or interest, to the payment of such liability.

"(B) The liability imposed by paragraph (1) may be collected at a proceeding in court if the proceeding is commenced within six years after the date upon which payment of the liability was first due, or prior to the expiration of any period for collection agreed upon in writing by the operator and the United States before the expiration of such six-year period. The period of limitation provided under this subparagraph shall be suspended for any period during which the assets of the employer are in the custody or control of any court of the United States, or of any State, or the District of Columbia, and for six months thereafter, and for any period during which the operator is outside the United States if such period of absence is for a continuous period of at least six months.

"(f) The fund may enter into agreements with operators who may be liable for the payment of benefits under section 422 of this part, under which the fund will assume the

~~liability of such operator in return for a payment or payments to the fund, and on such terms and conditions, as will fully protect the financial interests of the fund. During any period in which such agreement is in effect the operator shall be deemed to be in compliance with the requirements of section 423 of this part.".~~

OPERATOR LIABILITY

~~(b) Subsection~~ *SEC. 106. (a) Subsection* (i) of section 422 of the Act is amended to read as follows:

"(i) (1) During any period in which this section is applicable to the operator of a coal mine or mines who on or after January 1, 1970, acquired such mine or mines 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 or mines, or owner of such assets on or after January 1, 1970, such operator 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 by such prior operator as if the acquisition had not occurred and the prior operator had continued to be a coal mine operator.

"(2) Nothing in this subsection shall relieve any prior operator of any liability under this section.

"(3) For purposes of paragraph (1) of this subsec-

tion, the following shall apply to corporate reorganizations, liquidations, and such other transactions as are enumerated in this paragraph:

"(A) If an operator ceases to exist by reason of a reorganization or other transaction or series of transactions which involves a change in identity, form, or place of business or organization, however effected, the successor operator or other corporate or business entity resulting from such reorganization or change shall be treated as the operator to whom this section applies.

"(B) If an operator ceases to exist by reason of a liquidation into a parent corporation, the parent or successor corporation shall be treated as the operator to whom this section applies.

"(C) If an operator ceases to exist by reason of a sale of substantially all its assets or merger or consolidation, or division, the successor operator or corporation, or business entity shall be treated as the operator to whom this section applies.

"(4) Nothing in this subsection shall be construed to require the payment of benefits by or on behalf of an operator where liability for the claim is the responsibility of the fund under ~~section 424 of this part.~~ *section 203 of the Black Lung Benefits Revenue Act of 1977*.".

~~(c)~~ *(b)* Section 422 of the Act is amended by adding the following new subsection:

"(j) Notwithstanding the provisions of this section, section 424 shall govern the payment of benefits in cases in which—

"(1) an operator liable for the payment of 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 thirty days of an initial determination of eligibility by the Secretary, or

"(2) there is no operator who is required to secure the payment of such benefits, or

"(3) the miner's last coal mine employment was prior to January 1, 1970.".

~~(d)~~ *(c)* Section 422 of the Act is further amended by adding the following new subsection:

"(k) The Secretary shall be a party in any proceeding relating to a claim for benefits under this part.".

~~EXCISE TAX ON COAL~~

~~SEC. 6A. (a) Chapter 32 of the Internal Revenue Code of 1954 (relating to manufacturers excise taxes) is amended by inserting after subchapter A the following new subchapter:~~

"Subchapter B—Coal

"SEC. 4121. IMPOSITION OF TAX.

"(a) IN GENERAL.—There is hereby imposed on the sale of coal by the producer a tax at the rate of—

"(1) 30 cents per ton of coal which has an average rated British thermal unit (hereinafter 'Btu') value of 11,000 or more per pound;

"(2) 15 cents per ton of coal which has an average rated Btu value of less than 11,000 per pound but more than 8,000 per pound; and

"(3) 7.5 cents per ton of coal which has an average rated Btu value of 8,000 per pound or less.

For the purpose of this section, the term 'sale' includes the production of coal by a producer for its own use, and the rated Btu value of coal per pound shall be that Btu value assigned by the United States Bureau of Mines to the coal field or coal seam from which the coal is extracted.

"(b) DEFINITION OF TON.—For purposes of this section, the term 'ton' means 2,000 pounds.".

(b)(1)(A) Section 4221 of such Code (relating to certain tax-free sales) is amended by inserting "(other than under section 4121)" after "this chapter".

(B) Section 4293 of such Code (relating to exemption for United States and possessions) is amended by in-

serting "(other than under section 4221)" after "chapters 31 and 32".

(2) Section 4217(a) of such Code (relating to lease considered as sale) is amended by inserting "other than coal" after "article" the first time it appears.

(c) The table of subchapters for chapter 32 of such Code is amended by inserting after the item relating to subchapter A the following new item:

"SUBCHAPTER B. Coal.".

(d) The amendments made by this section apply to sales on and after October 1, 1977.

MISCELLANEOUS

SEC. 7. *107.* (a) Section 401 of the Act is amended by inserting "(a)" immediately following "SEC. 401." and by adding at the end thereof the following new subsection:

"(b) This title may be cited as the 'Black Lung Benefit Act'.".

(b) Section 411 (c) of the Act is amended by striking out "and" at the end of paragraph (3) thereof, by striking out the period at the end thereof, by inserting in lieu thereof "; and", and by adding at the end thereof the following new paragraph:

"(5) in the case of a miner who dies on or before the date of enactment of the Black Lung Benefits Reform Act of 1977 who was employed for 25 years or

more in one or more coal mines prior to June 30, 1971, the eligible survivors of such miner shall be entitled to the payment of benefits, unless it is established that at the time of his death such miner was not partially or totally disabled due to pneumoconiosis. Eligible survivors shall, upon request by the Secretary, furnish such evidence as is available with respect to the health of the miner at the time of his death.".

(c) Section 413(b) of the Act is amended (1) by striking out "(f)," and (2) by striking out "and (l)," in the last sentence thereof and by inserting in lieu thereof "(l) and (n),".

(d) Section 421(b)(2)(D) of the Act is amended to read as follows:

"(D) any claim for benefits on account of total disability of a miner due to pneumoconiosis is deemed to be timely filed if such claim is filed within three years after a medical determination of total disability due to pneumoconiosis;".

(e) Section 422(a) of the Act is amended by inserting immediately after the words "as amended" in the first sentence thereof the following: ", and as it may be amended from time to time,".

(f) Section 422(c) of the Act is amended by adding at the end thereof the following new sentence: "In no case

shall the eligible survivors of a miner who was determined to be eligible to receive benefits under this title at the time of his death, be required to file a new claim for benefits, or refile or otherwise revalidate the claim of such miner.".

(g) Section 422 (e) of the Act is amended by inserting "or" at the end of paragraph (1) thereof; by striking out "; or" at the end of paragraph (2) thereof and by inserting in lieu thereof a period; and by striking out paragraph (3) in its entirety.

(h) Section 422 (f) of the Act is amended to read as follows:

"(f) Any claim for benefits by a miner under this section shall be filed within three years after a medical determination of total disability due to pneumoconiosis.".

(i) Section 427 (c) of the Act is amended by striking out "of the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975" and by inserting in lieu thereof "fiscal year".

(j) For the purpose of determining eligibility for benefits under title IV of the Act, a miner will be deemed to have engaged in coal mine employment for any year in which—

(1) he has four quarters of coverage, as defined in section 213 of the Social Security Act, as a miner; or

(2) he was continuously on the payroll of a coal company and was employed as a miner; or

(3) the Secretary of Labor determines on the basis of other evidence that he was employed as a miner.

In determining the number of years of a miner's coal mine employment, the Secretary of Labor shall give the miner appropriate credit for that portion of any year in which he or she worked only part of a year.

(k) Section 430 of the Act is amended by—

(1) inserting "and by the Black Lung Benefits Reform Act of 1977" immediately after "1972"; and

(2) striking out the colon and all the language that follows it and inserting in lieu thereof a period.

(l) Notwithstanding the provisions of section 422(a), individuals appointed to hear claims pursuant to Public Law 94-504 may continue to adjudicate such claims until one year after enactment of this Act.

FIELD OFFICES

SEC. ~~8.~~ *108.* (a) The Secretary of Labor is authorized to establish and operate such field offices as necessary to assist miners and survivors in the filing and processing of claims under title IV of the Federal Coal Mine Health and Safety Act of 1969. Such field offices shall, to the extent feasible, be reasonably accessible to such miners and sur-

vivors. The Secretary of Labor may, in the establishment of such field offices, enter into such arrangements as he deems necessary with the heads of other Federal departments, agencies, and instrumentalities, and with State agencies, for the use of existing facilities and personnel under their control.

(b) There are authorized to be appropriated for the purposes of subsection (a) such sums as may be necessary.

INFORMATION TO POTENTIAL BENEFICIARIES

SEC. ~~9.~~ *109*. The Secretary of Health, Education, and Welfare and the Secretary of Labor shall jointly disseminate to interested persons and groups the changes in title IV of the Federal Coal Mine Health and Safety Act made by this Act, together with an explanation of such changes, and shall undertake, through appropriate organizations, groups, and coal mine operators, to notify individuals who are likely to have become eligible for the benefits by reason of such changes. Individual assistance in preparing and processing claims shall be offered and provided to potential beneficiaries.

EXPEDITED REVIEW, TRANSFER, AND PROCESSING OF DENIED CLAIMS

SEC. ~~10.~~ *110*. Title IV of the Act is further amended by adding at the end thereof the following new section:

"SEC. 432. (a) Any individual who has filed a claim for benefits under this title and whose claim has been denied,

may file a new claim for benefits under this part. Except as otherwise provided in subsection (c) of this section, a claim for benefits filed pursuant to this subsection shall be treated as a new claim for benefits filed under section 422. An individual who has filed a claim which has been denied under part B of this title and who has filed a new claim under part C of this title, including a claim filed under this section, shall be deemed to have met the requirements of section 422 (f).

"(b) (1) The Secretary shall promptly prescribe such regulations as are necessary to provide for the expedited processing of any claim filed under subsection (a) of this section. Such claims, and any pending claims, shall be reviewed in light of the amendments made by the Black Lung Benefits Reform Act of 1977.

"(2) Submission by an individual to the Secretary of a request for review shall constitute the filing of a claim under subsection (a). The Secretary shall provide simple forms for such purpose, postage paid, to each individual described in subsection (a).

"(3) The Secretary of Health, Education, and Welfare shall promptly furnish to the Secretary all pertinent information in the possession of the Department of Health, Education, and Welfare relating to claims denied under this title. If the evidence on file is sufficient for approval of a claim in light of the amendments made by the Black Lung Benefits

Reform Act of 1977, no further evidence shall be required. If such evidence on file is not sufficient for approval of a claim, the Secretary may, in the case of a living miner, require the taking of additional medical evidence, including the administration of a roentgenogram and pulmonary function tests. Claims filed under subsection (a) of this section, as well as all other claims pending under part C of this title, shall be processed in accordance with criteria established pursuant to section 402 (f) (4) of this title.

"(c) (1) Any individual whose claim is approved pursuant to this section who filed a claim for benefits under part B of this title, and whose claim has been finally adjudicated as denied by the Social Security Administration, shall be awarded benefits as if such claim were filed on January 1, 1974.

"(2) Any individual whose claim is approved pursuant to this section who filed a claim for benefits under section 415 or part C of this title, and whose claim has been finally adjudicated as denied by the Department of Labor, shall be awarded benefits as of the date such claim was originally filed, or January 1, 1974, whichever is later.".

EFFECTIVE DATES

SEC. ~~11.~~ *111.* (a) Except as provided in ~~subsections (b) and (c)~~ *subsection (b)* of this section, this Act shall take effect on the date of its enactment.

~~(b) The amendments made by section 6 of this Act relative to the establishment of the Black Lung Disability Fund shall take effect on October 1, 1977.~~

~~(c) Appropriations and tax revenues to the trust fund established pursuant to sections 6 and 6A of this Act shall accrue on and after October 1, 1977, and no~~ *(b) No* benefits awarded due to the operation of this ~~Act~~ *title* shall be paid until October 1, 1977.

OCCUPATIONAL DISEASE STUDY

SEC. ~~12.~~ *112.* (a) The Secretary of Labor, in cooperation with the Director of the National Institute for Occupational Safety and Health, shall conduct a study of all occupationally related pulmonary and respiratory diseases, including the extent and severity of such diseases in the United States. Such study shall further include analyses of (1) any etiologic, symptomatologic, and pathologic factors which are similar to such factors in coal workers' pneumoconiosis and its sequelae; (2) the adequacy of current workers' compensation programs in compensating persons with such diseases; and (3) the status and adequacy of Federal health and safety laws and regulations relating to the industries with which such diseases are associated.

(b) The study required by subsection (a) of this section shall be completed and a report thereon submitted to the President and the appropriate committees of the Con-

gress within eighteen months after the date of enactment of this Act.

PENALTY: FAILURE TO SECURE BENEFITS

SEC. ~~13.~~ *113*. Section 423 of the Act is amended by adding the following new subsection:

"(d) (1) Any employer required to secure the payment of compensation under this section who fails to secure such compensation shall be subject to a civil penalty of not more than $1,000 for each day during which such failure occurs; and in any case where such employer is a corporation, the president, secretary, and treasurer thereof shall be also severally liable to such civil penalty as herein provided for the failure of such corporation to secure the payment of compensation; and such president, secretary, and treasurer shall be severally personally liable, jointly with such corporation, for any compensation or other benefit which may accrue under said Act in respect to any injury which may occur to any employee of such corporation while it shall so fail to secure the payment of compensation as required by this section.

"(2) Any employer who knowingly transfers, sells, encumbers, assigns, or in any manner disposes of, conceals, secretes, or destroys any property belonging to such employer, after one of his employees has been injured within the purview of this Act, and with intent to avoid the payment of

compensation under this Act to such employee or his dependents, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than $1,000, or by imprisonment for not more than one year, or by both such fine and imprisonment; and in any case where such employer is a corporation, the president, secretary, and treasurer thereof shall be also severally liable to such penalty of imprisonment as well as jointly liable with such corporation for such fine.

"(3) This section shall not affect any other liability of the employer under this part.".

PENALTIES: FALSE STATEMENTS AND REPORTS

SEC. ~~14.~~ *114.* Title IV of the Act is further amended by adding after new section 432 the following new sections:

"SEC. 433. Any person who willfully makes any false or misleading statement or representation for the purpose of obtaining any benefit or payment under this Act shall be guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not to exceed $1,000 or by imprisonment of not to exceed one year, or by both such fine and imprisonment.

"SEC. 434. (a) The Secretary may by regulation require employers to file reports concerning employees who may be or are entitled to benefits under this part, including the date of commencement and cessations of benefits and

the amount of such benefits. Any such report shall not be evidence of any fact stated therein in any proceeding relating to death or total disability due to pneumoconiosis of the employee or employees to which such report relates.

"(b) Any employer who fails or refuses to file any report required of such employer under this section shall be subject to a civil penalty not to exceed $500 for each such failure or refusal.".

INSURANCE FUND

SEC. 115. Title IV of the Act is further amended by adding after new section 434 the following new section:

"SEC. 435. (a) The Secretary is authorized to establish and carry out a black lung insurance program which will enable operators to purchase insurance covering their obligations under section 422 of this part.

"(b) The Secretary may exercise his authority under this section only if and to the extent that insurance coverage is not otherwise available, at reasonable cost, to operators.

"(c)(1) The Secretary may enter into agreements with operators who may be liable for the payment of benefits under section 422 of this part, under which the Black Lung Compensation Insurance Fund (hereinafter referred to in this section as the 'fund') will assume all or part of the liability of such operator in return for a payment or payments of premiums to the fund, and on such terms and conditions as

will fully protect the financial solvency of the fund. During any period in which such agreement is in effect the operator shall be deemed in compliance with the requirement of section 423 of this part with respect to the risks covered by such agreement.

"(2) The Secretary may also enter into reinsurance agreements with one or more insurers or pools of insurers under which, in return for payment or payments of premiums to the fund, and on such terms and conditions as will fully protect the financial solvency of the fund, the fund will provide reinsurance coverage for benefits required to be paid under section 422 of this part.

"(d) The Secretary may by regulation provide for general terms and conditions of insurability as applicable to operators or insurers eligible for insurance or reinsurance under this section, including—

"(1) the types, classes, and locations of operators or facilities which shall be eligible for such insurance or reinsurance;

"(2) the classification, limitation, and rejection of any operator or facility which may be advisable;

"(3) appropriate premiums for different classifications of operators or facilities;

"(4) appropriate loss deductibles;

"(5) experience rating; and

"(6) any other terms and conditions relating to insurance or reinsurance coverage or exclusion which may be appropriate to carry out the purposes of this section.

"(e) The Secretary is authorized to undertake and carry out such studies and investigations and receive or exchange such information as may be necessary to formulate a premium schedule which will enable the insurance and reinsurance authorized by this section to be provided on a basis which is (1) in accordance with accepted actuarial principles, and (2) is fair and equitable.

"(f)(1) On the basis of estimates made under subsection (e), and such other information as may be available, the Secretary shall from time to time prescribe by regulation the chargeable premium rates for types and classes of insurers, operators, and facilities for which insurance or reinsurance coverage shall be available under this section and the terms and conditions under which, and the area within which, such insurance or reinsurance shall be available and such rates shall apply.

"(2) Such premium rates shall be (A) based on a consideration of the risks involved, taking into account differences, if any, in risks based on location, type of operations, facilities, type of coal, experience, and any other matter which may be considered under accepted actuarial principles,

and (B) adequate, on the basis of accepted actuarial principles, to provide reserves for anticipated losses.

"(3) All premiums received by the Secretary shall be paid into the fund.

"(g)(1) The Secretary is authorized to establish in the Department of Labor a Black Lung Compensation Insurance Fund which shall be available, without fiscal year limitation—

"(A) to pay claims of miners for benefits covered by insurance issued under this section,

"(B) to pay claims for reinsurance issued under this section,

"(C) to pay the administrative expenses of carrying out the black lung compensation insurance program under this section, and

"(D) to repay to the Secretary of the Treasury such sums as may be borrowed in accordance with the authority provided in subsection (i) of this section.

"(2) The fund shall be credited with—

"(A) premiums, fees, or other charges which may be collected in connection with insurance coverage provided under this section;

"(B) such amounts as may be advanced to the fund from appropriations in order to maintain the fund in an operative condition adequate to meet its liabilities; and

"(C) income which may be earned on investments of the fund pursuant to paragraph (3) of this subsection.

"(3) If, after all outstanding current obligations of the fund have been liquidated and any outstanding amounts which may have been advanced to the fund from appropriations authorized under subsection (i) have been credited to the appropriation from which advanced, the Secretary determines that the moneys of the fund are in excess of current needs, he may request the investment of such amounts as he deems advisable by the Secretary of the Treasury in public debt securities with maturities suitable for the needs of the fund and bearing interest at prevailing market rates.

"(h) The Secretary shall report to the Congress not later than the first day of April of each year on the financial condition of the fund and the result of the operations of the fund during the preceding fiscal year and on its expected condition and operations during the fiscal year in which the report is made.

"(i) There are authorized to be appropriated to the fund, as repayable advances, such sums as may be necessary to meet obligations incurred under subsection (g) of this section. All such funds shall remain available without fiscal year limitation. Advances made pursuant to this paragraph shall be repaid, with interest, to the general fund of the Treasury when the Secretary determines that moneys are available

in the fund for such repayments. Interest on such advances shall be computed in the same manner as provided in subsection (b)(2) of section 203 of the Black Lung Benefits Revenue Act of 1977.".

TITLE II—BLACK LUNG BENEFITS REVENUE ACT OF 1977

SEC. 201. SHORT TITLE.

This title may be cited as the "Black Lung Benefits Revenue Act of 1977".

SEC. 202. EXCISE TAX ON COAL.

(a) IN GENERAL.—Chapter 32 of the Internal Revenue Code of 1954 (relating to manufacturers' excise taxes) is amended by inserting after subchapter A the following new subchapter:

"Subchapter B—Coal

"Sec. 4121. Imposition of tax.

"SEC. 4121. IMPOSITION OF TAX.

"(a) IN GENERAL.—There is hereby imposed upon coal sold by the producer after September 30, 1977, and before October 1, 1982, a tax at the rate of 1 percent of the price for which it is sold.

"(b) EXCEPTION.—The tax imposed by subsection (a) shall not apply in the case of lignite.".

(b) CONFORMING AMENDMENTS.—

(1) Section 4221(a) of such Code (relating to

certain tax free sales) is amended by inserting "(other than under section 4121)" after "this chapter".

(2) Section 4293 of such Code (relating to exemption for Unitied States and possessions) is amended by inserting "(other than section 4121)" after "chapters 31 and 32".

(c) CLERICAL AMENDMENTS.—The table of subchapters for such chapter is amended by inserting after the item relating to subchapter A the following new item:

"SUBCHAPTER B. Coal.".

SEC. 203. TRUST FUND AND OPERATOR LIABILITY.

(a) ESTABLISHMENT OF FUND.—

(1) There is hereby established on the books of the Treasury of the United States a trust fund to be known as the Black Lung Disability Fund (hereinafter referred to as the "fund"). The fund shall remain available without fiscal year limitation and shall consist of such amounts as may be appropriated to it and deposited in it as provided in subsection (b).

(2) The trustees of the fund shall be the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health, Education, and Welfare. The Secretary of the Treasury shall be the managing trustee and shall hold, operate, and administer the fund.

(b) APPROPRIATIONS; OTHER RECEIPTS.—

(1) There are hereby appropriated to the fund, out of any money in the Treasury not otherwise appropriated, amounts equivalent to the taxes received in the Treasury under sections 4121 and 4986(a)(1) and (b)(1) of the Internal Revenue Code of 1954.

(2) There are authorized to be appropriated to the fund, as repayable advances, such sums as may from time to time be necessary to meet obligations incurred under subsection (d) of this subsection. Advances made pursuant to this paragraph shall be repaid, and interest on such advances shall be paid, to the general fund of the Treasury when the Secretary of the Treasury determines that moneys are available in the fund for such repayments. Interest on such advances shall be at a rate equal to the average rate of interest, computed as to the end of the calendar month next preceding the date of any such advance, borne by all marketable interest-bearing obligations of the United States then forming a part of the public debt. Where such average rate is not a multiple of one-eighth of 1 percent, the rate of interest on such advances shall be the multiple of one-eighth of 1 percent nearest such average rate.

(3) Amounts paid into the fund by a trust described

in section 501(c)(21) of the Internal Revenue Code of 1954 (other than under subsection (e)) shall be covered into the fund as miscellaneous receipts.

(4) Amounts repaid or recovered under subsection (b) of section 424 of the Federal Coal Mine Health and Safety Act of 1969 shall be covered into the fund as repayments of amounts erroneously paid out.

(c) DUTIES OF THE SECRETARY OF THE TREASURY.—

(1) The Secretary of the Treasury shall hold the trust fund and (after consultation with the other trustees of the fund) shall report to the Congress not later than the first day of April of each year on the financial condition and the results of the operations of the fund during the preceding fiscal year (including a detailed statement of the expenses paid out of the fund under subsection (a)(4) of section 424 of the Federal Coal Mine Health and Safety Act of 1969), on its expected condition and operations during the fiscal year in which the report is made, and on any proposed adjustment in the rate of tax imposed by section 4121 of the Internal Revenue Code of 1954. The report shall be printed as a House document of the session of the Congress to which the report is made.

(2) It is the duty of the Secretary of the Treasury to invest such portion of the fund as is not, in his judgment, required to meet current withdrawals, including the

repayment of advances made under subsection (b)(2). Such investments shall be made in public debt securities with maturities suitable for the needs of the fund and bearing interest at prevailing market rates. The income on such investments shall be credited to and form a part of the fund.

(b) OPERATION LIABILITY.—Section 424 of the Federal Coal Mine Health and Safety Act of 1969 is amended to read as follows:

"SEC. 424. (a) Amounts in the Black Lung Disability Trust Fund (referred to in this section as the 'fund') established under section 203 of the Black Lung Benefits Revenue Act of 1977 shall be available for the payments of—

"(1) benefits under section 422 in cases in which the Secretary determines that—

"(A) an operator liable for the payment of 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 thirty days of an initial determination of eligibility by the Secretary, or

"(B) there is no operator who is required to secure the payment of such benefits, and

"(2) obligations incurred by the Secretary with respect to all claims of miners or their survivors in which

the miner's last coal mine empolyment was prior to January 1, 1970, and for the repayment into the Federal Treasury of an amount equal to the sum of the amounts expended by the Secretary for such claims which were paid prior to the date of enactment of the Black Lung Benefits Reform Act of 1977, except that the fund shall not be obligated to pay or reimburse for benefits for any period of eligibility prior to January 1, 1974,

"(3) repayments of, and interest on, advances to the fund under subsection (b)(2), and

"(4) all expenses of operation and administration under this part (other than under section 427(a) or 435), including the administrative expenses incurred by the Department of Labor under this part, the administrative expenses incurred by the Department of the Treasury in administering subchapter B of chapter 32 of the Internal Revenue Code of 1954 and in managing the fund, and any expenses incurred by the Department of Health, Education, and Welfare in connection with the administration of this part.

"(b)(1) If an amount is paid out of the fund to an individual entitled to benefits under section 422 and the Secretary determines, under the provisions of sections 422 and 423, that an operator was required to secure the payment of all or a portion of such benefits, the operator is liable to

the United States for repayment to the fund of the amount of such benefits the payment of which is properly attributed to him. No operator or representative of operators may bring any proceeding, or intervene in any proceedings, held for the purpose of determining claims for benefits to be paid by the fund, except that nothing in this section shall affect the rights, duties, or liabilities of any operator in proceedings under section 422 or section 423 of this title. In a case where no operator responsibility is assigned pursuant to sections 422 and 423 of this title, a determination by the Secretary that the fund is liable for the payment of benefits shall be final.

"(2) If any operator liable to the fund under paragraph (1) refuses to pay, after demand, the amount of such liability (including interest) there shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such operator. The lien arises on the date on which such liability is finally determined, and continues until it is satisfied or becomes unenforceable by reason of lapse of time.

"(3)(A) Except as otherwise provided under this subsection, the priority of the lien shall be determined in the same manner as under section 6323 of the Internal Revenue Code of 1954. That section shall be applied for such purposes—

"(i) by substituting 'lien imposed by section 424(e)(2) of the Federal Coal Mine Health and Safety Act of 1969' for 'lien imposed by section 6321'; 'operator liability lien' for 'tax lien'; 'operator' for 'taxpayer'; 'lien arising under section 424(e)(2) of the Federal Coal Mine Health and Safety Act of 1969' for 'assessment of the tax'; 'payment of the liability is made to the Black Lung Disability Fund' for 'satisfaction of a levy pursuant to section 6332(b)'; and 'satisfaction of operator liability' for 'collection of any tax under this title' each place such terms appear;

"(ii) by disregarding subsection (f)(4); and

"(iii) by treating all references to the 'Secretary' as references to the Secretary of Labor.

"(B) In the case of a bankruptcy or insolvency proceeding, the lien imposed under paragraph (2) shall be treated in the same manner as a lien for taxes due and owing to the United States for purposes of the Bankruptcy Act or section 3466 of the Revised Statutes (31 U.S.C. 191).

"(C) For purposes of applying section 6323(a) of the Internal Revenue Code of 1954 to determine the priority between the lien imposed under paragraph (2) and the Federal tax lien, each lien shall be treated as a judgment lien arising as of the time notice of such lien is filed.

"(D) For purposes of this subsection, notice of the lien imposed under paragraph (2) shall be filed in the same manner as under section 6323(f) (disregarding paragraph (4) thereof) and (g) of the Internal Revenue Code of 1954.

"(4)(A) In any case where there has been a refusal or neglect to pay the liability imposed under paragraph (2), the Secretary may bring a civil action in a district court of the United States to enforce the lien of the United States under this section with respect to such liability or to subject any property, of whatever nature, of the operator, or in which he has any right, title, or interest, to the payment of such liability.

"(B) The liability imposed by paragraph (1) may be collected at a proceeding in court if the proceeding is commenced within six years after the date upon which the liability was finally determined, or prior to the expiration of any period for collection agreed upon in writing by the operator and the United States before the expiration of such six-year period. The period of limitation provided under this subparagraph shall be suspended for any period during which the assets of the operator are in the custody or control of any court of the United States, or of any State, or the District of Columbia, and for six months thereafter, and for any period during which the operator is outside the United States

if such period of absence is for a continuous period of at least six months.".

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on October 1, 1977. No benefits awarded due to the amendment made by subsection (b) shall be paid until October 1, 1977.

SEC. 204. OPERATOR'S TRUST FOR THE PAYMENT OF BLACK LUNG BENEFITS.

(a) ESTABLISHMENT OF TRUST.—Section 501(c) of the Internal Revenue Code of 1954 (relating to list of exempt organizations) is amended by adding at the end thereof the following new paragraph:

"(21) A trust or trusts established in writing, created or organized in the United States, and contributed to by any person (except an insurance company) if—

"(A) the purpose of such trust or trusts is exclusively—

"(i) to satisfy, in whole or in part, the liability of such person for, or with respect to, claims for compensation for disability or death due to pneumoconiosis under—

"(I) part C of title IV of the Federal Coal Mine Health and Safety Act of 1969,

or

"(II) any State law providing such compensation,

(referred to in this paragraph as 'Black Lung Acts');

"(ii) to pay premiums for insurance exclusively covering such liability; and

"(iii) to pay administrative and other incidental expenses of such trust (including legal, accounting, actuarial, and trustee expenses) in connection with the operation of the trust and the processing of claims against such person under Black Lung Acts; and

"(B) no part of the assets of the trust may be used for, or diverted to, any purpose other than—

"(i) the purposes described in subparagraph (A), or

"(ii) investment (but only to the extent that the trustee determines that a portion of the assets is not currently needed for the purposes described in subparagraph (A)) in—

"(I) public debt securities of the United States,

"(II) obligations of a State or local

government which are not in default as to principal or interest, or

"(III) time or demand deposits in a bank (as defined in section 581) or an insured credit union (within the meaning of section 101(6) of the Federal Credit Union Act) located in the United States, or

"(iii) payment into the Black Lung Disability Fund established under section 424 of the Federal Coal Mine Health and Safety Act of 1969, or into the general fund of the United States Treasury.".

(b) ALLOWANCE OF DEDUCTION.—

(1) IN GENERAL.—Part VI of subchapter B of chapter 1 of such Code (relating to itemized deductions for individuals and corporations) is amended by adding at the end thereof the following new section:

"SEC. 192. CONTRIBUTIONS TO BLACK LUNG BENEFIT TRUST.

"(a) ALLOWANCE OF DEDUCTION.—There is allowed as a deduction for the taxable year an amount equal to the sum of the amounts contributed by the taxpayer to or under a trust or trusts described in section 501(c)(21).

"(b) LIMITATION.—

"(1) IN GENERAL.—The amount of the deduction

allowed by subsection (a) for any taxable year shall not exceed the amount determined under paragraph (2) or (3), whichever is greater.

"(2) CURRENT YEAR OBLIGATIONS.—The amount determined under this paragraph for the taxable year is the amount which, when added to the fair market value of the assets of the trust as of the beginning of the taxable year, is necessary to carry out the purposes of the trust described in subparagraph (A) of section 501(c)(21) for the taxable year.

"(3) CERTAIN FUTURE OBLIGATIONS.—The amount determined under this paragraph for the taxable year is the sum of—

"(A) the amount which is necessary to meet the expenses of the trust described in clause (iii) of section 501(c)(21)(A) for the taxable year, and

"(B) the lesser of—

"(i) the amount which, when added to the fair market value of the assets of the trust as of the beginning of the taxable year, is necessary to provide all expected future payments with respect to black lung benefit claims which are approved, or filed and not disapproved, as of the end of the taxable year, or

"(ii) twice the amount which is necessary

to provide all expected future payments with respect to the greater of—

"(I) black lung benefit claims filed during the taxable year or any one of the 3 immediately preceding taxable years, or

"(II) such claims approved during any one of those 4 taxable years.

"(c) SPECIAL RULES.—

"(1) DETERMINATION OF EXPECTED FUTURE PAYMENTS.—The amounts described in subsection (b) shall be determined by using reasonable actuarial assumptions which are not inconsistent with regulations prescribed by the Secretary.

"(2) BENEFIT PAYMENTS TAKEN INTO ACCOUNT.—In determining the amounts described in subsection (b), only those black lung benefit claims the payment of which is expected to be made from the trust shall be taken into account.

"(3) TIME WHEN CONTRIBUTIONS DEEMED MADE.—For purposes of this section, a taxpayer shall be deemed to have made a payment of a contributiton on the last day of the preceding taxable year if the payment is on account of such taxable year and is made not later than the time prescribed by law for filing

the return for such taxable year (including extensions thereof).

"(4) CONTRIBUTIONS TO BE IN CASH OR CERTAIN OTHER ITEMS.—No deduction shall be allowed under subsection (a) with respect to any contribution to such a trust other than a contribution in cash or in items in which such a trust may invest under clause (ii) of section 501(c)(21)(B).

"(d) CARRYOVER OF EXCESS CONTRIBUTIONS.—If the amount of the deduction determined under subsection (a) for the taxable year (without regard to the limitation imposed by subsection (b)) exceeds the limitation imposed by subsection (b) for the taxable year, the excess shall be carried over to the succeeding taxable year and added to the amount allowable as a deduction by subsection (a) for that year.

"(e) DEFINITION OF BLACK LUNG BENEFIT CLAIMS.—For purposes of this section, the term 'black lung benefit claim' means a claim for compensation for disability or death due to pneumoconiosis under part C of title IV of the Federal Coal Mine Health and Safety Act of 1969 or under any State law providing for such compensation.".

(2) CLERICAL AMENDMENT.—The table of sections

for such part is amended by adding at the end thereof the following new item:

"Sec. 192. Contributions to black lung benefit trust.".

(c) EXCISE TAXES ON ACTS OF SELF-DEALING, TAXABLE EXPENDITURES AND EXCESS CONTRIBUTIONS.—

(1) Subtitle D of such Code (relating to miscellaneous excise taxes) is amended by adding at the end thereof the following new chapter:

"CHAPTER 45—BLACK LUNG BENEFIT TRUSTS

"SEC. 4985. TAXES ON SELF-DEALING.

"(a) INITIAL TAXES.—

"(1) ON SELF-DEALER.—There is hereby imposed a tax on each act of self-dealing between a disqualified person and a trust described in section 501(c)(21). The rate of tax shall be equal to 10 percent of the amount involved with respect to the act of self-dealing for each year (or part thereof) in the taxable period. The tax imposed by this paragraph shall be paid by any disqualified person (other than a trustee acting only as a trustee of the trust) who participates in the act of self-dealing.

"(2) ON TRUSTEE.—In any case in which a tax is

imposed by paragraph (1), there is hereby imposed on the participation of any trustee of such a trust in an act of self-dealing between a disqualified person and the trust, knowing that it is such an act, a tax equal to 2½ percent of the amount involved with respect to the act of self-dealing for each year (or part thereof) in the taxable period, unless such participation is not willful and is due to reasonable cause. The tax imposed by this paragraph shall be paid by any such trustee who participated in the act of self-dealing.

"(b) ADDITIONAL TAXES.—

"(1) ON SELF-DEALER.—In any case in which an initial tax is imposed by subsection (a)(1) on an act of self-dealing by a disqualified person with a trust described in section 501(c)(21) and in which the act is not corrected within the correction period, there is hereby imposed a tax equal to 100 percent of the amount involved. The tax imposed by this paragraph shall be paid by any disqualified person (other than a trustee acting only as a trustee of such a trust) who participated in the act of self-dealing.

"(2) ON TRUSTEE.—In any case in which an additional tax is imposed by paragraph (1), if a trustee of such a trust refused to agree to part or all of the correction, there is hereby imposed a tax equal to 50 per-

cent of the amount involved. The tax imposed by this paragraph shall be paid by any such trustee who refused to agree to part or all of the correction.

"(c) JOINT AND SEVERAL LIABILITY.—If more than one person is liable under any paragraph of subsection (a) or (b) with respect to any one act of self-dealing, all such persons shall be jointly and severally liable under such paragraph with respect to such act.

"(d) SELF-DEALING.—

"(1) IN GENERAL.—For purposes of this section, the term 'self-dealing' means any direct or indirect—

"(A) sale, exchange, or leasing of real or personal property between a trust described in section 501(c)(21) and a disqualified person;

"(B) lending of money or other extension of credit between such a trust and a disqualified person;

"(C) furnishing of goods, services, or facilities between such a trust and a disqualified person;

"(D) payment of compensation (or payment or reimbursement of expenses) by such a trust to a disqualified person; and

"(E) transfer to, or use by or for the benefit of, a disqualified person of the income or assets of such a trust.

"(2) SPECIAL RULES.—For purposes of paragraph (1)—

"(A) the transfer of personal property by a disqualified person to such a trust shall be treated as a sale or exchange if the property is subject to a mortgage or similiar lien;

"(B) the furnishing of goods, services, or facilities by a disqualified person to such a trust shall not be an act of self-dealing if the furnishing is without charge and if the goods, services, or facilities so furnished are used exclusively for the purposes specified in section 501(c)(21)(A); and

"(C) the payment of compensation (and the payment or reimbursement of expenses) by such a trust to a disqualified person for personal services which are reasonable and necessary to carrying out the exempt purpose of the trust shall not be an act of self-dealing if the compensation (or payment or reimbursement) is not excessive.

"(e) DEFINITIONS.—For purposes of this section—

"(1) TAXABLE PERIOD.—The term 'taxable period' means, with respect to any act of self-dealing, the period beginning with the date on which the act of self-dealing occurs and ending on the earlier of—

"(A) the date of mailing of a notice of deficiency with respect to the tax imposed by subsection (a)(1) under section 6212, or

"(B) the date on which correction of the act of self-dealing is completed.

"(2) AMOUNT INVOLVED.—The term 'amount involved' means, with respect to any act of self-dealing, the greater of the amount of money and the fair market value of the other property given or the amount of money and the fair market value of the other property received; except that in the case of services described in subsection (d)(2)(C), the amount involved shall be only the excess compensation. For purposes of the preceding sentence, the fair market value—

"(A) in the case of the taxes imposed by subsection (a), shall be determined as of the date on which the act of self-dealing occurs; and

"(B) in the case of taxes imposed by subsection (b), shall be the highest fair market value during the correction period.

"(3) CORRECTION.—The terms 'correction' and 'correct' mean, with respect to any act of self-dealing, undoing the transaction to the extent possible, but in any case placing the trust in a financial position not

worse than that in which it would be if the disqualified person were dealing under the highest fiduciary standards.

"(4) CORRECTION PERIOD.—The term 'correction period' means, with respect to any act of self-dealing, the period beginning with the date on which the act of self-dealing occurs and ending 90 days after the date of mailing of a notice of deficiency under section 6212 with respect to the tax imposed by subsection (b)(1), extended by—

"(A) any period in which a deficiency cannot be assessed under section 6213(a), and

"(B) any other period which the Secretary determines is reasonable and necessary to bring about correction of the act of self-dealing.

"(5) DISQUALIFIED PERSON.—The term 'disqualified person' means, with respect to a trust described in section 501(c)(21), a person who is—

"(A) a contributor to the trust,

"(B) a trustee of the trust,

"(C) an owner of more than 10 percent of—

"(i) the total combined voting power of a corporation,

"(ii) the profits interest of a partnership, or

"(iii) the beneficial interest of a trust or unincorporated enterprise,

which is a contributor to the trust,

"(D) an officer, director, or employee of a person who is a contributor to the trust,

"(E) the spouse, ancestor, lineal descendant, or spouse of a lineal descendant of an individual described in subparagraph (A), (B), (C), or (D),

"(F) a corporation of which persons described in subparagraph (A), (B), (C), (D), or (E) own more than 35 percent of the total combined voting power,

"(G) a partnership in which persons described in subparagraph (A), (B), (C), (D), or (E) own more than 35 percent of the profits interest, or

"(G) a trust or estate in which persons described in subparagraph (A), (B), (C), (D), or (E) hold more than 35 percent of the beneficial interest.

For purposes of subparagraphs (C)(i) and (E), there shall be taken into account indirect stockholdings which would be taken into account under section 267(c), except that, for purposes of this paragraph, section 267(c)(4) shall be treated as providing that the members of the family of an individual are only those indi-

viduals described in subparagraph (D) of this paragraph. For purposes of subparagraphs (C) (ii) and (iii), (F), and (G), the ownership of profits or beneficial interests shall be determined in accordance with the rules for constructive ownership of stock provided in section 267(c) (other than paragraph (3) thereof), except that section 267(c)(4) shall be treated as providing that the members of the family of an individual are only those individuals described in subparagraph (D) of this paragraph.

"(f) PAYMENTS OF BENEFITS.—For purposes of this section, a payment, out of assets or income of a trust described in section 501(c)(21), for the purposes described in clause (i) of section 501(c)(21)(A) shall not be considered an act of self-dealing.

"SEC. 4986. TAXES ON TAXABLE EXPENDITURES.

"(a) TAX IMPOSED.—

"(1) ON THE FUND.—There is hereby imposed on each taxable expenditure (as defined in subsection (d)) from the assets or income of a trust described in section 501(c)(21) a tax equal to 10 percent of the amount thereof. The tax imposed by this paragraph shall be paid by the trustee out of the assets of the trust.

"(2) ON THE TRUSTEE.—There is hereby imposed on the agreement of any trustee of such a trust to the

making of an expenditure, knowing that it is a taxable expenditure, a tax equal to 2½ percent of the amount thereof, unless such agreement is not willful and is due to reasonable cause. The tax imposed by this paragraph shall be paid by the trustee who agreed to the making of the expenditure.

"(b) ADDITIONAL TAXES.—

"(1) ON THE FUND.—In any case in which an initial tax is imposed by subsection (a)(1) on a taxable expenditure and such expenditure is not corrected within the correction period, there is hereby imposed a tax equal to 100 percent of the amount of the expenditure. The tax imposed by this paragraph shall be paid by the trustee out of the assets of the trust.

"(2) ON THE TRUSTEE.—In any case in which an additional tax is imposed by paragraph (1), if a trustee refused to agree to a part or all of the correction, there is hereby imposed a tax equal to 50 percent of the amount of the taxable expenditure. The tax imposed by this paragraph shall be paid by any trustee who refused to agree to part or all of the correction.

"(c) JOINT AND SEVERAL LIABILITY.—For purposes of subsections (a) and (b), if more than one person is liable under subsection (a)(2) or (b)(2) with respect to the making of a taxable expenditure, all such persons shall be jointly

and severally liable under such paragraph with respect to such expenditure.

"(d) TAXABLE EXPENDITURE.—For purposes of this section, the term 'taxable expenditure' means any amount paid or incurred by a trust described in section 501(c)(21) other than for a purpose specified in such section.

"(e) DEFINITIONS.—

"(1) CORRECTION.—The terms 'correction' and 'correct' mean, with respect to any taxable expenditure, recovering part or all of the expenditure to the extent recovery is possible, and where full recovery is not possible, contributions by the person or persons whose liabilities for black lung benefit claims (as defined in section 192(e)) are to be paid out of the trust to the extent necessary to place the trust in a financial position not worse than that in which it would be if the taxable expenditure had not been made.

"(2) CORRECTION PERIOD.—The term 'correction period' means, with respect to any taxable expenditure, the period beginning with the date on which the taxable expenditure occurs and ending 90 days after the date of mailing of a notice of deficiency under section 6212 with respect to the tax imposed by subsection (b)(1), extended by—

"(A) any period in which a deficiency cannot be assessed under section 6213(a), and

"(B) any other period which the Secretary determines is reasonable and necessary to bring about correction of the taxable expenditure.

"SEC. 4987. TAX ON EXCESS CONTRIBUTIONS TO BLACK LUNG BENEFIT TRUSTS.

"(a) TAX IMPOSED.—There is hereby imposed for each taxable year a tax in an amount equal to 5 percent of the amount of the excess contributions made by a person to or under a trust or trusts described in section 501(c)(21). The tax imposed by this subsection shall be paid by the person making the excess contribution.

"(b) EXCESS CONTRIBUTION.—For purposes of this section, the term 'excess contribution' means the sum of—

"(1) the amount by which the amount contributed for the taxable year to a trust or trusts described in section 501(c)(21) exceeds the amount of the deduction allowable to such person for such contributions for the taxable year under section 192, and

"(2) the amount determined under this subsection for the preceding taxable year, reduced by the sum of—

"(A) the excess of the maximum amount allowable as a deduction under section 192 for the tax-

able year over the amount contributed to the trust or trusts for the taxable year, and

"(B) amounts distributed from the trust to the contributor which were excess contributions for the preceding taxable year.

"(c) TREATMENT OF WITHDRAWAL OF EXCESS CONTRIBUTIONS.—Amounts distributed during the taxable year from a trust described in section 501(c)(21) to the contributor thereof the sum of which does not exceed the amount of the excess contribution made by the contributor shall not be treated as—

"(1) an act of self-dealing (within the meaning of section 4985),

"(2) a taxable expenditure (within the meaning of section 4986), or

"(3) an act contrary to the purposes for which the trust is exempt from taxation under section 501(a).".

(d) PUBLICITY OF INFORMATION.—Section 6104 of such Code (relating to publicity of information required from certain exempt organizations and certain trusts) is amended—

(1) by inserting "(other than in paragraph (21) thereof)" after "section 501(c)" in subsection (a)(1), and

(2) by adding at the end of subsection (b) thereof the following sentence: "This subsection shall not apply to information required to be furnished by a trust described in section 501(c)(21).".

(c) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 275(a)(6) of such Code is amended by striking out "and 44" and inserting in lieu thereof "44, and 45".

(2) Section 6161(b)(1) of such Code is amended by striking out "or 44" each place it appears and inserting in lieu thereof "44, or 45".

(3)(A) Section 6211(a) of such Code is amended by striking out "and 44" and inserting in lieu thereof "44, and 45".

(B) Section 6211 of such Code is amended by striking out "or 44" each place it appears and inserting in lieu thereof "44, or 45".

(4)(A) Section 6212(a) of such Code is amended by striking out "or 44" and inserting in lieu thereof "44, or 45".

(B) Section 6212(b)(1) of such Code is amended by striking out "or chapter 44" and inserting in lieu thereof "chapter 44, or chapter 45".

(C) Section 6212(b)(1) of such Code is amended by striking out "chapter 44, and this chapter" and in-

serting in lieu thereof "chapter 44, chapter 45, and this chapter".

(D) Section 6212(c)(1) of such Code is amended by striking out "or of chapter 42 tax (other than under section 4940)" and inserting in lieu thereof "of chapter 42 tax (other than under section 4940), or of chapter 45 tax".

(5)(A) Section 6213(a) of such Code is amended by striking out "or 44" and inserting in lieu thereof "44, or 45".

(B) Section 6213(e) of such Code is amended by inserting ", 4985 (relating to taxes on self-dealing), or 4986 (relating to taxes on taxable expenditures)" after "4975 (relating to excise taxes on prohibited transactions)".

(C) Section 6213(e) of such Code is amended by striking out "or 4975(f)(4)" and inserting in lieu thereof "4975(f)(6), 4985(e)(4), or 4986(e)(2)".

(D) Section 6213(f) of such Code is amended by striking out "or chapter 42 or 43" each place it appears and inserting in lieu thereof "or chapter 41, 42, 43, 44, or 45".

(6)(A) Section 6214 of such Code is amended by striking out "or 44" each place it appears in the text thereof and inserting in lieu thereof "44, or 45".

(B) The caption of section 6214(c) of such Code is amended by striking out "or 44" and inserting in lieu thereof "44, or 45".

(7) Section 6344(a)(1) of such Code is amended by striking out "or 44" and inserting in lieu thereof "44, or 45".

(8) Section 6405(a) of such Code is amended by striking out "private foundations and pension plans under chapters 42 and 43" and inserting in lieu thereof "public charities, private foundations, pension plans, real estate investment trusts, or operators' trust funds under chapter 41, 42, 43, 44, or 45".

(9) Section 6501(e)(3) of such Code is amended by striking out "or 43" and inserting in lieu thereof "43, 44, or 45".

(10) Section 6501(n) of such Code is amended—

(A) by striking out "CHAPTER 42 TAXES" in the caption and inserting in lieu thereof "CHAPTER 42 AND SIMILAR TAXES", and

(B) by striking out the first sentence of paragraph (1) and inserting in lieu thereof the following: "For purposes of any tax imposed by chapter 42 (other than section 4940), section 4975, section 4985, or section 4986, the return referred to in this

section shall be the return filed by the private foundation, plan, or trust (as the case may be) for the year in which the act (or failure to act) giving rise to liability for such tax occurred.".

(11)(A) Section 6503(g) of such Code is amended by striking out "or section 507 or section 4971 or section 4975" and inserting in lieu thereof "or section 507, 4971, 4975, 4985, or 4986".

(B) Section 6503(g) of such Code is amended by striking out "or 4975(f)(4)" and inserting in lieu thereof "4975(f)(6), 4985(e)(4) or 4986(e)(2)".

(12) Section 6511(f) of such Code is amended to read as follows:

"(f) SPECIAL RULE FOR CHAPTERS 42, 43, AND 45 TAXES.—For purposes of any tax imposed by chapter 42, 43, or 45, the return referred to in subsection (a) shall be the return specified in section 6501(n)(1).".

(13) Section 6512 of such Code is amended by striking out "or 44" each place it appears and inserting in lieu thereof "44, or 45".

(14) The caption of section 6601(c) of such Code is amended by striking out "OR 44" and inserting in lieu thereof "44, OR 45".

(15) Section 6862(a) of such Code is amended by

striking out "gift, and certain excise taxes)" and inserting in lieu thereof "gift tax, and taxes imposed by chapter 41, 42, 43, 44, or 45)".

(16)(A) Section 7422(e) of such Code is amended by striking out "or 44" and inserting in lieu thereof "44, or 45".

(B) The caption of section 7422(g) of such Code is amended by striking out "OR 43" and inserting in lieu thereof ", 43, 44, OR 45".

(C) Section 7422(g) of such Code is amended by striking out "or 4975" each place it appears and inserting in lieu thereof "4975, 4985, or 4986".

(D) Section 7422(g)(1) of such Code is amended by inserting "section 4985(a) (relating to initial taxes on self-dealing), section 4986(a) (relating to tax imposed on taxable expenditures)," after "section 4975(a) (relating to initial tax on prohibited transactions),".

(E) Section 7422(g)(1) of such Code is amended by striking out "or section 4975(b) (relating to additional tax on prohibited transactions)," and inserting in lieu thereof "section 4975(b) (relating to additional tax on prohibited transactions), section 4985(b) (relating to additional taxes on self-dealing), or section 4986(b) (relating to additional taxes on taxable expenditures),".

(17) Section 7454(b) of such Code is amended by

inserting "or whether the trustee of a trust described in section 502(c)(21) has 'knowingly' participated in an act of self-dealing (within the meaning of section 4985) or agreed to the making of a taxable expenditure (within the meaning of section 4986)," after "section 4945),".

(f) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to contributions, acts, and expenditures made after December 31, 1977, in taxable years beginning after such date.

SEC. 205. ACCESS TO CERTAIN TAX RETURN INFORMATION BY NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH.

Section 6103(m) of the Internal Revenue Code of 1954 (relating to disclosure of taxpayer identity information) is amended—

(1) by striking out "and" at the end of paragraph (1);

(2) by striking out the period at the end of paragraph (2) and inserting in lieu thereof a comma and the word "and"; and

(3) by adding at the end thereof the following new paragraph:

"(3) upon written request, to disclose the mailing address of taxpayers to officers and employees of the National Institute for Occupational Safety and Health

solely for the purposes of locating individuals who are, or may have been, exposed to occupational hazards in order to determine their vital status and to refer sick or injured workers for medical care and treatment.".

Calendar No. 312

95TH CONGRESS
1ST SESSION

S. 1538

[Report No. 95–209]

[Report No. 95–336]

A BILL

To amend title IV of the Federal Coal Mine Health and Safety Act to improve the black lung benefits program established thereunder, to impose an excise tax on the sale or use of coal, and for other purposes.

By Mr. RANDOLPH

MAY 16, 1977

Read twice and ordered to be placed on the calendar

MAY 26 (legislative day, MAY 18), 1977

Referred to Committee on Finance with instructions that the bill be ordered reported no later than July 1, and reported to the Senate no later than July 12, by unanimous consent

JULY 12 (legislative day, MAY 18), 1977

Reported with amendments

BLACK LUNG BENEFITS REVENUE ACT OF 1977

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now proceed to the consideration of S. 1538, which will be stated by title.

The legislative clerk read as follows:

A bill (S. 1538) to amend title IV of the Federal Coal Mine and Safety Act to improve the black lung benefits program established thereunder, to impose an excise tax on the sale or use of coal, and for other purposes.

The Senate proceeded to consider the bill, which had been reported from the Committee on Finance with amendments.

The ACTING PRESIDENT pro tempore. Time for debate on this bill is limited to 2 hours, to be equally divided between and controlled by the Senator from West Virginia (Mr. RANDOLPH) and the Senator from New York (Mr. JAVITS), with 1 hour on any amendment in the first degree—except an amendment by Mr. CHAFEE, on which there shall be 1 hour, and an amendment by Mr. JAVITS, on which there shall be 2 hours, with 30 minutes on any amendment in the second degree, with 20 minutes on any debatable motion, appeal, or point of order, and with the vote on final passage to occur before the Senate completes its business for today.

Who yields time?

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum, but first I ask unanimous consent that the time not be charged against anybody.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

UNANIMOUS-CONSENT AGREEMENT

Mr. ROBERT C. BYRD. Mr. President, I have discussed with the distinguished minority leader a proposed unanimous-consent request which I think is absolutely necessary in the light of conversations that have been had with the distinguished manager of the black lung bill, Mr. RANDOLPH; with the distinguished ranking minority member of the committee, Mr. JAVITS; with the distinguished chairman of the committee, Mr. WILLIAMS, and with other Members, in order that we may avoid what otherwise could become a constitutional question. We do not want any constitutional question to endanger the black lung bill. We do not want the Senate to have to do its work twice.

By way of explanation as to why we have the black lung bill up today, may I say that I have urged Members of the other body to get the black lung bill over here as soon as they possibly could; but for reasons that I am sure are good, they have been unable to do that to date.

In yesterday's Washington Post, I noticed a story which caused me to feel that the black lung bill was in trouble in the House. Consequently, I felt constrained to move forward with the bill today, particularly in view of the fact that we do not have anything else we can do today. We do not have available to us on the calendar any other work we can do which is not subject to a 3-day rule or subject to a budget waiver or some other restriction.

Discussing the matter with the distinguished minority leader, we felt under the circumstances we had to go forward with this bill today. Having laid it down and gotten a request to complete it today, then I was reminded by Senator RANDOLPH of the constitutional question about which he wrote some days ago in a letter to Mr. PERKINS on the other side of the Hill, and he was kind enough to send me a copy of that legislation.

The minority leader is fully in accord with me that because of these reasons a unnaimous-consent agreement is going to be necessary to avoid the constitutional question and in order to avoid the Senate's having to do its work twice.

So the request is as follows:

I ask unanimous consent that the agreement on S. 1538, the black lung bill be modified so that instead of final passage of the bil before the Senate completes its business today, after third reading of the bill it be returned to the Calendar and the majority leader shall be powered to have the Senate resume its consideration at any time—when I say any time, of course, I am going to consult with the minority leader and the manager of the bill and the ranking member, the latter two of whom will have to manage the bill—without further debate or motions thereon in order.

Mr. President, I further ask unanimous consent that when the Senate receives a black lung bill from the House, it be placed on the Calendar, the majority leader be empowered to have the Senate consider it at any time—with the same consultations—and that no amendment or motion relative thereo be in order other than a motion to strike all after the enacting clause and insert in lieu thereof the text of S. 1538 as amended by the Senate, with no debate in order with respect to the House bill or the substitute therefor.

Mr. BAKER. Mr. President, reserving the right to object—and I will not object—the distinguished majority leader and I discussed this matter, and I have, in turn, discussed it with representatives of the distinguished senior Senator from New York, who is the ranking member of the committee and has a deep interest in this subject.

I think the agreement is satisfactory, and I am prepared in a moment to agree to its being entered.

I think, Mr. President, it is important to proceed with this matter. Notwithstanding this difficulty. We have to try to accommodate this disagreement, because the black lung bill is a matter of such consequence and importance to the people of my area, my State, my region of the country, that I think it is important to proceed as promptly as possible.

So I express my appreciation to the distinguished majority leader and the chairman of the committee, to Senator RANDOLPH and to Senator JAVITS, for putting us in a position to act with promptness on the Senate side even though we have to make extraordinary and unusual arrangements to provide for it.

This agreement has been cleared with the distinguished Senator from New York, and I do not object to it.

The ACTING PRESIDENT pro tempore. The Senator from West Virginia.

Mr. RANDOLPH. Reserving the right to object—and I shall not object—I think the procedure as initiated by the majority leader, and in agreement with the minority leader, both Members of the Senate who not only in their leadership capacities but also as Senators who are intensely interested in the subject matter and know the reasons why as quickly as possible we should come to grips once again with the amendment to the law which originally passed in 1969, is, I think, a fair and also satisfactory manner in which we can proceed at this time and be ready for later action.

We are conscious of and, of course, the request made by the able majority leader, Mr. ROBERT C. BYRD, indicates we are attempting to work with the House of Representatives in this matter. We recognize the work that has been done there as well as the work, of course, which has been done here.

This has not been a so-called side issue within the Committee on Human Resources. This has been a very main concern of many of us in the committee.

So I commend the leader of our majority party and the leader of the minority party in this effort. There is no majority and minority, really. We are partners in doing something which I believe is very important. While I am commending the role of the majority leader in this effort, I vividly recall his participation in the development of the black lung benefits program in 1969. Senator BYRD and I together authored the Senate provisions which ultimately became title IV of the Federal Coal Mine Health and Safety Act. I appreciated his efforts then, just as I appreciate them now.

I want to state at this time, and I want to be very clearly understood, that one of the difficulties I think we must find a way to overcome—and it is not for us to do it—to hopefully, through the proper modus operandi within the United Mine Workers Union, to have the disastrous strikes that are wildcat in nature and not approved by the union itself, be minimized so that the production of coal so necessary to our energy supply reserve, and that situation be hopefully remedied as quickly as possible.

The American people have a right to expect that that be done. I think that the majority of coal miners want to be on the job rather than away from their work.

I have no further comment and I thank the majority leader.

The ACTING PRESIDENT pro tempore. Is there objection? The Chair hears none, and the modification of the unanimous-consent agreement propounded by the Senator from West Virginia is agreed to, and rule XII is waived.

Mr. ROBERT C. BYRD. Well, rule XII does not have to be waived, because we are not passing a bill.

The ACTING PRESIDENT pro tempore. The Parliamentarian informs me that when an agreement upon which rule XII had to be waived is modified it has to be again waived.

Mr. ROBERT C. BYRD. The Chair is correct.

Mr. RANDOLPH. Mr. President, because of the unanimous-consent request which has been granted by the action of the majority leader in concert with the agreement of the minority leader, I ask unanimous consent to have printed in the RECORD a copy of a letter that I addressed to the Honorable CARL PERKINS, the chairman of the Committee on Education and Labor of the House of Representatives, dated July 13. A copy of that letter was sent to the able majority leader, Senator ROBERT C. BYRD. I ask unanimous consent also that a copy of a letter from Representative PERKINS to our majority leader under date of July 20 be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

WASHINGTON, D.C.,
July 13, 1977.

Hon. CARL D. PERKINS,
Chairman, Committee on Education and Labor, House of Representatives, U.S. Senate, Washington, D.C.

DEAR CARL: Pursuant to your telephone call of yesterday requesting my thoughts on how the House and Senate might proceed in the development of black lung reform legislation, following are my views on this matter.

The Senate Human Resources Committee favorably reported S.1538 on May 16, 1977. It is quite similar to the bill reported last year. Yesterday, July 12 the Senate Finance Committee filed its report on the bill. In general, Finance adds a separate title to the bill to contain the tax provisions (1 percent ad valorem), the trust fund, the so-called Hansen amendment which permits coal companies to set up, with protections, tax-free black lung benefit trusts, and a not-directly germane Nelson provision relating to NIOSH.

The Senate Finance Committee takes very seriously (and broadly) the provision of Article I, Section 7 of the Constitution which requires revenue raising measures to originate in the House. The only ways to meet the Constitution problem, in the absence of House action on H.R. 4544, are: (1) pass S.1538 and tack it on to a Housse-passed tariff bill, or (2) pass S. 1533 and sit on it until the House acts.

The first course is risky because Ways and Means would in all likelihood express serious concerns; a germaneness issue could be raised; and that Committee could demand hearings on the legislation, which would result in delays that would eliminate any hope of congressional action this year.

The second alternative is perhaps just as risky, for those who oppose the legislation could attack the bill on constitutional grounds, asserting that Senate passage is Senate action within the meaning of Article I, Section 7. In addition, we could be faced with the specter of having the Senate consider black lung legislation twice: once as described above, and again when the House bill comes over.

As a result of these knotty problems it is apparent to me that the House must act first and act quickly if we are to get the bill to the President this year. Only a little over three (3) weeks remain before the August recess, and September is going to be filled with appropriations and energy measures.

Carl, these are my candid observations in this matter. It seems to me that you must proceed quickly. I have talked with Bob Byrd about this, and am providing him a copy of this letter, not only because of his responsibility for moving legislation in the Senate, but also because of his intense interest in this subject.

With hope for success in our mutual efforts, I am,

Truly,

JENNINGS RANDOLPH.

WASHINGTON, D.C.,
July 20, 1977.

Hon. ROBERT C. BYRD,
Majority Leader, U.S. Senate, Washington, D.C.

DEAR BOB: With further reference to our conversation regarding the Black Lung Benefits Reform Act, I have obtained assurances from the House leadership which will enable us to move in the House next week on H.R. 4544.

In line with our understanding, it would be appreciated if you would continue to hold the Senate bill until the House has acted.

With warm regards,

Sincerely,

CARL D. PERKINS,
Chairman.

ORDER FOR NO VOTES BEFORE 12:30 P.M. TODAY

Mr. ROBERT C. BYRD. Mr. President, I have cleared this with the distinguished manager of the bill. I ask unanimous consent that, if any rollcall votes are ordered that might otherwise occur before 12:30 p.m. today, they not occur before 12:30 p.m. so as to prevent interruption of committees and conference committees. They are very busy.

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

Mr. BAKER. Mr. President, I ask unanimous consent that it be in order to ask for the yeas and nays on the Chafee amendment at this time.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. CHAFEE. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The ACTING PRESIDENT pro tempore. Who yields time? The Senator from West Virginia.

Mr. RANDOLPH. I yield myself such time as I may desire. I ask unanimous consent that during the consideration of S. 1538, the following staff be granted the privilege of the floor: Robert Humphreys, Michael Goldberg, and Louise Ringwalt.

I also ask unanimous consent in addition to those names that Mark McConaghy, Lawrence Brown, and Richard Ruge be accorded the same privileges.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. RANDOLPH. Mr. President, I make a point of order of no quorum.

The ACTING PRESIDENT pro tempore. On your time?

Mr. RANDOLPH. On our time, yes.

The ACTING PRESIDENT pro tempore. The clerk will call the roll on the time of the Senator from West Virginia.

The second assistant 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. SASSER). Without objection, it is so ordered.

Mr. RANDOLPH. Mr. President, it is

my privilege to bring before the Senate a long-awaited measure, S. 1538, the Black Lung Benefits Reform Act of 1977.

With other members of the Committee on Human Resources of the Senate I have attempted since March 1976, to bring a black lung reform bill into this forum for debate and hopeful passage.

Last year repeated delays resulted in the postponement of H.R. 10760 until, perhaps I can use the word literally, the 11th hour; the 94th Congress adjourned without considering this needed reform legislation.

This legislation has the strong support of the majority leader, my able colleague from West Virginia (Mr. ROBERT C. BYRD), and, hopefully, Senators on both sides of the aisle.

Earlier in connection with the unanimous-consent request, I indicated that I did not think in terms of majority-minority in this matter but, hopefully, a partnership which might permit us, frankly challenge us, to enact helpful well-reasoned legislation.

We have moved in the 95th Congress with relatively prompt dispatch in this matter. We know that the House of Representatives is expected to act soon on its bill, H.R. 4544. And I am certain Congress will be able to present a black lung reform bill to the President prior to the adjournment of the first session of the 95th Congress.

I speak very earnestly to my colleagues when I say that they, as well as I, are aware that our Committee on Human Resources reported favorably S. 1538 as an original bill on May 16, 1977, and that action was taken by unanimous-consent agreement to refer the measure to the Committee on Finance of the Senate for review of tax and trust fund provisions. That committee reported S. 1538 with amendments to the text of the bill on July 12, 1977.

I am gratified that in the Chamber is the articulate and able Senator from New York, and I use those words not as pleasantries, but in a way that expresses my appreciation always to him. We are not always in agreement on matters, but his knowledge and perception bring to our committee and to this subject matter the very best of thought. So, Senator JAVITS is a very active person in connection with what we have done in the committee and what hopefully we can determine in the Senate today.

When the Finance Committee made its revision, it brings to our attention that S. 1538 now consists of two titles, title I, the Black Lung Benefits Reform Act of 1977, which includes except for the Black Lung Disability Fund, all the substantive provisions that were reported by our Committee on Human Resources.

Then, there is title II, the Black Lung Benefits Revenue Act of 1977, which contains the trust fund provisions, a 1-percent ad valorem tax on coal, the authorization of coal operator trusts for future liability for black lung benefit payments under Federal or State programs, and a provision that relates to access by the National Institute for Occupational Safety and Health to mailing addresses of persons exposed to occupational health hazards.

In addition, it is important to note that the Committee on Finance modified one provision of the original bill. That provision is section 424(f), which authorizes the Secretary of Labor to enter into agreements with coal operators to provide what amounts to last resort insurance.

I believe the modifications, to which I shall address myself later, are acceptable to the members of our Committee on Human Resources.

Mr. President, title IV of the Federal Coal Mine Health and Safety Act of 1969, I think, has been both a blessing and perhaps a curse—a blessing because hundreds of thousands of deserving beneficiaries have received and continue to receive compensation income through this worthwhile Federal program. It is also perhaps a curse, because thousands of claimants who have been denied benefits, and thousands of others who have waited for years for their claims to be decided, are not yet brought into the benefits under the original act and the later amendments.

The program has really been harsh to many who have made their claims, submitted the claims and, through administrative or what I call legal quirks—I am not saying maneuvering—they have been determined to be ineligible for benefits.

These and other reasons are compeling, in my thinking, for the enactment of this program of reform legislation. Widows who know to a certainty—there is no dispute about it—that their husbands were totally disabled by black lung, but are barred from receiving benefits, because they have no medical evidence to substantiate their claim, are one group. A second group: Miners who are told they are disabled, and whose chest X-rays are interpreted as positive for pneumoconiosis, but who are denied benefits because the rereaders of the X-rays hired by the Labor Department disagree with the original X-ray interpretation.

Third are those widows whose claims are clearly valid, who would receive benefits except for the passage of time since the miner husband's death.

Then there is a fourth group, that of miners who are ill, but are faced with the dilemma of whether to continue working or whether to stop their labor and file a black lung claim, perhaps taking a chance on the probability of approval of such claims sometime out there in the future.

Finally, there are all the black lung claimants who must wait an average of 630 days for their claims to be processed, I remind my colleagues, only to have such claims, in 97 percent of the cases approved by the Labor Department, controverted by the responsible coal company.

Mr. President, these are some of the reasons that have brought our committee to the point of bringing this measure before the Senate. We have been in the process, always hopefully, of reasoned improvement of this legislative history, through the enactment in 1969 and 1972—passage of that act made necessary, because there is the pulmonary and respiratory disease situation that has been added, of course, in the consideration of approval of the claim, to the X-ray finding itself.

This was a step forward, because the social security system had not taken into account the pulmonary and respiratory ailments, which are very marked in connection with those who labor in the coal mines of this country.

A black lung benefit program has certainly—and I underscore this—worked well and favorably for many; but for many other persons it has been something which causes sleepless nights. Using the language in a metaphorical sense, it has been a quagmire, in some instances, because of the frustrations and the disappointments that have occurred.

S. 1538 will not solve all the problems nor fulfill the wishes of every claimant for black lung benefits. It is, however, expected to, and I think will, necessarily result in dramatic improvement in the program. It is urgently needed, and it can give a certain degree of economic security to thousands of disabled miners, widows, and children, who are now, we believe, denied the benefits of this program.

For the information of my colleagues who are not conversant with the terrible occupational disease which is referred to commonly as black lung—the correct medical term is pneumoconiosis—and for those of my colleagues who are familiar with the destructiveness, the toll which follows, I think it is important that we, to a degree, understand that we have not been able to move as quickly with the modifications in the law, with the changes in interpretation which cause us, hopefully, to act; and for that reason I think it is important that there be in the RECORD a description which I shall briefly give of title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended—popularly known, as I have earlier mentioned, as the Black Lung Benefits Act.

Title IV provides benefits for miners totally disabled by pneumoconiosis, and for their eligible survivors, including the widows, the children, the dependent parents, and siblings.

A miner with pneumoconiosis who worked 10 or more years in the mines is presumed to have contracted the pneumoconiosis in that coal mine employment.

A miner with complicated pneumoconiosis is irrebuttably presumed to be totally disabled. A diseased miner who worked 10 or more years in the mines and died from what I have mentioned, a respiratory disease, is presumed to have died due to pneumoconiosis. A miner with 15 or more years in an underground coal mine or in a surface mine with comparable dust conditions, whose chest X-ray is negative for complicated pneumoconiosis, and who has or had a totally disabling respiratory or pulmonary impairment, which I also mentioned earlier, is presumed to be totally disabled due to pneumoconiosis.

Title IV consists of two separate benefit programs, part B and part C. Part B is administered by the Secretary of Health, Education, and Welfare, a Fed-

eral program under which successful claimants who filed on or before June 30, 1973, are entitled to the payment for benefits by the Federal Government for life or for as long as they retain their eligibility or continue it.

Part C is administered by a State workers' compensation agency meeting minimum standards, or by the Secretary of Labor where such standards are not met.

No States as yet met the minimum requirements. The responsible coal operators, and there are many such responsible coal operators, pay the benefits as in traditional workers' compensation programs. Under the law, the coal industry is liable for claims filed after June 30, 1973, for payment on or after January 1, 1974.

The Department of Labor is responsible for paying benefits when the responsible operator cannot be determined, which is the case currently in approximately 75 percent of the approved claims.

The law as amended in 1972, which mentioned previously, terminates employer liability for claims after December 30, 1981.

The 1972 amendments resulted from the inadequacies and the inequities of the law and its administration, as I have earlier indicated. I have reemphasized these points at this juncture. A greater percentage of claims was allowed under part B, as a consequence of the 1972 amendments, and certain injustices were rectified. Yet, as I earlier said, many problems continue to plague the fair administration of the program.

More importantly, these problems translate into this frustration, this delay, this perpetual hardship in many cases, for thousands of disabled coal miners and the widows of those who died producing this vital energy resource for America, who are looking, and properly so, to a just conclusion of the earlier law and the amendments, including the bill pending before us, for affirmative action.

Mr. President, at this point I am going to outline the form and meaning of the provisions contained in the pending bill. For the most part, I will confine my remarks to title I. Because they are so closely interrelated, I will also touch on the provisions of title II, anticipating that the very able chairman of the Committee on Finance (Mr. LONG) subsequently will treat this subject matter at greater length.

Section 102 of the bill amends these definitions: "pneumoconiosis," "miner," and "total disability."

Under current law, pneumoconiosis is defined as "a chronic dust disease of the lung arising out of coal mine employment."

Our bill adds to this definition to include the related complications of the disease, and respiratory and pulmonary impairment arising from coal mine employment.

Mr. President, these additions that I have been mentioning substantially mirror the administrative practices, particularly that of the Social Security Administration. I think it is important to incorporate in the law the concept that pneumoconiosis, as it exists among coal miners, is not an easily identifiable condition, but may be a joining of conditions, which, together, result in the total disability of the miner. A chest X-ray may not conclusively demonstrate the existence of moderate or severe coal workers' pneumoconiosis, but the miner may well be totally disabled by work-related respiratory or pulmonary impairments. I have stressed that which we brought into being in the amendments of 1972.

The term "miner" is redefined to include workers who process and transport coal, self-employed miners, coal mine construction workers are also included, but only to the extent that they worked in conditions substantially similar to conditions in underground mines. Railroad, trucking, bargeline, and coke oven workers are not included in the definition.

"Total disability" is listed as a definition, which I think is fair, but the term is substantive as well as descriptive. S. 1538 propounds several important changes in the law which will affect eligibility for benefits. First, it authorizes the Secretary of Labor to establish medical criteria for determining total disability in coal mines under part C. Currently the Social Security Administration imposes on the Department of Labor its own standards, which are considerably more restrictive than the standards it uses for part B claimants. Second, the bill provides that a miner's employment in a mine at the time of death may not be used as conclusive evidence that the miner was not totally disabled. In the past, miners, frankly, have literally worked themselves to death. Because such miners were working when they died, their widows have not been able to show they were totally disabled. In like manner, the bill also provides that a miner whose work circumstances have changed to indicate reduced ability to perform his usual coal mine work may not be conclusively presumed to be totally disabled.

Section 103 of the bill eliminates in the part B benefit program the offset, or reduction, of black lung benefits in cases in which the beneficiary is receiving State workers' compensation for injuries other than pneumoconiosis. Part C of title IV now has this limitation on the offsetting of benefits; this section conforms part B to part C. If a State award is made for black lung, then the Federal black lung payment should be reduced. The bill does not disturb that principle.

Section 104 prohibits the payment of benefits to working miners, except those conclusively presumed to be totally disabled under section 411(c)(3) of the act, but the provision allows miners to file claims while still working, to have their claims determined, and to receive benefits if their coal mine work terminates within a year after a final determination of eligibility for benefits.

The next section, section 105, contains three important provisions. First, the appropriate Secretary—HEW for part B, and Labor for part C—is required to accept the interpretation of an X-ray submitted by the claimant if certain conditions are met. The interpreting physician must be a board certified or board eligible radiologist; the person administering the X-ray must be a radiologist or qualified radiologic technologist or technician; and the X-ray must be of a quality sufficient to demonstrate the presence of pneumoconiosis. We are taking away the question mark and trying to be very explicit. Further, the Secretary need not accept the interpretation if he has reason to believe the claim is fraudulent. Finally, the Secretary of Labor may by regulation establish standards for the administration of chest X-rays.

Notwithstanding these what I consider to be formidable safeguards, there was substantial sentiment expressed by members of the Human Resources Committee and the Finance Committee that this provision eliminates quality control and ties the hands of the Secretary to the extent that a "bad" interpretation could not be overturned. As a result, presumably, undeserving claims might be allowed. In my opinion—and I believe I have studied this issue more carefully than perhaps any other member of this body—this position is founded on a misunderstanding of the value of the X-ray as a diagnostic tool, on its proper weight as evidence in a black lung determination, and on the relative importance of the X-ray re-reads. I intend to discuss this issue in considerable depth later on, and I intend to show that the provision in the bill relating to X-ray interpretation is sound, appropriate, and necessary.

How much time, now, Mr. President, has been consumed?

The PRESIDING OFFICER (Mr. GLENN). Twenty minutes remain to the Senator.

Mr. RANDOLPH. A second provision of section 105 eases the difficulty encountered by widows in attempting to substantiate claims where medical evidence of the miner's condition is scanty or nonexistent. A survivor's claim is to be approved in cases of no medical evidence or if such evidence is inclusive, when other evidence in the record, including affidavits, taken as a whole establishes that the miner was totally disabled due to pneumoconiosis when he died, or that his death was due to pneumoconiosis.

The provision restates and strengthens the existing law, which has heretofore been largely ignored. Section 411(c)(4) states that—

> In the case of a living miner, a wife's affidavit may not be used by itself to establish the presumption.

For purposes of this 15-year rebuttal presumption therefore it was, and remains the intent of Congress that a widow's affidavit may be used by itself to establish that presumption. The provision in the bill affirms that affidavits are sufficient to establish a claim for benefits in many cases.

The committee further intends that, henceforth, claims examiners must go behind the cause of death listed on a death certificate. Prior to enactment of the 1969 act there was little reason for the coalfield doctor or coroner to diag-

nose a miner's illness, or certify the cause of death, as anything other than the immediate cause of death—"heart attack" or "heart failure" are most commonly listed. but such terms do not tell much about the underlying causes of the miner's expiration, the cause of the complications of the miner's employment which have led to pneumoconiosis.

Finally, section 105 of S. 1538 requires that each miner claimant be given an opportunity to undergo a complete pulmonary evaluation. In the past, physical examinations often have not included arterial blood gas testing, either because such tests are too expensive, or the facilities for the tests are not readily available. Yet, in many cases the inability of the lungs to transfer oxygen to the blood stream is the major cause of disability.

Each section of the bill is important, but I will not detail more of the matters that will be placed, perhaps by me, as a part of the RECORD.

In the interest of time I will discuss only two others before moving to title II of S. 1538.

Section 107, entitled "Miscellaneous," is a catchall section which includes a number of vital provisions. One of these would provide an entitlement to benefits to the eligible survivor of a miner who was employed for 25 years or more in a coal mine prior to June 30, 1971, if such miner died prior to the date of enactment of the 1977 bill. This entitlement is not automatic; it is a presumption that can be rebutted by establishing that the miner was not partially or totally disabled when he died. Further, such survivors are to provide, on request of the Secretary, any available evidence concerning the miner's physical condition at the time of death.

Current law requires that a claim by a miner be filed within 3 years after the discovery of total disability due to pneumoconiosis, or the date of the miner's death. With respect to a claim filed on the basis of section 411(c)(4)—the 15-year rebuttable presumption—such claim, in the case of a living miner, must be filed within 3 years of last exposed employment in a mine; in the case of a survivor's claim, that must be filed within 15 years from the date of last exposed employment. This provision has resulted in unnecessary and unintended hardship for many claimants, particularly widows of long standing. In all too many cases, the only bar to the approval of a claim has been the passing of time. This artificial and heartless barrier must be removed.

Another provision of section 107 eliminates the termination of payment of part C claims which under existing law is to occur on December 30, 1981. This has the effect of making the program permanent.

The section also makes the amendments of the bill to part B applicable to part C, and eliminates the June 30, 1971, last-date-of-employment cutoff applicable to part C claims filed on the basis of section 411(c)(4).

Other provisions in this section are discussed in the report of the Committee on Human Resources.

Finally, Mr. President, section 110 provides for the expedited processing of claims previously denied under part B or part C. The denied claimant is to be contacted by the Secretary of Labor, is to be provided a simple postcard type form on which the claimant is to indicate whether he or she wishes to have the claim reviewed, and an affirmative indication will constitute the filing of a new claim. Additional evidence to support a claim may be taken where necessary. Benefits previously denied claimants whose claims are approved following review are to be awarded retroactively. For part B denied claimants, benefits are to be paid as of January 1, 1974. For section 415 and part C claimants, benefits are to be paid as of January 1, 1974, or the date the original claim was filed, whichever is later.

Mr. President, as we think of title II of the bill, that title, as Senator JAVITS knows, is a matter for consideration of the Committee on Finance.

At the outset, I want to express my appreciation to the chairman of that committee (Mr. LONG). We have talked about this matter many times. Also, to the chairman of the Subcommittee on Taxation and Debt Management (Mr. HARRY F. BYRD, JR.), who is knowledgeable on the problem. And to other members of the committee who have been working to expedite the consideration of this important matter.

The Committee on Finance has, with the assistance of the Joint Committee on Taxation, and with its usual high level of professionalism, made a substantial contribution to the development of S. 1538, and there has been a substantial contribution from that section of the Senate to the development of S. 1538.

Although the committee has placed the Black Lung Disability Fund in title II of the bill, there have been no substantial modifications of the fund provisions as compared to the bill originally reported by the Committee on Human Resources.

The tax now contained in the bill is a 1 percent ad valorem tax on all coal other than lignite. This approach simplifies the tax mechanism and, as I understand it, raises essentially the same amount of revenue as the taxes proposed in the original bill. I support this change.

The Finance Committee also modified the "last resort insurance" provision adopted by the Human Resources Committee to provide a number of guidelines for the operation of a fund for the purpose by the Secretary of Labor. I have no objection to this change.

Section 204 of the bill incorporates the substance of the so-called Hansen amendment—the Senator from Wyoming—which amends section 501(c) of the Internal Revenue Code to exempt from taxation trusts established for liability for the payment of black lung benefits. On this matter, I defer to members of the Finance Committee and the Treasury Department for their feeling.

An amendment offered by the Senator from Wisconsin (Mr. NELSON) was incorporated as section 205 of this bill. This provision authorizes the Internal Revenue Service to disclose to the National Institute for Occupational Safety and Health the mailing addresses of persons exposed or who have been exposed to occupational hazards. I mentioned that earlier. Although this provision reaches persons in addition to those in coal mine employment, it is a necessary provision. I support it.

Mr. President, there is one action taken by the Committee on Finance to which I state a strong objection. The tax on coal is limited in duration to 5 years—from October 1, 1977, to September 30, 1982. This limitation, in my conviction, would be manifested in one of two results: either the payment of benefits to disabled miners and survivors would terminate after September 1982 or the Federal Government would again pick up the tab for such benefits. I think either result would be untenable.

In my view—I express this very strongly—it is inappropriate. In a measure, I think it is unkind to provide benefits on which beneficiaries come to rely for support and then subsequently to take them away. It is also wrong, I think, to saddle the Federal Government with it—to saddle the general taxpaying public with this responsibility.

That is one of the principal reasons for the development of this legislation, because it is widely acknowledged that there is a need to shift the burden of black lung disability payments to where it properly belongs at this time, and that is on the coal operators and the coal consumers. As we consider S. 1538, I shall propose an amendment to strike the time limitation on the tax.

Mr. President, the black lung benefits program has had the support of Congress and the President of the United States since 1969. I have said that we came here again in 1972 and amended the law to make it more equitable and just. There are further serious problems which were unanticipated at that time, when the earlier amendments were developed.

This legislation, with that originating in the House of Representatives, has been under consideration for some time, as I indicated earlier. It is legislation reflecting some of the earlier problems in the program, and we have studied them since 1973. We have had the benefit of oversight of the black lung program during the past 5 years. In the course of the last Congress—the 94th and the current one, the 95th—I think we have perfected, in a well-reasoned way, the measure now pending before the Senate. Its general approach is that all parties can and should accept a measure that will aid thousands of people who need help. Some of them need the help desperately—the old and disabled miners, their widows, children of those who have given their lives to produce America's most substantial and vital energy resource.

I trust that the Members of the Senate will consider S. 1538 as a measure deserving of their consideration and of their support.

Mr. President, how much time have I used of the 1 hour?

The PRESIDING OFFICER. The Senator has used 55 minutes and has 5 minutes remaining.

Mr. RANDOLPH. I reserve the remainder of my time.

(The following proceedings occurred

during Mr. RANDOLPH'S opening statement and are printed at this point by unanimous consent:)

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

Mr. RANDOLPH. Yes; I am very gratified to have this interruption by the able Senator from Alabama.

Mr. SPARKMAN. Relief for the black lung disease came into existence and sometime after that we added the red lung disease. Is that still carried? That is for iron ore mines.

Mr. RANDOLPH. This does not touch any problem except the coal mining industry. It does not go into the other matters.

Mr. SPARKMAN. Has any consideration been given to that? It was added.

Mr. RANDOLPH. No, it was not. The bill provides for a study of all these related problems.

Mr. SPARKMAN. I am not talking about just in recent years.

Mr. RANDOLPH. I remember, of course, the problem of silicosis. That was back in the early 1930's. In the House we had a very extensive program. Hopefully, it did some good in meeting that problem.

Mr. SPARKMAN. I feel quite certain that red lung was added.

Mr. RANDOLPH. To the Coal Mine Health and Safety Act?

Mr. SPARKMAN. It was made a part of the same act. At least, that is my information.

Mr. RANDOLPH. I believe my colleague perhaps is not wrong, but I can only say I have no knowledge of it being included in the 1969 or 1972 act.

Mr. SPARKMAN. No. It was much earlier than that. Would the Senator have his staff check into the iron ore situation? It was called red lung. Black lung came first and then I know we did something about the red lung. I wish the Senator would check into the problem of red lung that the miners of iron ore became subjected to. I would appreciate it if he would have some checking done on that.

Mr. RANDOLPH. I am reminded that the Senator introduced a bill of some type on this subject. I am not familiar with it, but I will check it out. The staff will go into the situation.

Mr. SPARKMAN. I did introduce a bill and I thought it was added. This was some time ago, some years ago. If the chairman would have his staff check into that, I would like to know just what the present situation is.

Mr. RANDOLPH. I have been handed a copy of the Senator's bill, S. 1041. That was introduced this year.

Mr. SPARKMAN. Was it introduced as a bill or as an amendment?

Mr. RANDOLPH. As a bill. It would be, of course, to amend the black lung benefits provision of this law of 1969, which I have mentioned. Did the Senator have an earlier bill, other than the one introduced in the 95th Congress?

Mr. SPARKMAN. I believe so. I would have to do some checking back myself. It does not matter about that. I do hope consideration will be given to this. I would be very glad if it might be added as an amendment to the present bill.

Mr. RANDOLPH. I am recalling now that in view of the legislation introduced by the Senator, for himself and Senator ALLEN, that we did include in the legislation the study of these other types of diseases which might come from a different type of mining, and concerning, of course, silicosis in the iron mines.

Mr. SPARKMAN. I believe the miners just call it red lung.

Mr. RANDOLPH. Just as we call pneumoconiosis black lung.

Mr. SPARKMAN. Yes.

I thank the Senator.

Mr. RANDOLPH. I thank the Senator for his comment. I am hopeful that we can do as he has indicated, perhaps give more prompt attention to this matter. I shall also talk with the Members of the House.

I am reminded also, that it is contemplated by the chairman of our Committee on Human Resources that workers' compensation standards legislation will include such a disease as red lung.

Mr. SPARKMAN. I certainly appreciate that.

Mr. RANDOLPH. I appreciate the opportunity to discuss this matter with the distinguished Senator from Alabama. I commend the Senator for his concern.

Mr. SPARKMAN. I thank the Senator very much.

(This concludes proceedings which occurred earlier.)

Mr. ROBERT C. BYRD. Mr. President, today we have the opportunity to readdress ourselves to a task begun back in 1969 and assure just compensation to our old and sick miners who have been afflicted by the dread black lung disease. Since our first efforts to address this subject over 7 years ago, we have learned much about both the diagnosis and prognosis of this disease. We have discovered that in too many cases those who should have received benefits all too often did not receive them or received them only after long and costly efforts. Despite our attempt to make the working conditions of miners safer, we still have thousands of miners who contract black lung as a result of their occupation. This legislation attempts to offer some degree of recompense for the harm they have suffered in order that the rest of us may benefit from this energy source.

During our discussion of the Mine Safety Act last month I indicated that we must assure adequate protection for our most precious resource, that is, the miner. That same responsibility rests with us today. We must recognize that one of the costs which we must bear in order to enjoy our energy-oriented lifestyle is the social cost we owe to those who make such a lifestyle possible.

Mr. President, no one has been more in the forefront in the fight for black-lung benefits than my able colleague, Senator RANDOLPH. As a matter of fact, no one has been in the forefront as much as he, in my opinion. Once again he has shown his extraordinary leadership in this area.

The bill is not without controversy. It is obvious that it will be thoroughly debated and perhaps amended. This, of course, is the proper way to resolve whatever differences we may have. But as we begin the debate, let us keep in mind our goal, that is, to provide just compensation—and it must be just—to those miners who have sacrificed for all of us and for the Nation.

Mr. JAVITS. I yield myself 10 minutes.

Mr. President, the Senator from West Virginia has been a strong and effective advocate of this legislation. He has outlined the details of the legislation and the arguments for it. I should like to deal, then, with the reservations which I have about this bill and with where they fit into the public policy of the country.

For one, Mr. President, let us understand that black lung is not the only difficult industrial disease. We have asbestosis and many other diseases which result from different types of employment. They include textile workers, asbestos workers, iron workers, painters, and many others.

Our workers' compensation laws and our occupational health and safety laws either are not sufficiently adequate to cover these diseases or have not yet caught up with the sophistication which modern medicine has with respect to detecting these diseases.

Occupational diseases are inadequately unrecompensed, in substance. Black lung is the one exception, which, due to the vigor of the advocacy of those who are interested, especially from coal-mining areas, has resulted in this being selected out as a special industrial disease for this unique Federal compensatory treatment.

I do not object to that. I only point it out because it is critically important, as you can only carry this type of discrimination so far.

The second problem is the price tag, which is extremely high. For this one industrial disease, the U.S. Government already has spent $5 billion, and the program has been in effect since 1970.

Notwithstanding the tax features in this bill—which I strongly favor, but it is the first time we have done it—the prediction is for a shortfall, the difference between what the tax on coal will raise and what is required to finance these various benefits.

To show the size of the obligation which is involved here, I point out that there are now pending in the way of claims under this bill something in the area of 600,000 claims. Those facts are found at page 3 of the committee report. There are 562,000 claimants under part B and 110,000 claimants under part C. That totals 672,000 claimants. How many coal miners are there—working coal miners? 180,000.

So what we have done is literally to have tried to deal, at a big cost to the United States—roughly $1 billion a year—with one occupational disease accumulating the experience of all of those going back for one or two generations.

Now, this is very rarely realized when we discuss black lung. Senator RANDOLPH, with his customary eloquence, has pointed out the need and the difficulty of these workers. But there are needs and difficulties of millions of workers, not just the coal mine workers. The coal mine workers have been selected out for unique treatment and a unique amount of payment by the Federal Government.

An effort is being made in this bill to relieve the Federal Government of that burden by passing it on to the consumer because what is added to the cost of coal is going to be paid by the consumer.

In that regard, Mr. President, I would like to make this clear: I mentioned a minute ago two programs, part B and part C. Part B is paid for exclusively by the Federal Government and covers black lung claimants who have sought payment of their claims on or before June 30, 1973. Part C is black lung claimants who sought payment of their claims after June 30, 1973.

As to part B the Federal Government pays the whole tab out of general revenues. As to part C, it has the power to recover if it can discover the responsible coal mine operator for whom the particular miner worked. Right now the U.S. Government has paid over 97 percent of the claims because those against whom it is claiming over have contested the claims. So, for practical purposes the Government has paid the whole bill.

There are no workers' compensation laws which are sufficient to warrant approval of the Department of Labor, which would displace the Federal program, and the effort by the Federal Government to collect from those operators who would be liable to the miner have been largely unsuccessful. In the meantime, these claims are paid by the Federal Government. The industry is contesting 97 percent of the claims which were filed after June 30, 1973. Up to now, the entire program has been costing nearly $1 billion a year.

The 1-percent ad valorem tax which is contained in this bill, Mr. President, is insufficient to pay future costs. The reason it is insufficient is found at page 7 of the report of the Committee on Finance which dealt with the matter of taxation under this bill, within its jurisdiction. And, it will be noted that the tax, to wit, the 1 percent, which would raise the funds needed to pay the bill for black lung claimants only if two aspects of the black lung bill before us are eliminated. These are: first, the prohibition against reinterpreting X-rays; and, second, the presumption of eligibility after 25 years' work.

The prohibition against reinterpreting X-rays is a particularly egregious part of this bill, which I violently opposed in the committee, and which I sought to strike and was defeated by a divided vote of 6–5. That involves the right of the Federal Government to have the X-ray of the miners' lungs reexamined by a Federal Government expert in order to validate this aspect of a miner's claim. This bill prohibits—I emphasize that, prohibits—that reexamination, an unheard of stultification of justice at a high cost to the taxpayers of the United States.

My colleague and member of the minority of the Committee on Human Resources, Senator CHAFEE, of Rhode Island, will move the same amendment I moved in committee in that regard very shortly, and I hope very much the Senate will sustain that.

Now, if the Senate sustains the amendment it will represent, over the 5-year period for which the tax is levied, a cut in the bill's cost of roughly $250 million.

I know of no one who is going to move with respect to the 25-year presumption. That is described also, if Members wish to identify it, at page 2 of the report of the Committee on Human Resources, which reads as follows:

> A survivor is entitled to benefits if the miner died on or before the date of enactment of the bill, and worked 25 years in mine employment prior to June 30, 1971, unless it is established that the miner was not partially or totally disabled due to pneumoconiosis.

In short, Mr. President, I made that deal. The bill was very much tougher on presumptions before I worked that deal out with Senator RANDOLPH and, hence, I do not wish to call into question my own agreement, and I hope no other Member will.

So the assumption of the Committee on Finance that that item would be excluded is not going to happen, and that is a pretty big cost. That involves $176 million over the 5-year period. So we know that unless the Chafee amendment carries—and I have joined in that amendment with Senator CHAFEE as a cosponsor—there will be a minimum shortfall of $176 million in the tax, and it may come to more than that.

I point out to my colleagues that there is nothing in the Senate bill that calls for an appropriation out of general revenues to make up for that shortfall. It simply is silent on the subject. I can only hope that the House bill looks after it, and it is now known we do not intend to take final action on this matter until the House has passed its bill. So I call to the House's attention, if they go for the 1-percent ad valorem tax, that there has to be a provision which will provide for financing as to any shortfall. Otherwise this will be a bridge too short, by 1 yard or 100 yards, we do not know, depending on what disposition is made of these assumptions of the Committee on Finance, and what disposition is made of the Chafee amendment to which I have just referred.

Mr. President, otherwise, aside from the matters which I have discussed, the bill liberalizes the program pretty much along the lines which we have passed on two previous occasions, and I have no doubt will pass again. But I believe that what this bill highlights very markedly and sensationally is the problem we have in dealing with this kind of an industrial disease in one industry while leaving all other industries uncovered, relatively speaking, because the workers' compensation laws and occupational health and safety law just do not adequately cover occupational diseases.

I appreciate the work which was done by the Committee on Finance. I see Senator LONG is in the Chamber. I wish to reiterate what I have just argued, Senator LONG, so that you may hear it: There were two assumptions upon which your committee based the tax, one of which may be realized by an amendment which Senator CHAFEE and I are proposing, to wit, reexamination of X-rays—that is $250 million over the 5 years. But the other one, the 25-year presumption that a miner had black lung because he worked in the mines for 25 years, I do not think is going to be realized because I worked out that arrangement myself with Senator RANDOLPH in order to deal with a much worse automatic entitlement provision.

So I will not challenge it, and I hope no other Member does because when one works something out, as you and I well know, you had better leave it alone.

Mr. LONG. Mr. President, if the Senator will yield at that point, I applaud the Senator as one who, when he makes a commitment, keeps it. He is that kind of a man, and we all admire him for it.

But I am sure he realizes that not everybody made that commitment.

Mr. JAVITS. That is correct.

Mr. LONG. A lot of other Senators did not make the commitment.

From my point of view I find it very difficult to conclude that a man had black lung just because he worked around a mine for 25 years, when you can find all kinds of evidence to the contrary. He might not have it at all. In other words, there are some people who worked in mines or worked near mines, in situations where they did not have this exposure to the same type of air pollution that causes black lung.

If they do not have it, for the life of me I do not see why we ought to presume somebody had black lung unless we have some medical evidence that he had it.

Mr. JAVITS. In mitigation, may I point out the reasons why I worked this out, and I think it is a fair solution. As finally drafted we only apply this provision to the survivors of such miners after their death, so that the plea of my colleague from West Virginia respecting widows and orphans is a justified one.

Mr. LONG. Mr. President, if the Senator will yield at that point, after his death why not do an autopsy and then you know whether he had the black lung? You do not need to leave it to doubt then. Do an autopsy and find out.

Mr. JAVITS. The other aspect of the provision contained here is that it is a presumption that may be rebutted by the Secretary of Labor with adequate evidence. That may be difficult to obtain, and as the Senator knows autopsies require the consent of the family of the person who is going to be autopsied.

Mr. LONG. The pain is no longer there when a person is a corpse. By my beliefs, the spirit has departed. The person does not feel any pain when the person gets to be a corpse. From my point of view they can do all the autopsies they want on me after my spirit has departed. The family has the body. They have the body right there. So they have the evidence to prove that the man had the black lung or did not have the black lung. All they have to do is just produce the evidence which can be the basis of an autopsy and if the autopsy said a person had the black lung we should pay it.

It seems to me it is exactly the same principle as we were discussing with regard to the X-ray. Someone will go to a family doctor, who represents all these people, is fond of the clients and very

much on their side, taking an X-ray. Then someone representing the union will say: "If the family doctor says he looked at that X-ray and he said a person had black lung, that is all there is to it. No one else can look at it."

It is awfully easy to win a debate if the other side is not going to be able to see the evidence or even argue about the evidence. If we put that principle throughout this Government, I think it would give a totally impossible situation. I am glad the Senator sees that. But is not the principle the same? The family has the evidence. There is the corpse. If he has the black lung, the autopsy would show it. How can you contend that when you have the evidence to prove the person had the black lung they should presume it without taking a look at the evidence?

Mr. JAVITS. There are two problems with that. One is that in the arrangement that I worked out with Senator RANDOLPH this applies only to those who had 25 years or more in the coal mines prior to June 30, 1971. So a good many of those are beyond autopsies.

The second point is that, of course, there are many people in our country who for religious reasons or sentimental reasons will not allow a member of their family to be subject to an autopsy.

I did, however, work out with Senator RANDOLPH the following: The presumption may be rebutted because the bill says that eligible survivors shall, upon request by the Secretary, furnish such evidence as is available with respect to the health of the miner at the time of his death.

Again, I repeat to the Senator, it was a much tougher provision before I got it worked out. But I raise it only because it is highlighted in the Finance Committee report as having a substantial price tag over 5 years.

I yield myself 5 additional minutes.

May I say to the Senator that I hope the Senator will prayerfully consider whether or not he should or should not amend that section. I hope he does not for the reasons I have stated, but I think in our debate we have brought out the pros and cons of why I worked it out with Senator RANDOLPH as I did.

Mr. President, I believe I have explained to the Senate that, as is my duty as the ranking member of the minority and I have done it throughout the black lung legislation, it is my job to see that the Senate is fully informed and that what should be contested is contested.

There will be, as far as I know, two amendments. First is the amendment in which I joined with Senator CHAFEE on the rereading of the X-rays, and I hope very much the Senate approves that. Just common due process and justice holds that the Federal Government should have a right to reread these X-rays.

Second, the other amendment that I will have will be to eliminate the fact that this program would, for the first time, operate without any termination point.

The tax has a termination point, which Senator RANDOLPH may move to strike, to wit, September 30, 1982. On the other hand, if the termination point is removed by the motion of Senator RANDOLPH, then I think it should still follow that we should review this program because it has a shortfall in terms of the amount the tax it raises as against the projected benefit costs. We certainly should review it at the end of 5 years. That amendment will come along in due course. In the meantime, I have outlined to the Senate the issues of cost, and again I do not begrudge anything to the coal miners. God knows, it is a tough enough occupation and a dangerous enough occupation. I only bemoan the fact that we have not caught up with treating others who suffer just as much the way we are treating the coal miners.

Mr. RANDOLPH. Mr. President, will my able colleague yield?

Mr. JAVITS. I yield.

Mr. RANDOLPH. I make this observation. He speaks of other workers who have problems of impairment of their health because of their employment, and that is true. Yet I would remind the Senate, and the Senator from New York, of course, was a part of our programing, in 1969, even though we were thinking in terms of a national bill for occupational health and safety, we realized that it was a matter of priority to bring the Coal Mine Health and Safety Act into being, and so this was done in 1969. Then in 1970, we passed the national Occupational Safety and Health Act with application to other types of employment, not that we did not need to do, as the Senator has indicated, in other occupations or work programs but there was the priority considered very carefully at that time and in 1969, as I have indicated, the coal mining problem was addressed and then 1 year later with the passage of the Occupational Safety and Health Act we gave our attention as a Senate and a Congress to the problems of other industry and employment therein.

Mr. JAVITS. Mr. President, may I reply by saying that I did not agree or subscribe to the theory of a preference for the coal miner. But I put it on the basis of not begrudging justice if it can only be highly partial to those whom it benefits while we must await the full measure of justice to those who are not so benefited. That is the way I felt about this bill.

Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. HUDDLESTON. Mr. President, will the manager of the bill yield me 2 minutes?

Mr. RANDOLPH. I yield to the able Senator from Kentucky (Mr. HUDDLESTON), the 2 minutes he has requested.

Mr. HUDDLESTON. I thank the Senator.

I shall respond to the allegation made by the distinguished Senator from Louisiana relative to the rereading of the X-rays.

The bill provides, if I understand it correctly, that if the question of fraud enters into the picture, the Government does, of course, have the opportunity to correct that. It requires also that if the quality of the X-ray itself is not sufficient then the Government can go behind that picture.

The suggestion seems to be that we are not able to trust a physician if he is a local physician, even though he may be just as qualified as a Government physician. As a matter of fact, the bill requires that he be qualified; that he be either certified by the board as a competent radiologist or eligible for certification.

Why should we assume that we can trust a Government radiologist, no better qualified, just because he happens to be on the Government payroll? This has been one of the very serious problems with the black lung program—one that has caused great delay in approving applications, and one that has denied benefits to many people who are entitled to them.

I think we ought to bear in mind that we are not asking that carte blanche authority be given to the local physician. He has to be certified. He has to have an X-ray that is of sufficient quality to justify the reading that he makes; and if there is any evidence of fraud at all, of course, proper measures can be taken.

Mr. RANDOLPH. Mr. President, I appreciate the comments of the Senator from Kentucky, because it is important that what he says be understood by all Members of the Senate. I stressed that in my formal statement on the provisions of the bill. The Senator's stressing of the aspects of fraud and competence is every important to the consideration of this bill.

The PRESIDING OFFICER. Who yields time?

UP AMENDMENT NO. 693

Mr. CHAFEE. Mr. President, I have 1 hour, I believe, on my amendment; is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. CHAFEE. I would like to take 15 minutes of that time, Mr. President.

Before starting, I ask unanimous consent that Don Zimmerman and John Rother of Senator JAVITS' staff, and Lee Verstandig and Nancy Barrow of my staff, be accorded the privilege of the floor.

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

Amendments are not in order until the committee amendments have been disposed of.

Mr. CHAFEE. Mr. President, I ask unanimous consent that it be in order to consider my amendment at this time.

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

The clerk will state the amendment.

The second assistant legislative clerk proceeded to read the amendment.

Mr. CHAFEE. I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

Beginning on page 5, line 13, strike out through line 11 on page 6.

On page 6, line 12, strike "(b)" and substitute "Sec. 105.".

Mr. CHAFEE. Mr. President, I think it would be well if we started at around zero to examine this unique provision in the bill that comes before us today.

We are dealing with the matter of black lung disease. Under the law as it presently exists, a physician in the community where the miner resides makes an examination of the X-ray and sends it in to Washington, D.C. with his comments, saying that black lung disease exists.

It then comes to the Government, with its readers—and these are called B-readers; they are experienced, trained lung X-ray readers, they are not generalists, they are people who have gone through a special course at Johns Hopkins University to read lung X-rays.

I might say reading X-rays is a particular science, and it is particular for whatever section of the body a man is reading X-rays for. A man who is an expert at reading X-rays for the head, skull, or the limbs is not necessarily an expert at reading X-rays for the chest.

Under present circumstances, the X-ray comes in and the Government B-reader examines it. He can make a determination whether he concurs with the finding made in the local community, or whether he does not.

I might point out that the Government reader does not always find that there is no black lung disease there. As a matter of fact, according to the latest study, made in 1975, some 18 percent of the cases were upgraded. In other words, they found the existence of a more serious case of black lung than was previously thought to exist, or, for instance, they may have found black lung where none was previously found. So the Government, in these 18 percent of the cases, found more.

Furthermore, Mr. President, in some 40 percent of the cases, the Government expert readers detected unforeseen, unrecognized diseases, which accrued to the benefit of the miner in giving him warning, perhaps, of some other disability. They detected, for example, lung cancer, tuberculosis, and emphysema.

What is proposed in this bill, I think we will all agree is an extraordinary provision. What is proposed here? That now the local reader of the X-ray—and it is true he must be a qualified—let us get the exact language—he must be a qualified radiographic technologist or technician. He is a local boy, a local man; he sends in his X-rays, Mr. President, and says there is black lung disease, and there is no way that the Federal Government can have another reading.

Why, this is an open door to the Treasury. It is amazing that they do not just send it in and say, "Send us the check." The Government has no chance to read it and say, "Yes, there is" or "No, there is not."

The distinguished Senator from Kentucky has observed that this would not apply in cases of fraud. But fraud means that when you are sending in an X-ray for miner X, it is really an X-ray of miner Y. It does not really go into the definition of whether or not there is black lung disease there.

The local doctor—and I must say I admire the distinguished Senator from Kentucky when he says that we are overly-suspicious to assume that a physician could, perhaps, not be right; but many physicians are not always right. I suggest that lawyers are not always right, and doctors are not always right, and maybe even Senators are not always right—although I seriously doubt that. [Laughter.]

I yield to the distinguished floor manager of the bill.

Mr. RANDOLPH. And that is why——

Mr. CHAFEE. On his time.

Mr. RANDOLPH. Yes. That is why I say, with all respect, that I want this amendment defeated, because I think the Senator from Rhode Island is wrong.

Mr. CHAFEE. Well, that may be. That is what makes the world go around.

Mr. President, I really, in a way, have to admire people with a lot of brass. I mean, they find an opening and they drive a truck through it. Begrudgingly enough, you have to hand it to them. To come in with a provision like this is really something. The Government has no defenses whatsoever.

Sitting up here in the gallery we have taxpayers of the United States, and we are saying to them, "You are not entitled to be represented in this instance." The only person who has a say is the examiner of the X-ray down in the local community. The man from Wheeling, W. Va., sends in the X-ray and says: "Black lung is here," and, by golly, they can send along a self-addressed envelope with the message: "Please send us our check." It is amazing that they have not put in a provision that they can request a blank check and say: "Let us fill in the amount."

Mr. LONG. Mr. President, will the Senator yield at that point?

Mr. CHAFEE. Yes.

Mr. LONG. In a different sort of situation, I had a dear friend who went to a well-known, well-thought-of doctor, a man who was president of the medical society in the State capital, Baton Rouge, a very dear friend of his and a respected member of the medical fraternity, both before and afterward.

This friend of mine went to see this very good doctor, good man, highly thought of in every respect, and the doctor diagnosed his complaint as being diverticulitis.

Later on he went down to the Ochsner Foundation in New Orleans, and those people said, "This looks like cancer to us."

Then they asked would the doctor in Baton Rouge send them the X-rays that he had taken. He insisted that his diagnosis was right, that the man had diverticulitis.

They said, after examining the X-rays, "In our opinion the man has cancer, and better get the growth out of his intestine or he is going to die in short order." They performed an operation, and found the man had cancer, just as they had suspected.

Under this provision, those more qualified experts in the field would not even have the right to say, "That is a good picture" or "That is a clear picture."

Well, why not let them tell the rest of it: Yes, that is a clear picture and what the picture says is that the man does not have black lung, he has cancer, which is an entirely different disease. Rather than treat him for black lung, he ought to remove the lung for cancer.

To me, that makes no sense at all, to say that somebody could take a look at an X-ray and say, "Yes, it is a clear X-ray," and not proceed to say what the X-ray says, that the man has cancer, not black lung at all.

Mr. CHAFEE. Mr. President, I would like to discuss briefly with the floor manager of the bill how we are going to proceed. As I understand, there will be no votes before 12:30. That does not necessarily mean that there will be no vote, but no votes before 12:30.

The PRESIDING OFFICER. No rollcall votes.

Mr. RANDOLPH. Except on the Senator's amendment.

Mr. CHAFEE. No, no rollcall votes. The yeas and nays have been ordered on my amendment.

Mr. RANDOLPH. I am sorry. I might have been moving around at the time of the request of Senator BYRD.

What is the situation as to the first rollcall vote?

The PRESIDING OFFICER. The order is that there be no record rollcall votes before 12:30.

Mr. CHAFEE. So, the way I envision it is that, any time after 12:30, I could call up and ask for a vote on my amendment. I guess there are no other amendments on the desk, are there?

The PRESIDING OFFICER. There are other printed amendments that have not been called up yet, and there are committee amendments to be disposed of, also.

Mr. CHAFEE. Perhaps I should just proceed on the remainder of my time. How much time do I have? I said 15 minutes.

The PRESIDING OFFICER. The Senator has used 9 minutes. He has 6 minutes remaining.

Mr. CHAFEE. Mr. President, there is a problem that was mentioned by the distinguished Senator from Kentucky, in his brief remarks, and the distinguished Senator from West Virginia. That is the problem of delay. We have a real problem here and I think we all acknowledge it.

Under the current system, the X-ray comes in and there is a long delay between the reading of it and the payments. First, let me briefly ask, is it all on the Government's side? Not at all. The way it works now, Mr. President, is that the X-ray comes in from the field. Accompanying it is a statement by the local physician. The Government B-reader then reads it.

Let us assume that the B-reader finds no black lung disease. Does that end the situation; the big bad Government has had its say and the miner is denied his compensation? Not at all.

It then goes to an administrative law judge. He is a third party. He then can call in more expert witnesses, ask for further X-rays. The claimant can

present expert testimony. Then a decision is made.

Now, let us say, Mr. President, that the administrative law judge decides in favor of the Government. Does the miner lose? No, sir, he does not lose. He has a chance of an appeal to the so-called Benefits Review Board.

The complaint is this, Mr. President, that all of this takes a long time and, in some instances, has taken over 600 days. That is nearly 2 years. That is wrong. I agree that is wrong. The manager of the bill agrees that that is wrong. I suppose the Senator from Kentucky undoubtedly agrees that that is wrong.

But what is the solution? Is the solution to throw open the gates to the Treasury and say, "Come in and help yourself; no delay, no waiting; six chairs"? Not at all. The solution is to improve the administrative process. If we in the U.S. Senate, the Congress of the United States, cannot improve that process, then we ought to throw up our hands in despair.

There are different ways we can improve the process. For example, we can have the reader, this B-reader, down in the local communities. Another example is to have more B-readers.

The present man in the Labor Department, Donald Elisburg, Assistant Secretary of Employment Standards, has testified that he is going to improve this process. I think we ought to watch over his shoulder and see that it is speeded up. If it is not, that is our prerogative, to get on his back and get him going.

The solution, Mr. President, is not to say that there is a delay therefore, let us deprive the Government of any defenses it might have.

Mr. President, I point out another interesting provision of this act. Oddly enough, it deprives the Government of its defenses, but it does not deprive the owner of the mine of his defenses. In those instances where there is a known mineowner who employed the claimant, and the claimant comes in for his claim, in that case, there can be a rereading, a second reading, under this act, to protect the owner of the mine. To me, it is incongruous and I just do not understand it, that we are depriving the Government of a defense that we are not depriving the owner of the mine of. I suppose that, under the U.S. Constitution, we could not deprive the owner of the mine of that defense, but we are going much farther in protecting the owners of the mine than we are the U.S. Government and the taxpayers of the United States.

Mr. President, I supported this overall bill, but this amendment or this provision in the bill just went too far. I think, as the able Senator from New York previously pointed out, we are doing for this group of citizens of the United States, mainly mineworkers—and, by the way, the classification of a mineworker is very, very broad. It does not go quite so far as to include anyone who has ever seen a mine, but it goes pretty far: working around a mine.

So we are treating this group in a special way.

Mr. RANDOLPH. Will the Senator yield at that point?

Mr. CHAFEE. Yes.

Mr. RANDOLPH. It is not just going around the mine, but we specifically say where the dust conditions would be of the same category. We make it very plain.

Mr. CHAFEE. Yes. So we are treating this special group of citizens of the United States in a very special way. The taxpayers of the United States are treating these miners, this group—never mind textile workers, never mind people who work around other dangerous substances like asbestos—they are treating this special group in a very special way. We support it; but let us not throw open the doors of the Treasury and say, "Come on in and help yourselves," on the basis of one local doctor's reading.

Mr. HUDDLESTON. Will the Senator yield on that point?

Mr. CHAFEE. Yes.

Mr. HUDDLESTON. The Senator is concerned about using taxpayers' money to this large extent on the basis of one competent, qualified physician's judgment. It is not unlike what we are doing now with hundreds of millions of dollars of the taxpayers' money in the medicaid and medicare programs throughout the country.

The PRESIDING OFFICER. The Senator's 15 minutes have expired.

Mr. CHAFEE. I yield myself 5 more.

Mr. HUDDLESTON. The Federal Government does not review all those decisions made by physicians to determine whether or not payment is justified. Why impose that penalty on the black lung sufferers?

Mr. CHAFEE. May I say in response, there are all kinds of review of medicare and medicaid programs. There are utilization review committees; there are all kinds of reviews. As we all know, however, one of the great problems with these programs is the scandals that have developed because there is inadequate review. It seems to me that the Senator is citing not only a situation that is not quite as described, because there are checks, but, furthermore, the very programs that are in trouble because there are not adequate checks.

Finally, Mr. President, I point this out: This provision in this act is not supported by the administration. The administration came in and contested, spoke against this. I read the language of Mr. Elisburg:

> We feel it is appropriate for the Government to provide for medical experts to read X-rays and X ventilatory tracings, even if other medical personnel have already interpreted them. The Government role in assuring validity and consistency in interpretation is basic to the integrity and equity of the program and must be continued.

Mr. President, let me just say finally, I have supported this bill. I have great admiration for the sponsor of the bill because, personally, I serve on two committees under his distinguished leadership.

It always amazes me, when somebody has something that is pretty good, why they overreach. To me, this is one bridge too far. It just stretches the credulity and, I believe, the good judgment of the Senate, if we go this far.

That is why I have supported the amendment that has been proposed.

The PRESIDING OFFICER (Mr. HUDDLESTON). Who yields time?

Mr. RANDOLPH. Mr. President, has the amendment been offered?

The PRESIDING OFFICER. Yes, the amendment is pending.

Mr. RANDOLPH. Then the time is controlled on the amendment?

The PRESIDING OFFICER. That is correct.

Mr. RANDOLPH. And that is 30 minutes to the proponents of the amendment?

The PRESIDING OFFICER (Mr. NELSON). The Senator from West Virginia has 30 minutes on the amendment.

Mr. RANDOLPH. Mr. President, I yield such time as I may desire.

I wish to call attention to a letter that has been sent by Senator CHAFEE to all Members of the Senate. I presume they have the letter and I have in recent minutes been able to look at its language.

I know that he, of course, feels very strongly on this matter. With good humor, however, I am sorry he is shocked because I do not want any shock waves running through our colleagues in connection with this debate.

Senator CHAFEE has described the amendment he proposes, but, with due respect to my colleague, whom I admire and esteem, I must indicate that the Senator from Rhode Island, I believe, is not completely informed of the effect of section 105(a) as contained in the bill.

First, the letter asserts that the Department of Labor will be denied the opportunity to reread X-rays.

Now, this is not the case. The Department is not precluded from rereading X-rays, but the Secretary is precluded from interposing an additional opinion as to the existence or stage of advancement of pneumoconiosis under certain conditions.

That is quite a difference from what has been stated.

The letter also indicates, and I quote:

> Once an X-ray is filed and disability is claimed, benefits are paid.

Mr. President, for the sake of so many disabled miners, I only wish that statement were true. I state unequivocally that it is not true, as I have tried earlier to point out in my opening statement, and this is the very heart of section 105(a).

The X-ray is an imperfect tool. It cannot be used, save in cases of complicated pneumoconiosis, to be the sole determinant of eligibility.

I quote from a document submitted to the Department of Labor by a respected pulmonary specialist, Dr. Donald Rasmussen.

As I make this quotation, I would like the Senator to listen, and I know he will carefully, to Dr. Rasmussen's words.

> Chest films of good quality should be obtained on all applicants primarily to exclude imperfections, malignant or other diseases, or conditions of the lungs or thorax. There is little or no reason for the elaborate system of multiple readers.

I underscore what he said by repeating that there is little or no reason for the

elaborate ssytem of multiple rereaders, since the presence or absence of pneumoconiosis per se is pertinent only in cases who have worked less than 15 years in the coal industry.

Then he says something that I think is very valid:

Even in these cases there is no relationship between the X-ray findings and the presence or absence of impaired function.

I agree that the executive branch must be able to reread X-rays for the purpose of discovering disease. That is a proper function in an illness. But that is not the issue here, as I see it, in the amendment.

The issue, I think, is whether rereaders hired by the Government should be allowed to second-guess the coalfield radiologist who is much more knowledgeable about the individual miner—and I stress that very much as we discuss the subject of the matter of rereaders.

In connection with the Senator's amendment, I think the rereading of X-rays by the so-called B or expert readers hired on a consulting basis by the Department of Labor and by the Social Security Administration has been bitterly opposed by miner claimants and their union.

We have been assured that the B-reader is better qualified to determine the presence of pneumoconiosis and its stage of advancefent than the coalfield doctor, whether or not he is a radiologist. Yet the B-reader can interpret only what is presented to him. He has but one X-ray to review for the most part—a two-dimensional and imperfect representation of the condition of the miner.

American College of Radiology representatives acknowledge that the X-ray is a useful test, but that it is only a fragment of the whole body of evidence that should be considered. Dr. Russell Morgan of Johns Hopkins University, which administers the B-reader testing program, agrees that, to be properly read, X-rays should be of good quality, and further that there should be both an AP, or anterior-posterior, film and a lateral, or side-view film.

In the light of the admitted imperfection of the X-ray as a determinant of impairment due to pneumoconiosis, greater reliance should be placed on the assessments of those who are familiar with the conditions of disabled coal miners and who deal with their health problems on a regular basis—the coal field doctors.

To limit the re-reading of X-rays, as this committee did in last year's reported bill and as it is recommended in the pending bill, is not an adverse reflection on the capabilities of B readers, nor does it cast aspersions on the X-ray as a useful tool in medical diagnosis.

It is, however, intended to support the proposition that the X-ray is not a definitive tool, and that the initial reader is more competent to judge impairment and disability in the whole man than is the reviewing reader.

One recent study found that, on comparing British and American readers—all of the American readers in this study were those regularly used by the Social Security Administration in their determination of eligibility for claims—American readers agreed with British readers as seldom as 45 percent of the time and among each other as seldom as 48 percent of the time. After noting the disturbing results of this study, the researcher quipped, "Clearly, coal workers pneumoconiosis, like beauty, is in the eye of the beholder."

It is important, in order to avoid misconceptions about the value of the X-ray, to be aware of the fact that a chest X-ray does not relate to lung disability. It can, but sometimes does not, identify coal workers' pneumoconiosis. It does not identify other disabling lung diseases associated with underground coal mining. In 1972, these limitations on the value of the X-ray were recognized, and the policy with respect to their use was modified. Nevertheless, both Social Security and the Department of Labor have continued to place undue reliance on the X-ray in the determination of black lung claims. The Committee on Human Resources has been told that fully 60 percent of the X-rays initially interpreted as positive for pneumoconiosis have been re-read by department contract radiologists as negative.

As a matter of policy, Mr. President, we should not sanction a "battle of the experts" in this area. Black lung victims and their widows have been the only casualties of this battle in the past. As we strongly urged in 1972, the disabled miner and the widow must be given the benefit of any doubt surrounding their disability. X-ray interpretation in this field is not an exact science. Medical knowledge to determine to what extent coal mining relates to disability in a specific miner is woefully inadequate. Again, it is the miner who suffers as a result of this defiiciency.

Mr. President, I think all Senators understand that I am very earnest in my opposition to this amendment. I recognize, of course, that there are those who feel otherwise, and certainly Senator CHAFEE and Senator JAVITS, who cosponsor the amendment, feel otherwise. I think it would be wrong for the Senate to accept the amendment. Its acceptance would be severely detrimental to the disabled miners and widows. It would sanction the existing practice, which even those who are engaged in it acknowledge is not determinative and is far from perfect.

Mr. President, how much time do I have remaining on the amendment?

The PRESIDING OFFICER. The Senator from West Virginia has 16 minutes remaining.

Mr. RANDOLPH. I thank the Chair.

The PRESIDING OFFICER. Who yields time?

If no time is yielded, it will be charged equally to both sides.

Mr. CHAFEE. How much time do I have remaining?

The PRESIDING OFFICER. The Senator from Rhode Island has 12 minutes.

Mr. ROBERT C. BYRD. Mr. President, I thank the Chair for his indulgence. I suggest the absence of a quorum with the time being charged to both sides on the bill.

The PRESIDING OFFICER (Mr. NELSON). The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

ORDER FOR VOTE ON CHAFEE AMENDMENT AT 2 P.M.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the vote on the amendment by Mr. CHAFEE occur at 2 p.m. today.

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

UP AMENDMENT NO. 694

Mr. ALLEN. Mr. Presdent, I send to the desk an amendment introduced on behalf of myself and my distinguished senior colleague, Mr. SPARKMAN, and I ask that it be stated.

The PRESIDING OFFICER. Does the Senator seek unanimous consent?

Mr. ALLEN. Yes, I ask unanimous consent.

The PRESIDING OFFICER. There is an amendment pending.

Mr. ALLEN. I ask unanimous consent that this amendment might be considered at this time.

Mr. JAVITS. What is the unanimous-consent request?

The PRESIDING OFFICER. The Senator from Alabama asked unanimous consent that the amendment he sent to the desk be considered at this time. Is there objection? The Chair hears none, and it is so ordered.

Mr. JAVITS. Parliamentary inquiry, Mr. President.

The PRESIDING OFFICER. The Senator will state it.

Mr. JAVITS. Is the pending amendment temporarily set aside?

The PRESIDING OFFICER. It is temporarily set aside.

The clerk will report.

The legislative clerk read as follows:

The Senator from Alabama (Mr. ALLEN), for himself and Mr. SPARKMAN, proposes unprinted amendment No. 694.

Mr. ALLEN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

Add new section to bill as follows:

That section 401 of the Federal Coal Mine Health and Safety Act of 1969 is amended by inserting the subsection designation "(a)" after "401." and by adding at the end thereof the following new subsection:

"(b) Congress finds and declares that there are a significant number of iron miners living today who are totally disabled due to pneumoconiosis or silicosis arising out of employment in one or more of the Nation's iron mines; that there are a number of survivors of such miners whose deaths were due to these diseases; and that few States provide benefits for death or disability due to these diseases to such miners or their surviving dependents. It is, therefore, the purpose of this title to provide benefits, in cooperation with the States, to iron miners who are totally disabled due to pneumoconiosis or silicosis and to the surviving dependents of miners whose death was due to such diseases; and to assure that in the future adequate benefits are provided to iron miners and

their dependents in the event of their death or total disability due to pneumoconiosis or silicosis.".

SEC. 2. (a) Section 402(b) of the Federal Coal Mine Health and Safety Act of 1969 is amended to read as follows:

"(b) The term 'pneumoconiosis or silicosis' means a chronic dust disease of the lung arising out of employment in a coal or iron mine.".

(b) Section 402(d) of such Act is amended by striking "underground coal" and substituting "coal or iron".

SEC. 3. Parts B and C of title V of the Federal Coal Mine Health and Safety Act of 1969 are amended by inserting "or silicosis" after "to pneumoconiosis" each time it appears and by inserting "and silicosis" after "for pneumoconiosis" each time it appears.

SEC. 4 (a) Section 411(c)(2) of the Federal Coal Mine Health and Safety Act of 1969 is amended by striking out "underground coal" and inserting in lieu thereof "coal or iron".

(b) Section 422(a) of such Act is amended by striking "and underground coal" and inserting in lieu thereof "a coal or iron".

(c) Section 422(i)(1) of such Act is amended by striking out "coal".

Mr. ALLEN. Mr. President, this amendment offered by Mr. SPARKMAN and myself has the very same provisions as S. 1041, which we introduced on March 18, 1977. What it does is to make the same provisions for iron ore miners who develop silicosis that are made for coal miners who develop pneumoconiosis.

We have given a great deal of attention to the plight of coal miners, but practically no attention to iron ore miners who suffer a disease just as debilitating.

Senator SPARKMAN and I have had this bill and other bills introduced here in the Senate and, thus far, there has been no hearing on our bills.

The purpose of this amendment is to call attention to this situation which seems to work a hardship on the iron ore miners, and the purpose of the amendment is to put the iron ore miners on the same basis as the coal miners. Senator SPARKMAN and I have supported all of the black lung legislation, and we support the bill under consideration, but we just feel that with so many iron ore miners suffering from silicosis, which is just as injurious and just as deadly as the pneumoconiosis, we feel that it is unfair to neglect any longer the plight of the iron ore miners.

We have literally thousands of employees in the iron ore mines in Alabama who have been or may yet become afflicted with silicosis. We would like for some similar provision to be made for the iron ore miners that is being made for the coal miners. We would hope that they would be treated on the very same basis. We hope that the chairman of the committee, the manager of the bill, and the ranking minority member of the committee, are willing to accept this amendment.

I yield to my distinguished colleague, Mr. SPARKMAN.

Mr. SPARKMAN. I thank my colleague.

Mr. President, I might say I had an exchange with the chairman who is handling this bill earlier with reference to that, and I told him that we do have this trouble there and it is called red lung to distinguish it from black lung.

Mr. ALLEN. Yes.

Mr. SPARKMAN. But they undergo exactly the same conditions, and I have had assurance from the chairman that it will be studied. In fact he tells me there are several different categories that are going to be studied and this is included among them.

Mr. ALLEN. I am sure my distinguished colleague would agree with the legal axiom that "Justice delayed is justice denied." So we are hopeful that some action can be taken on this in the very near future.

Mr. SPARKMAN. Of course, I wish to see it, also. I had a colloquy with the chairman a short time ago, and he did assure me that it was undergoing study, was included in several categories, and a study is provided for in the bill.

Mr. RANDOLPH. Mr. President, will the able Senator from Alabama yield at this point?

Mr. ALLEN. Yes, I am delighted to yield to the distinguished chairman.

Mr. RANDOLPH. The concern of the two Senators from Alabama on this subject, as indicated in their introduction of the bill, which had been presented during the 95th Congress and on previous occasions in one form or another, is certainly proof positive of their desire that the occupational disease study of red lung or other diseases that are associated with types of mining be matters of consideration in the Human Resources Committee and that we attempt to cope with these problems as expeditiously as possible.

We felt at this time as we were amending the original Coal Mine Health and Safety Act of 1969, which was amended in 1972, in this legislation, amending those earlier acts of 1969 and 1972, we do just the job here in connection with the coal mining problem. We think this will conclude the problems which have been very complex in connection with the payment of claimants. But we have felt the necessity and in fact we have recognized the arguments that are being made here, and in the legislation on page 25 of the pending bill we have a section entitled "Occupational Disease Study." I ask unanimous consent at this point that language be printed in the RECORD.

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

OCCUPATIONAL DISEASE STUDY

SEC. 112. (a) The Secretary of Labor, in cooperation with the Director of the National Institute for Occupational Safety and Health, shall conduct a study of all occupationally related pulmonary and respiratory diseases, including the extent and severity of such diseases in the United States. Such study shall further include analyses of (1) any etiologic, symptomatologic, and pathologic factors which are similar to such factors in coal workers' pneumoconiosis and its sequelae; (2) the adequacy of current workers' compensation programs in compensating persons with such diseases; and (3) the status and adequacy of Federal health and safety laws and regulations relating to the industries with which such diseases are associated.

(b) The study required by subsection (a) of this section shall be completed and a report thereon submitted to the President and the appropriate committees of the Congress within eighteen months after the date of enactment of this Act.

Mr. RANDOLPH. We are saying that we will cooperate through the Secretary of Labor with the Director of the National Institute for Occupational Health and Safety, and that there shall be a study of all occupationally related pulmonary and respiratory diseases, including the extent and the severity of those diseases.

I will not state what that study would do, but it would be very thorough and very detailed.

We will look into the adequacy of current workers' compensation programs in connection with those persons with such diseases.

And we will look into the status of the laws that are now upon the books relating to the industries and the diseases which come from working within those businesses or industries.

We ask that the report be submitted to the President and to the appropriate committees, and we have allowed 18 months for the completion of that work and report to the President and to Congress.

I hope that, in this instance, fully recognizing the intent which is proper of the Senator from Alabama, the amendment not be a matter of vote because, in the purpose we are with the Senator, but having recognized it and knowing that we are coming to it, I trust that we can be given the opportunity to take care of it at a later time.

I remember standing in the well of the Chamber in 1965 when we brought up the Appalachian Regional Commission program, which now, of course, embraces 12 parts of States and the State of West Virginia as a whole. At that time there were Members very properly saying, "What about the other sections of the country that have these common problems?" I recognized them, and I pledged in the well of the Chamber that we would produce legislation for those other areas of the country.

I want to say that we kept that pledge, and now there are seven areas of the country and the Appalachian Commission, eight in all, where these programs have been rebuilding, where there is the thrust of common problems to areas of this country. This has been a matter that was not unduly delayed, but we had been studying the subject for 2 years. We were ready to act on the Appalachian problem, and then it took further study to get ready so that we could act properly on these other areas of the country. We did it, and it is somewhat a similar situation, as I see it, in connection with the request being made, and I leave it to the good judgment, of course, of my colleagues as to pressing the amendment. Or, with the assurance from the manager of this bill, we will be having this study and it will only take 18 months and the report will come then as to what we believe should be done.

Mr. ALLEN. I thank the distinguished Senator.

He is certainly well recognized for his fairness and his compassion. I call his attention to the situation that Senator SPARKMAN and I find ourselves in with our constituency that possibly we would have a coal miner in Birmingham living next door to an iron ore miner, both suffering from similar diseases caused under the same circumstances but in different mines.

The coal miner having black lung receives compensation, which is fair and which we approve of, but his neighbor, because he works in an iron ore mine, receives no compensation. We are pleased that the chairman has a study underway, and we are hopeful that that will show the necessity of enacting legislation in other fields as well as the field of black lung.

We would like to ask the distinguished chairman if it would be his purpose and his thought to wait until the study has been completed before we have a hearing before the committee. Would the Senator give us an indication if possibly we might have a hearing prior to the completion of this 18-month study.

Mr. RANDOLPH. The Senator is very persuasive, of course. Why does he not just trust the Senator who is now speaking to move these matters, with which he is very understandably concerned. as quickly as possible?

Mr. ALLEN. We certainly have full confidence in the distinguished Senator from West Virginia. We will accede to his request. Certainly we will be delighted——

Mr RANDOLPH. I think it is possible we could have what the Senator is requesting, but we would rather not be committed.

Mr. ALLEN. I would like to have an expression also from the distinguished Senator from New York on that point.

Mr. JAVITS. Certainly, Mr. President, I concur with the distinguished Senator from West Virginia as to the timetable question. I know of the great esteem with which we all hold him; I think his confidence is well trusted by the Senator from Alabama.

For those Senators who were not in the Chamber, they will recall or see in the RECORD that I called attention to that very problem. There is a problem of red lung for ironworkers, a problem of brown lung for textile workers, and a problem of white lung for talc miners.

The NIASH, the research agency of the National Institute of Safety and Health, is conversant with these matters. We have had some hearings already, and I am confident that within a reasonable time, a proximate time, we can afford a hearing to the ironworkers.

Senators may be interested to know that I am working very hard with Senator WILLIAMS, with the cooperation of Senator RANDOLPH, on workmen's compensation. We had the finding of a commission about 3 years ago that one deficiency in workmen's compensation was the failure to take account of these lingering diseases, which often take years to develop, but when they do develop are lethal in their character.

I shall persevere in that effort. There will be a bill introduced in September, I hope, by Senator WILLIAMS and myself, joined with others, to extend the workmen's compensation coverage to include those diseases, including the red lung which I have mentioned here. I hope we will have an opportunity to have the Senators from Alabama give us the facts and details on those things before then, whether in the hearings or outside them. But I can assure both Senators I am passionately devoted to their cause, and I am confident we will get abreast of them. I believe they feel as I do, that the coal miners' situation having been so bad, we do not begrudge them their relief, but we wish to bring the others up to the same kind of justice; and I pledge to both Senators to make every effort, with hearings, bills, and everything it takes to accomplish it.

Mr. ALLEN. Mr. President, I thank the distinguished managers of the bill. I believe the offering of this amendment has been highly productive, in that it has focused attention on the plight of other miners and other industrial workers who do contract these diseases in the performance of their duties.

The assurances that we have been given by the chairman of the committee and the ranking minority member are most reassuring, and we are hopeful that we can make progress in this area at an early date.

With these splendid assurances, for which are grateful, we ask that we be allowed to withdraw the amendment.

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

Mr. ALLEN. I yield.

Mr. SPARKMAN. We appreciate the assurances given to us both by the Senator from West Virginia, with whom I had an exchange several months ago, and by the Senator from New York (Mr. JAVITS).

I might say that if the subcommittee to which he refers, or the full committee, has a hearing at some time in the near future, we would like an opportunity to appear as spectators.

Mr. ALLEN. Again I thank the distinguished Senator from West Virginia.

Mr. RANDOLPH. I am very conscious of the concern of the Senators from Alabama. It is a concern which is shared by the members of our committee, as indicated by Senator JAVITS, and earlier by me, in reference to remarks we made in colloquy with Senator SPARKMAN and now with Senator ALLEN.

The PRESIDING OFFICER (Mr. STONE). Does the Senator from Alabama withdraw his amendment?

Mr. ALLEN. I do withdraw the amendment.

The PRESIDING OFFICER. The amendment is withdrawn.

UP AMENDMENT NO. 695

Mr. RANDOLPH. Mr. President, I send to the desk an amendment and ask for its immediate consideration.

The PRESIDING OFFICER. Is there objection to the consideration of the amendment submitted at this time?

Mr. JAVITS. And temporarily displacing the Chafee amendment?

The PRESIDING OFFICER. Temporarily displacing the committee amendment and the amendment by the Senator from Rhode Island (Mr. CHAFEE). Is there objection? Without objection, it is so ordered. The Clerk will state the amendment.

The second assistant legislative clerk read as follows:

The Senator from West Virginia (Mr. RANDOLPH) proposes an unprinted amendment numbered 695:

On page 33, beginning on line 18, strike out "and before October 1, 1982.".

Mr. RANDOLPH. Mr. President, the report of the Committee on Finance states that the tax on coal imposed pursuant to section 202 of the bill is to terminate on September 30, 1982, and by implication, the trust fund.

The report, however, does not disclose why the tax is to be imposed for this limited 5-year period. I can appreciate that Finance Committee members might feel that a tax should not be imposed on a permanent basis if the level of benefits, over time, will be steadily reduced; for the following reasons, I judge it imperative to establish the tax with no termination date.

As in part B of the black lung benefits program, and as with other disability compensation programs, benefit payments are made for the duration of the disability. If the tax is terminated, then the program is also terminated. It follows that benefits, too, will be terminated. It is not fair or appropriate to provide benefits for 5 years and suddenly cut them off.

Proponents of a "sunset" tax provision may suggest that State workers' compensation programs will pick up the benefits after the Federal program is terminated. This is, I respectfully suggest, wishful thinking. It is not realistic to expect States to assume millions of dollars of liability voluntarily.

The alternative, I submit, is equally unacceptable. If the tax terminates, the benefits will have to be paid out of general revenues. If this is what is contemplated, it is merely a continuation of the existing system, only the situation is worse. With the reform provisions of S. 1538, and with the assumption by the trust fund of considerable liability which under existing law attaches to individual coal operators, the amount of general revenues required will be far greater than is currently the case.

One of the major reasons for the development of S. 1538 was to transfer the burden of paying black lung benefits from the Federal Government to the coal industry, where, we believe that burden belongs. If the tax is terminated after 5 years, this sound policy will be entirely nullified.

Mr. President, I oppose the termination of the tax on coal, and I ask that my amendment be approved.

Mr. JAVITS. Mr. President, first, to regularize the procedure, and I hope that my colleague from West Virginia will agree, I ask unanimous consent that the committee amendments, those made by the Committee on Finance, may be considered en bloc and treated as original

text for the purpose of further amendment.

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

Mr. JAVITS. Mr. President, the reason that the Committee on Finance limits the operation of the tax is two-fold. First, they want to take another look at this program if they are going to continue a tax that is going to produce, over 5 years, what they estimate as almost a billion dollars—$930 million.

Second, this tax that is to be levied will not pay for all of the part C claims. It falls short, and they say it falls short, unless two assumptions are made: one, that there will be a strikeout of the provision in the bill relating to the reinterpretation of X-rays; and, two, that there be an elimination from the bill of the presumption of eligibility after 25 years of work.

Between them, these provisions account for about $426 million of anticipated expenditure over the next 5 years, so the amount of the shortfall is going to be evident when there is final action on this bill. Hence, the Committee on Finance wants to take another look at it.

Mr. President, I shall move, as soon as this amendment is laid aside temporarily, to put a terminal date in the bill in respect of the financing of new claims roughly contemporaneous with the date the Finance Committee has set to terminate the collection of the tax.

I believe that it is high time that there be an end to this drain on the Federal Treasury for the benefit of one particular set of victims. We have just heard from the Senators from Alabama of another set, and there are many more sets than that, equally deserving. So, Mr. President, the action of the Senate on this amendment, which Senator RANDOLPH, with his customary fairness, has interposed before mine so that the Senate could act on that first, becomes critically important. I hope very much that the Senate will reject that amendment and leave the terminal date for the tax in the bill.

ORDER FOR NO ROLLCALL VOTES BEFORE 2 P.M. TODAY

The PRESIDING OFFICER. There is an amendment pending.

Mr. JAVITS. Mr. President, I ask unanimous consent that the amendment of Senator RANDOLPH may be temporarily laid aside.

Mr. RANDOLPH. I shall not object, but I wish to make this request, and it may already have been done: that no rollcall votes occur before 2 p.m.

The PRESIDING OFFICER. There has not been a unanimous-consent request or order barring votes before 2 p.m. There has been a consent agreement to vote on the amendment by the Senator from Rhode Island (Mr. CHAFEE) at 2 o'clock.

Mr. RANDOLPH. I make that unanimous-consent request.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request of the Senator from New York that the amendment of the Senator from West Virginia be laid aside?

Without objection, it is so ordered.

AMENDMENT NO. 530

Mr. JAVITS. I call up amendment No. 530.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from New York (Mr. JAVITS) proposes amendment No. 530.

On page 20, lines 5 through 9, strike section 7(g) and redesignate the succeeding subsections accordingly, and, at the end of title I, add a new section as follows:

"PROGRAM TERMINATION

"SEC. 116. No new claims for benefits under this part shall be accepted after December 31, 1982.".

Mr. JAVITS. Mr. President, this bill has no terminal date. The Act which it amends had a terminal date of 1981 for any new claims to be filed. I do not want to inhibit the recognition of claims filed up to December 31, 1982, but I do not want new claims to occur thereafter with no tax to cover them. Obviously, that is what is going to happen unless Senator RANDOLPH's amendment is carried. Even if it is carried, I would still insist on my amendment, for the same reason that the Senate fixed a 1981 date in the bill as it stands today.

This is a very expensive program. We already see, even under the Finance Committee tax, that there is going to be a shortfall to meet the terms of the bill which we have to finance. All our arguments about economy go out the window unless we have a time when we can review this bill in order to stem the flow of Federal funds into it.

Mr. President, we have distributed to every Member a letter outlining the case, which I really think is irrefutable, for ending this program so that Congress may review it by January 1, 1983. If the amendment of Senator RANDOLPH to the Finance Committee's part of this bill fails to carry and the trust fund, based upon the tax rate, only operates until the end of 1982, it seems to me irrefutable that there has to be a terminal date for the substantive part of the bill itself. If, on the other hand, the Randolph amendment should carry, we still have to have a terminal date, because the tax falls short of paying the amount which will be required to be paid due to the provisions relating to the rereading of X-rays and to the 25-year presumption for deceased miners whose employment terminates before 1971. Therefore, we should have an opportunity to review the shortfall and determine whether or not we wish to continue or modify the program.

For all of those reasons, Mr. President, I believe that this amendment is an appropriate one and should be carried.

Mr. President, I ask unanimous consent that the letter addressed to my colleagues, describing in detail the situation that demands a terminal date on the substantive aspect of the bill may be printed in the RECORD as part of my remarks.

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

U.S. SENATE,
Washington, D.C., July 21, 1977.

DEAR COLLEAGUE: When the bill to amend the Black Lung Benefits Program (S. 1538) is considered by the Senate today, I will propose an amendment to delete the provision which, for the first time, would make this program a permanent Federal responsibility. Instead, my amendment will authorize the Department of Labor to continue to accept new benefit claims for five more years through December 31, 1982. The amendment will retain the Congressional intent expressed in the original 1969 Act, and reaffirmed in the 1972 amendments, that this temporary Federal benefits program should last only until State workers' compensation systems provide coverage of coal miners who are disabled by black lung disease.

Under current law, all benefits under the Department of Labor program will cease, and no new claims will be accepted, after 1981. Under the amendment, all beneficiaries who qualified prior to that date will continue to receive benefits, and only new claims after January 1, 1983 would have to look to the applicable State workers' compensation agency. This will allow the States time to improve their workers' compensation programs and also will require Congressional review of the Black Lung program within five years.

Under the bill, the Congress will have to review the financing mechanism of the Black Lung Benefits Program within five years in any event. This is because, as reported by the Finance Committee, upon referral from the Human Resources Committee, the one percent ad valorem tax on the sale of coal to be used to pay most future benefit costs out of a new trust fund will be levied only through September 30, 1982, and no provision is made to resume general revenue financing thereafter.

In fact, as stated on page 7 of the Finance Committee report, the tax "revenue is likely to be insufficient, by almost $300 million, to meet the expected obligations of the trust fund for the next 5 years." Accordingly, my amendment terminating new claims after 1982 coincides with the exhaustion of the trust fund's financing under the terms of this bill itself.

It is also important to know why the States have not already assumed complete responsibility for black lung compensation claims and how other provisions in this bill deal with this previously unresolved issue. Under current law, the Secretary of Labor as to Black Lung is authorized to certify State workers' compensation programs that meet certain criteria. The Federal program is not applicable with respect to claims filed by residents of certified States. But, to date no States have seriously attempted to get Federal certification.

The major impediment to certification, which this bill overcomes, has been the understandable unwillingness of the States to assume retroactive liability for the thousands of claims of coal miners who contracted black lung disease before the State laws were amended to provide black lung coverage as a compensable disability. Two features of this bill resolve this problem. First, a trust fund is created to finance past and current claims. Second, as I proposed to the Human Resources Committee, the bill (in Sec. 102 (c)(2)) explicitly relieves any State applying for approval from retroactive liability by providing that no benefits would be required where the miner's last coal mine employment terminated prior to the Secretary of Labor's certification of the State law.

Equitable and adequate compensation of

victims of occupational disease requires continued improvement of State workers compensation systems, not the perpetuation for decades to come of stop gap Federal compensation programs like Black Lung. Making the Black Lung program permanent will inevitably invite increased demands for comparable Federal compensation programs for other categories of employees disabled by occupational diseases—textile workers, asbestos workers, iron workers and many others—who can legitimately complain that the Federal Government has discriminated against them by singling out only one group of workers for special treatment. That is the purpose of the amendment I have proposed, to which I urge you to lend your support.

With best wishes,

Sincerely,

JACOB K. JAVITS.

Mr. JAVITS. Mr. President, I ask unanimous consent that I may suggest the absence of a quorum and that it not be charged to either side.

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

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. JAVITS, Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. JAVITS. Mr. President, I have consulted Senator RANDOLPH'S staff, and and it is based upon that consultation that I make the following unanimous-consent request:

I ask unanimous consent that, in lieu of any time remaining on the Chafee amendment, there may be 10 minutes before the vote on the Chafee amendment, to commence at 2 o'clock, for further debate on the Chafee amendment, the time to be equally divided—5 minutes to the proponent of the amendment, 5 minutes to the opponents—the vote to occur upon the completion of that debate.

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

Mr. JAVITS. Mr. President, I ask unanimous consent that with respect to the Randolph amendment pending at the desk, there also be a comparable 10-minute debate—5 minutes to the proponent, 5 minutes to the opponents—the debate to commence immediately after the vote on the Chafee amendment has been completed, and that second debate to be followed by a vote after its completion.

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

Mr. JAVITS. Mr. President, I ask unanimous consent for the same arrangement exactly on my own amendment, which follows the Randolph amendment.

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

Mr. JAVITS. Mr. President, I again ask unanimous consent that I may call for a quorum without the time being charged to either side.

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

Mr. JAVITS. 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. JAVITS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

RECESS UNTIL 2:00 P.M.

Mr. JAVITS. Mr. President, I move that the Senate stand in recess until 2:00 p.m.

The motion was agreed to, and at 1:31 p.m., the Senate recessed until 2:00 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. MUSKIE).

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, I ask unanimous consent that Martin Franks, of my staff, be accorded the privilege of the floor during debate and votes for the rest of this afternoon.

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

Mr. JAVITS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. JAVITS. Are there 10 minutes for debate now on the amendment of the Senator from Rhode Island, which is pending?

The PRESIDING OFFICER. The Senator is correct.

Mr. JAVITS. Five minutes to a side?

The PRESIDING OFFICER. The Senator is correct.

Mr. JAVITS. Mr. President, I suggest that the Senator utilize his time.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

UP AMENDMENT NO. 693

Mr. CHAFEE. Mr. President, this amendment was discussed, to some degree, this forenoon. I might explain to the Members present the gist of it.

The current law is that when an X-ray comes in from the coal mine area, indicating that a miner has black lung disease, it then goes to a section in the Department of Labor where the Government has an opportunity to read the X-ray again. This is read by what is known as a B reader. These men are specially trained, having gone through the course at Johns Hopkins University. They are specially trained, not just to read X-rays, but to read X-rays of the lungs.

ORDER OF PROCEDURE

Mr. JAVITS. Mr. President, will the Senator yield for a moment?

Mr. CHAFEE. Yes.

Mr. JAVITS. Mr. President, I ask unanimous consent that it may be in order to ask for the yeas and nays on the Javits amendment at this time.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. JAVITS. 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 were ordered.

Mr. JAVITS. Mr. President, I ask unanimous consent that it may be in order to ask for the yeas and nays on the Randolph amendment at this time.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. JAVITS. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

UP AMENDMENT NO. 693

Mr. CHAFEE. In the event that the Government reader should determine that, based on his reading, there cannot be a determination of black lung disease, the situation does not end, Mr. President. Instead, the claimant has a right to appeal to an administrative law judge. The administrative law judge can call in expert witnesses, can ask for further X-rays, can seek whatever additional information he needs in connection with the reading of that X-ray.

Let us take a step further, Mr. President. Let us assume that the administrative law judge determines that the claimant, based on this X-ray, does not have a case. That does not end it. It then goes to the Benefits Review Board.

The principal reason, I believe, Mr. President, that this is a most extraordinary change in the law is that the change in the law proposed in this amendment is that the Government has no reading of the X-ray. The X-ray comes in from the coal mine area, with a statement by the reader there, the local doctor, who examines it and determines that there is black lung disease. That settles that point. The Government has no chance to read the X-ray. We are thereby depriving the Government of its opportunity to determine that, in the Government's view, there is no claim. It seems to me that that is a most extraordinary deprivation of the Government's right to protect the taxpayers of this Nation.

I further point out, Mr. President, that oftentimes, when the Government gets the X-ray under the present situation, it upgrades the award. In other words, it determines that the black lung disease is more serious than the original reader had expected.

There is a further protection for the claimant in that, in 40 percent of the cases that were examined in 1975 under a study, the Government's second reader found that there was previously undetected evidence of lung cancer, tuberculosis, and emphysema. What my amendment does is go back to the situation where we are now. In other words, it protects the Government's right to have a second reading and changes the proposed law, which would eliminate the right of the Government, the taxpayers of this Nation, the citizens of this Nation, to have its second reading made prior to any benefit being paid.

Mr. JAVITS. Will the Senator yield?

Mr. CHAFEE. Yes.

Mr. JAVITS. Mr. President, I support this amendment. I think it is inconceivable that the Government should not have that right. I moved it in the com-

mittee. It was defeated by a very narrow vote. I hope very much that it carries in the Senate.

Mr. CANNON. Mr. President, I ask unanimous consent that William Kroger of my staff may have the privilege of the floor during debate and vote on this measure.

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

Mr. CHAFEE. I further point out that this amendment was defeated in the committee, 6 to 5. The amendment is supported by the administration, as the Assistant Secretary for Employment Standards stated in his letter.

The PRESIDING OFFICER. The Senator's time has expired. Who yields time?

Mr. RANDOLPH. I yield myself the remainder of the time. Is that 5 minutes on the majority side?

The PRESIDING OFFICER. The Senator is correct.

Mr. RANDOLPH. Mr. President, I have discussed this very thoroughly during debate earlier today. I really regret—and we cannot, I am sure, have it otherwise—that Members of the Senate were not present. So often, we find ourselves coming in and voting on a subject which is rather complex, such as this subject. I know that Senator CHAFEE and the manager of this bill went into this subject very thoroughly.

I submit that Dr. Donald Rasmussen is a man who understands this problem. I am afraid that Mr. CHAFEE, the able Senator from Rhode Island, really does not understand the importance that I attach to the position I hold of, frankly, defeating this amendment.

Dr. Rasmussen said:

Chest films of good quality should be obtained on all applicants, primarily to exclude infectious, malignant or other diseases or conditions of the lungs or thorax. There is little or no reason for the elaborate system of multiple readers, since the presence or absence of pneumoconiosis per se is pertinent only in cases who have worked less than 15 years in the coal industry.

Then he said:

Even in these cases, there is no relationship between the X-ray findings and the presence or absence of impaired function.

Mr. President, the Labor Department admits that, in the vast majority of the cases, X-ray rereading results in the reversal of positive findings of pneumoconiosis. The GAO, in its recent report on the administration of the black lung program, points out that the rereading of X-rays results in significant delays in claims processing. The provision in the committee bill gives the Secretary adequate means of assuring the quality of the X-ray. The rereading prohibition applies only if all the factors are present: that the X-ray was taken by a qualified technician; that the original interpretation was made by a certified radiologist or a radiologist who is eligible for certification by the Board of Radiologists; that the X-ray is of sufficient quality to show pneumoconiosis; that there is no evidence of fraud.

I agree that the executive branch must be able to reread X-rays for the purpose of discovering illness.

This is not the issue in the vote here on the amendment. The issue, as I have indicated earlier today, is whether rereaders hired by the Government should be allowed to second-guess the coal field radiologist, the man who is there where the mining is taking place, who is far knowledgeable about the individual miner.

Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. All time having been yielded back or having expired, the question is on agreeing to the amendment of the Senator from Rhode Island. The yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Arizona (Mr. DECONCINI), the Senator from Arkansas (Mr. MCCLELLAN), and the Senator from Minnesota (Mr. HUMPHREY), are necessarily absent.

I further announce that the Senator from South Carolina (Mr. HOLLINGS), the Senator from Mississippi (Mr. EASTLAND), and the Senator from Mississippi (Mr. STENNIS), are absent on official business.

I further announce that, if present and voting, the Senator from Minnesota (Mr. HUMPHREY), would vote "nay."

Mr. STEVENS. I announce that the Senator from Idaho (Mr. MCCLURE), the Senator from South Carolina (Mr. THURMOND), and the Senator from North Dakota (Mr. YOUNG), are necessarily absent.

I also announce that the Senator from Maryland (Mr. MATHIAS), is absent on official business.

I further announce that, if present and voting, the Senator from South Carolina (Mr. THURMOND), would vote "yea."

The result was announced—yeas 41, nays 49, as follows:

[Rollcall Vote No. 311 Leg.]

YEAS—41

Bartlett	Glenn	Morgan
Bellmon	Goldwater	Muskie
Brooke	Gravel	Nelson
Bumpers	Griffin	Packwood
Byrd, Harry F., Jr.	Hansen	Proxmire
Case	Hatch	Roth
Chafee	Hathaway	Schmitt
Chiles	Hayakawa	Scott
Curtis	Helms	Stafford
Danforth	Javits	Stevens
Dole	Laxalt	Talmadge
Domenici	Leahy	Tower
Garn	Long	Wallop
	Lugar	Zorinsky

NAYS—49

Abourezk	Hart	Nunn
Allen	Haskell	Pearson
Anderson	Hatfield	Pell
Baker	Heinz	Percy
Bayh	Huddleston	Randolph
Bentsen	Inouye	Ribicoff
Biden	Jackson	Riegle
Burdick	Johnston	Sarbanes
Byrd, Robert C.	Kennedy	Sasser
Cannon	Magnuson	Schweiker
Church	Matsunaga	Sparkman
Clark	McGovern	Stevenson
Cranston	McIntyre	Stone
Culver	Melcher	Weicker
Durkin	Metcalf	Williams
Eagleton	Metzenbaum	
Ford	Moynihan	

NOT VOTING—10

DeConcini	Mathias	Thurmond
Eastland	McClellan	Young
Hollings	McClure	
Humphrey	Stennis	

So Mr. CHAFEE'S amendment was rejected.

Mr. RANDOLPH. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. HUDDLESTON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 695

The PRESIDING OFFICER. The question recurs on amendment No. 695, offered by the senior Senator from West Virginia (Mr. RANDOLPH).

The Senate will be in order. The Senate will not proceed until the Senate is in order. Senators will clear the aisle and clear the well and will continue their conversations in the cloakroom.

On this amendment there will be 10 minutes of debate, to be equally divided between the sponsor of the amendment and the Senator from New York (Mr. JAVITS).

Who yields time?

Mr. RANDOLPH. Mr. President, a question: What is the status of the pending amendment? Has there been debate on this amendment in any degree?

The PRESIDING OFFICER. The Chair understands that there has been debate—a few minutes less than 10 minutes.

Mr. RANDOLPH. Mr. President, I yield myself such time as I may require.

The PRESIDING OFFICER. The Senator is recognized.

Mr. RANDOLPH. Mr. President, it has been asserted by the Senator from New York in reference to the report of the Committee on Finance that a substantial shortfall in revenues in relation to benefits will result from passage of this bill. That assertion is based on a series of cost and revenue assumptions. The sources are the Joint Committee on Internal Revenue Taxation and the Department of Labor staff.

On the other side of the question the Congressional Budget Office, directed by Dr. Alice Rivlin, has determined in a July 11 cost estimate that the shortfall of revenues will be only in the amount of $35 million over a period of 5 years, or $7 million a year.

Our bill, in fact, requires the trustees of the fund to report on the condition of the fund and to recommend to Congress any requirement for changes in the tax. This is to be done annually. Thus there is no need, as I see it, for a termination date on the tax.

Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. JAVITS. Mr. President, I yield 3 minutes to the Senator from Louisiana.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. LONG. Mr. President, I would think we could all agree that much remains to be seen about what the cost of this program is going to be. For example, the Senate just gave its approval to a rather controversial provision in the bill which says that the Government does not have the right to have its experts pass judgment on what those X-rays show. So if someone goes to his family doctor and the family doctor says he has black lung disease, the Government cannot

have one of its specialists testify what, in his judgment, that X-ray shows.

The Department of Labor, of course, opposed the Committee on Human Resources on that item and, frankly, those of us on the Committee on Finance were inclined to feel that it is not how you ought to do business, where the Government is precluded from having its witnesses testify on behalf on the Government's position.

But that was the judgment of the Senate and, I dare say, most Senators, I do not think, had the opportunity to fully appraise themselves of what the problem here was that will raise the cost of the program.

We also have a problem here with regard to the presumption created by the bill that a person who worked in the mines for 25 years is presumed to have black lung, for the benefit of his widow or his heirs.

From the point of view of most of us, when a person is dead why can you not have an autopsy and see if he has black lung? Well, we are not going to have the right to have the autopsy. We are going to presume he has black lung because he worked in a mine for 25 years.

These things are going to increase the cost of the program. The view of the Committee on Finance and the view of the Senator from New York (Mr. JAVITS), is, that being the case, we ought to provide a tax to pay for this matter for 5 years, and then after 5 years we ought to take another look at it and see what it is costing and have a chance to pass judgment on what our program should be.

I heard the argument of the Senator from West Virginia, and I suppose I cannot quarrel with his views, he representing coal miners, and they ought to have everything that can be recommended. But I would think, in view of the fact that the costs of this matter may wind up being a great deal more than anybody anticipates, where the costs wind up being anywhere from two to 10 times what anybody estimated they would wind up being, it would seem we ought not to be so liberal and we should be cautious. We should wind up with this being the cost for 5 years, and then we should take another look at it.

I would like to ask is this an amendment offered by the Senator from West Virginia or is it the Committee on Finance amendment we would be voting on?

The PRESIDING OFFICER (Mr. CHILES). The amendment offered by the Senator from West Virginia.

Mr. LONG. Then I hope the Senate will not agree to the amendment.

Mr. JAVITS. Mr. President, I yield myself 2 minutes.

The PRESIDING OFFICER. The Senator from New York.

Mr. JAVITS. Mr. President, it seems to me if anything is open and shut, this is it. Here is a time limitation on a tax, an ad valorem tax, which is going to be passed on to the consumer, and we ought to have a time limitation to review what we are spending.

This program has cost the Government $1 billion a year. Now future costs are going to be transferred to the coal consumer. Do we just want that program to go on forever without implementing it into workers' compensation or requiring some other evidence of responsibility? I almost cannot understand ourselves if that is the way we feel.

Now, we have a limitation of 1981 in the present act. This is not of meaning to me; it is of meaning to our country and to the consumers of coal. We have a limitation of 1981. We are willing to push that up to 1983. Not to review this program at all, not to take another look at the tax when the time expires in 5 years, seems absolutely beyond me, especially as the estimates of money will fall short, whether it is $35 million or $400 million, they are going to fall short. Therefore, we should end them at a given time.

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

Mr. JAVITS. I yield.

Mr. LONG. Basically what this amounts to is that we have here a $1 billion tax to finance what by any standard is an exceedingly generous program and, frankly, there are going to be situations where we are going to pay a lot more than anybody ever dreamed of for some cases which, to say the least, will be controversial.

Now, the view of the Committee on Finance and the view of the Senator from New York in this matter is that we ought to take another look at it in 5 years' time and see what it is going to cost.

Mr. JAVITS. That is the course of basic responsibility, and I see that as the point of view of the Committee on Finance, and I argue to sustain the position of the Committee on Finance.

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

Mr. JAVITS. I yield.

Mr. CURTIS. I just want to add my support to the position of the Senator from New York and my distinguished chairman, Senator Long.

There are many unknowns in this bill. It is a new tax. It came to us on an excise tax basis. We effected a change. We think it will work out equitably, but it is a new program so far as this tax arrangement is concerned, and I would feel much better if it had a termination date so that another Congress could look at it.

The PRESIDING OFFICER. All time on the amendment has expired.

Mr. JAVITS. I yield 2 minutes on the bill.

Mr. RANDOLPH. Mr. President, I would remind my able chairman of the Committee on Finance, Mr. LONG, that the surface mining bill provides a tax for 15 years. Now, that is a fact. How can you reason or how can the members reason that we should do any less for those persons in a bill that is people-oriented, very frankly. I recognize that. The miner and the program, as I see it, need a continuity, and that is why I take the position that I do.

I understand in part the reasoning, but I cannot, of course, agree with the situation as stated by those, including the Senator from Louisiana, who want a so-called termination date of this type.

Mr. JAVITS. I yield a minute to the Senator from Colorado.

Mr. HART. Mr. President, first of all, if we apply a sunset principle to this tax, then I think we should do so in all tax subsidies on an experimental basis just to see how it works, just to be fair.

Second, under the present program 90 percent of the miners in Colorado are having trouble getting their benefits because they are delayed and the applications are stacked up, and the presumption is they do not have black lung until they prove they do.

I think the medical evidence is quite to the contrary. I think the presumption should be on those who say they do not have black lung to prove they do not. I think the presumption should operate in favor of the person who has been under the ground for 25 years. That is what I take it the purpose of the Senator's proposal is, and I think we should support him.

Mr. JAVITS. Mr. President, I yield myself 1 minute to reply.

The difficulty is we picked out one industrial illness, and we favored it. If we were doing it across the board, I would be sympathetic with my colleague. I am the last person who is going to stand against some form of compensation. I have made fair treatment of workers my whole life's work.

I feel, having picked it out specially, we have really gone pretty much overboard with it and at least we should have some review process.

We have this amendment relating to the tax, and then we have my own amendment relating to the new claims after 1982. We have to get it back into the State workers' compensation system or at least do it for the others who are similarily affected at one and the same time.

For those reasons, I hope very much the Senate will reject the amendment.

I yield the floor.

Mr. RANDOLPH. Mr. President, I say to the Senator from New York that if the tax is terminated then the program, as I have said earlier today, is also terminated. It follows that benefits also will be terminated.

I do not believe that it is fair or appropriate to provide benefits for 5 years and then, frankly, very suddenly cut them off.

Mr. JAVITS. In answer to that, I believe that we should stop taking new claims after the end of 1983 and review this whole program. This is an element in that determination which I believe is a prudent one for the Senate in view of the way this program has rolled up the costs at the same time that it has been restricted to one industrial illness. I am very smypathetic to it. But we have to have some controls and some restraints.

Mr. RANDOLPH. Mr. President, will my able colleague yield again?

Mr. JAVITS. I yield.

Mr. RANDOLPH. I have said earlier today that the alternative which I have indicated I think is equally bad. If the tax terminates, the benefits will have to be paid out of the general revenues, as the Senator has just said.

If this is what is contemplated, it is merely a continuation of the existing system. Only I think it is making the system worse.

I hope that we realize that one of the major reasons for the development of this bill was to transfer the burden of paying black lung benefits from the Federal Government to the coal industry.

I also wish to add, with the permission of my colleague——

Mr. JAVITS. Of course.

Mr. RANDOLPH (continuing). That in this legislation we require that the trust fund report on the condition of the fund, and then we recommend to Congress any requirement for changes in the tax, and I remind Senators that this is done on an annual basis.

Thus, I repeat. I think it is unwise to have the termination date as the opponents believe on the tax itself.

Mr. JAVITS. Mr. President, I think it is time to end the debate on this.

Mr. LONG. Mr. President, will the Senator yield a minute?

Mr. JAVITS. I yield.

Mr. LONG. Mr. President, there are two things in here we should take a look at. Both of them have to do with people who might not have black lung at all.

The Senate just went along with the proposition that the Government is to be denied the right to let those Government witnesses testify what those X-rays mean. So, if the Government is not permitted to call its witnesses you might say the doctor for the claimant has the first, last, and only say on what that X-ray means. So that just sets the stage, and the Labor Department itself that is very friendly toward labor and sympathetic toward labor recommends against that.

The Senate went along with this proposition that the Government witnesses cannot testify for the Government. That is No. 1.

No. 2, in this bill we have also a presumption that if a person worked in the mines 25 years he had black lung even though the person is dead. You have the body right there and an autopsy could very well prove that he does not have black lung. The Labor Department is against that also.

I note that we may find that we have a great deal more cost in this program than we ever anticipated.

In view of the Finance Committee having to worry about where all the money is going to come from to pay for this, I say let us provide the $1 billion tax to pay for it for roughly 5 years but then let us take a look to see if we can really afford all this generosity.

Clearly we are going to be paying black lung benefits to a great number of people who do not have black lung. How far do we wish to go with it?

So the suggestion of the Finance Committee is to put the tax on to pay for it for 5 years and then give ourselves the right to take a look at it 5 years from now to see if we wish to be that generous.

Obviously all those who have black lung wish us to continue the benefits. However, as to those who do not have black lung, should we not have another look at this thing 5 years from now? In that case, the judgment of the Finance Committee majority, as was the judgment of the Senator from New York, who served on the Human Resources Committee, was that in that event we should take a look at it after 5 years to see how the costs are comparing to the estimates.

The PRESIDING OFFICER. The Senator's 5 minutes have expired.

Mr. JAVITS. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. All time has expired.

The question occurs on agreeing to the amendment of the Senator from West Virginia. The yeas and nays have been ordered, and the clerk will call the roll.

The second assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Minnesota (Mr. HUMPHREY) and the Senator from Arkansas (Mr. MCCLELLAN) are necessarily absent.

I further announce that the Senator from Mississippi (Mr. EASTLAND), the Senator from Mississippi (Mr. STENNIS), and the Senator from South Carolina (Mr. HOLLINGS) are absent on official business.

I further announce that, if present and voting, the Senator from Minnesota (Mr. HUMPHREY) would vote "yea."

Mr. STEVENS. I announce that the Senator from Idaho (Mr. MCCLURE) and the Senator from South Carolina (Mr. THURMOND) are necessarily absent.

I also announce that the Senator from Maryland (Mr. MATHIAS) is absent on official business.

I further announce that, if present and voting, the Senator from South Carolina (Mr. THURMOND) would vote "nay."

The result was announced—yeas 47, nays 45, as follows:

[Rollcall Vote No. 312 Leg.]

YEAS—47

Abourezk	Glenn	Metzenbaum
Anderson	Gravel	Morgan
Baker	Hart	Pell
Bayh	Haskell	Percy
Biden	Hatfield	Proxmire
Bumpers	Hathaway	Randolph
Byrd, Robert C.	Heinz	Ribicoff
Cannon	Huddleston	Riegle
Case	Inouye	Sarbanes
Clark	Jackson	Sasser
Cranston	Kennedy	Schweiker
Culver	Matsunaga	Stevenson
DeConcini	McGovern	Stone
Durkin	McIntyre	Weicker
Eagleton	Melcher	Williams
Ford	Metcalf	

NAYS—45

Allen	Goldwater	Nunn
Bartlett	Griffin	Packwood
Bellmon	Hansen	Pearson
Bentsen	Hatch	Roth
Brooke	Hayakawa	Schmitt
Burdick	Helms	Scott
Byrd, Harry F., Jr.	Javits	Sparkman
	Johnston	Stafford
Chafee	Laxalt	Stevens
Chiles	Leahy	Talmadge
Church	Long	Tower
Curtis	Lugar	Wallop
Danforth	Magnuson	Young
Dole	Moynihan	Zorinsky
Domenici	Muskie	
Garn	Nelson	

NOT VOTING—8

Eastland	Mathias	Stennis
Hollings	McClellan	Thurmond
Humphrey	McClure	

So Mr. RANDOLPH'S amendment was agreed to.

The PRESIDING OFFICER. There will now be 10 minutes of debate before the vote on the Javits amendment.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield?

Mr. JAVITS. I would like Members to stay here to listen to this debate. I believe one of the things we have suffered from is the fact that Members do not hear the debate. They come in and vote and, on the exhortation of a friend, vote yea or nay as the case may be. I hope very much they will just stay for 10 minutes and attend to their duty and vote their conscience.

This amendment coming up is the most important vote of all.

Now I will yield.

BLACK LUNG BENEFITS ACT OF 1977

The Senate continued with the consideration of S. 1538.

AMENDMENT NO. 530

Mr. JAVITS. Mr. President, I will confine my remarks to 5 minutes. Unless there is a compelling reason, I will not yield any more than 5 minutes in opposition, so we should vote in 10 minutes.

Mr. President, this amendment proposes to put a termination date for new claims on this whole bill, and every argument which has been made on both sides of the question leads up to this conclusion: This is a discriminatory law which this bill would perpetuate indefinitely, and we need to give ourselves 5 years in which to try to include other occupational diseases somewhere, whether in this or any other statute. This is certainly a reason for placing a termination date.

If the amount raised by the tax, now without a termination date, falls short materially, not $35 million but $400 million or more, then we should certainly have another look at the whole program as to new claims.

We have had a termination date in the law, 1981. When that question came before the committee previously objection to retaining that termination date in this law was voiced. I am proposing now that it be 1983.

Mr. President, will all respect for my colleagues who favor this bill, they are really pushing it too far. This has no right to be a permanent program of the United States. Many people may benefit from it. A lot of people in my community would benefit if we give some special reward to those who have been unemployed for a year. There are plenty of those. Or some other special class could be singled out for favored treatment.

Now, Mr. President, there are equities, but I think they are more than fully satisfied by wrat we are doing. Now we are levying a tax on the public, roughly $1 billion in this 5-year period. Mr. President, it seems to me that we certainly ought to review the bidding at the end of 5 years in respect to any new claims which are then to be filed. I hope very much that we will not defy reason in this matter and that we at least will continue the policy we, ourselves, inaugurated, of not creating a permanent program.

We have had a cap, a termination date. Let us continue to have a date. That, it seems to me, is the only fair way in which to proceed in this matter. I have recommended to the Senate by this amendment that December 31, 1983, is a more than adequate time to see what ought to be done about this program; should we continue it, work it out by State workmen's compensation reform; or take some other direction. But to just build in the United States a permanent program for one occupational disease cannot be justified by any standard of justice or reason to the consumers or the taxpayers of the United States.

I hope very much that we will act decisively at least on this, the final amendment which will tell the whole story as to whether we intend to be provident about this matter. This black lung legislation was originally estimated to cost, at the most, $300 million. It now costs $1 billion a year.

Members may raise their eyebrows at me arguing about economy, but I am not arguing about economy. I am arguing about justice and prudence; justice to others who are subject to occupational disease and prudence in terms of the personal responsibility for dealing with the peoples' money.

I had hoped very much that Senator RANDOLPH would accept this amendment. But I hope that the Senate will sustain at least this amendment, for reasons of justice and prudence if no other.

Mr. GRAVEL. Will the Senator yield?

The PRESIDING OFFICER. The Senator's time has expired.

Mr. GRAVEL. Who has time so I may speak?

The PRESIDING OFFICER. The Senator from West Virginia has 5 minutes.

Mr. RANDOLPH. I yield 3 minutes to the distinguished Senator from Alaska.

Mr. GRAVEL. I was one of the persons who were not here for the debate and got bits and pieces of it, as normally happens when we come to the floor. As I understand it, this is a tax on coal. Is that the case?

Mr. JAVITS. That is correct.

Mr. GRAVEL. In my rudimentary knowledge, if we are taxing coal and the mining of coal creates a health hazard to the people who mine, it would seem proper to me that the element of society that consumes the coal should bear the cost of that health hazard that is created in mining the coal.

Is that an improper deduction, in the Senator's thinking, of what should be the case as we clear the accounts in our society?

Mr. JAVITS. My answer is decidedly yes, in this case, because there are just as great equities for the miners of iron and the miners of talc and the knitters of the textiles as there are for coal miners. The coal miners happen to be first at the trough. That is OK. I am not arguing against that, and I am going to vote for this bill. But I do not believe we ought to shut off all these other equities by having no terminal date at all when we can take another look at this thing and see what is just for others as well.

Mr. GRAVEL. There is probably something in this bill that I am not acquainted with that shuts off people who mine iron or mine other products. I do not know what that would be. But the fact that we move affirmatively to set the accounts straight in our society, from an economic point of view, on a health hazard from black lung should not preclude us from coming back and setting the account straight on iron ore and setting the account straight on any mining activity that creates a health hazard for those people who pursue that way of life.

When we diffuse this health hazard into the total tax base, we indirectly subsidize that kind of activity. Maybe we want to do that. But I think it is better

* * * * *

for society to recognize where the costs are and pay them there. That is what we do environmentally, when we make the steel mills clean up the dirty water, and the chemical plants clean up the dirty water. We put more cost on selling their chemicals and selling their steel That is part of the pollution. Black lung is a human pollution.

As I understood it when I voted for the amendment of the Senator from West Virginia, I was committing myself to vote to pay for the cost of black lung where it should be paid for, on a pound of coal. So if I consume a pound of coal and somebody has black lung as a result of it, I am paying enough to pay for that cost, which is a real cost. We have been walking away from these costs.

The PRESIDING OFFICER. The Senator's 3 minutes have expired.

Mr. GRAVEL. I think I have made the point I wanted to make. I thank my colleague.

Mr. RANDOLPH. Mr. President, how much time do I have?

The PRESIDING OFFICER. Two minutes.

Mr. RANDOLPH. Mr. President, the amendment now being considered was considered very carefully in our Committee on Human Resources. The proposal of Senator JAVITS was defeated by a vote of 7 to 4. There was, I think, a full discussion of that amendment.

Certainly, my colleague and friend has preserved his right to offer the amendment here. I strongly believe that the amendment should be defeated, just as it was earlier defeated in the committee.

No one can offer assurance that there will be no compensable black lung cases 5 years hence. Pneumoconiosis is a progressive disease. A miner who is not disabled today may well be totally disabled 5 or 10 years from now. This is possible even if the miner terminates his coal mine employment today.

While there is reason to hope that workmen's compensation programs will fully cover black lung and other occupational diseases, that date, that millennium, has not yet arrived. There is no ironclad assurance that the situation can or will change within 5 years. There is no justification for allowing the program to terminate, even for new claims. If miners continue to be disabled by pneumoconiosis, as the able Senator of Alaska (Mr. GRAVEL) said, from their coal mine employment, they should be compensated, no matter what that year of compensation is.

I yield back my time.

The PRESIDING OFFICER. All time has expired.

The question is on agreeing to the amendment of the Senator from New York. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Minnesota (Mr. HUMPHREY), the Senator from Arkansas (Mr. MCCLELLAN) are necessarily absent.

I further announce that the Senator from Mississippi (Mr. EASTLAND), the Senator from Mississippi (Mr. STENNIS), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Louisiana (Mr. LONG) are absent on official business.

I further announce that, if present and voting, the Senator from Minnesota (Mr. HUMPHREY), would vote "nay."

Mr. STEVENS. I announce that the Senator from Idaho (Mr. MCCLURE) and the Senator from South Carolina (Mr. THURMOND) are necessarily absent.

I also announce that the Senator from Maryland (Mr. MATHIAS), is absent on official business.

I further announce that, if present and voting, the Senator from South Carolina (Mr. THURMOND), would vote "yea."

The result was announced—yeas 42, nays 49, as follows:

[Rollcall Vote No. 313 Leg.]

YEAS—42

Allen	Goldwater	Pearson
Bartlett	Griffin	Percy
Bellmon	Hansen	Roth
Bentsen	Hatch	Schmitt
Biden	Hayakawa	Scott
Brooke	Helms	Stafford
Byrd, Harry F., Jr.	Javits	Stevens
Chafee	Laxalt	Stone
Chiles	Leahy	Tower
Curtis	Lugar	Wallop
Danforth	McIntyre	Weicker
Dole	Muskie	Young
Domenici	Nelson	Zorinsky
Garn	Nunn	
	Packwood	

NAYS—49

Abourezk	Glenn	Metzenbaum
Anderson	Gravel	Morgan
Baker	Hart	Moynihan
Bayh	Haskell	Pell
Bumpers	Hatfield	Proxmire
Burdick	Hathaway	Randolph
Byrd, Robert C.	Heinz	Ribicoff
Cannon	Huddleston	Riegle
Case	Inouye	Sarbanes
Church	Jackson	Sasser
Clark	Johnston	Schweiker
Cranston	Kennedy	Sparkman
Culver	Magnuson	Stevenson
DeConcini	Matsunaga	Talmadge
Durkin	McGovern	Williams
Eagleton	Melcher	
Ford	Metcalf	

NOT VOTING—9

Eastland	Long	McClure
Hollings	Mathias	Stennis
Humphrey	McClellan	Thurmond

So Mr. JAVITS' amendment was rejected.

The PRESIDING OFFICER. The bill is open to further amendment.

Mr. RANDOLPH. Mr. President, I state this for the information of Senators: We know of only one amendment that is to be offered. I hope that Senator JAVITS and I can be in agreement as to the amendment to be offered by the able Senator from Kentucky (Mr. FORD).

UP AMENDMENT NO. 696

Mr. FORD. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Kentucky (Mr. FORD) proposes an unprinted amendment numbered 696:

On page 24, line 21, strike the quotation marks.

On page 24, insert between lines 21 and 22 the following:

"(d) any individual whose claim for benefits under this title is denied shall receive from the Secretary a written statement of the reasons for denial of such claim, and a summary of the administrative hearing record, or, upon good cause shown, a copy of the transcript thereof.

Mr. FORD. Mr. President, I commend the leadership and the distinguished floor manager, Senator RANDOLPH, for recognizing the need to bring this measure up for the consideration of the full Senate.

As an elected representative of the country's leading coal-producing State, I have very strong emotions about this issue, and I can assure my colleagues of the extreme importance of this legislation to thousands of miners who are suffering from black lung and attendant illnesses.

These men and their families have, for far too long, suffered from the inadequacies of a program that neither understands nor satisfactorily addresses their medical condition, and there should be no doubt among any of us here today that reforms in our present black lung benefits program are needed, and, in fact, long overdue.

Mr. President, it is a fact that if you work in the mines long enough, 9 chances out of 10 are that you will contract black lung. Medical evidence shows beyond a doubt there is an overwhelming probability that lung disease is a risk that goes with working in the mines.

It is becoming increasingly evident that dust standards in the mines are not being met and miners are still subjected to the daily risks of contracting black lung. Naturally, our obligatioin is to do all we can to prevent unhealthy and unsafe working conditions, and it is hoped that the mine safety legislation that this body approved earlier this year will result in significant improvements in miners' working conditions. Until we succeed in this goal, however, we have an obligation to insure satisfactory compensation for the risks inherent in this vocation, which is so very essential to helping this country meet its present and future energy needs.

Certainly, part of the problems associated with the black lung benefits program are compounded by internal administrative procedures in the Department of Labor. However, under the new administration I have been encouraged by a change in attitude accompanied by a sincere desire to take a close look at how the program can be improved through changes in administrative procedures.

In fact, last month at my request the new Assistant Secretary of Labor, Donald Elisburg, sent several of the top officials involved with administering the black lung benefits program to Kentucky to meet with concerned groups and individuals and see firsthand the problems which are being experienced by those who are intended to be the beneficiaries of this program. These officials spent 2 days in eastern Kentucky and now have a better understanding of the many frustrations experienced by those miners and their survivors who apply for black-lung benefits.

I am confident that as a result of this visit a reevaluation of the Department's administrative procedures will be made, and I feel certain that improvements will be implemented.

To further improve the program's administration—and quite possibly reduce the ever-growing number of court challenges of claim denials—I am offering an amendment to this bill which would require the Secretary of Labor to provide to a denied claimant specific reasons for the denial. In addition, my amendment would also require that the claimant be provided with a (see amends) his claim determination, without the necessity of court action.

I urge this amendment's inclusion as part of this bill.

Finally, Mr. President, I point out that while no piece of legislation can ever satisfy all segments of society, this bill represents more than a reasonable compromise in relation to providing benefits due individuals who contract black lung and in its cost to society. Most important, it is the best hope—the only hope—for remedying the many shortcomings and inequities of the present law at this time.

Mr. President, I understand that the leadership on both sides have agreed to this amendment.

I yield back the remainder of my time.

Mr. JAVITS. Mr. President, we have worked out this amendment with Senator FORD, and I am perfectly agreeable to take it to conference.

Mr. RANDOLPH. Mr. President, the Senator from New York (Mr. JAVITS) is correct. We have worked with the Senator from Kentucky (Mr. FORD) on the proposed amendment. It is acceptable to us.

We do know that black lung claimants currently are not told the specific, detailed reasons for the denial of their claims. Thus, often they have little to go on to determine whether or not they would desire to appeal the denial. This amendment would permit the claimant, as we understand, to have the reasons for his denial. It would provide him an opportunity to review the full record of his case, without the necessity of going to court.

Mr. FORD. The Senator is correct. This amendment, it is hoped, will cut down on the backlog of claims in the courts and will help expedite matters.

This body has added a number of judges to eastern Kentucky in order to help eliminate the backlog, and I believe this will be a step in the right direction.

Mr. RANDOLPH. I yield back the remainder of my time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment.

The amendment was agreed to.

UP AMENDMENT NO. 697

Mr. GRIFFIN. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Michigan (Mr. GRIFFIN) proposes an unprinted amendment No. 697:

On page 6, line 11, at the end of section 105(a), which precludes the Government from even questioning an X-ray determination by a certified radiologist, change the period to a semicolon and insert the following:

"*Provided, however,* That this section shall be effective when and if the Commissioner of Internal Revenue determines and proclaims that it is no longer necessary to examine and audit the income tax return of any taxpayer whose return is certified to by a certified public accountant."

Mr. GRIFFIN. Mr. President, this is a simple amendment which should be supported. There was logic in the Chafee amendment, which would have given the Government merely the right to question the evidence upon which a determination of black lung was based.

If the language in the bill is left to stand, as is, this would be the first situation I am aware of, after 20 years of service in Congress, in which the Government would be absolutely barred from even looking at the evidence in cases where the taxpayers will have to foot the bill. Consumers and taxpayers of this country will be required to pay out billions of dollars under this legislation, and they have a right to assurance that those who benefit really do have black lung.

I have offered this amendment, with tongue in cheek, as a way of giving my colleagues another opportunity to vote on the Chafee proposal. I hope that six or seven of them may now realize the mistake of their earlier vote.

I am submitting this amendment, and I will ask for the yeas and nays, which I do now——

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. GRIFFIN. I want to be sure that Senators really knew what they were doing when they voted earlier.

I believe it would be just as illogical and as irrational to say that the Commissioner of Internal Revenue should never question or examine the tax return of any taxpayer whose return is certified to by a certified public accountant. It seems to me that it is the same principle.

Of course, it would be a cold day in hell before the Commissioner of Internal Revenue would ever issue a proclamation like the one described in the amendment. Obviously, I do not want this particular provision in the bill to become effective, and it will not become effective if my amendment is adopted.

I ask for a vote, Mr. President.

The PRESIDING OFFICER. Who yields time?

Mr. RANDOLPH. Mr. President, there is no time needed. I think the matter, regardless of whether men knew what they were voting on in the prior amendments, they certainly have the opportunity here to vote again. I believe in the theory of fairness, and my position has been made known on the Chafee amendment, and there is no need to restructure the situation from the standpoint of the Senator now speaking.

It is agreeable with me if it is desired to have a rollcall, so let us proceed.

Mr. GRIFFIN. I yield back the time.

Mr. RANDOLPH. Of course, as we were against the Chafee amendment, which was defeated, we, of course, are against the amendment now offered.

Mr. GRIFFIN. Let me say again that anyone who does not want the language in the bill to become effective, of course, should vote for this amendment.

Mr. RANDOLPH. I yield back my time.

The PRESIDING OFFICER. All time yielded back? The question is on agreeing to the amendment of the Senator from Michigan. The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Minnesota (Mr. HUMPHREY), and the Senator from Arkansas (Mr. MCCLELLAN) are necessarily absent.

I further announce that the Senator from Mississippi (Mr. EASTLAND), the Senator from Mississippi (Mr. STENNIS), the Senator from Louisiana (Mr. LONG), and the Senator from South Carolina (Mr. HOLLINGS) are absent on official business.

I further announce that, if present and voting, the Senator from Minnesota (Mr. HUMPHREY) would vote "nay."

Mr. STEVENS. I announce that the Senator from Idaho (Mr. MCCLURE), the Senator from New Mexico (Mr. SCHMITT), and the Senator from South Carolina (Mr. THURMOND) are necessarily absent.

I also announce that the Senator from Maryland (Mr. MATHIAS) is absent on official business.

I further announce that, if present and voting, the Senator from South Carolina (Mr. THURMOND) would vote "nay."

The result was announced—yeas 22, nays 68, as follows:

[Rollcall Vote No. 314 Leg.]

YEAS—22

Bartlett	Goldwater	Roth
Bellmon	Griffin	Scott
Chafee	Hansen	Stevens
Curtis	Hatch	Tower
Danforth	Hayakawa	Young
Dole	Helms	Zorinsky
Domenici	Laxalt	
Garn	Lugar	

NAYS—68

Abourezk	Ford	Moynihan
Allen	Glenn	Muskie
Anderson	Gravel	Nelson
Baker	Hart	Nunn
Bayh	Haskell	Packwood
Bentsen	Hatfield	Pearson
Biden	Hathaway	Pell
Brooke	Heinz	Percy
Bumpers	Huddleston	Proxmire
Burdick	Inouye	Randolph
Byrd, Harry F., Jr.	Jackson	Ribicoff
	Javits	Riegle
Byrd, Robert C.	Johnston	Sarbanes
Cannon	Kennedy	Sasser
Case	Leahy	Schweiker
Chiles	Magnuson	Sparkman
Church	Matsunaga	Stafford
Clark	McGovern	Stevenson
Cranston	McIntyre	Stone
Culver	Melcher	Talmadge
DeConcini	Metcalf	Wallop
Durkin	Metzenbaum	Weicker
Eagleton	Morgan	Williams

NOT VOTING—10

Eastland	Mathias	Stennis
Hollings	McClellan	Thurmond
Humphrey	McClure	
Long	Schmitt	

So Mr. GRIFFIN's amendment was rejected.

The PRESIDING OFFICER. Is there further amendment to be proposed?

Several Senators addressed the Chair.

Mr. JAVITS. Mr. President, how much time do I have remaining on the bill?

The PRESIDING OFFICER. The Senator has 29 minutes remaining.

Mr. JAVITS. I suggest the absence of a quorum.

The PRESIDING OFFICER. The Clerk will call the role.

The legislative clerk proceeded to call the role.

Mr. JAVITS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. RANDOLPH. Mr. President, let us have order, please, in the Chamber.

The PRESIDING OFFICER. The Senate will be in order.

UP AMENDMENT NO. 698

Mr. CHAFEE. Mr. President, I send to the desk an unprinted amendment and ask that it be read.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Rhode Island (Mr. CHAFEE) proposes an unprinted amendment numbered 698:

On page 5, line 16, insert after the word "that" the following:

"In the case of a miner who was employed in one or more coal mines for 25 or more years, and where there is other evidence of pulmonary or respiratory impairment."

Mr. CHAFEE. Mr. President, this amendment provides that there be no requirement of a second reading, of any reading of the X-ray by the Government official, in the case of any miner who has worked in the mines for 25 years or more and has other evidence of pulmonary problems.

In other words, what we are doing, Mr. President, is saying that in that category there can be no reading of the X-ray by the Federal Government.

However, in the other cases, where a miner has worked less than 25 years, then the Government is permitted to read the X-ray, and that, of course, as Senators know, is the situation that exists now. This proposal would partially eliminate the Government's rights.

Mr. President, I would just like to say this: No one here who would support this amendment, particularly the Senator from Rhode Island, objects to any miner receiving what he should receive. But we do object to the Federal Government having no protection whatsoever. This proposal would permit the Federal Government to read the X-ray in other cases, and if there is objection, if there are problems, if we do not see what the local doctor sees, then it can go through the regular appeal process.

I might say this, Mr. President: One of the great objections to having the Government read the X-ray is the delay, and the claim that this takes a long time. Maybe it does. But the solution to that, Mr. President, is not to eliminate all the safeguards that the Government has, but to approach the problem from another direction: Have more so-called B readers. Have more readers, and speed up the process in other innumerable ways. As a matter of fact, Mr. Elisberg, who is the Assistant Secretary for Employment Standards, has testified that he wants to speed up the process, and we think that is right.

Mr. President, this is a very understandable amendment. It is, as Senators know, similar to the amendment we voted on earlier today, but it eliminates, that is, it does not pertain to, those miners who have been in the mines for 25 years or more. There is no second reading on their X-rays, no challenge by the Government except in those extraordinary cases of fraud, or where a certified radiologist did not submit the X-ray. For the others, it provides the Government, which is making the payments, some protection by providing for this second reading.

Mr. President, I do not really understand how this amendment can be seriously opposed. I would be delighted to hear the counterarguments. I think we can set aside the argument on 600 days, and all that contention that they make on all the other approaches.

Mr. HARRY F. BYRD, JR. Mr. President, will the Senator yield for a question?

Mr. CHAFEE. I yield to the Senator from Virginia.

Mr. HARRY F. BYRD, JR. As I understand the amendment of the Senator from Rhode Island, it represents a compromise between his original amendment and the committee bill?

Mr. CHAFEE. That is right. I look upon it as a compromise. The floor manager of the bill, of course, will have to speak for himself; but this amendment provides that as to those miners with 25 years in the mines, their X-rays cannot be rejected, but for the others, their X-rays can be reread, and then there are the challenge procedures that the Senate has provided.

I yield to the Senator from Michigan.

Mr. GRIFFIN. Mr. President, I preferred the Senator's original amendment which would have allowed the Government to examine X-rays in any case, whenever there is a question—and that was the intent of the amendment I offered, as well. However, since neither the Senator's original amendment nor my amendment was adopted, I shall certainly vote now for this amendment offered by the Senator from Rhode Island. I hope the Senate will come to its senses and adopt it.

Mr. CHAFEE. I thank the Senator from Michigan.

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

Mr. CHAFEE. I yield.

Mr. GARN. I certainly strongly support the amendment of the Senator from Rhode Island. There have been a lot of issues that have come before this body since I have been here, and on first reading of this amendment, I could not imagine how anyone cannot be for it.

In the committee bill, we make a presumption that all doctors are honest. If that were true, if we knew every doctor would look at the X-rays honestly, there would be no objection. But, my goodness, looking at the medicare and medicaid scandals that have gone on recently, with doctors making a half million dollars a year right here in Washington for illegally filling out medicare and medicaid forms, it seems to be absolutely and totally unreasonable to assume that all of the situations would be properly certified by a doctor.

Certainly to be able to have a medical expert of the Government look at those X-rays seems entirely reasonable to me. I wish there were more Senators here. I wonder how many Senators knew exactly what they were voting for on the last amendment. We have an empty Chamber as usual. But I would hope that at least to a certain extent, we could protect the taxpayers of this country from fraud, and that is all we are talking about.

I certainly have no objection to anyone getting benefits to which he is medically and legally entitled. But there is no corner on honesty among M.D.'s, CPA's, attorneys, or otherwise. Unfortunately, in any line of endeavor, there are some people who are not honest. Most CPA's would submit only honest tax returns. Unfortunately, there are some who would not, and the Internal Revenue Service has a right to audit returns. It seems to me we can make an assumption that some doctors would not make an honest analysis and diagnosis of a case, and those cases the Government doctors ought to have a right to check into.

I support the amendment.

Mr. FORD. Mr. President, who has control of the time?

Mr. CHAFEE. Mr. President, since I have control of the time in support of the amendment, assuming the Senator from Kentucky will speak in support of it, I yield him 1 minute.

Mr. FORD. No; if the Senator from West Virginia will yield 1 minute, I would like to answer the Senator from Utah.

Mr. RANDOLPH. Mr. President, I yield the Senator from Kentucky 2 minutes.

Mr. FORD. Mr. President, the Senator from Utah made the assumption that all the doctors for the Government were honest. That is his assumption. He assumed that all doctors on the other end were dishonest. The Senator is saying they are all dishonest down in your home town and my home town, but that those doctors employed by the Federal Government are totally honest. I want the Senator to know that I object to his assumption.

Mr. GARN. I am not assuming by any means that all private doctors are dishonest, Governor. I certainly do not believe that. I would suppose that the proportion in the Government or in the private sector would be about the same, just like the proportion of mayors or Governors.

I do not think it makes too much difference, what kind of training we have had. But the point I want to make is what happens to this is neither one is the final one if there is a dispute. It goes to an administrative decision, but maybe the lawyers have the same problem. I do not know.

The PRESIDING OFFICER. Who yields time?

Mr. SCOTT. Will the Senator yield briefly?

Mr. CHAFEE. I yield 2 minutes.

Mr. SCOTT. I just want to pose a question. Would there be anything that would

prevent a miner from shopping around for a physician who would approve his claim? If he went to one and received a reading that was unfavorable, could he go to another one to get a reading and keep shopping until he received a reading which would prove his claim? If somebody needs a physician's certificate in order to take sick leave, his private physician will give him a certificate. I would address my question to the Senator from Rhode Island, asking if he can comment on that.

Mr. CHAFEE. In answer to the question, there is nothing in the bill which would prevent a claimant from going to any doctor or a series of doctors to seek the opinion that he would approve of. When he gets whatever opinion he seeks, he then sends it in with the X-rays to the Federal Government.

Under the system as proposed, that ends it. The Government cannot check that X-ray unless, of course, there is a fraud, a fraud situation, as I mentioned earlier this morning, where an X-ray in theory is for miner X where actually it is for miner Y, or something of that nature. But as to the determination of the reading of the X-ray, that cannot be challenged by the Government.

Mr. SCOTT. I would say to the distinguished Senator that I intend to support his amendment. I did support his other amendment. I represent coal miners and have a lot of sympathy for miners who do obtain black lung. I heard one of our colleagues refer to this as a ripoff. If it should pass in its present form, I think that would be a good terminology to use. I would think it would be a ripoff of the Government to permit any such thing, any such potential for fraud, to be enacted into law. I cannot support a bill which would do anything like that.

I appreciate the Senator yielding.

Mr. CHAFEE. Mr. President, there is another point I would like to make. We are talking about a trust fund. I think the key point is that we should do everything we can to protect the trust fund for the legitimate claimants. Under the predictions which have been made, unless something is done this trust fund will fall short of the necessary funds by some $300 million. I believe we have all had experience is seeing trust funds run short of money. This amendment I have proposed would save that trust fund some $250 million. In other words, it would see that the money went to the legitimate claimants, the claimants who really require it, rather than having it go to claimants who, in fact, present no valid cases.

I feel this is not imposing a restriction on miners. I believe anybody who votes for the amendment I have proposed is striking a blow for the legitimate claimants. I urge Members of the Senate to support what I believe to be a very sensible amendment which does so much for those who really require the funds.

Mr. RANDOLPH. Mr. President, I rise in opposition to the amendment. I want it understood in good humor that I admire the persistence of my friend from Rhode Island. If he cannot approach his objective by one route, he will attempt to approach it by another. That certainly is his prerogative, and he speaks, of course, always with persuasiveness.

The trouble with the amendment now pending is that my opposition to his prior amendment, which was defeated, I now have because this is not an amendment which changes the concept in the amendment which earlier was defeated. The concept is just the same now as in the earlier amendment.

Mention has been made by the able Senator from Virginia (Mr. HARRY F. BYRD) that this is a compromise amendment. It is not a compromise amendment. It continues what the Senator, understandably, is attempting to do.

I have a high regard, of course, for both Senators from Virginia. Senator SCOTT has indicated that he would be unable to support this legislation without the Chafee amendment in it. That is my understanding.

Mr. SCOTT. The Senator is correct.

Mr. RANDOLPH. And he has indicated that he could not support the bill because, in a sense, it is a ripoff. I want to be very careful in my language.

Mr. SCOTT. Let me ask the distinguished Senator from West Virginia the same question asked of the Senator from Rhode Island: would it be possible for a claimant to shop around from physician to physician until he found one who would approve his claim? Would there be a prohibition against his going to more than one physician?

It just seems to me that if that is true, it is a ripoff. I do not hesitate to use this phrase. It did not originate with me. It was said in private conversation by another Member, a colleague of ours. I agree with him.

Mr. RANDOLPH. I would not want to inadvertently use a word someone else had used and the Senator is repeating. Now since the Senator is perhaps glad to have a joint authorship of the word, if I understand it, I would like to make reference to the question the Senator has asked.

Mr. SCOTT. Could the Senator respond to the question? I would appreciate it.

Mr. RANDOLPH. I will do so.

In the bill, on page 5, is section 105, evidence required to establish claim. I will read a portion of that language:

> The Secretary shall accept a board certified or board eligible radiologist's interpretation of a chest roentgenogram which is of a quality sufficient to demonstrate the presence of pneumoconiosis submitted in support of a claim for benefits under this title if such roentgenogram has been taken by a radiologist or qualified radiologic technologist or technician, except where the Secretary has reason to believe that the claim has been fraudulently represented.

I hope that language, at least in degree, is somewhat an answer to the concern of my friend, who does look into these matters very, very carefully.

Mr. SCOTT. If the Senator will yield briefly, let me say I am sure the distinguished Senator from West Virginia does not want to be the author of legislation which could reasonably be used in a fraudulent manner. Yet the portion he has just read does not indicate anything that would prohibit a miner wanting to get affirmative relief from shopping from physician to physician until he obtained one who would permit him to receive black lung benefits.

(Mr. HARRY F. BYRD, JR. assumed the chair.)

Mr. SCOTT. I know I am not using the technical language that the distinguished Senator referred to, because I, too, would stumble over a few of these words that they are using. We are talking about physicians with a specialty and we are talking about miners that, in popular terminology, get black lung disease. Just as anyone might shop around to find an expert witness that would testify in favor of his claim, I see nothing that would prevent a miner from shopping until he got an affirmative opinion.

I appreciate the Senator's indulgence.

Mr. RANDOLPH. Mr. President, I do not look upon it as an indulgence. I am here, of course, to try to understand the position of those who oppose the position or positions that I take.

I must say that even the American Medical Association has suggested that persons go from one physician to another. I do not call it shopping around to have one physician and to check with another physician. I do not think that is a shopping-around process. I think that that is an intelligent way for a person to act, back home or somewhere else, or in Washington, D.C., who is troubled by a feeling that he just wants to know what another doctor might say.

I do not think it is trying to receive a favorable report from someone. I think it is an effort to feel a certain security or a certain, let us say, positive feeling by the person who is ill that he is having the best advice possible. That is the theory on which I have mentioned the matter in reference to shopping around.

I have a very great affection for the Senator from Utah (Mr. GARN). I listened very carefully to him as he spoke this afternoon. I have patterned my life, I hope, on believing that, in whatever profession, there are more good people than bad people in that profession. I know that is his thinking. If we go on the theory that there are more people that are dishonest than there are people who are honest, the Founding Fathers of this country were wrong, and now, when we begin the third century, we shall be working on a premise that I think could cause a deterioration of the Nation. Even at such times as now, although there are differences between us, I have great faith in the American people as a whole.

I hope—and I do not want to imply that he said anything other than what I am saying. I just want to stress that I am positive, I am not negative. I believe that, in this program to help the miners of the United States of America, frankly, we are dealing not so much in statistics; we are dealing in the lives of people. It is a people program. I think that, sometimes, we may forget, looking at the expenditure of money, whether it comes from the Federal Government or some fund or is paid by a tax on coal or comes from the mine operators themselves, that this program, in the long look, will be an indication that the Congress of the United States—beginning in 1969, carrying

through with amendments in 1972, and now, with the further, hoped-for passage of this act—will have brought about an investment in a belief that we have. In the inherent fairness and justice of the Congress and the Government of the people of the United States of America, we believe that, when there is a proved case by those who have fueled the Nation and have provided us with a mobility that we enjoy, when those persons have valid claims, they will be honored and not be delayed for a year or 2 years.

Mr. GARN. Will the Senator yield?

Mr. RANDOLPH. Yes, I shall yield in just a moment.

If I wanted to be shocked at some amendment, as Senator CHAFEE was shocked, and used the word in his letter—frankly, I have great fondness for the Senator from Michigan (Mr. GRIFFIN) but that is an amendment that I think deserved exactly the vote it got. There were only 22 votes in this body for the amendment and 68 against it. It was in no wise a matter of partisanship. It was in no wise because Members were not on the floor. Members have been here during the afternoon, going and coming. That, to me, was an amendment that had, frankly, not the substance that I think an amendment should have. I do not think the result was one that was helter-skelter. I think the Members knew exactly how they were voting when they voted, 68 against the amendment and only 22 for it.

I do not think we can attribute any lack of knowledge to the membership when it votes on these amendments. I hope that this further amendment by Senator CHAFEE will not prevail.

I want to add that an X-ray does not establish eligibility for benefits. The claimant must still prove his case. We must remember that. The Government can still, in any case, dispute the miner's claim of the disability for which he is to be awarded compensation.

Mr. GRIFFIN. Will the Senator yield to me, since he used my name?

Mr. RANDOLPH. Yes, and I used it, I hope, in a very acceptable way.

Mr. GRIFFIN. I want to say that I cannot argue with the Senator. There was a very solid vote against the amendment. I thought that Senators did not understand what they were doing when they voted on the first amendment by the Senator from Rhode Island.

Mr. RANDOLPH. I know that.

Mr. GRIFFIN. I wanted to give them another chance, because the effect of my amendment was intended to be the same as the first Chafee amendment; in other words, the language of the bill would not have gone into effect. I am very disappointed, and, naturally, I think a majority of my colleagues were wrong.

Let me ask a question of the distinguished chairman. Am I correct in my assumption that the mine union has a lot to do with the processing of many claims by union members for black lung?

Mr. RANDOLPH. I know of no action, frankly, direct or indirect, that the union has in connection with the processing of a black lung claim.

Mr. GRIFFIN. Does the union have clinics in which their doctors examine the claimants?

Mr. RANDOLPH. Yes.

Mr. GRIFFIN. They certainly have something to do with it, then, do they not?

Mr. RANDOLPH. There are, of course, hospitals. There have been miners' hospitals.

Mr. GRIFFIN. Are there union-run clinics?

Mr. RANDOLPH. There have been from time to time.

Mr. GRIFFIN. Do they employ their own doctors?

Mr. RANDOLPH. There are some, yes. There are some. I do not see, though, that this has anything to do with it.

Mr. GRIFFIN. I just want to ask the Senator if he feels, then, with regard to a worker who happens to be nonunion, in a small mine, somewhere far removed, is the Senator satisfied and assured that such an individual is going to get the same treatment under this law as would be the case of a union miner who would go to a union clinic and be examined by a union doctor?

Mr. RANDOLPH. Yes, he will.

Mr. GRIFFIN. I thank the Senator very much.

Mr. RANDOLPH. I could point to the Senator from Kentucky on that situation. I expect there are more nonunion miners in the State of Kentucky than in any other State. I have conferred with Senator FORD, but I hope he would agree with me.

Mr. GRIFFIN. Of course, the certificate of any doctor, including an unpaid doctor in a union clinic, once he determined the X-ray showed black lung, that could not be questioned by the Government under this bill as submitted by the distinguished Senator from West Virginia, is that correct, unless it proved wrong?

Mr. RANDOLPH. I have to come back to the X-rays. I have said it over and over, it is a small part of the program. That is why we came in 1972 to amend the original act. We came with the pulmonary and respiratory disease program as proof of the black lung condition, the disease which has struck down literally—I am hesitant to use figures—but hundreds of thousands of persons have contracted black lung in the mining of coal.

Very frankly, I say that if there is any error to be made, I will make it on behalf of the person rather on the dollar involved.

Mr. GRIFFIN. What is the average benefit of the person who receives benefit under the black lung law?

Mr. RANDOLPH. $205 to $410.

Mr. GRIFFIN. Is the Senator talking about a month or a year?

Mr. RANDOLPH. A month.

Mr. GRIFFIN. What does that translate into, $4,000 a year?

Mr. RANDOLPH. Fifty percent of the GS–2 on total disability.

Mr. GRIFFIN. And that would be, of course, in addition to social security?

Mr. RANDOLPH. It could be, if he had social security.

Mr. GRIFFIN. I mean, there is no setoff?

Mr. RANDOLPH. No, there is not, not under part B. There is an offset under part C, the program we are considering.

Mr. GRIFFIN. I thank the Senator very much.

Mr. RANDOLPH. I thank my colleague.

Mr. GARN. Will the Senator from West Virginia yield?

Mr. RANDOLPH. Yes.

Mr. GARN. I wish to clarify one point. The Senator said he would like to make a positive assumption most people in the professions were honest. I did not want my remarks misinterpreted. I thought I said the same thing. The vast majority of doctors—I say the vast majority, not just the majority—are honest, but I think we would be naive if we did not recognize some are not.

The only point I tried to make before is that there will be some who would certify, just like when abortions were illegal there were some doctors who would do illegal abortions.

I do not think it is a matter of doctor shopping. I think it would be that miners would learn which doctors would be willing to certify they had it.

That is the only reason I think we ought to have a check at Government level.

I agree with the distinguished Senator that the vast majority are honest and would not be participating in that.

Mr. HATCH. Will my colleague from West Virgina yield?

Mr. RANDOLPH. Yes, in just a moment.

I believe Senator CHAFEE has 18 minutes. I believe I have 7 minutes. I am trying just to think in terms of perhaps Senator CHAFEE giving his time, if he would.

I do not say that I have been too generous. I have been delighted to yield.

Mr. CHAFEE. I will do that.

Does the Senator want to continue now and I will give him time later?

Mr. RANDOLPH. No, he may continue.

The PRESIDING OFFICER. The Chair states that the Senator from Rhode Island has 18 minutes, the Senator from West Virginia has 7.

Mr. CHAFEE. This is on my time.

Mr. HATCH. Would my distinguished colleague from West Virginia give me his attention?

Mr. CHAFEE. Mr. President, I wonder if we could interrupt a minute, I would like to ask for the yeas and nays on this.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. CHAFEE. I thank the Chair.

Mr. HATCH. If my dear friend from West Virginia will consider a couple of comments I have to make, I have for many years fought for working people. I have tried all kinds of FELA cases in the railroad business. I think this is setting a very dangerous precedent. Because I have tried cases on the plaintiff's side, I have tried cases on the defendant's side. I think it would be a safe estimate to say I have been involved in thousands of cases—not tried, but I have been involved in thousands, have tried hundred.

I can say now, the railroad companies have railroad clinics, and this is a dangerous precedent because that could just as easily swing around to the point where those clinics will make final determinations with regard to injuries in the railroad business, which is a very dangerous business.

Also, I think anybody that thinks that union doctors or railroad doctors do not find what they want to find—and I am not necessarily calling them dishonest—but they are there to find certain things and certain conclusions.

It is like in the automobile negligence business.

I have seen a lot of defense doctors come in with the same reports in every case against the injured plaintiff and I have seen a lot of plaintiffs' doctors come in with reports that are just as much for the plaintiffs as the defendants' doctors were for the defendants.

Frankly, it did not take long for either side to find out where they were, who they were, and how they could get the very best benefits and, in essence, shop for medical help.

I think it really is absurd to not allow the Government to do this and to ask the taxpayers of this Nation to foot the bill.

I agree, it is a bill I support. I want the distinguished Senator, my friend from West Virginia, to know I support it, because I realize the effect of pneumoconiosis and the dangerous work these men do in the mines, and I think it is important work for this country.

But I think it is a dangerous thing and a very bad thing. And I think it is an absurd thing to expect the taxpayers of this country to pay all of these benefits without having at least the privilege of doublechecking on any roentgenologist's report and reading the X-rays.

My experience has been that for the most part, roentgenologists are accurate doctors. For the most part, they do a good job. But I have also seen instances where we have had wide disparities between two roentgenologists, both of whom were decent and honorable and wonderful doctors.

I think in those situations the Government ought to have the benefit of the doubt of at least looking at them. I want to protect the men, too. But my goodness, I can guarantee that if this particular amendment is not granted—and I would have prevented it in the original form also because it would have been fairer to the taxpayers and to all concerned if it is not granted—then we will find every case that is brought is going to be automatically granted, because what is there to check medically other than the X-rays in pneumoconiosis?

I think that may be an oversimplification, but the fact of the matter is that it is the most crucial aspect of the examination and of the whole matter.

I would like my distinguished friend, my dear friend from West Virginia, to really consider accepting this particular amendment because it is a compromise, one I think a lot of us feel should not have been compromised, and I think a reasonable compromise at that, and one that really is not going to hurt anybody and does protect the taxpayers, at least to a degree.

This is going to cost millions and millions of unnecessary dollars and the taxpayers will know, they are going to know it is costing them, and unnecessarily.

Mr. SCOTT. Will the Senator yield?

Mr. HATCH. Certainly.

The PRESIDING OFFICER. The Senator's 4 minutes have expired.

Mr. SCOTT. One minute.

Mr. CHAFEE. Yes.

Mr. SCOTT. I appreciate the Senator from Rhode Island yielding.

But the Senator from Utah has referred to his experience as a trial lawyer.

Is it not a fact that one can generally get an expert witness to testify to his point of view—if I could have the attention of my colleague from Utah——

Mr. HATCH. I am sorry.

Mr. SCOTT. The Senator has referred to his experience as a trial attorney. Is it not a fact that in the field of expert witnesses, generally, you can get an expert witness who will testify to the point of view of the individual who is paying his fee?

As I recall, the Supreme Court, in a decision involving expert witnesses in land appraisal cases, made a statement to the effect that it was common knowledge that a land appraiser, a professional appraiser, did color his opinion to fit the views of the person who was paying his fee. Is there not a danger in being able to shop around? I use the phrase "shop around" advisedly, because I think that is what would be done. Does the Senator from Utah share this thought?

Mr. HATCH. I agree with the distinguished Senator from Virginia. I prefer to believe that most medical practitioners are honest and decent men, trying to do a good job. But it does not take too long for either side to find a doctor who is going to come through for them on every issue, and there are those in every major metropolitan area in this country.

I think the Senator has hit upon a very good point.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. CHAFEE. Mr. President, I ask the floor manager of the bill a question.

I have trouble understanding why we are departing from the existing system. The best I can understand it is that there is too much delay. There are 300 days; there are 600 days. If that is so, I say to the distinguished Senator from West Virginia, let us tackle that problem. Let us get in more readers. Let us feed the system. Let us have these so-called B-readers out in the community.

I have great difficulty understanding why the solution should be to deprive the Government of its possible defense. I reiterate that when we are depriving the Government of its defense, we really are depriving the other miners of their defense; because this trust fund is going to have only x dollars in it, and the drain upon the fund is anticipated to be x plus $300 million. So unless we guard the fund cautiously and see that it goes to the people who are deserving, the fund will be disappearing, and the people who are really entitled to it will not get their benefits.

If that is the thrust, to cut down delay, why are there not other ways to approach this, rather than eliminating this step?

(Mr. ZORINSKY assumed the chair.)

Mr. RANDOLPH. I will be delighted to comply with the request, and we will do it on my time.

How much time do I have, Mr. President?

The PRESIDING OFFICER. The Senator from West Virginia has 7 minutes remaining.

Mr. RANDOLPH. How much time does my colleague have?

The PRESIDING OFFICER. Eleven minutes.

Mr. RANDOLPH. Then, I guess I had better withdraw my generosity. [Laughter.]

Mr. CHAFEE. I yield 2 minutes.

Mr. RANDOLPH. I thought it was the reverse.

I say to my colleague from Utah that fraud occurs. I am sure it occurs. An unscrupulous doctor can even send in an X-ray which shows complicated pneumoconiosis and the B-reader can readily agree, of course, with the first interpretation. We know that.

However, I say to the Senators who are in the Chamber that that is not the only problem. Sixty percent of X-rays originally read as positive are being reread as negative. Let us see about that situation. Sixty percent originally read as positive and reread, under the type of program the Senator wants of rereading, as negative.

I must repeat, very quietly but earnestly: I say that the coalfield radiologist knows the miner and his condition. The "B" reader, the rereader, does not. I do not say the facts side completely on either the coal field radiologist or competely on the rereader. But the balance will be with the radiologist in the field.

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

Mr. RANDOLPH. I yield.

Mr. CHAFEE. We are on my time, are we not?

Mr. RANDOLPH. I will yield on my time. I am a generous man.

Mr. HATCH. The only question, I say, is this: I venture to make the prediction that if this bill is passed in its present form, everyone will be found to have pneumoconiosis, or almost everyone.

If 60 percent have been questioned and found negative rather than positive, perhaps there are some legitimate reasons for that.

That is all I think Senator CHAFEE's amendment is requesting: let us at least not bar the Government from making out its own case. If the Government is abusing that or if there is a time factor here, let us amend the bill to take care of that. Let us not take away and change the whole system of law in this country simply because we want to protect the men.

I believe this is a reasonable amendment. It is a dangerous precedent if we pass this bill in its present form, and in

the end the men are going to be hurt, because the trust fund will go faster. We either will have to increase the trust fund or, in the end, many men in other industries, who presently could be taken serious advantage of, could be hurt because we have tried to make an exception in this industry. I think that is basically wrong.

Mr. RANDOLPH. I do not understand this to be a precedent. Of course, there is always the innovative, the creative, the resourceful approach to any problem.

In 1942, I offered the constitutional amendment to give 18-, 19-, and 20-year-old youth the opportunity and responsibility to participate with the ballot. It happened in 1971, when my resolution was passed.

We had no support in 1942 for an innovative, creative, and proper approach to the problem, no support whatever in the hearing. Practically no one was present, only one member of the committee. But in 1971, its time had come. Ninety-four Senators joined in that legislation which I proposed for the constitutional amendment.

That is not to say that this is on all fours, but I am only saying that I do not get excited because we have something unusual here. We have it because black lung is a highly unusual disease. It is attached to coal mining, as my friend knows. That is why we have special attention for it, a special program.

Just this thought, and I hope it will not be misunderstood: a transplant specialist said, "I must perform an operation immediately. What hearts have I available?"

He was told by his aides that he had the heart of a beautiful young woman, the heart of a celebrated athlete, and the heart of a banker. He said, "Give me the heart of the banker."

The operation was performed, apparently successfully.

A few days later, the aide said to him, "Why did you use the heart of the banker?"

"Well," he said, "that's understandable. It had never been used." [Laughter.]

I did not tell that story simply to interrupt what might be the continuity of debate. I think it is very important for us to realize that everyone—the banker, the doctor, the Member of the Senate, the miner, the storekeeper; I could run the list—are all part of America, and they all fit together. It is a good America. It has shortcomings; mistakes and errors are being committed. But there will be no error today if this measure is passed without the amendment of my able friend from Rhode Island.

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

Mr. JAVITS. I yield the Senator 2 minutes on the bill.

Mr. GRIFFIN. Mr. President, it strikes me that if 60 percent of the cases in which the Government examines the X-rays result in rejection by the Government of the claim, that is mighty strong and powerful evidence that there are at least some claims in there that are not valid.

The distinguished chairman indicated that he did not see this as a precedent. Well, I do see it as a precedent, and that is one of the reasons why I am so concerned. It is not that I lack compassion for coal miners. I understand and share the deep feeling the chairman has.

But it would be ridiculous, and certainly not in the public interest, if the Commissioner of Internal Revenue were to say, "We will never examine any tax return that it is certified by a certified public accountant."

I think it would be equally ridiculous if the Commissioner of Social Security were to say, "We are going to grant disability benefits under social security to anybody who can get a certificate from a doctor saying he is disabled." The Government would not be in a position to examine or question the certification.

I find it necessary to ask the Senator from West Virginia whether he has thought about that, and what would be his position if an amendment were offered here in the Senate to give a social security claimant the same kind of a right as he is giving to those who are making claims under this particular act? I wonder if the Senator from West Virginia heard the question?

I asked the question because he says he does not see any precedent here. I am concerned that it does establish a precedent.

I wonder what the Senator's position would be if a Senator came in with an amendment providing the same kind of a guarantee to any claimant who is seeking disability benefits under social security? He shops around and finds a physician who will say he is disabled. I can foresee such an amendment here in the not too distant future arguing, "If that is good enough for coal miners it ought to be good enough for people who want social security disability benefits."

I wonder what the position of the Senator from West Virginia would be?

Mr. RANDOLPH. I would give it a sympathetic hearing.

Mr. GRIFFIN. In other words, this would be a precedent.

Mr. RANDOLPH. I do not understand precedent. The way I discussed it black lung was a highly unusual occupational disease, and I say we take extraordinary, perhaps, if you want to use that, means to compensate those who have that disease.

Mr. GRIFFIN. Well, being disabled is highly unusual and unfortunate for any individual, whether he is a coal miner or not.

Mr. RANDOLPH. I doubt if that is a statement my friend would like to stand on.

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

Mr. RANDOLPH. Yes, I yield.

Mr. FORD. I am not as articulate as other Senators, and I do not have the ability to paint the word picture I would like to paint, but I want to bring up a point, and I have not been in court and argued a thousand cases. I am not a good lawyer because I am not a lawyer. Probably if I were, I would not be a good one. But the point that is being made in opposition to the committee here is that the X-ray is the only thing. The X-ray is not the only thing, so I would like for you to think of the other items that this miner has to comply with in order to secure his claim.

We are asking for one item, and one item only, to help. We have backlogs of going to court. Where do the 60 percent go? I think the lawyers who are arguing against this over there are trying to help lawyers in eastern Kentucky get more cases, because if the Government denies 60 percent of the claims then we go to court.

What I have been trying to do, and the amendment was accepted, was so we might help expedite these claims that are turned down.

So I would suggest to the Senators on the other side that we are losing the total picture of what we are trying to do here and zeroing in on one little item and, of course, you can ask questions of any Senator here he cannot answer. That is simple. All you have to do is ask a question, think up something, dream up something.

But the point here is, we are trying to help people, and the X-ray is not the sole question we are involved in this afternoon.

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

Mr. JAVITS. Mr. President, I yield myself 2 minutes.

Mr. President, I support this amendment. I am a lawyer, and I do sit on the other side, but I will yield to no one in this Chamber as to my ardent defense of the rights of labor for three decades. So, with respect, sir, I will speak.

I think due process is the essence of the American system, and whether you deny it in one little thing or you deny it in a big thing, a denial of due process runs contrary to the American system.

These people are going to go to court anyhow, and there are plenty of other procedural things that can be raised. Any able lawyer will find you 50 not just this 1. But I feel very uncomfortable in the presence of an effort to cut around the due process of law to which every American, whether it is a corporation or whether it be an individual, is entitled. Always there is that adage "There but for the grace of God go I."

It sounds right to those who advocate this position in this matter. Tomorrow it may prove very, very wrong, indeed, because it puts us on a path of cutting around what is the process of proof, and probative proof, which, in my judgment, is very unwise.

The Nation will not collapse if this is legislated into this bill. But let us remember it was put into this bill in order to produce claims. That is why it is here. It is not here for any other reason but to produce more claims, to make it easier to approve claims, and I do not think that is the purpose of this statute.

The purpose of this statute is to do justice to people who are hurt, not just to produce claims and, therefore, I believe the amendment should be adopted.

The PRESIDING OFFICER. Who yields time?

Mr. HATCH. I take exception to the distinguished Senator from Kentucky. The reason I stood and recited some of the experiences I have had as an attorney is because I fought for these people. I fought for the railroad workers in our society who are in just as dangerous a profession as the miners, and I have great sympathy for and I am going to support this bill.

But the precedent it is setting, if it passes in its present form without at least some amendment like this, is a bad precedent, and that is the point. Over the long run, the people of this country are not going to like it because it is wrong.

I would like to just aline myself with the remarks of the distinguished ranking member of the Committee on Human Resources, Senator JAVITS. I think he has hit the nail right on the head, as usual, in a very cogent and very well-reasoned way, and I think it basically sums up the position. I appreciate his remarks.

Mr. CHAFEE. Mr President, just one contribution here. The suggestion was that under the present system if a claim is denied, then you go into the courts. Now, that is not quite accurate. Under the present system it goes to a so-called administrative law judge, a single person, not shrouded, not circled, with all the normal laws that apply to a court proceeding.

Further testimony can come in, further X-rays, and then if the claimant loses before this administrative law judge it then goes to the so-called Benefits Review Board.

I think everyone in this Chamber and everyone interested in this act believes there should be greater speed than presently exists. There are many ways of achieving greater speed than throwing out the baby with the bath water as we are doing here today.

Mr. President, I yield the remainder of my time.

Mr. RANDOLPH addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia has 1 minute.

Mr. RANDOLPH. Mr. President, due process is not really the issue, as I understand it. Due process is wholly preserved through the hearing process in this bill.

The argument of the Senator from New York would seemingly apply in any situation where we have a presumption. I hope the amendment offered by the Senator from Rhode Island will not be approved by the Senate, and I think the action earlier taken is an indication of our feeling within this body.

I, of course, recognize always the conviction and the votes of the Members of this body as we come to face our decision on this matter.

I yield back my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Rhode Island. The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. HANSEN. Mr. President, regular order.

Mr. CRANSTON. I announce that the Senator from Minnesota (Mr. HUMPHREY), the Senator from Arkansas (Mr. MCCLELLAN), and the Senator from Louisiana (Mr. JOHNSTON) are necessarily absent.

I further announce that the Senator from South Carolina (Mr. HOLLINGS), the Senator from Louisiana (Mr. LONG), and the Senators from Mississippi (Mr. EASTLAND and Mr. STENNIS) are absent on official business.

I further announce that, if present and voting, the Senator from Minnesota (Mr. HUMPHREY) would vote "nay."

Mr. STEVENS. I announce that the Senator from Idaho (Mr. MCCLURE) and the Senator from South Carolina (Mr. THURMOND) are necessarily absent.

I also announce that the Senator from Maryland (Mr. MATHIAS) is absent on official business.

I further announce that, if present and voting, the Senator from South Carolina (Mr. THURMOND) would vote "yea."

The result was announced—yeas 48, nays 42, as follows:

[Rollcall Vote No. 315 Leg.]

YEAS—48

Allen	Garn	Nunn
Bartlett	Glenn	Packwood
Bellmon	Goldwater	Pearson
Bentsen	Gravel	Proxmire
Brooke	Griffin	Roth
Bumpers	Hansen	Schmitt
Burdick	Hatch	Scott
Byrd, Harry F., Jr.	Hathaway	Sparkman
	Hayakawa	Stafford
Case	Helms	Stevens
Chafee	Javits	Talmadge
Chiles	Laxalt	Tower
Church	Leahy	Wallop
Curtis	Lugar	Young
Danforth	McIntyre	Zorinsky
Dole	Muskie	
Domenici	Nelson	

NAYS—42

Abourezk	Hart	Morgan
Anderson	Haskell	Moynihan
Baker	Hatfield	Pell
Bayh	Heinz	Percy
Biden	Huddleston	Randolph
Byrd, Robert C.	Inouye	Ribicoff
Cannon	Jackson	Riegle
Clark	Kennedy	Sarbanes
Cranston	Magnuson	Sasser
Culver	Matsunaga	Schweiker
DeConcini	McGovern	Stevenson
Durkin	Melcher	Stone
Eagleton	Metcalf	Weicker
Ford	Metzenbaum	Williams

NOT VOTING—10

Eastland	Long	Stennis
Hollings	Mathias	Thurmond
Humphrey	McClellan	
Johnston	McClure	

So Mr. CHAFEE's amendment was agreed to.

Mr. JAVITS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. CHAFEE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. JAVITS. Mr. President, as far as I know there are no further amendments.

The PRESIDING OFFICER (Mr. CULVER). The Senator will please suspend for a moment. The Senate is not in order. The Senate will be in order.

The Senator from New York may proceed.

Mr. JAVITS. Mr. President, as far as I know we have no further amendments on this side.

UP AMENDMENT NO. 699

Mr. RANDOLPH. Mr. President, there are certain technical amendments that come from the Finance Committee, and in the absence of Senator LONG, who of necessity is unable to be here at this time, I present these amendments in his behalf. They are, as I say, technical and clarifying amendments, and Senator JAVITS and I have agreed that it is proper to have them included.

The PRESIDING OFFICER. The clerk will state the amendments.

The second assistant legislative clerk read as follows:

The Senator from West Virginia (Mr. RANDOLPH) for Senator LONG, proposes an unprinted amendment numbered 699.

The amendment is as follows:

On page 34, line 7, strike out "Amendments" and insert in lieu thereof "Amendment".

On page 35, line 10, strike out "subsection (d) of this subsection" and insert in lieu thereof the following: "subsection (a) of section 424 of the Federal Coal Mine Health and Safety Act of 1969".

On page 36, line 2, strike out "subsection (e)" and insert in lieu thereof the following: "subsection (b) of section 424 of the Federal Coal Mine Health and Safety Act of 1969".

On page 37, line 7, strike out "(b) Operation Liability" and insert in lieu thereof the following: "(d) Payments from Fund".

On page 37, line 23, strike out "and".

On page 38, line 10, after "subsection (b)(2)" insert the following: "of section 203 of the Black Lung Benefits Revenue Act of 1977."

On page 40, line 1, strike out "section 424(e)" and insert in lieu thereof the following: "section 424(b)".

On page 40, line 5, strike out "section 424(e)(2)" and insert in lieu thereof the following: "section 424(b)(2)".

On page 41, line 7, strike out "Secretary" and insert in lieu thereof the following: "Secretary of Labor".

On page 42, line 3, strike out "(c)" and insert in lieu thereof "(e)".

On page 42, lines 3 and 4, strike out "amendment made by subsection (a)" and insert in lieu thereof the following: "amendments made by subsections (a), (b), and (c)".

On page 42, line 5, strike out "(b)" and insert in lieu thereof the following: "(d)".

On page 42, line 6, strike out "until" and insert in lieu thereof the following: "before".

On page 44, lines 9 through 11, strike out "section 424 of the Federal Coal Mine Health and Safety Act of 1969" and insert in lieu thereof the following: "section 203 of the Black Lung Benefits Revenue Act of 1977".

On page 47, line 18, strike out "Claims" and insert in lieu thereof the following: "Claim".

On page 48, line 4, insert a comma after "Expenditures".

On page 54, line 16, strike out "(G)" and insert in lieu thereof the following: "(H)".

On page 54, line 20, strike out "(E)" and insert in lieu thereof the following: "(F)".

On page 55, line 1, strike out "(D)" and insert in lieu thereof the following: "(E)".

On page 55, line 3, strike out "(F), and (G)" and insert in lieu thereof the following: "(G), and (H)".

On page 55, line 10, strike out "(D)" and insert in lieu thereof the following: "(E)".

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

Mr. RANDOLPH. I also ask unanimous

consent to have printed in the RECORD the Congressional Budget Office cost estimates.

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

CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., July 11, 1977.

HON. RUSSELL LONG,
Chairman, Committee on Finance, U.S. Senate, Washington, D.C.

DEAR SENATOR LONG: In response to a request from the staff of your Committee, the following represents our most recent estimate of the total trust fund costs, including current law, in S. 1538 ($ in millions)

1978	213.1
1979	274.2
1980	338.3
1981	158.0
1982	163.2
5-year total	1,146.8

The above numbers differ slightly from those submitted by the Department of Labor in their recent reestimate submitted to your Committee. In recent discussions with the Labor Department, we have been able to reconcile the differences in our respective cost estimates of this bill for all but one provision: the costs of Section 2(c) relating to the application of medical standards to determine total disability.

CBO's original estimate for this Section was based upon data provided to us by the Department of Labor. More recent information that they have compiled would, according to them, significantly increase the approval rate for claims filed. Since CBO had no independent means of estimating the number of claims that would be affected by this Section, we cannot dispute this reestimate prepared by the Labor Department as it relates to Part C claims. However, included in their estimate are an additional 7,250 claims denied under Part B which would, in their opinion, be approved as a result of this provision. Some of these claims were already included in our estimate in Section 4, the removal of the current employment bar. The rest of these claims are assumed to be primarily individuals who were denied under Part B because of filing after June 1973. We assume that approximately 2,100 of these miners are already counted under the Section 4 provision and, of the remainder, we would project that only half as many claims would actually now be eligible. Thus, CBO would estimate an additional 2,500 approvals of Part B claims under Section 2(c). Based upon this reduction in the Labor Department's projected number of approvals from 7,250 to 2,500, the following represents our estimate of the costs of this Section ($ in millions):

1978	81.2
1979	151.8
1980	210.6
1981	91.1
1982	95.8
5-year total	630.5

We hope this information will be helpful to you and would be pleased to be of further assistance to you in this matter.

Sincerely,

ALICE M. RIVLIN,
Director.

CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., July 11, 1977.

HON. RUSSELL B. LONG,
Chairman, Committee on Finance,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for S. 1538, the Black Lung Benefits Revenue Act of 1977.

Should the Committee so desire, we would be pleased to provide further details on the attached cost estimate.

Sincerely,

ALICE M. RIVLIN,
Director.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 1538 (Finance Committee)

2. Bill title: Black Lung Benefits Revenue Act of 1977

3. Purpose of bill: S. 1538 was originally reported by the Committee on Human Resources (S. Rept. 95–209) on May 16, 1977. That bill provided for modification in the eligibility criteria of the Black Lung Benefits program by reducing and clarifying some of the evidentiary requirements for entitlement, thus expanding the number of potential beneficiary to this program. The bill also made all of these new beneficiaries eligible under the Department of Labor (Part C) program and created a trust fund to pay all claims under Part C except where a responsible mine operator can be identified. The Finance Committee version of S. 1538 creates, through a one percent ad valorem tax on all coal (except lignite), a mechanism to raise funds to support the trust fund. Under current law, benefits paid under Part C are financed through general revenues.

4. Cost estimate: ($ in millions)

Fiscal year:	*Total receipts*
1978	137.7
1979	169.0
1980	185.8
1981	204.3
1982:	224.7

5. Basis for estimate: Revenues were calculated using data from the Joint Tax Committee on projected 1977–1982 tonnage for anthracite, bituminous, and sub-bituminous coal and the price per ton for each type of coal over the same period. Because of the effective date of October 10, 1977 as mandated in the bill, revenues in Fiscal Year 1978 reflect only 11⅔ months of collections. Further, one a month lag in collecting revenues was also assumed. Lastly, because data was provided on a calendar year basis, it was assumed that equal amounts would be collected in each month during the calendar year and collections for four months of the previous fiscal year and eight months of the current year were added to calculate revenues. Four months from the previous fiscal year was used (as opposed to the three in the fiscal year) in order to take into account the one month lag in collections.

Total receipts collected over the five year period would be $921.5 million. Total trust fund liabilities are calculated to be $1,146.8 million or $225.3 milion more than revenues. However, the trust fund liabilities include $145.0 million in Part C liability under current law and a $45.2 million payback of prior claims from the trust fund to general revenues. Thus, the total new appropriations needed to support the trust fund will be $35.1 million over the five year period.

6. Estimate comparison: Not Applicable.

7. Previous CBO estimate: None.

8. Estimate prepared by: Jeffrey Merrill (225–7766).

9. Estimate approved by: C. Muckols, for James L. Blum, Assistant Director for Budget Analysis.

Mr. RANDOLPH. Mr. President, under the unanimous——

The PRESIDING OFFICER. Will the Senator please suspend? The Senate is not in order.

The Senator from West Virginia.

Mr. RANDOLPH. Mr. President, under the unanimous-consent agreement which was proposed by the able majority leader and agreed to by the minority leader, who has worked in partnership on this legislation, we would not be voting on the final passage of this measure, going to third reading, as we understand, but the House, presumably, will vote on next Tuesday. There is this matter of a constitutional problem.

I understand from the leader that we feel the unanimous-consent agreement preserves the position of the Senate and preserves the position of the House. We will not vote but wait until the House takes action. Is that correct?

Mr. ROBERT C. BYRD. The Senator is correct. The Senate will proceed to third reading and then the measure will be left on the Calendar.

Mr. RANDOLPH. Returned to the Calendar for the moment, yes.

Mr. HARRY F. BYRD, JR. Will the Senator yield for a question?

Mr. RANDOLPH. I yield.

Mr. HARRY F. BYRD, JR. Is the understanding of the Senator from Virginia correct that if and when the House acts affirmatively on similar legislation and that is reported to the Senate, then a vote will be taken on the Senate bill and not the House bill?

Mr. RANDOLPH. The able Senator from Virginia is correct.

Mr. HARRY F. BYRD, JR. I shall support the Senate proposal, but I wanted to be clear as to whether it was a Senate bill or a House bill on which we would be voting.

Mr. RANDOLPH. The Senate measure. I thank my friend for the inquiry.

Mr. HASKELL. Mr. President, I want to voice my strong support for S. 1538, the Black Lung Benefits Reform Act of 1977. In so doing I also want to commend the distinguished senator from West Virginia, Mr. RANDOLPH, for his dedication in guiding this important legislation through the Human Resources Committee, and the distinguished majority leader for his commitment to bringing this bill to the floor as expeditiously as possible. Both have performed an invaluable service, and I deeply hope that the House of Representatives can now be persuaded to act quickly so that these badly needed and long delayed changes in the black lung benefits program can at last become law.

The ravages of black lung disease are all too well known to the coal miners of this Nation who perform a physically demanding task in surroundings that are nearly always dangerous and often debilitating and deadly. Hundreds of thousands of coal miners have been disabled as a result of this incurable and irreversible disease. In testimony before the Labor and Public Welfare Committee last year I noted that among the some 10,000 active and retired miners in my own State of Colorado, almost 1,300 black lung claims were being processed in 1976.

The evidence is overwhelming that various debilitating degrees of black lung disease afflict the vast number of miners after numerous years in the mines.

We have taken belated steps to make

mines safer and cleaner. We must now take the steps necessary to insure that those who have suffered from past inattention to these problems are dealt with fairly and compassionately.

In the 94th Congress I introduced S. 3183, with the cosponsorship of 21 of my colleagues, to remedy many of the ills which have been found to exist in the present black lung benefits program. We were nearly able to secure enactment of that legislation into law, but failed in the closing hectic days of the 94th Congress.

I am deeply gratified that the substance of my previous legislation has been incorporated into original legislation reported this year by the Committee on Human Resources, and that we are acting on this legislation in adequate time to secure House passage and finally see these needed reforms become law.

The Black Lung Benefits Reform Act of 1977 is responsible legislation, containing adequate safeguards against potential abuse. It is neither a "give-away;" nor a "boondoggle" for coal miners. It is rather a major step toward securing elemental justice for those who have suffered from society's inattention to coal mine safety.

I urge my colleagues to support this important and badly needed legislation.

Mr. HART. Mr. President, I would like to express my strong support for S. 1538, which will amend title IV of the Federal Coal Mine Health and Safety Act to improve the black lung benefits program.

Mr. President, prior to the 20th century, most Americans lived and worked in agricultural communities. During the industrial revolution, however, more and more people gravitated to the cities to work in factories. Initially, concerns for worker safety, wages, hours and compensation benefits were ignored. However, as the public began to demand safe and equitable working conditions, the Federal Government moved to help protect workers in a variety of different ways.

In 1908, Federal workers first received compensation for job-related injuries. Since that time, government involvement in the workplace has resulted in provisions of workmen's compensation insurance; unemployment insurance; social security retirement benefits; as well as the assurance of a relatively safe working environment in many industries. In general, we have made considerable progress in protecting worker health and safety. However, many reforms are still needed, and in terms of individuals, none are now more in need of assistance than those who work in the coal mines.

As oil and gas supplies diminish, our country will become even more dependent on coal as a basic energy resource. Our annual consumption of coal is extracted by less than two-tenths of 1 percent of the American work force—about 180,000 miners.

These miners work in conditions that most of us would not tolerate, risking their lives to keep this country running and to earn a living for themselves. We have all heard of gruesome incidents where mine walls collapse; critical mine safety equipment fails; explosions occur from accumulations of methane gas and coal dust; and so forth. And yet even when "safer" conditions prevail, a miner is constantly surrounded by a cloud of coal and rock dust. If a miner works in this dust for a period of years, the odds are almost absolute that he will suffer the respiratory impairment known as black lung disease or coal workers' pneumoconiosis. Pneumoconiosis is a progressive disease—once a minor has it, his health begins to deteriorate.

To date, some 500,000 victims of pneumoconiosis are receiving benefits under the black lung program established by title IV of the Federal Coal Mine Health and Safety Act. Approximately $5 billion in benefits have been distributed since the program began in 1970.

However, while the program has benefited many individuals, a large number of miners have had claims denied. S. 1538 will remove certain eligibility restrictions and expedite claims for the victims of black lung disease and their survivors. Moreover, this legislation will assure that coal mine operators will at least assume substantial financial responsibility for the black lung program. In sum, the bill will go a long way toward eliminating some of the difficulties encountered by thousands of disabled miners and their widows in their efforts to obtain what are well deserved compensation.

Mr. CURTIS. Mr. President, S. 1538, the Black Lung Benefits Reform Act of 1977, was referred to the Committee on Finance after having been reported by the Committee on Human Resources. Because the bill, as reported by that committee, establishes a coal tax and trust fund to finance the black lung benefits program, the bill was referred to the Committee on Finance.

Under the present law and under S. 1538, as reported by the Committee on Human Resources, a part of the cost of black lung benefits is charged directly against the former employer of the beneficiary when liability can be established under certain statutory criteria. Where this is not possible, the present law provides for the costs of benefits to be financed out of Federal general revenues. The Human Resources Committee bill would impose an excise tax on the producer's sale of coal, at a rate determined by the coal's British thermal unit (Btu) value. Revenues from this tax would be automatically appropriated to a trust fund, which would pay benefits in cases where there is no "responsible operator" and with respect to all claims in which the miner's last coal mine employment was before January 1, 1970.

The Committee on Finance has modified the excise tax and trust fund provisions of the bill, converting the tax into a tax on coal—other than lignite—at the rate of 1 percent of the price for which it is sold, and terminating the tax and trust fund provisions after 5 years. In addition, the Finance Committee has added provisions amending the tax status of operators' self-insurance trusts.

Mr. President, I have two serious reservations with the bill as reported by the Committee on Human Resources:

The first change would prohibit the Department of Labor from challenging the intrepretation of an X-ray submitted by a claimant in support of the claim if read by a Board-eligible or Board-certified radiologist.

The second change in S. 1538 would create a presumption of eligibility for survivors of miners who worked for 25 years or more in coal mining prior to June 30, 1971 and who die on or before the date of enactment of the bill. Benefits would be payable to such survivors unless the Department of Labor establishes that the miner, at the time of his death, was neither totally disabled nor partially disabled from black lung disease. This provision has an estimated average annual cost of $35 million over the next 5 years.

I am hopeful that changes, especially the later, which converts the program to a pension plan, will be deleted by my colleagues.

Mr. MUSKIE. Mr. President, S. 1538, the Black Lung Benefits Reform Act of 1977, has an admirable goal—to place the burden for compensating miners disabled by pneumoconiosis, or black lung disease, on the coal industry rather than the taxpayer. Since 1969, almost the entire burden of black lung compensation has rested with the general fund of the Treasury, which will have paid out a total of $5.6 billion in black lung benefits by the end of this fiscal year. Under S. 1538, while the general funds would continue to pay benefits to those who applied prior to June 30, 1973, benefits to those applying after that date, where the Department of Labor is unable to identify a single operator responsible for the working conditions which caused black lung, would be paid from a newly established trust fund financed through an excise tax assessed against coal operators. Through this mechanism, then, much of the financial responsibility for black lung benefits would be assumed by the coal industry.

The Human Resources Committee, in its section 302(b) allocation of budget authority and outlays among its programs, found room to allocate $306 million in budget authority and $137 million in outlays for this legislation. The new costs added by S. 1538 are $149 million in budget authority and outlays.

Thus, the bill is consistent with the committee's budget authority allocation, but it does exceed the outlay assumptions slightly. Thus this bill, when viewed alone, can be accommodated by the 1978 First Budget Resolution except for the small outlay increase.

However, Mr. President, I must point out that First Budget Resolution also assumed savings due to legislation in other programs in the income security function of the budget. These savings were assumed to occur in programs under the jurisdiction of the Finance Committee and were expected to total $50 million in budget authority and $827 million in outlays. Both Presidents Ford and Carter recommended such savings in their fiscal 1978 budgets. The Finance Committee in its March 15 letter to the Budget Committee, suggested that most of these savings be assumed in the budget resolution, and the Finance Commit-

tee assumed all these savings in its section 302(b) allocation under the First Budget Resolution. Nonetheless, to date no action has been taken on legislation to achieve these savings in either the House or the Senate.

It goes without saying that without these savings the targets for the income security function will be breached, even if the black lung bill or other legislation is not enacted. As chairman of the Budget Commitee, we are bound to attempt to enforce the spending targets of the congressional budget.

Therefore, if the Finance Committee is unable to take prompt action to bring about the savings assumed in the first budget resolution, we must make an effort to achieve those savings on the floor of the Senate by amending the next appropriate legislation.

I shall not attempt to attach my savings amendment to the black lung bill now before us, because the savings would be achieved in programs unrelated to the black lung benefits program, and because the black lung bill was initiated by the Human Resources Committee and not the Finance Committee. However, I understand that the Finance Committee will soon report H.R. 7200, a bill pertaining to various programs under the Social Security Act. If the savings suggested by the Finance Committee are not contained in that measure, I, along with other Senators, shall sponsor an amendment to H.R. 7200 which would achieve those savings.

We understand that the Finance Committee has had a heavy schedule of legislation this year. But the savings suggested by the Finance Committee and assumed in the first budget resolution have not been achieved. We must do all in our power to achieve these savings in order to maintain the fiscal discipline of the congressional budget and see that the budget policy we adopted in May is not thwarted.

In regard to S. 1538, the bill before us today, I will vote for this bill to improve the financing of black lung benefit payments. However, I do plan to support amendments to eliminate certain benefit liberalizations contained in this bill in order to assist the Congress in living within its budget. I urge my colleagues to consider carefully these amendments in the context of the huge budget deficit we face for fiscal year 1978 and vote to live within our budget so that a larger 1978 deficit will not be necessary.

Mr. CLARK. Mr. President, the passage of S. 1538, the Black Lung Benefits Reform Act of 1977, would significantly improve the administration of the black lung benefits program. I strongly support this legislation so that we can provide relief to tens of thousands of former coal miners and their dependents and restore integrity to the program.

Among the major provisions are:

First, the financial burden of the program will be shifted from the Government to the coal industry. The cost of claims prior to January 1, 1970, will be financed by an excise tax on coal;

Second, chest X-rays must be accepted as evidence, as long as they are of good quality and are taken and interpreted by qualified persons;

Third, affidavits shall be accepted as evidence where no medical evidence exists or where it is insufficient;

Fourth, the term "total disability" is broadened to permit benefits for those who were employed as miners at the time of death;

Fifth, a survivor is entitled to automatic benefits if the miner worked 25 years in mine employment prior to June 30, 1971; and

Sixth, prompt consideration of claims and appeals will be required.

These and other provisions of S. 1538 would do much to streamline the black lung benefits program and make it more responsive to the needs of miners, their dependents, and their survivors.

Last year, my staff calculated that, on the average, claimants in Iowa waited 2 years and 2 months before their claims were processed. Some of my constituents have been waiting 3 or 4 years, with no word about whether their claims have been approved.

The letter below, which I ask unanimous consent be printed in the RECORD, is representative of the type of correspondence I receive from Iowans regarding the black lung program. Mrs. Louis Valentine of Mystic, Iowa, writes:

I and many of us have been very frustrated by the constant delays, denials, appealing over and over, test after tests and hearings year after year.

The time has come for Congress to relieve these individuals and their families of their financial strain, their disillusionment, and their frustration. I urge my colleagues to approve S. 1538.

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

MYSTIC, IOWA, *May 11, 1976.*

Hon. DICK CLARK,
U.S. Senator of Iowa,
Washington, D.C.

DEAR SIR: In reply to your letter of May 6, 1976, I beg of you to try your utmost to get my husband, (Louie Valentine S.S. No. 485-10-7456) Black Lung Benefit Claims passed, as I need help now.

My husband, after working in the underground coal mines for 32 years, and undergoing nearly six years of tests, trips and hearings, even though his own Doctor, E. A. Larsen, M.D. testified that Louie Valentine had to quit work in the mines in 1944 because of Miners Lung and respiratory conditions, despite this was denied his claim. Even then my husband worked in the coal fields, hauling coal until the age of 68 (for 24 years now).

After spending over 50 years in the coal fields, I think that he or any man well deserves the Black Lung Benefits without test after test and Hearings at the age of 77 years, which is be-meaning and confusing to people of that age, as if they were asking for something they did not deserve.

Now my husband suffered a stroke on March 17, 1976, was entered in the St. Joseph's Hospital and from there had to be taken to the "Golden Age Manor" as I can not possibly take care of him, my own health being very poor, as I suffer from Atherosclerosis and had open heart surgery in April 1, 1975.

We truly need the Black Lung Benefits now, and Louie Valentine filed his claim on January 20, 1971, being denied, he kept appealing his claim to date.

I talked to Ms. Lois B. Schaefer, Claims Examiner from the U.S. Department of Labor and she did have all the records and reports which the Social Security office of Ottumwa was to forward to Ms. Schaefer at once. (I personally called them to send all records of when Louie first filed for Black Lung). To date I have heard no more and I do pray that she has gotten these records by now and with your help that we will now receive the Black Lung Benefits my husband so richly deserves.

I and many of us have been very frustrated by the constant delays, denials, appealing over and over, test after tests and hearings year after year, when I know this is a legitimate claim and feel that surely action will be taken now, under the new bill H.R. 10760 approved by the House of Representatives and co-sponsored Bill S. 3183 which you approve and you will give us prompt consideration.

I thank you for your interest and any help you can and will give us to hasten the action on our appeal for the Black Lung benefit claim filed by Louie Valentine.

Sincerely,

MRS. LOUIE VALENTINE.

Mr. HUDDLESTON. Mr. President, as the Nation looks to coal to pull us through the energy shortage, we must be constantly aware of the high price of that coal in terms of the health, and often the lives, of our miners. If a miner escapes a roof fall, an explosion, or one of the many other types of accidents all too prevalent in the mines, he still faces a near guarantee of lung and breathing impairments caused by coal workers' pneumoconiosis—a progressive irreversible, and seriously debilitating disease caused by the inhalation of coal mine dust. According to medical authorities, in many cases respiratory damage is present after only 1 year underground; in at least 52 percent of all underground miners there is X-ray evidence of pneumoconiosis after 11 years; and at least 88 percent of the coal miners who have served in the mines for 15 years or more can successfully establish under present criteria that they suffer from black lung.

Ideally, we should clean up the mines and end the cause of the disease. We are making progress in that direction and, with strict enforcement of the law, eradication of new black lung cases should be accomplished. But, in the meantime, the very least we can do for the victims of this insidious disease is to try to assure them of some compensation for their hardship and suffering.

In 1969, the Congress enacted a program to compensate miners disabled by black lung and the families of miners killed by it. Clearly, that program has had its successes—monthly payments ranging to a maximum of $410.80 are going to over 500,000 miners or their families. But, unfortunately, the record is full of cases of inexcusable delays in processing claims, seemingly endless and expensive appeals, and denials which at times appear inexplicable. And, each and every one of these cases means that some disabled miner and his family are suffering severe and unnecessary hardship.

The bill before us today is designed to correct some of the deficiencies in the

black lung program and bring some relief from the bureaucratic redtape, delays, and outright inequities which have become so closely identified with the current system.

First, as reported, it eliminates the 1981 termination date of the current black lung law, leaving no doubt that we fully intend to permanently honor our commitment to our disabled miners.

At long last, the responsibility for financing the program is put where it belongs—on the coal mine employers, and not on the Federal Government.

It amends the terms "pneumoconiosis" and "miner" to assure that all respiratory and pulmonary impairments arising out of coal mine employment, and all coal workers exposed to these impairments, are compensable.

It eliminates unnecessarily strict time limits under present law which often have prevented the consideration of claims on their merits.

It ends the terrible practice of forcing a miner to leave his job, and gamble with his family's future, before he can file a black lung claim and receive a determination of eligibility.

The rereading of X-rays, which have resulted in so many delays and so many denials, is ended.

Survivor's claims are facilitated.

Field offices to assist claimants in filing and expediting their claims are authorized, and both HEW and the Department of Labor are required to provide information and assistance to potential beneficiaries.

Claimants who have had their claims denied under the old program will be able to have their claims reviewed under a simple refiling procedure.

And, a permanent $10 million annual authorization is provided for black lung clinical facilities.

Mr. President, disabled miners and their widows should not face an uphill battle to secure benefits which they deserve and for which they have paid so dearly. This bill is in no way a giveaway, but it should at least give claimants their rightful opportunity to have their claims decided equitably and quickly.

Mr. WILLIAMS. Mr. President, coal workers' pneumoconiosis, or black lung disease is a truly dreadful disease. It is a progressive, irreversible respiratory ailment which robs its victims of vitality and energy by making it increasingly difficulty for them to obtain oxygen from the air they breathe. Eventually, it robs its victims of life itself.

Anyone who has seen the ravages of this disease, the agony of its victims, cannot help but be touched by the terrible suffering it causes to miners and their families. The sight of active miners used to the most physical of work, who are unable to even walk without great suffering is truly a pathetic picture.

Black lung disease is perhaps a truly classical occupational disease. It is caused by one thing, and one thing only; the inhalation, over a period of time, of coal dust.

In 1969, when we passed the Federal Coal Mine Health and Safety Act, we set upon a course to eliminate the scourge of black lung. We were to have made our mines less dusty, and by doing so, we were to have eliminated the risk that a miner would get black lung disease.

We know now, that to a large extent, we have been unsuccessful in doing this. As a result, the problem of black lung is still with us. And it will be with us for years to come.

That is why, Mr. President, it is imperative that we reform the black lung program.

That program has, since its inception, been fraught with administrative and statutory problems which have rendered it a hollow promise to hundreds of thousands of our Nations' miners and their families. Under the current program, the victims of this dreadful disease are made to wrestle futilely with a faceless bureaucracy and with Byzantine procedures while their lives slowly ebb away.

This bill corrects many of the injustices which have developed in the administration of the black lung program. It streamlines the procedures by which the black lung program is administered, and eases the burden of establishing a claim. These burdens have frustrated eligible and deserving claimants in the past.

We must streamline procedures, because they are currently out of control. The Labor Department's own internal task force reported that in fiscal year 1976, processing time for claims within the Department had increased to an average of 630 days. The General Accounting Office, in its recent report to the Committee on Human Resources, indicated that there are more than 50,000 claims backlogged in the Department of Labor. Nearly one-third of these have been there for more than 2 years.

We must also ease the unfair burden of proof which the program currently places on claimants. Through fiscal year 1976, the Labor Department had received more than 92,000 black lung claims. It had approved only 3,233 claims. In addition to the complex administrative procedures currently in force, a reason for this low claim approval rate is that often it is all but impossible for legitimate claimants to establish their eligibility. Medical evidence is often imprecise and difficult to evaluate. Symptoms can be confusing. Often, and especially so in cases of older miners, doctors are not sufficiently skilled in diagnosing black lung. In many cases the illness or death of a miner due to black lung has been attributed to some other cause. Then, when the miner's widow went to file her claim, she had insufficient medical evidence to establish her eligibility.

And yet, we know that black lung has been, and continues to be a serious problem in our coal industry. A study done by the National Institute of Occupational Safety and Health indicates that, based on autopsies, more than 90 percent of the deceased miners studied had the disease.

This bill would ease some of the burdens on claimants and would also eliminate many of the administrative bottlenecks. It would require the Secretary of Labor to establish effective medical criteria. It would recognize the continuing prevalence of the disease among our Nation's coal miners. It would eliminate unfair statutes of limitations which work to the disadvantage of those claimants who are most in need.

Finally, Mr. President, this bill would shift the cost of this program to the coal industry. In 1969, when the Congress established the black lung program, we intended that the industry would pay benefits for claims filed after 1974. So far, this has not been the case. Very few of these claims have been allowed. Fewer still have been assigned to responsible operators. The operators have contested more than 90 percent of the claims which were issued to them. The rest are still being paid by the Government.

This bill established a trust fund, funded by a tax on coal, which will pay the claims which are now being paid by the Government, but which we intended to be paid by the industry.

This is an important step toward encouraging the industry to finally clean up our mines.

And, we must clean up our mines. The President of the United States has sent up his energy proposals. They rely on increased production and use of coal as an energy source. Mr. President, if we are to increase our coal production, it cannot be at the cost of the health, well-being, and the very lives of our Nation's miners. We must eliminate the scourge of black lung, and we must fairly and adequately compensate the victims of this dreaded disease.

This bill is a giant stride toward the accomplishment of both of these goals. I urge the Senate to pass this bill, and to keep the promise we made to our coal miners in 1969.

Mr. HATCH. Mr. President, I intend to support the final passage of S. 1538, the Black Lung Benefits Reform Act of 1977.

I do so as a part of my concern for the working people in our country and the thousands of Utah coal miners who have courageously labored in our Nation's coal mines at great personal risk to themselves and their dependents. I believe we are in a new era of concern for the welfare of America's coal miners by virtue of the passage of the Federal Coal Mine Health and Safety Act of 1969 and my concern is continuing.

Since passage of that act, many constructive improvements have been made in the miners' inherently hazardous work environment, although the coal miners of America are not yet as safe and healthful as we would wish them to be. We in Congress and the coal mine industry are working toward this goal.

Until we have reached the stage where mine operations have made the work environment as safe as can be achieved, it is our obligation to insure that victims of black lung disease and their survivors are fairly and timely compensated for disabling pneumoconiosis. This bill is a continuing link in support of the chain of events triggered by the enactment of the Federal Coal Mine Safety and Health Act.

Title IV of that act provides a mechanism for compensating miners totally

disabled due to black lung, or pneumonconiosis, the dependents of such miners, and the eligible survivors of such miners. Part B is administered by the Social Security Administration for claims filed from the date of enactment of the act—December 30, 1969—through June 30, 1973. Beneficiaries are paid from the general funds of the Treasury for life. Some 375,000 claims, out of about 550,000 filed, have been approved, and 180,000 have been denied. Current appropriations for part B are about $850 million.

Part C is administered by the Department of Labor for claims filed after June 30, 1973. Beneficiaries are to be paid, according to the statute, by responsible coal operators through State workers' compensation systems which meet benefit standards set by the Secretary of Labor. Where there is no responsible operator, the Department of Labor pays the claim.

Out of approximately 109,000 claims filed, 4,100 have been approved and 56,000 have been denied. The remaining 49,000 undecided claims form the backlog resulting in large part from an average claim processing time of 630 days. Of the claims approved, coal operators are paying only 200; the industry is controverting 97 percent of the claims for which a responsible operator has been identified by the Secretary of Labor.

Because of the few claims being paid by mine operators, a Federal Government-administered trust is created which is designed to shift part C benefits payments to the coal industry as originally intended by Congress in the 1972 amendments to the Coal Act.

In fact the industry has gone on record as commending the trust fund and tax amendments made by the Senate Finance Committee as a constructive approach toward financing black lung liability under part C. In fairness, however, I must say that it opposes some of the other provisions of the bill.

I am somewhat disturbed by the provision which allows widows an automatic entitlement to benefits based solely on years of coal mine employment. Current law provides no compensation on this basis. While I am opposed to the precedent here, I believe that my concern is overriden in this case because of the extreme difficulty widows experience in providing medical evidence to support a claim, and due to the pervasive financial hardship of most coal miners' widows.

In summary, Mr. President, while I am not totally happy with all aspects of the bill, I believe that on balance it is a fair and constructive approach to compensating those gallant miners who have sacrified their health and become totally disabled in consideration of the Nation's demanding energy needs.

Mr. HEINZ. Mr. President, last year the Congress failed to enact a black lung reform bill, despite the fact that there are over 51,000 pending claims filed by miners who have risked their health and lives to provide all of us with much needed energy resources.

I have been a strong supporter of black lung reform legislation because I am aware of the very real problems encountered by thousands of old and disabled miners and their families in their efforts to obtain what they believe are their well deserved benefits. My office receives hundreds of requests by miners to help them with the bureaucratic tangles that they must cope with in order to achieve benefits. Unfortunately, in our efforts to provide assistance to those who suffer from black lung disease, we have created mechanism which often results in frustration and denial of benefits for many deserving miners.

If this Nation ever expects to increase production of its vast coal resources, we must assure that we will have the manpower to mine and move our coal. As long as people think that mining is a job that dooms people to ill health with improper care and no economic security, we cannot recruit the manpower we need.

So the future demands that we develop reasonable assurance of security for those who risk their health to help this country achieve energy independence. Without a workable black lung program the incentive for coal mine manpower will be reduced and our goals of increasing coal production will be delayed.

Today we will consider the Black Lung Benefits Reform Act of 1977, a bill designed to eliminate some of the delays in the present system and create a funding mechanism that will finance the benefits program. The bill also creates field offices to assist black lung benefits claimants with their claim filing and processing in the areas where they live. As the Committee on Human Resources points out, we now know that the number of disabled miners far exceeds earlier estimates. Currently, there are about 562,000 claims on file under part B of the program, which includes those who filed on or before June 30, 1973 and are entitled to the payment of benefits for life or as long as they remain eligible. There are also over 110,000 claims on file under part C which was designed to be administered by State workers' compensation agencies meeting minimum standards, or by the Secretary of Labor where such standards were not met. Unfortunately, no States have yet been able to meet the minimum requirements and as a result the Department of Labor has administered the entire part C program.

This evidence clearly demonstrates an overwhelming need for changes to be made in the existing program and I urge my colleagues to join me in voting in favor of S. 1538.

(This concludes additional statements submitted.)

Mr. ROBERT C. BYRD. Third reading.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendments to be proposed, the question is on the engrossment and the third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. Under the order, the bill will remain on the calendar.

* * * * *

BLACK LUNG BENEFITS REVENUE ACT OF 1977

Mr. RANDOLPH. Mr. President, in accordance with the unanimous consent agreement of July 21 on the Black Lung Benefits Revenue Act of 1977, known as S. 1538, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 401, H.R. 4544.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The clerk will state the bill by title.

The legislative clerk read as follows:

A bill (H.R. 4544) to amend the Federal Coal Mine Health and Safety Act to improve the black lung benefits program established under such act, and for other purposes.

The Senate proceeded to consider the bill.

Mr. RANDOLPH. Mr. President, I move to strike all after the enacting clause of H.R. 4544 and insert in lieu thereof the text of S. 1538, as amended.

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

The motion was agreed to.

The ACTING PRESIDENT pro tempore. The question is on the engrossment of the amendment and third reading of the bill.

The bill was ordered to be read a third time, was read a third time, and passed.

Mr. RANDOLPH. Mr. President. I move to reconsider the vote by which the bill was passed.

Mr. STEVENS. 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 S. 1538 be indefinitely postponed.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. RANDOLPH. I thank the Chair.

Mr. President, it is gratifying that the Senate has approved the Black Lung Benefits Reform Act of 1977. As Senators know, the House of Representatives approved a black lung measure, H.R. 4544, on Monday. It is my genuine hope that final congressional action on this necessary legislation will come in the near future. As sponsor and floor manager of the Senate bill, it is my firm conviction that this action is vital for the protection of coal miners and theri survivors.

Many Senators have participated in bringing this bill into being. I am grateful to the able majority leader, Senator BYRD, for his strong support and for expediting floor action, and to the minority leader, Senator BAKER, for his cooperation. My deep appreciation is expressed for the assistance and cooperation of the chairman of our Committee on Human Resources, Senator WILLIAMS, the ranking minority member, Senator JAVITS, and all members of our committee. I thank also Chairman LONG and the members of the Senate Finance Committee for their attention to this measure.

We must increasingly rely on a strong mining industry to fuel and energize America. And in the past our miners have paid a heavy price, because of black lung and injurious and fatal accidents in providing needed coal for the Nation. The black lung benefits program is a necessary endeavor by the Congress, the Federal Government, and industry, because a comprehensive health and safety effort to protect miners was not instituted years ago.

The Congress is moving toward final approval of needed improvements to the black lung program which was first enacted in 1969. A conference with the House to resolve differences between the two bills should come shortly so that a measure can be sent to the President for signature in the near future.

95TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 95-864

BLACK LUNG BENEFITS REFORM ACT OF 1977

FEBRUARY 2, 1978.—Ordered to be printed

Mr. PERKINS, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 4544]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4544) to amend the Federal Coal Mine Health and Safety Act to improve the black lung benefits program established under such Act, 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 House recede from its disagreement to the amendment of the Senate 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:

SHORT TITLE

SECTION 1. This Act may be cited as the "Black Lung Benefits Reform Act of 1977".

DEFINITIONS

SEC. 2. (a) Section 402(b) of the Federal Mine Safety and Health Act of 1977 (hereinafter in this Act referred to as the "Act") is amended to read as follows:

"(b) The term 'pneumoconiosis' means a chronic dust disease of the lung and its sequelae, including respiratory and pulmonary impairments, arising out of coal mine employment.".

(b) Section 402(d) of the Act is amended to read as follows:

"(d) The term 'miner' means any individual who works or has worked in or around a coal mine or coal preparation facility in the extraction or preparation of coal. Such term also includes an individual who works or has worked in coal mine construction or transportation in or around a coal mine, to the extent such individual was exposed to coal dust as a result of such employment.".

(c) Section 402(f) of the Act is amended to read as follows:

"(f)(1) The term 'total disability' has the meaning given it by regulations of the Secretary of Health, Education, and Welfare for claims

under part B of this title, and by regulations of the Secretary of Labor for claims under part C of this title, subject to the relevant provisions of subsections (b) and (d) of section 413, except that—

"(A) in the case of a living miner, such regulations shall provide that a miner shall be considered totally disabled when pneumoconiosis prevents him or her from engaging in gainful employment requiring the skills and abilities comparable to those of any employment in a mine or mines in which he or she previously engaged with some regularity and over a substantial period of time;

"(B) such regulations shall provide that (i) a deceased miner's employment in a mine at the time of death shall not be used as conclusive evidence that the miner was not totally disabled; and (ii) in the case of a living miner, if there are changed circumstances of employment indicative of reduced ability to perform his or her usual coal mine work, such miner's employment in a mine shall not be used as conclusive evidence that the miner is not totally disabled;

"(C) such regulations shall not provide more restrictive criteria than those applicable under section 223(d) of the Social Security Act; and

"(D) the Secretary of Labor, in consultation with the Director of the National Institute for Occupational Safety and Health, shall establish criteria for all appropriate medical tests under this subsection which accurately reflect total disability in coal miners as defined in subparagraph (A).

"(2) Criteria applied by the Secretary of Labor in the case of—

"(A) any claim which is subject to review by the Secretary of Health, Education, and Welfare, or subject to a determination by the Secretary of Labor, under section 435(a);

"(B) any claim which is subject to review by the Secretary of Labor under section 435(b); and

"(C) any claim filed on or before the effective date of regulations promulgated under this subsection by the Secretary of Labor;

shall not be more restrictive than the criteria applicable to a claim filed on June 30, 1973, whether or not the final disposition of any such claim occurs after the date of such promulgation of regulations by the Secretary of Labor.".

(d) Section 402 of the Act is amended by adding at the end thereof the following new subsection:

"(h) The term 'fund' means the Black Lung Disability Trust Fund established in section 3(a)(1) of the Black Lung Benefits Revenue Act of 1977.".

SURVIVOR ENTITLEMENTS

SEC. 3. (a) Section 411(c) of the Act is amended—

(1) in paragraphs (1) and (2) thereof, by striking out "if" and inserting in lieu thereof "If" and by striking out the semicolon and inserting in lieu thereof a period;

(2) in paragraph (3) thereof, by striking out "if" the first place it appears therein and inserting in lieu thereof "If" and by striking out "; and" and inserting in lieu thereof a period; and

(3) by adding at the end thereof the following new paragraph:

"(5) In the case of a miner who dies on or before the date of the enactment of the Black Lung Benefits Reform Act of 1977 who was employed for 25 years or more in one or more coal mines before June 30, 1971, the eligible survivors of such miner shall be entitled to the payment of benefits, at the rate applicable under section 412 (a)(2), unless it is established that at the time of his or her death such miner was not partially or totally disabled due to pneumoconiosis. Eligible survivors shall, upon request by the Secretary, furnish such evidence as is available with respect to the health of the miner at the time of his or her death.".

(b)(1)(A) Section 412(a)(3) of the Act is amended by striking out "and" the first place it appears therein, and by inserting after "the time of her death," the following: "and in the case of any child or children entitled to the payment of benefits under paragraph (5) of section 411(c),".

(B) The first sentence of section 412(a)(5) of the Act is amended—

(i) by striking out "or" the fifth place it appears therein; and

(ii) by inserting after "child, or parent," the following: "in the case of the dependent parent or parents of a miner (who is not survived at the time of his or her death by a widow or a child) who are entitled to the payment of benefits under paragraph (5) of section 411(c), or in the case of the dependent surviving brother(s) or sister(s) of a miner (who is not survived at the time of his or her death by a widow, child, or parent) who are entitled to the payment of benefits under paragraph (5) of section 411(c),".

(2) Section 414(e) of the Act is amended by striking out "or" the second place it appears therein and by striking out the period at the end thereof and inserting in lieu thereof the following: ", or (3) any such individual is entitled to benefits under paragraph (5) of section 411(c).".

(3) Section 421(a) of the Act is amended by inserting after "pneumoconiosis" the second place it appears therein the following: ", and in any case in which benefits based upon eligibility under paragraph (5) of section 411(c) are involved.".

(4) The first sentence of section 422(a) of the Act is amended by inserting before the period at the end thereof the following: ", or with respect to entitlements established in paragraph (5) of section 411(c)".

OFFSET LIMITATION

SEC. 4. The first sentence of section 412(b) of the Act is amended by inserting after "disability of such miner" the following: "due to pneumoconiosis".

EVIDENCE REQUIRED TO ESTABLISH CLAIM

SEC. 5. (a) Section 413(b) of the Act is amended by inserting after the second sentence thereof the following new sentences: "Where there is no medical or other relevant evidence in the case of a deceased miner, such affidavits shall be considered to be sufficient to establish that the miner was totally disabled due to pneumoconiosis or that his or her death was due to pneumoconiosis. In any case in which there

is other evidence that a miner has a pulmonary or respiratory impairment, the Secretary shall accept a board certified or board eligible radiologist's interpretation of a chest roentgenogram which is of a quality sufficient to demonstrate the presence of pneumoconiosis submitted in support of a claim for benefits under this title if such roentgenogram has been taken by a radiologist or qualified technician, except where the Secretary has reason to believe that the claim has been fraudulently represented. In order to insure that any such roentgenogram is of adequate quality to demonstrate the presence of pneumoconiosis, and in order to provide for uniform quality in the roentgenograms, the Secretary of Labor may, by regulation, establish specific requirements for the techniques used to take roentgenograms of the chest. Unless the Secretary has good cause to believe that an autopsy report is not accurate, or that the condition of the miner is being fraudulently misrepresented, the Secretary shall accept such autopsy report concerning the presence of pneumoconiosis and the stage of advancement of pneumoconiosis.".

(b) Section 413(b) of the Act, as amended in subsection (a), is further amended by adding at the end thereof the following new sentence: "Each miner who files a claim for benefits under this title shall upon request be provided an opportunity to substantiate his or her claim by means of a complete pulmonary evaluation.".

(c) The fifth sentence of section 413(b) of the Act is amended by striking out "(f)," and by striking out "and (l)," and inserting in lieu thereof "(l), and (n),".

(d) Section 413 of the Act is amended by adding at the end thereof the following new subsection:

"(d) No miner who is engaged in coal mine employment shall (except as provided in section 411(c)(3)) be entitled to any benefits under this part while so employed. Any miner who has been determined to be eligible for benefits pursuant to a claim filed while such miner was engaged in coal mine employment shall be entitled to such benefits if his or her employment terminates within one year after the date such determination becomes final.".

APPROVAL OF STATE WORKERS' COMPENSATION LAWS

SEC. 6. (a) Section 421(b)(2)(A) of the Act is amended by inserting before the semicolon the following: ", except that (i) such law shall not be required to provide such benefits where the miner's last employment in a coal mine terminated before the Secretary's approval of the State law pursuant to this section; and (ii) each operator of a coal mine shall secure the payment of benefits pursuant to section 423 with respect to any miner whose last employment in a coal mine terminated before the Secretary's approval of the State law pursuant to this section".

(b) Section 421(b)(2)(C) of the Act is amended by striking out "part B of this title" and inserting in lieu thereof "this part", by striking out "of Health, Education, and Welfare", and by striking out "thereunder" and inserting in lieu thereof "under this part".

(c) Section 421(b)(2)(D) of the Act is amended to read as follows:

"(D) any claim for benefits on account of total disability of a miner due to pneumoconiosis is deemed to be timely filed if such

claim is filed within three years after a medical determination of total disability due to pneumoconiosis;".

DETERMINATION OF CLAIMS FOR BENEFITS UNDER PART C OF TITLE IV OF THE ACT

SEC. 7. (a) The first sentence of section 422(a) of the Act is amended—

(1) by inserting after "as amended" the following: ", and as it may be amended from time to time";

(2) by inserting a comma after "and 51 thereof)"; and

(3) by striking out "and except as the Secretary shall by regulation otherwise provide" and inserting in lieu thereof "or by regulations of the Secretary and except that references in such Act to the employer shall be considered to refer to the trustees of the fund, as the Secretary considers appropriate and as is consistent with the provisions of section 424".

(b) Section 422(b) of the Act is amended by adding at the end thereof the following new sentence: "An employer, other than an operator of a coal mine, shall not be required to secure the payment of such benefits with respect to any employee of such employer to the extent such employee is engaged in the transportation of coal or in coal mine construction. Upon determination by the Secretary of the eligibility of the employee, the Secretary may require such employer to secure a bond or otherwise guarantee the payment of such benefits to the employee.".

(c) Section 422(c) of the Act is amended—

(1) by striking out "and the Secretary of Health, Education, and Welfare"; and

(2) by striking out "the period" and inserting in lieu thereof "a period after December 31, 1969,".

(d) Section 422(e) of the Act is amended by inserting "or" at the end of paragraph (1) thereof, by striking out ", or" at the end of paragraph (2) thereof and inserting in lieu thereof a period, and by striking out paragraph (3) thereof.

(e) Section 422(f) of the Act is amended to read as follows:

"(f) Any claim for benefits by a miner under this section shall be filed within three years after whichever of the following occurs later—

"(1) a medical determination of total disability due to pneumoconiosis; or

"(2) the date of the enactment of the Black Lung Benefits Reform Act of 1977.".

(f) Section 422(h) of the Act is amended by striking out the first sentence thereof.

(g) Section 422(i) of the Act is amended to read as follows:

"(i)(1) During any period in which this section is applicable to the operator of a coal mine who on or after January 1, 1970, acquired such mine or substantially all the assets thereof, from a person (hereinafter in this subsection referred to as a 'prior operator') who was an operator of such mine, or owner of such assets on or after January 1, 1970, such operator shall be liable for and shall, in accordance with section 423, secure the payment of all benefits which would have been payable by the prior operator under this section with respect to miners

previously employed by such prior operator as if the acquisition had not occurred and the prior operator had continued to be an operator of a coal mine.

"(2) Nothing in this subsection shall relieve any prior operator of any liability under this section.

"(3)(A) For purposes of paragraph (1) of this subsection, the provisions of this paragraph shall apply to corporate reorganizations, liquidations, and such other transactions as are specified in this paragraph.

"(B) If an operator ceases to exist by reason of a reorganization or other transaction or series of transactions which involves a change in identity, form, or place of business or organization, however effected, the successor operator or other corporate or business entity resulting from such reorganization or other change shall be treated as the operator to whom this section applies.

"(C) If an operator ceases to exist by reason of a liquidation into a parent or successor corporation, the parent or successor corporation shall be treated as the operator to whom this section applies.

"(D) If an operator ceases to exist by reason of a sale of substantially all his or her assets, or as the result of a merger, consolidation, or division, the successor operator, corporation, or other business entity shall be treated as the operator to whom this section applies.

"(4) In any case in which there is a determination under section 424 that no operator is liable for the payment of benefits to a claimant, nothing in this subsection may be construed to require the payment of benefits to a claimant by or on behalf of any operator.".

(h) Section 422 of the Act is amended by adding at the end thereof the following new subsections:

"(j) Notwithstanding the provisions of this section, section 424 shall govern the payment of benefits in cases—

"(1) described in section 424(a)(1); or

"(2) in which the miner's last coal mine employment was before January 1, 1970.

"(k) The Secretary shall be a party in any proceeding relative to a claim for benefits under this part.

"(l) In no case shall the eligible survivors of a miner who was determined to be eligible to receive benefits under this title at the time of his or her death be required to file a new claim for benefits, or refile or otherwise revalidate the claim of such miner.".

(i) Notwithstanding the provisions of section 422(a) of the Act, individuals appointed to hear and determine claims for benefits under part C of title IV of the Act and under section 415 of the Act pursuant to Public Law 94-504 (90 Stat. 2428) may continue to adjudicate such claims during the one-year period following the date of the enactment of this Act.

PENALTIES FOR FAILURE TO SECURE PAYMENT OF BENEFITS

SEC. 8. Section 423 of the Act is amended by adding at the end thereof the following new subsection:

"(d)(1) Any employer required to secure the payment of benefits under this section who fails to secure such benefits shall be subject to

a civil penalty assessed by the Secretary of not more than $1,000 for each day during which such failure occurs. In any case where such employer is a corporation, the president, secretary, and treasurer thereof also shall be severally liable to such civil penalty as provided in this subsection for the failure of such corporation to secure the payment of benefits. Such president, secretary, and treasurer shall be severally personally liable, jointly with such corporation, for any benefit which may accrue under this title in respect to any disability which may occur to any employee of such corporation while it shall so fail to secure the payment of benefits as required by this section.

"(2) Any employer of a miner who knowingly transfers, sells, encumbers, assigns, or in any manner disposes of, conceals, secrets, or destroys any property belonging to such employer, after any miner employed by such employer has filed a claim under this title, and with intent to avoid the payment of benefits under this title to such miner or his or her dependents, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than $1,000, or by imprisonment for not more than one year, or both. In any case where such employer is a corporation, the president, secretary, and treasurer thereof also shall be severally liable for such penalty of imprisonment as well as jointly liable with such corporation for such fine.

"(3) This subsection shall not affect any other liability of the employer under this part.".

CLINICAL FACILITIES

SEC. 9. The first sentence of section 427(c) of the Act is amended by striking out "of the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975" and inserting in lieu thereof "fiscal year".

APPLICABILITY OF AMENDMENTS

SEC. 10. Section 430 of the Act is amended—

(1) by inserting "and by the Black Lung Benefits Reform Act of 1977" after "1972"; and

(2) by striking out the colon and all that follows it and inserting in lieu thereof a period.

MEDICAL CARE

SEC. 11. The Secretary of Health, Education, and Welfare shall notify each miner receiving benefits under part B of title IV of the Act on account of his or her total disability who such Secretary has reason to believe became eligible for medical services and supplies on January 1, 1974, of his or her possible eligibility for such benefits. Where such Secretary so notifies a miner, the period during which he or she may file a claim for medical services and supplies under part C of title IV of the Act shall not terminate before six months after such notification is made.

PENALTIES FOR FALSE STATEMENTS AND FAILURES TO FILE REPORTS

SEC. 12. (a) Section 431 of the Act is amended to read as follows:

"SEC. 431. Any person who willfully makes any false or misleading

statement or representation for the purpose of obtaining any benefit or payment under this title shall be guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not more than $1,000, or by imprisonment for not more than one year, or both.".

(b) Part C of title IV of the Act is amended by adding at the end thereof the following new section:

"SEC. 432. (a) The Secretary may by regulation require employers to file reports concerning miners who may be or are entitled to benefits under this part, including the date of commencement and cessation of benefits and the amount of such benefits. Any such report shall not be evidence of any fact stated therein in any proceeding relating to death or total disability due to pneumoconiosis of any miner to which such report relates.

"(b) Any employer who fails or refuses to file any report required of such employer under this section shall be subject to a civil penalty of not more than $500 for each such failure or refusal.".

INSURANCE FUND

SEC. 13. Part C of title IV of the Act, as amended by section 12(b), is further amended by adding at the end thereof the following new section:

"SEC. 433. (a) The Secretary is authorized to establish and carry out a black lung insurance program which will enable operators of coal mines to purchase insurance covering their obligations under section 422.

"(b) The Secretary may exercise his or her authority under this section only if, and to the extent that, insurance coverage is not otherwise available, at reasonable cost, to operators of coal mines.

"(c)(1) The Secretary may enter into agreements with operators of coal mines who may be liable for the payment of benefits under section 422, under which the Black Lung Compensation Insurance Fund established under subsection (g) (hereinafter in this section referred to as the 'insurance fund') shall assume all or part of the liability of such operator in return for the payment of premiums to the insurance fund, and on such terms and conditions as will fully protect the financial solvency of the insurance fund. During any period in which such agreement is in effect the operator shall be deemed in compliance with the requirements of section 423 with respect to the risks covered by such agreement.

"(2) The Secretary may also enter into reinsurance agreements with one or more insurers or pools of insurers under which, in return for the payment of premiums to the insurance fund, and on such terms and conditions as will fully protect the financial solvency of the insurance fund, the insurance fund shall provide reinsurance coverage for benefits required to be paid under section 422.

"(d) The Secretary may by regulation provide for general terms and conditions of insurability as applicable to operators of coal mines or insurers eligible for insurance or reinsurance under this section, including—

"(1) the types, classes, and locations of operators or facilities which shall be eligible for such insurance or reinsurance;

"(2) the classification, limitation, and rejection of any operator or facility which may be advisable;

"(3) appropriate premiums for different classifications of operators or facilities;

"(4) appropriate loss deductibles;

"(5) experience rating; and

"(6) any other terms and conditions relating to insurance or reinsurance coverage or exclusion which may be appropriate to carry out the purposes of this section.

"(e) The Secretary may undertake and carry out such studies and investigations, and receive or exchange such information, as may be necessary to formulate a premium schedule which will enable the insurance and reinsurance authorized by this section to be provided on a basis which is (1) in accordance with accepted actuarial principles; and (2) fair and equitable.

"(f)(1) On the basis of estimates made by the Secretary in formulating a premium schedule under subsection (e), and such other information as may be available, the Secretary shall from time to time prescribe by regulation the chargeable premium rates for types and classes of insurers, operators of coal mines, and facilities for which insurance or reinsurance coverage shall be available under this section and the terms and conditions under which, and the area within which, such insurance or reinsurance shall be available and such rates shall apply.

"(2) Such premium rates shall be (A) based on a consideration of the risks involved, taking into account differences, if any, in risks based on location, type of operations, facilities, type of coal, experience, and any other matter which may be considered under accepted actuarial principles; and (B) adequate, on the basis of accepted actuarial principles, to provide reserves for anticipated losses.

"(3) All premiums received by the Secretary shall be paid into the insurance fund.

"(g)(1) The Secretary may establish in the Department of Labor a Black Lung Compensation Insurance Fund which shall be available, without fiscal year limitation—

"(A) to pay claims of miners for benefits covered by insurance or reinsurance issued under this section;

"(B) to pay the administrative expenses of carrying out the black lung compensation insurance program under this section; and

"(C) to repay to the Secretary of the Treasury such sums as may be borrowed in accordance with the authority provided in subsection (i).

"(2) The insurance fund shall be credited with—

"(A) premiums, fees, or other charges which may be collected in connection with insurance or reinsurance coverage provided under this section;

"(B) such amounts as may be advanced to the insurance fund from appropriations in order to maintain the insurance fund in an operative condition adequate to meet its liabilities; and

"(C) income which may be earned on investments of the insurance fund pursuant to paragraph (3).

"(3) *If, after all outstanding current obligations of the insurance fund have been liquidated and any outstanding amounts which may have been advanced to the insurance fund from appropriations authorized under subsection (i) have been credited to the appropriation from which advanced, the Secretary determines that the moneys of the insurance fund are in excess of current needs, he or she may request the investment of such amounts as he or she deems advisable by the Secretary of the Treasury in public debt securities with maturities suitable for the needs of the insurance fund and bearing interest at prevailing market rates.*

"(h) *The Secretary shall report to the Congress not later than the first day of April of each year on the financial condition of the insurance fund and the results of the operations of the insurance fund during the preceding fiscal year and on its expected condition and operations during the fiscal year in which the report is made.*

"(i) *There are authorized to be appropriated to the insurance fund, as repayable advances, such sums as may be necessary to meet obligations incurred under subsection (g). All such sums shall remain available without fiscal year limitation. Advances made pursuant to this subsection shall be repaid, with interest, to the general fund of the Treasury when the Secretary determines that moneys are available in the insurance fund for such repayments. Interest on such advances shall be computed in the same manner as provided in subsection (b) (2) of section 3 of the Black Lung Benefits Revenue Act of 1977.".*

STATEMENT OF REASONS FOR DENIAL OF CLAIMS

SEC. 14. Part C of title IV of the Act, as amended by sections 12(b) and 13, is further amended by adding at the end thereof the following new section:

"*SEC. 434. Any individual whose claim for benefits under this title is denied shall receive from the Secretary a written statement of the reasons for denial of such claim, and a summary of the administrative hearing record or, upon good cause shown, a copy of any transcript thereof.*".

REVIEW OF PENDING AND PREVIOUSLY DENIED CLAIMS

SEC. 15. Part C of title IV of the Act, as amended by sections 12(b), 13, and 14, is further amended by adding at the end thereof the following new section:

"*SEC. 435. (a) (1) The Secretary of Health, Education, and Welfare shall promptly notify each claimant who has filed a claim for benefits under part B of this title and whose claim is either pending on the effective date of this section or has been denied on or before that effective date, that, upon the request of the claimant, the claim shall be either—*

"(A) *reviewed by the Secretary of Health, Education, and Welfare under paragraph (2) for a determination based on the evidence on file, taking into account the amendments made by the Black Lung Benefits Reform Act of 1977; or*

"(B) *referred directly by the Secretary of Health, Education, and Welfare to the Secretary of Labor for a determination under paragraph (3), with an opportunity for the claimant to present*

additional medical or other evidence in accordance with that paragraph, taking into account the amendments made by the Black Lung Benefits Reform Act of 1977.

"(2)(A) *The Secretary of Health, Education, and Welfare shall approve forthwith each claim for which review is requested under paragraph (1)(A) if, based upon the evidence on file, the provisions of part B of this title, as amended by the Black Lung Benefits Reform Act of 1977, require such approval. The Secretary of Health, Education, and Welfare shall certify such approval to the Secretary of Labor and such approval shall be binding upon the Secretary of Labor as an initial determination of eligibility. Upon receipt of that certification, the Secretary of Labor shall immediately make or otherwise provide for the payment of the claim in accordance with this part.*

"(B)(i) *The Secretary of Health, Education, and Welfare shall refer to the Secretary of Labor any claim not approved under subparagraph (A) for a determination under paragraph (3), and shall notify the claimant of that referral to the Secretary of Labor for such a determination.*

"(ii) *The Secretary of Health, Education, and Welfare shall notify each claimant whose claim has been approved under subparagraph (A) that, if the claimant disputes the scope or terms of the award, such dispute shall be referred to the Secretary of Labor for a determination under paragraph (3).*

"(C) *Upon the completion of the review of any claim by the Secretary of Health, Education, and Welfare under this paragraph, the responsibility for further action with respect to such claim shall be transferred to the Secretary of Labor. The Secretary of Labor shall consider each such claim in accordance with paragraph (3).*

"(3)(A) *Except as provided in this section, the Secretary of Labor shall treat each claim referred by the Secretary of Health, Education, and Welfare under paragraph (1)(B) or (2)(B) as if it were a claim filed under this part. The provisions of subsection (b) shall apply to any determination of the Secretary with respect to any such claim referred to the Secretary.*

"(B) *The Secretary of Health, Education, and Welfare shall promptly furnish to the Secretary of Labor all pertinent information in the possession of the Department of Health, Education, and Welfare relating to claims referred to the Secretary of Labor under this subsection.*

"(4) *For the purposes of any determination by the Secretary of Labor under paragraph (3), the date of the request under paragraph (1) shall be considered the date of filing of the claim.*

"(b)(1) *The Secretary of Labor shall review each claim which has been denied under this part (or under section 415) on or before the effective date of this subsection, and each claim which is pending under this part (or under section 415) on such effective date, taking into account the amendments made to this part by the Black Lung Benefits Reform Act of 1977. The Secretary shall approve any such claim forthwith if the provisions of this part, as so amended, require that approval, and the Secretary shall immediately make or otherwise provide for the payment of the claim in accordance with this part.*

"(2)(A) *The Secretary, in carrying out the review of any claim*

under paragraph (1) and in making any determination under subsection (a)(3), shall not require any additional medical or other evidence to be submitted if the evidence on file is sufficient for approval of the claim, taking into account the amendments made to this part by the Black Lung Benefits Reform Act of 1977.

"(B) If the evidence on file is not sufficient for approval of the claim, the Secretary shall provide an opportunity for the claimant to present additional medical or other evidence to substantiate his or her claim and shall notify each claimant of that opportunity.

"(c) Any individual whose claim is approved pursuant to this section shall be awarded benefits on a retroactive basis for a period which begins no earlier than January 1, 1974.".

SHORT TITLE FOR THE ACT

SEC. 16. Section 401 of the Act is amended by inserting "(a)" after "SEC. 401." and by adding at the end thereof the following new subsection:

"(b) This title may be cited as the 'Black Lung Benefits Act'.".

OCCUPATIONAL DISEASE STUDY

SEC. 17. (a) The Secretary of Labor, in cooperation with the Director of the National Institute for Occupational Safety and Health, shall conduct a study of all occupationally related pulmonary and respiratory diseases, including the extent and severity of such diseases in the United States. Such study shall further include analyses of (1) any etiologic, symptomatologic, and pathologic factors which are similar to such factors in coal workers' pneumoconiosis and its sequelae; (2) the adequacy of current workers' compensation programs in compensating individuals with such diseases; and (3) the status and adequacy of Federal health and safety laws and regulations relating to the industries with which such diseases are associated.

(b) The study required in subsection (a) shall be completed and a report thereon submitted to the President and to the appropriate committees of the Congress no later than 18 months after the date of the enactment of this Act.

FIELD OFFICES

SEC. 18. (a) The Secretary of Labor shall establish and operate such field offices as may be necessary to assist miners and survivors of miners in the filing and processing of claims under title IV of the Act. Such field offices shall, to the extent feasible, be reasonably accessible to such miners and survivors. The Secretary, in connection with the establishment and operation of field offices, may enter into arrangements with other Federal departments and agencies, and with State agencies, for the use of existing facilities operated by such departments and agencies. Where the establishment of separate facilities is not feasible the Secretary may enter into such arrangements as he deems necessary with the heads of Federal departments, agencies, and instrumentalities and with State agencies for the use of existing facilities and personnel under their control.

(b) There are authorized to be appropriated for the purposes of subsection (a) such sums as may be necessary.

INFORMATION TO POTENTIAL BENEFICIARIES

SEC. 19. The Secretary of Health, Education, and Welfare and the Secretary of Labor shall disseminate to interested persons and groups the changes in title IV of the Act made by this Act, together with an explanation of such changes, and shall undertake, through appropriate organizations, groups, and coal mine operators, to notify individuals who are likely to have become eligible for benefits by reason of such changes. Individual assistance in preparing and processing claims shall be offered by the Secretary of Health, Education, and Welfare and the Secretary of Labor and provided to potential beneficiaries.

EFFECTIVE DATES

SEC. 20. (a) The provisions of this Act shall take effect on the date of the enactment of this Act.

(b) In the event that the payment of benefits to miners and to eligible survivors of miners cannot be made from the Black Lung Disability Trust Fund established by section 3(a) of the Black Lung Benefits Revenue Act of 1977, the provisions of the Act relating to the payment of benefits to miners and to eligible survivors of miners, as in effect immediately before the date of the enactment of this Act, shall take effect, as rules and regulations of the Secretary of Labor until such provisions are revoked, amended, or revised by law. The Secretary of Labor may promulgate additional rules and regulations to carry out such provisions and shall make benefit payments to miners and to eligible survivors of miners in accordance with such provisions.

(c) In accordance with the requirements of section 5 of the Black Lung Benefits Revenue Act of 1977, it is hereby provided that such Act shall take effect in accordance with the provisions of such Act. The

provisions of this subsection are hereby deemed to be in explicit satisfaction of the requirements of section 5 of such Act.

And the Senate agree to the same.

CARL D. PERKINS,
JOHN H. DENT,
PHILLIP BURTON,
JOSEPH M. GAYDOS,
WILLIAM CLAY,
MARIO BIAGGI,
LEO C. ZEFERETTI,
MICHAEL O. MYERS,
AUSTIN J. MURPHY,
BALTASAR CORRADA,
PAUL SIMON,
GEORGE MILLER,
FRANK THOMPSON, Jr.,
IKE ANDERSON,
AL ULLMAN,
DAN ROSTENKOWSKI,
CHARLES VANIK,
JOHN J. DUNCAN,

Managers on the Part of the House.

HARRISON A. WILLIAMS, Jr.,
CLAIBORNE PELL,
GAYLORD NELSON,
DON RIEGLE,
JENNINGS RANDOLPH,
EDWARD M. KENNEDY,
RUSSELL LONG,
FLOYD K. HASKELL,
JACOB K. JAVITS,
RICHARD SCHWEIKER,
ROBERT T. STAFFORD,
JOHN H. CHAFEE,
PAUL LAXALT,

Managers on the Part of the Senate.

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 amendment of the Senate to the bill (H.R. 4544) to amend the Federal Coal Mine Health and Safety Act to improve the black lung benefits program established under such Act, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck out all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment which is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

DEFINITIONS

Pneumoconiosis

The House bill did not modify the existing law defining "pneumoconiosis". The Senate amendment defined pneumoconiosis as a "chronic dust disease of the lung and its sequelae, including respiratory and pulmonary impairments, arising out of coal mine employment".

The conference substitute conforms to the Senate amendment.

Miner

The House bill did not modify the existing definition of "miner". The Senate amendment modified the definition to include all self-employed miners and specified that the term includes workers who are employed in or around a coal mine or preparation facility in the extraction, preparation, or transportation of coal, and construction workers who are exposed to coal dust in their employment.

The conference substitute conforms generally to the Senate amendment with an amendment to clarify that transportation and construction workers are covered only to the extent they work in or around a coal mine and are exposed to coal dust. The conference substitute elsewhere provides that coal mine construction and transportation employers who are not also mine operators shall not be obligated to purchase insurance for the payment of claims under the Federal Mine Safety and Health Act of 1977. However, the conference substitute elsewhere also provides that coal mine construction and transportation employers who are not also mine operators shall be individually liable

for the payment of approved claims in appropriate cases. (See section 7, which amends the Act to require such employers to secure a bond or otherwise guarantee the payment of such claims once approved.)

Total disability

The House bill did not modify the provisions of current law which authorize the Secretary of Health, Education, and Welfare to promulgate medical standards for the determination of total disability for all claims. The House bill did, however, bind the Secretary of HEW to prescribing part C regulations no more restrictive than those in effect for claims filed on June 30, 1973 ("interim" standards). The Senate amendment authorized the Secretary of Labor to promulgate new medical standards to be applied to all part C claims and retained the standard-setting authority of the Secretary of HEW with respect to part B claims. The Senate amendment further provided that the Secretary of Labor, in consultation with NIOSH, would establish criteria for medical tests consistent with the definition of total disability.

The conference substitute conforms to the Senate amendment with the proviso that the so-called "interim" part B medical standards are to be applied to all reviewed and pending claims filed before the date the Secretary of Labor promulgates new medical standards for part C cases.

The conferees intend that the Secretary of Labor shall promulgate regulations for the determination of total disability or death due to pneumoconiosis. With respect to a claim filed or pending prior to the promulgation of such regulations, such regulations shall not provide more restrictive criteria than those applicable to a claim filed on June 30, 1973, except that in determining claims under such criteria all relevant medical evidence shall be considered in accordance with standards prescribed by the Secretary of Labor and published in the Federal Register.

The conferees also intend that all standards are to incorporate the presumptions contained in section 411(c) of the Act.

The House bill amended section 413 to provide that a claim cannot be rejected solely on the basis of current employment as a miner if (1) the miner's work location has recently been changed to a less dusty area; (2) the nature of employment has been changed to be less rigorous; or (3) the nature of employment has been changed to result in receipt of substantially less pay.

The Senate amendment modified the definition of "total disability" to provide that: (1) a deceased miner's employment in a mine at the time of death is not conclusive evidence that the miner was not totally disabled; and (2) a living miner's employment with changed employment circumstances indicating a reduced ability to do his usual coal mine work, is not conclusive evidence that the miner is not totally disabled.

The conference substitute conforms to the Senate amendment. By this amendment, the conferees intend to conclusively establish what is already implicit in current law; that is, that mere status as an employee is not always accompanied by the absence of total disability (within the meaning of the Act). It is in response to the administrative practice of denying claims solely on the basis of employment status

without regard to the type of work being performed. The amendment thus identifies certain situations which may suggest the existence of legal disability notwithstanding continued employment status and where additional administrative inquiry is therefore directed.

The House bill also provided that a miner could file a claim for benefits regardless of whether the miner was currently employed and that the Secretary of Labor could advise the miner if he would be eligible for benefits if he changed the circumstances of his work. The Senate amendment did not contain these provisions.

The conference substitute does not include the House provision since the provision would essentially duplicate authority provided elsewhere in the conference substitute, arising out of identical provisions in the House bill and Senate amendment, which prohibits benefit payments to employed miners (except those afflicted with complicated pneumoconiosis, as described by section 411(c)(3)), but permits a miner to receive benefits if his employment terminates within 1 year after he is determined to be otherwise eligible for benefits.

EVIDENCE

Affidavits

The House bill provided that where there is no relevant medical evidence in the case of a deceased miner, affidavits shall be considered sufficient to establish eligibility. The Senate amendment provided that in the case of a deceased miner, where there is no medical evidence or where such evidence is inconclusive, a claim shall be approved if other evidence in the record, including affidavits, taken as a whole, establishes eligibility.

The conference substitute conforms to the House provision with a Senate amendment that affidavits are sufficient to establish eligibility in the case of a deceased miner where there is no medical "or other" relevant evidence.

X-ray rereading prohibition

The House bill required the Secretary to accept the opinion of a claimant's physician regarding whether the miner's X-ray shows pneumoconiosis unless the Secretary has good cause to believe the X-ray is not of sufficient quality, or the miner's condition is being fraudulently represented. The Senate amendment provided that if the miner is employed for 25 or more years in the mines and there is other evidence of pulmonary or respiratory impairment, the Secretary must accept the reading of a board-certified or board-eligible radiologist if the X-ray is of sufficient quality and is taken by a radiologist or a qualified radiologic technologist or technician, except where the Secretary has reason to believe that the claim has been fraudulently misrepresented. The Secretary of Labor may by regulation establish specific requirements for techniques used to take X-rays.

The conference substitute generally conforms to the Senate provision except that the limitation on the prohibition as it pertained to claims of miners with 25 or more years of mining employment contained in the Senate amendment is deleted. In the case of X-rays read by a board-certified or board-eligible radiologist it is the intention of the conferees that the Secretary shall accept, for whatever evidentiary

value X-rays generally may have, the evaluation of such X-rays read by a board-certified or board-eligible radiologist without submitting them to a further rereading.

Autopsy reports

The House bill provided that the Secretary must accept an autopsy report for purposes of determining the presence of pneumoconiosis and the stage of advancement of pneumoconiosis, unless the Secretary has good cause to believe it is not accurate, or that the miner's condition is being fraudulently misrepresented. The Senate amendment did not contain these provisions.

The conference substitute conforms to the House bill.

Pulmonary examination

The Senate amendment required that miners be provided an opportunity to substantiate their claims by means of complete pulmonary examinations. The House bill contained no such provision.

The conference substitute adopts the Senate provision with an amendment to clarify that the miner-claimant has the right to insist on a complete pulmonary examination in substantiating the claim. The conferees recognize that complete pulmonary examinations, including blood gas tests, may be an especially important tool in diagnosing total disability due to pneumoconiosis for miners in certain cases, such as high-altitude miners. In adopting this provision, the conferees intend that in evaluating claims, all relevant evidence be considered, but that no claim may be denied unless the claimant has been offered the opportunity to substantiate his claim by means of such pulmonary examinations (except where it is determined in consultation with the miner's physician that such test is medically contraindicated) and the miner has been given a reasonable period of time to avail himself or herself of such opportunity. The conferees do not intend by this provision, however, that any single medical test be given priority in establishing total disability due to pneumoconiosis.

BENEFIT ELIGIBILITY

Survivor presumption

The Senate amendment entitled the survivor of a miner who died before the date of enactment of the 1977 amendments and who had at least 25 years of coal mine employment prior to June 30, 1971, to benefits, unless it is established that, at the time of death, the miner was not partially or totally disabled due to pneumoconiosis. The survivor was required upon request to supply the Secretary with available evidence concerning the health of the miner at the time of death. The House bill had no equivalent provision.

The conference substitute adopts the Senate provision.

Mine accident provisions

The House bill provided that if a miner was employed 17 years or more in underground coal mines and died as a result of an accident in any such coal mine which occurred before June 30, 1971, an eligible survivor would be entitled to part B black lung benefits. The Senate amendment had no comparable provision.

The conference substitute does not contain this provision.

Determination of year of employment

The Senate amendment provided that a miner would be credited with a year of employment if the miner had four quarters of coverage as defined in the Social Security Act, was continuously on the payroll of a coal company, or if the Secretary of Labor determined on the basis of other evidence that he was employed as a miner. The House bill had no comparable provision.

The conference substitute does not contain this provision.

Use of 15-year presumption

The House bill did not modify current law under which part C claimants, in order to use the section 411(c)(4) presumption of total disability due to pneumoconiosis, must have worked 15 years in the coal mines prior to June 30, 1971, and have filed the claim within 3 years of last exposed employment in a coal mine for a living miner and within 15 years of last exposed employment in a coal mine in the case of a survivor's claim. The Senate amendment eliminated all time limitations on the use of the section 411(c)(4) presumption.

The conference substitute conforms to the Senate amendment.

Statute of limitations

The House bill provided that, in addition to the provisions of current law under which a part C claim may be filed within 3 years of discovery of total disability due to pneumoconiosis or within 3 years of death due to pneumoconiosis, a part C claim may also be filed within 3 years of the date of enactment of these amendments. The Senate amendment permitted the filing of a part C claim by a miner within 3 years after a medical determination of total disability due to pneumoconiosis, and eliminated the statute of limitations on survivor claims.

The conference substitute conforms to the Senate provision with an amendment which would also permit the filing of a part C claim within 3 years of the date of enactment of these amendments.

Survivors of approved claimants

The Senate amendment provided that the eligible survivors of approved claimants would not be required to file a new claim for benefits. The House bill had no comparable provision.

The conference substitute conforms to the Senate amendment.

Medical benefits

The House bill required the Secretary of HEW to notify miners receiving benefits under part B of their eligibility to file for medical benefits under part C. Such miners would then have 6 months to file a part C claim for medical benefits, without regard to the current 3-year statute of limitations. The Senate amendment had no comparable provision.

The conference substitute adopts the provision of the House bill. The conferees intend that the so-called "interim" part B medical standards are to be applied to all of these medical benefits claims.

Applicability of 1977 part B amendments to part C

The Senate amendment made these amendments to part B applicable to part C where relevant. The House bill had no comparable provision.

The conference substitute conforms to the Senate amendment. Neither this provision nor any other provision in the conference substitute eliminates or narrows the current applicability of all part B presumptions to part C claims. Indeed, it is the express intent of the conferees to expand the regulatory authority of the Department of Labor in administering the black lung benefits program.

NOTIFICATION AND REVIEW

Notification

The House bill provided that the Secretaries of Labor and HEW would disseminate to interested persons and groups information on changes in the law. Each Secretary would undertake a program to give individual notices. The Secretary of HEW would locate and notify individuals with long periods of coal mine employment or their survivors of their eligibility to file a part B claim if they had not previously filed a part B or part C claim and such persons could file claims within 6 months of notification.

The Senate amendment required the Secretaries of Labor and HEW to disseminate jointly to interested persons and groups information on changes in the law, and through group organizations and operators to undertake to notify individuals. Individual assistance was to be provided to potential beneficiaries.

The conference substitute conforms to the House bill with an amendment to delete any requirement that a delegate of the Secretary personally visit individuals to inform them of their eligibility for benefits. Also deleted is the provision in the House bill permitting the reopening of part B to "notified" potential claimants. In addition, as discussed below, the Secretary of HEW will notify denied part B claimants and the Secretary of Labor will notify denied part C claimants of their review rights and, with regard to part C claimants, of their right to augment their files. The conference substitute also retains the Senate provision requiring that individual assistance be provided to potential beneficiaries. The conferees intend that the Secretaries undertake a broad campaign to disseminate information about the changes in the program and to notify individuals who may have become eligible for benefits, through appropriate organizations, groups, and coal mine operators.

Review

The House bill provided that the Department of Health, Education, and Welfare would automatically review all previously denied or pending part B claims and that the Department of Labor would likewise review all previously denied or pending part C claims to determine if the respective claimants would be eligible for benefits in light of the 1977 amendments. The Senate amendment provided that claimants with previously denied claims would be permitted to refile under part C under an expedited procedure to be established by the Secretary of Labor.

The conference substitute adopts the requirement of the House bill of entitlement to review of all denied or pending claims (part B and part C) taking into account the changes made by these amendments. It requires the Department of HEW to notify individuals whose part B claims have been denied or are pending that they

may elect to have HEW review the claim on the existing record or have the claim referred to the Department of Labor for refiling under part C with an opportunity to submit new evidence. Where the claimant elects review under part B and the Department of HEW finds the claimant eligible in light of these amendments, or for other reasons, the Secretary of HEW is to certify this determination to the Secretary of Labor. This certification is binding upon the Secretary of Labor as an initial determination of eligibility and the Secretary of Labor is required to immediately make or otherwise provide for the full payment of the claim in accordance with relevant part C provisions.

Where the claimant elects review under part B and the Department of HEW does not find the claimant eligible for benefits on the existing record, the claim will be referred to the Secretary of Labor for refiling under part C, and consideration thereunder (including the opportunity to submit new evidence), and the claimant is notified by HEW of that referral. Once the Secretary of HEW makes the determination of claim approval or denial based on review on the existing record, the responsibility for further review action on any such claim is transferred to the Secretary of Labor. This also includes the situation where a claimant is dissatisfied with the scope or terms of an HEW approval (e.g., dispute regarding augmentation of benefits because of dependents). The Department of HEW is thus expressly relieved of providing an administrative process for appeal from its determinations under these provisions and that responsibility rests with the Department of Labor.

Where the claimant does not elect review under part B, but elects to have the claim referred to the Department of Labor for refiling under part C, HEW shall so notify the Secretary of Labor and shall promptly provide the Secretary with the claimant's case file, and all pertinent information necessary to further process the claim. With respect to all claims referred by HEW to the Secretary of Labor, and thus refiled as part C claims, the Secretary of Labor shall provide an opportunity for the claimant to present additional medical or other evidence in support of the claim and shall notify each claimant of that opportunity.

The conference substitute also requires the Secretary of Labor to automatically review all currently denied or pending part C claims, taking into account the changes made by these amendments. The Secretary is required to immediately make or otherwise provide for the full payment of claims approved under these provisions in accordance with relevant part C provisions. If the evidence on file is not sufficient for approval of a claim, the Secretary shall provide an opportunity for the claimant to present additional medical or other evidence in support of the claim and shall notify each claimant of that opportunity. If a claim is denied on review on the existing record. the claimant shall once again be informed of his right to submit additional evidence in support of the claim under part C.

All reviews or refiled claims shall receive expedited treatment. The conferees also expect the Secretaries of HEW and Labor to establish a satisfactory mechanism to coordinate their responsibilities and to avoid both agencies simultaneously reviewing the claim of any claimant previously denied under part B and later denied, pending, or

entitled under part C. The conferees expect the Secretary of HEW to administer the "interim" standards with a view to the just accomplishment of the purpose of allowing for reviewed part B claims to establish disability within the meaning of the 1977 amendments as they apply to all reviewed part B claims.

For purposes of payment of benefits, all claims under review shall be treated as part C claims and shall be subject to relevant part C provisions which require payment of benefits by a coal mine operator, other employer, or by the trust fund established by the Black Lung Benefits Revenue Act of 1977.

Retroactivity

The House bill provided no payment retroactivity pursuant to review. The Senate amendment provided that a part B denial, refiled as a part C claim and approved, would be paid from January 1, 1974, as would a denied section 415 claim (that is, a claim filed between July 1 and December 31, 1973). A previously denied part C claim approved after refiling would be paid benefits from the date of original filing.

The conference substitute conforms generally to the Senate amendment with an amendment which does not alter the current law regarding retroactivity of benefits payments but which precludes any retroactivity of benefits for a period prior to January 1, 1974.

Pre-1970 employment

The House bill reopened part B (claims paid out of general revenues) for all claims predicated upon employment which terminated prior to December 30, 1969. The Senate amendment provided that any approved part C claim based upon coal mine employment which terminated prior to January 1, 1970, was to be paid by the trust fund established by the Senate amendment. The Senate amendment did not permit newly filed claims under part B.

The conference substitute conforms to the Senate amendment. The responsibility for payment of part B claims approved upon review pursuant to these amendments is dealt with elsewhere in the conference substitute.

Successor operator

The Senate amendment added to current law a requirement that, on or after January 1, 1970, if an operator reorganizes to change its identity, form, or place of organization, is liquidated into a parent corporation, or ceases to exist because of a sale of assets, merger, consolidation, or division, the successor operator or corporation is liable for claims based on coal mine employment for the predecessor operator, except that a predecessor operator shall be primarily liable if the predecessor operator remains a coal mine operator and is financially responsible for the payment of the claim. The House bill had no such provision.

The conference substitute conforms to the Senate amendment.

CLAIMS ADJUDICATION

Procedures

The House bill retained provisions under current law by which the Longshoremen's and Harbor Workers' Act procedures applied with

respect to claims processed by the Secretary of Labor. In addition, the House bill added provisions establishing a new hearing procedure which required an expedited hearing within 45 days if requested by a claimant. The House bill also required the claimant's appeal from a final decision of the Secretary to be taken to a U.S. district court. The standard of review applied by the district court would have been "weight of the evidence".

The Senate amendment retained the Longshoremen's Act procedures for the adjudication of all claims processed by the Secretary of Labor but permitted the use of hearing officers for a period of 1 year. It also made future amendments to Longshoremen's Act procedures automatically applicable to black lung claims.

The conference substitute conforms to the Senate amendment. For purposes of adjudication, all claims certified, referred, or otherwise subject to review by the Secretary of Labor under section 435, shall be treated as part C claims.

Participation

The House bill provided that no operator may participate in the adjudication of any claim. The trustees of the fund (established by the House bill) could participate in the claims process on behalf of all operators only to the extent that they could appeal a prior decision, and medical determinations of the Secretary would not be appealable. If the trustees appealed a decision their appeal would be taken to the appropriate court of appeals.

The Senate amendment provided that only the Secretary and the claimant may participate in proceedings for which the trust fund may be liable. Neither the fund nor any operator could participate in any trust fund claim initially or on appeal. The Senate amendment made the Secretary of Labor a party in any part C proceeding and retained the current authority for operators to participate in claims adjudication with respect to claims for which they might be responsible.

The conference substitute conforms to the Senate amendment in the respect that the Secretary of Labor is a party in any part C proceeding and in retaining the authority of current law for operators to participate in the adjudication of claims for which they may be individually found liable (including part B claims certified or otherwise referred to the Secretary of Labor by the Secretary of HEW pursuant to the conference substitute). The balance of the Senate provision is incorporated in the provisions of the Black Lung Benefits Revenue Act of 1977, a prior and separate enactment dealing generally with the trust fund financing mechanism for the Black Lung Benefits Act.

Enforcement of operator liability to claimants

The House bill did not modify current law under which the failure of an operator to pay a claimant results in payments by the Secretary of Labor made on behalf of such operator. The Secretary may bring a civil action for recovery. Pursuant to incorporated Longshoremen's Act provisions, the operator may be required to pay the claimant 20 percent in addition to compensation if timely payments are not made. There is no penalty for failure to insure.

The Senate amendment provided that the failure of an operator to pay a claimant would result in payments being made by the trust fund. If the operator refused to repay the fund, there would be a lien against

such operator's assets, enforceable in a U.S. district court. The operator would also be liable for the payment of a 20 percent penalty to the claimant pursuant to the Longshoremen's Act. A civil penalty of up to $1,000 a day would be provided for failure of an employer to secure benefits and corporate officers would be made jointly and severally liable. Criminal penalties would be imposed against an operator who knowingly destroyed or encumbered his property to avoid paying benefits. Other penalties would be imposed by the Senate amendment for the filing of false statements. The Secretary would be authorized to require employers to file reports concerning who may be entitled to benefits. Failure to file such reports would be subject to a civil penalty.

The conference substitute conforms to the Senate amendment with regard to its provisions establishing penalties for failure to secure payment of benefits and for false statements and reports. The balance of the Senate provision (e.g., trust fund liability, lien provisions) is incorporated in the provisions of the Black Lung Benefits Revenue Act of 1977 (discussed above).

The conferees intend that the Secretary of Labor fully utilize the regulatory authority under which he or she may require reports of employers (regarding black lung beneficiaries or potential beneficiaries) to collect broad statistical data and to monitor the status of individual or groups of claims.

Enforcement of operator liability to fund

The House bill provided that if an operator failed or refused to pay an assessment or premium to the fund, the trustees would be authorized to bring a civil action against such operator in an appropriate U.S. district court. Nine percent interest could be assessed on past due balances. In addition, the Secretary of the Treasury could assess penalties not in excess of unpaid premiums and assessments to be paid by a defaulting operator. Penalties could be recovered by the Secretary of the Treasury in an appropriate U.S. district court, and would be paid into the fund.

The Senate amendment provided that if an operator failed to pay his designated 1 percent sales tax or repay the fund for the amounts paid on such operator's behalf, there would be either a default in tax liability declared by the Internal Revenue Service or in the latter case a lien imposed pursuant to provisions of the Internal Revenue Code of 1954. Such lien would be enforced by the Secretary of Labor in a U.S. district court.

The conference substitute does not contain either provision since the provision of the Senate amendment is incorporated in the provisions of the Black Lung Benefits Revenue Act of 1977, a prior and separate enactment (discussed above).

Administration

The House bill established a coal industry administered fund, the trustees of which would be elected by coal mine operators. The operator trustees administered and managed the fund and were authorized to invest the corpus in accordance with ERISA limitations. The Senate amendment established a trust fund and provided that the trustees of the fund would be the Secretaries of Treasury, Labor, and HEW, with the Secretary of the Treasury the managing trustee. Assets of the fund would be invested only in public debt securities.

The conference substitute does not contain either provision since the provision of the Senate amendment is incorporated in the provisions of the Black Lung Benefits Revenue Act of 1977 (discussed above).

Payments

The House bill provided that the trust fund would pay the full cost of all part C claims including reimbursing the Federal Government for any payments made after December 31, 1973, for claims filed after June 30, 1973, and authorized the trust fund to assume payment of the obligations (in return for reasonable payment) of insurance carriers or operators who incurred a prior obligation under this part. The fund would pay only its own administrative expenses.

The Senate amendment provided that the trust fund would pay all part C claims which are predicated upon employment which terminated prior to January 1, 1970, and claims with respect to employment after that date where no responsible operator can be found or the miner's coal mine employer is insolvent or uninsured. The fund would also reimburse the Treasury for all part C claims paid by the Federal Government prior to enactment of these amendments with respect to periods of eligibility from January 1, 1974. The fund would pay the administrative expenses of Labor, HEW, and Treasury.

The conference substitute provides that the trust fund (established by the Black Lung Benefits Revenue Act of 1977) pays benefits in cases in which there is no operator who is required to secure the payment of such benefits or where a liable operator has failed to make payment in a timely manner or cases in which the miner's last coal mine employment was before January 1, 1970 (irrespective that in cases reviewed under section 435 the claims was initially filed as a part B or part C claim). The balance of the Senate amendment is incorporated in the provisions of the Black Lung Benefits Revenue Act of 1977 (discussed above).

Financing

The House bill provided that the trust fund would be supported by premiums and assessments payable by each coal mine operator in the United States, except where a State law has been certified. The amount of the premium would be established in the first year by the Secretary of Labor predicated upon the tons of coal mined by each such operator. In following years, the premium would be established by the trustees subject to modification by the Secretary. Premiums would have to be sufficient to meet the obligations of the fund. Premium rates would be uniform throughout the coal mine industry. Premiums due and payable would be collected by the Secretary of the Treasury in the same manner as quarterly payroll reports of employers, and penalties could be assessed by the Secretary of the Treasury for failure to pay premiums. In addition to the annual premiums, assessments would also be required to be paid into the fund by individual coal mine operators at the end of each year in an amount which would be equal to the claim liability experience of such operator.

The Senate amendment established a trust fund on the books of Treasury, supported by a uniform 1 percent ad valorem manufacturers excise tax on coal (other than lignite) sold by producers after September 30, 1977. Claims for which there is a responsible operator would be financed through insurance or self-insurance, as under current law.

The conference substitute makes reference to the Black Lung Disability Trust Fund established by the Black Lung Benefits Revenue Act of 1977 (discussed above). The financing mechanism for the trust fund, as prescribed in the Revenue Act, conforms generally to the Senate amendment, except that the tax is based upon the tonnage of coal mined by coal operators (as in the House bill) at the rate of $0.50 per ton for underground coal and $0.25 per ton for surface-mined coal (but not to exceed 2 percent of the price at which the ton of coal is sold by the producer). The conference substitute does continue the current law regarding the individual liability of responsible operators (except where the miner's last coal mine employment was before January 1, 1970).

MISCELLANEOUS

Insurance

The Senate amendment created a black lung compensation insurance fund in the Department of Labor to enable the Secretary of Labor to offer insurance to operators if such insurance is unavailable privately at reasonable cost. The Senate amendment further authorized repayable advances to the insurance fund. The insurance fund would charge premiums consistent with accepted actuarial principles. The House bill had no such provision.

The conference substitute conforms to the Senate amendment. It is the intent of the conferees that the insurance fund not be operated solely as an insurer of a high-risk pool. The Secretary is also expected to utilize this authority to assist in encouraging private insurers to make contract insurance widely available at reasonable costs.

Field offices

The House bill required the Secretary of Labor to establish field offices. The Senate amendment authorized the Secretary of Labor to establish field offices.

The conference substitute conforms to the House bill with an amendment authorizing the Secretary of Labor to enter into agreements to use the facilities of other Federal or State agencies in establishing such field offices, and to use such facilities and also personnel if necessary in lieu of establishing separate field offices where separate Labor Department staffed field offices are not feasible. The conferees intend that, while the Secretary of Labor establish field offices wherever there are sufficient claimants in need of assistance, the Secretary not be required to maintain separately staffed field offices in locales where there is likely to be an insufficient number of claimants to justify their continued existence.

Occupational disease study

The House bill provided that the House Education and Labor Committee would conduct a study of white lung disease in 1 year. The Senate amendment required the Secretary of Labor, in cooperation with NIOSH, to conduct an 18-month study of all occupationally-related pulmonary and respiratory diseases.

The conference substitute conforms to the Senate amendment.

Information to denied claimants

The Senate amendment required the Secretary of Labor to supply each denied claimant with a written statement of the reasons for such

denial and a summary of the administrative hearing record or, on a showing of good cause, a copy of any transcript thereof. The House bill had no such provision.

The conference substitute conforms to the Senate amendment.

Interim part C payments

The House bill provided that part C benefits would be paid by the Secretary in any case in which the Black Lung Disability Insurance Trust Fund was not in operation. The Senate amendment had no such provision.

The conference substitute conforms to the House bill except that the reference is to the Black Lung Disability Trust Fund established by the Black Lung Benefits Revenue Act of 1977 (discussed above). The intent underlying this provision is to essentially "revive" the payment provisions of the current law in the event payments cannot lawfully be made from the trust fund. An example (and perhaps the only imaginable eventuality which could trigger this provision) would be a Supreme Court finding of legal infirmity going to an aspect of the trust fund sufficient to prevent the trust fund from adequately assuming the purpose and responsibility for which it was established.

Retroactivity—State exemption

The House bill made no change in the current law under which a State could gain an exemption for its operators from the provisions of the Federal statute if the State enacts a black lung compensation law which the Secretary of Labor could certify as meeting the Federal statutory standards. Such standards required *inter alia* State law coverage for miners last employed before enactment. The Senate amendment modified the existing law to permit the Secretary of Labor to approve State laws which provided coverage for miners whose last employment to minutes after the Secretary's approval of such State law.

The conference substitute conforms to the provisions of the Senate amendment with an amendment to clarify the intent of the conferees that operators in certified States under the Federal statute would still be required to secure the payment of benefits pursuant to Federal law with respect to miners whose last employment in coal mining terminated before the Secretary's approval of the State law. It is the intent of the conferees that no miner currently covered by the Federal statute be denied coverage under either the Federal statute or a certified State law because of the operation of this provision. Operators in certified States would nonetheless be liable for the coal excise tax imposed by the Black Lung Benefits Revenue Act of 1977, and miners whose employment ceased before the State law was certified would be paid pursuant to the operation of the Federal law.

Self-insurance

The Senate amendment provided specific income tax treatment for a qualifying trust used by a coal mine operator to self-insure for liabilities under Federal and State black lung benefits laws, and allowed deductions within certain limits for amounts contributed to the trust by the operator. The Senate amendment further imposed certain investment limitations and prohibitions on "self-dealing" and "taxable expenditures" designed to prevent abuses of such trusts. The Senate

amendment provisions would be effective for taxable years beginning after December 31, 1977. The House bill contained no such provision.

The conference substitute does not contain this provision although it is incorporated in the provisions of the Black Lung Benefits Revenue Act of 1977 (discussed above).

Addresses

The Senate amendment amended section 6103 of the Internal Revenue Code of 1954 to allow the IRS to provide NIOSH with addresses of taxpayers for purposes of locating individuals who may have been exposed to occupational hazards. The House bill contained no such provision.

The conference substitute does not contain this provision because this provision was included in the Act of December 13, 1977 (Public Law 95–210; 91 Stat. 1485), an amendment to the Social Security Act to provide payment for rural health clinic services.

Location of Division of Coal Mine Workers' Compensation

The House bill provided that the Division of Coal Mine Workers' Compensation would be located in the Office of the Secretary of Labor. The Senate amendment had no such provision.

The conference substitute does not contain this provision from the House bill.

Effective dates

The House bill provided generally that the bill would take effect on the date of enactment. The House bill also contained additional effective dates relating to the manner in which the funding provisions of the House bill would take effect. The Senate amendment contained similar provisions for a generally applicable effective date on the date of enactment, with additional effective date provisions relating to funding.

The conference substitute provides that the amendments will take effect on the date of enactment. Additional effective dates relating to funding were made unnecessary as a result of the enactment of the Black Lung Benefits Revenue Act of 1977 (discussed above).

CARL D. PERKINS,
JOHN H. DENT,
PHILLIP BURTON,
JOSEPH M. GAYDOS,
WILLIAM CLAY,
MARIO BIAGGI,
LEO C. ZEFERETTI,
MICHAEL O. MYERS,
AUSTIN J. MURPHY,
BALTASAR CORRADA,
PAUL SIMON,
GEORGE MILLER,
FRANK THOMPSON, Jr.,
IKE ANDERSON,
AL ULLMAN,
DAN ROSTENKOWSKI,
CHARLES VANIK,
JOHN J. DUNCAN,
Managers on the Part of the House.

HARRISON A. WILLIAMS, Jr.,
CLAIBORNE PELL,
GAYLORD NELSON,
DON RIEGLE,
JENNINGS RANDOLPH,
EDWARD M. KENNEDY,
RUSSELL LONG,
FLOYD K. HASKELL,
JACOB K. JAVITS,
RICHARD SCHWEIKER,
ROBERT T. STAFFORD,
JOHN H. CHAFEE,
PAUL LAXALT,
Managers on the Part of the Senate.

○

BLACK LUNG BENEFITS REFORM ACT OF 1977—CONFERENCE REPORT

Mr. RANDOLPH. Mr. President, I submit a report of the committee of conference on H.R. 4544 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4544) to amend the Federal Coal Mine Health Safety Act to improve the black lung benefits program established under such act, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of February 2, 1978.)

Mr. RANDOLPH. Mr. President, I appreciate the cooperation of the Senator from West Virginia (Mr. ROBERT C. BYRD) in permitting us at this time to bring to the floor this conference report, which is a privileged matter. Our able majority leader has been an effective advocate of this black lung legislation.

It is a privilege to bring to the Senate the conference report on H.R. 4544 the Black Lung Benefits Reform Act of 1977. This report represents the extensive and comprehensive work of conferees from four committees—the Committee on Education and Labor and the Committee on Ways and Means of the House of Representatives and the Committee on Human Resources and the Committee on Finance of the Senate.

I note for the record that the chairman of the Committee on Human Resources, Senator WILLIAMS, and the chairman of the Committee on Finance, Senator LONG, are in the Chamber at this time.

The measure provides significant improvements to the black lung program. It will enable afflicted miners and the survivors of deceased miners to have a deserved and needed opportunity to qualify for black lung benefits.

Very quickly, let us go back to 1969. At that time, we brought into Congress, and it became law, the original Black Lung Benefits Act. It was further modified in 1972, when we brought in the elements of pulmonary and respiratory diseases as a part of the possible proof.

Now, in 1978, we are finalizing a bill, which will qualify many persons who need the opportunity to have their claims reviewed in connection with this dread disease.

As my colleagues know, the Senate debate on this body's version of the black lung bill, S. 1538, took place on July 21, 1977, and gave it unanimous approval on September 20, 1977. Subsequently, the conferees from the four committees agreed to separate the legislation into two parts—a bill to establish a tax on coal to fund approved black lung claims and a bill to reform the standards for approval of such claims. The financing proposal, H.R. 5322, was approved by the Senate on December 15, 1977, and by the House on January 24, 1978. We are confident that legislation will be signed by the President. The reform proposal in its final version is the measure before us today.

Briefly, the major provisions of the conference report are as follows:

First, there will be an automatic review of all previously denied or pending claims to determine if claimants are now eligible under the 1977 amendments. The "interim" medical standards which I will refer to later will be used in evaluating these claims.

Previously denied and pending part C claims will be reviewed by the Secretary of Labor. Claimants will be given the opportunity to augment their files. When such claims are approved they will be paid by the black lung disability benefits trust fund unless a responsible operator can be identified and the coal miner's employment extended beyond January 1, 1970.

All denied part B claimants will be given the option of having their claims reviewed based on existing files by the Secretary of HEW or transferred to the Secretary of Labor for review. In the latter case, the Secretary of Labor will treat the claim like a reviewed part C claim. If the HEW Secretary reviews the claim and it is found not approvable, the claimant will have the opportunity to have his or her claim transferred to the Department of Labor for further review based on any additional evidence that the claimant may submit. If the HEW Secretary approves the claim, it is transferred to the Department of Labor for payment as an initial determination of eligibility. The Labor Secretary will immediately direct that the payments be made from the trust fund or by a responsible operator if a responsible operator is identified. Any responsible operator will have the right to litigate his responsibility and the eligibility of the claimant. If the operator prevails in such litigation, payments to the claimant will cease.

The number of such claims in HEW and Labor totals over 200,000. This estimate includes claims of miners and survivors.

All claims approved as a result of this review will be eligible for retroactive benefits from the date of onset of disability or January 1, 1974, whichever is later. It should be stressed that no benefits resulting from the review of part B or part C claims will be paid by the Federal Government.

Under the conference report, the Secretary of Labor is authorized to promulgate medical standards for the evaluation of part C claims at a time in the future. However, the review of all Part B and part C claims and of all claims filed prior to the promulgation of the Labor Department's medical standards will be accomplished with the use of the "interim" medical standards which were in use after the Black Lung Amendments of 1972.

In the past, except for complicated pneumoconiosis cases, a miner who was working at the time of death or at the time of his or her claim was made, could not be found eligible for benefits. H.R. 4544 states that employment at the time of death cannot be conclusively used as evidence that the miner was not totally disabled in determining the survivor's claim. Also, the bill provides that a living miner's changed circumstances of employment can be indicative of reduced ability to perform coal mine work. As in current law, however, no miner can receive black lung benefits while still employed (except for those with complicated pneumoconiosis.) A working miner must leave work within a year to collect benefits.

H.R. 4544 modifies the evidence required to show disability from black lung. This includes:

For deceased miners, where there is no medical or other relevant evidence, affidavits shall be sufficient to show that the deceased miner was totally disabled due to pneumoconiosis or died as a result of pneumoconiosis;

The Secretary is prohibited from rereading X-rays, provided that the X-ray was initially taken and read by qualified individuals, is of sufficient quality, and there is no evidence of fraud;

There is other evidence that a miner has a pulmonary or respiratory impairment;

The Secretary must accept an autopsy report, unless he has good cause to believe that it is not accurate or that the miner's condition is being fraudulently misrepresented; and

Claims cannot be denied unless the miner has been afforded the opportunity to have a complete pulmonary examination.

H.R. 4544 provides that for State workers' compensation laws to be in compliance with the Federal black lung standards such laws need only cover claims filed subsequent to the approval of the State law. This provision will aid States in qualifying their compensation programs for black lung.

The conference report amends part C so that coal mine operators can only be held responsible for black lung benefits if the miner's employment extended beyond January 1, 1970.

The Secretary of Labor is authorized to establish an insurance fund for operators who are unable to secure insurance for black lung liability or are unable to do so at reasonable cost.

The conference report provides that a survivor of a miner who had at least 25 years of coal mine employment prior to June 30, 1971, will be entitled to benefits unless it is established that at the time of death the miner was not partially or totally disabled due to pneumoconiosis.

On this point, the conferees agreed to incorporate both the Senate and House provisions which provide for the filing of a part C claim by a miner within three years after the date of enactment of these amendments or within 3 years after a medical determination of total disability due to pneumoconiosis. The statute of limitations on survivor claim is eliminated.

The conference report adopted a House provision which allows miners receiving benefits under part B to file for medical benefits under Part C. Such filing must be done during a six-month period after the enactment of these amendments.

The conference report generally retains the Longshoremen's and Harbor Workers' Act procedures for the adjudication of all claims subject to review by the Secretary of Labor.

With further reference to the claims adjudication features, many of the provisions that were in the Senate and House bills are now covered by the Black Lung Benefits Revenue Act which is before the President. These include participation by the operators in adjudication, enforcement of operator liability to the claimant and the fund, administration of the fund, payments from the fund, and the trust fund itself. Those features retained in H.R. 4544 are covered in the conference report on the bill.

Finally, Mr. President, there are several provisions of the conference report which should also be noted.

H.R. 4544 provides for—

The establishment of field offices, where warranted, to assist claimants;

An 18-month study of all occupationally related pulmonary and respiratory diseases by the Secretary of Labor in cooperation with NIOSH;

A process in which any denied claimants will be supplied with a written statement of the reasons for such denial; and

A mechanism for interim part C payments in the event payments cannot lawfully be made from the Trust Fund.

Mr. President, these amendments to the black lung program have been developed over a period of 3 years. They are necessary and urgently needed revisions to compensate those persons who have mined coal to energize our Nation and who, in this process, have been afflicted by pneumoconiosis—a disabling and progressively dibilitating disease. Miners and their families have sacrificed much over the years. They are still paying a heavy price for these sacrifices and it is encumbent on the Congress and the Federal Government to be alert and responsive to the health and welfare of those persons who constitute our mining population.

The black lung program has been a blessing for hundreds of thousands of deserving beneficiaries who have received and continue to receive compensation income. But it has been a bitter disappointment for thousands of claimants who have been denied benefits, and thousands of others who have waited for years for their claims to be decided. They have not yet had an opportunity for fair consideration under the original act and the later amendments.

The program has really been harsh to many who have submitted claims and pursued them in good faith. Through administrative or legal quirks they have been determined to be ineligible for benefits.

These and other reasons are compelling ones for the enactment of this program of reform legislation. Widows who know with certainty that their husbands were totally disabled by black lung have often been barred from receiving benefits because they have no medical evidence to substantiate their claim.

Miners who are told they are disabled and whose chest X-rays are interpreted as positive for pneumoconiosis have been denied benefits because the rereaders of the X-rays disagree with the original X-ray interpretation.

There are widows whose claims are clearly valid and who would receive benefits except for the passage of time since the miner husband's death.

There are miners who are ill but are faced with the dilemma of whether to continue working or whether to stop their labor and file a black lung claim, perhaps taking a chance on the probability of approval of such claims sometime distant in the future.

Finally, there are all the black lung claimants who must wait an average of 630 days for their claims to be processed, only to have such claims, in 97 percent of the cases approved by the Labor Department, controverted by the responsibile coal company.

Mr. President, these are some of the reasons that have brought us to the point of bringing a new black lung meas-

ure to enactment. We have been in the process of reasoned improvement of this legislation from its enactment in 1969 to the 1972 amendments. Those amendments were made necessary because the full extent of pulmonary and respiratory diseases was being ignored through the sole use of the X-ray finding.

This was a step forward. The Social Security Administration was required to take into account pulmonary and respiratory ailments, which are very marked in connection with those who labor in the coal mines of this country.

A black lung benefit program has certainly—and I underscore this—worked well and favorably for many; but for many other persons it has been something which causes sleepless nights and anguished days.

H.R. 4544 will not solve all the problems nor fulfill all the wishes of every claimant for black lung benefits. It will, however, necessarily result in dramatic improvements in the program. It is urgently needed, and it can give a certain degree of economic security to thousands of disabled miners, widows, and children, who are now unjustly denied the benefits of this program.

Mr. President, I strongly urge adoption of this conference report.

Mr. President, this is no mere pleasantry for me. It is something I want very much to do, and I am eager to do it. That is to express genuine appreciation to the chairman of the Committee on Human Resources, Senator HARRISON WILLIAMS.

From the very beginning, even earlier than the passage of the 1969 bill, he was deeply involved in the hearing process and the process of developing black lung legislation. Without his effective work, the 1969 measure and the 1972 amendments would not have become law.

I am grateful, and I express my personal as well as my official thanks, as do thousands and thousands of miners and their families who know of his endeavors both on black lung and on coal mine health and safety. The Senator from New Jersey (Mr. WILLIAMS) has been a leader in all areas of the effort to insure safe and healthy working conditions for the people of our Nation and his work has improved the lives of millions.

Mr. President, I wish also to say that we have constantly had the reasoned judgment of the articulate and able Senator from New York, the ranking minority member of the Human Resources Committee.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator's time has expired.

Mr. RANDOLPH. Mr. President, will the distinguished Senator from New York yield 1 minute from his time?

Mr. JAVITS. I yield 1 minute.

The PRESIDING OFFICER. The Senator has an additional minute.

Mr. RANDOLPH. Mr. President, it is not important here to be able to say that on all counts Senator JAVITS agreed with me or with Senator WILLIAMS or with others. But he constantly was at counsel table working with to develop a measure that could receive hopefully unanimous approval of both the House of Representatives and Senate, and we believe that is happening. Miners and their families have benefited from the diligent efforts of the Senator from New York (Mr. JAVITS).

I also wish to strongly state the appreciation—of all of us who worked with him—of the leadership which has been given by the Chairman of our Finance Committee, Senator LONG of Louisiana.

Someone might have said a little word or two along the way that he might have been a stumbling block. He was not that. He was trying to help us to work out a valid program for the payment of black lung benefits not only now but in the years ahead. And I think that it is important to have had that sort of counsel and assistance.

Representative CARL PERKINS, chairman of the House Education and Labor Committee, of course, was a vigorous and dedicated advocate of this legislation. He worked with us. We worked with him. We had times of stress and strain, but we came through that conference with good will, understanding, and purpose. I am deeply grateful to Representative PERKINS.

I stress also that Representative JOHN DENT had a significant role in developing this measure. His dedication to the miners of this country is known and this legislation is a further indication of it.

Finally, I thank the members of the staff, many of them who are here today. They worked constantly. They dug in early in the morning and late at night to help us bring about the finalization of this legislation. I personally commend and express appreciation to Mike Goldberg and Jerry Lindrew of the majority staff, subcommittee on Labor; Don Zimmerman, minority staff; Wiley Jones, Senator LONG's staff; and Herb Chabot and Richard Ruge, Joint Committee on Taxation.

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

Mr. JAVITS. Mr. President, I ask my own chairman if he wishes some additional time.

Mr. WILLIAMS. Only an additional moment.

Mr. JAVITS. I yield to him.

Mr. WILLIAMS. Mr. President, coal workers' pneumoconiosis, or black lung disease, is a dreadful and insidious disease which interferes with the respiratory function of its victims, and which slowly and progressively makes the very act of breathing more and more difficult.

Over the years, our coal miners have made significant contributions to our Nation's energy production. They have done so at a great personal sacrifice to their own health. The Congress has, in turn, taken steps to prevent black lung and to compensate miners who are afflicted with this occupational disease.

In 1969, Congress launched a two-pronged attack on this national health problem. With last years passage of the Federal Mine Safety and Health Act, we committed ourselves to controlling the levels of coal dust in our Nation's mines, and to eliminating the cause of black lung. By controlling dust levels, we hoped that future generations of coal miners would not have to face the suffering and hardship of their forebears.

Today's legislation will simplify the task of compensating the victims of black lung disease, and will thus provide justice for past inequities. It will also encourage the investment necessary to clean up the mine and eliminate the cause of this dreaded disease.

In the past, the administration of the black lung benefits program has failed to reach its objectives of fairly compensating victims and of reaching an equitable distribution of the costs of black lung compensation. Miners have been put through one obstacle after another in order to justify their claims and all but a handful of these claims are still, 7 years after implementation of the program, being paid by the Federal Government.

The conference report eliminates bottlenecks in the processing of claims. It eliminates unfair statutes of limitations. It adjusts the criteria which are used to evaluate claims so that these criteria will apply fairly to all. Currently, the criteria works to the distinct disadvantage of older miners and their widows who often cannot accumulate the medical or other data necessary to establish eligibility.

By approving this conference report, the Congress will also shift the burden of paying black lung benefits to the coal industry. The Senate bill contained a trust fund to be paid for by the coal industry with the Federal Government assuming no new liability for black lung claims.

The House conferees accepted this important principle. The conferees agreed, however, that the black lung benefits trust fund, and the accompanying excise tax should be provided for by separate legislation—amending the internal revenue code. The conferees asked the Senate Committee on Finance and the Ways and Means Committee of the House of Representatives to provide such legislation, and as a result, the black lung benefits revenue act (H.R. 5322) has already been passed by both the senate and the house and is now awaiting the President's signature.

By effectively shifting the cost of paying black lung benefits to the coal mining industry, that industry will be encouraged to eliminate harmful dust from our coal mines and eventually, to eliminate this disease.

With the enactment of this conference report our efforts to control black lung will be complete.

Mr. President, the conferees have worked for nearly 4 months to develop this report. Although both the Senate and the House conferees worked toward the same objective, there were serious differences in approach. This conference report represents an accommodation of those differences and I would like to commend the chairman of the Senate conferees, the Senator from West Virginia (Mr. RANDOLPH) for his leadership and perseverance in the conference, and to congratulate him on the conference report. I would also like to express my appreciation for the positive assistance

which we received from the other Senate conferees.

Mr. President, this conference report, the Black Lung Benefits Reform Act of 1977, will restore justice and fairness to the black lung program and will fulfill the promise which we made to our Nation's coal miners in 1969.

I commend this conference report to the Senate.

Mr. President, the Senator from West Virginia brought to our legislative effort to meet the needs of coal miners the knowledge that comes from one who lives close to the people he represents, and so many of them are employed in the coal mines. It is for nearly a decade that we have worked together to develop the two things that coal miners needed, a program to advance safetv and health conditions in the mines, and then a program of compensation for those who have been diseased as a result of this employment.

It has been all together in our legislation. Since 1969 problems have developed with this measure and with the bill that we passed that deals with a reorganization of the Mine Safety and Health Administration.

I think the coal miners of our land at last have the full measure that they are entitled to for compensation and also for insuring a work environment, that over the years ahead will reduce, we hope to zero, the incidence of the disease that we compensate here.

Certainly, and I know my colleague from New York will share this with me, though we come from States that are not known as and are not coal mining States, we had to work and relv day in, day out, on every measure in this area on the most constructive and most humane Senator from West Virginia.

It is good that we had the complications of financing the black lung program so expertly resolved with the cooperation and all of the creative thought of the Senator from Louisiana.

I thank the Senator from New York.

Mr. JAVITS. I thank my colleague.

Mr. President, I yield myself 5 minutes.

Mr. President, as one of the Senate members of the conference committee, I support the conference report on the Black Lung Benefits Reform Act of 1977, and I urge its adoption here today. This legislation will correct several provisions of the present law which have unfairly caused benefits to be denied to miners suffering from pneumoconiosis and to their survivors, and will reform the financing of black lung compensation by shifting the burden of fiancing benefits from the general revenues of the Treasury to the users of coal by a sales tax collected through coal mine operators. Coal mine operators, through the tax revenues to the new trust fund and through liability for individual claims, will be responsible for financing the cost of all benefits, including claims certified by the Secretary of HEW under the new section 435 of the act.

These amendments finally achieve the objective I have sought since the inception of the black lung benefits program in 1969 of requiring the coal industry itself to pay the cost of compensating miners and their survivors for black lung disease. I urged this approach again during consideration of the 1972 amendments. Although the 1972 amendments incorporated the concept of operator liability for individual claims, the provisions adopted then under part C were largely ineffective and resulted in virtually all payments being made from general revenues.

I am also pleased that the bill as reported by the conferees retains a great many of the amendments which I proposed during its consideration by the Human Resources Committee, and also includes amendments which I offered during the conference itself.

My great interest in the black lung benefits program, since its inception in 1969, has been to insure equity for victims of black lung disease while being mindful of the burden on the U.S. taxpayer of as much as $1 billion per year in benefit payments. I wish to assure my colleagues that although the bill incorporates a number of liberalized standards governing the adjudication of black lung benefit claims, it clearly preserves its basic integrity as a workers' compensation program by requiring a finding not only of the presence of black lung disease, but also that the claimant's disability due to the disease prevents him from performing coal mine work.

In this connection, I was concerned throughout the consideration of this legislation by the conference committee that the dual responsibilities of HEW and the Department of Labor for reviewing previously denied claims be exercised in a manner that is fair to all concerned. These claims are to be reviewed by both agencies under medical criteria no more restrictive than the so-called interim medical standards which were originally promulgated by HEW for the determination of claims under part B of the act, for which HEW was responsible through June 30, 1973. The bill also provides authority for the Secretary of Labor to promulgate regulations establishing revised medical criteria, based on the best medical information available, to be applicable to all newly filed claims.

The "interim" standards as they were applied to determine benefit claims under part B, have been highly controversial and widely criticized. For example, the Secretary of Labor, on September 30, 1977, stated:

> The part B standards are not medically sound for providing benefits to all deserving individuals.

I therefore requested that the statement of managers include language to the effect that "all relevant medical evidence" be considered in applying the "interim" standards to the reviewed claims in order to more clearly explain the intent of the new section 402(f)(2) of the act created by section 2(c) of the bill. I also suggested the language that "the conferees expect the Secretary of HEW to administer the 'interim' standards with a view to the just accomplishment of the purpose of allowing for reviewed Part B claims to establish disability within the meaning of the 1977 amendments as they apply to all reviewed Part B claims." It is found in the statement of managers under the heading of "Review."

These amendments I believed were not intended to require payment of a claim where the evidence in the file is fragmentary or otherwise incomplete, but to require payment of a claim where there is evidence of the presence of pneumoconiosis and that it has caused disability for performing coal mine work. If in reviewing its files of previously denied cases HEW finds incomplete evidence, such as X-ray evidence of simple pneumoconiosis only (which, X-ray evidence standing alone is insufficient to establish eligibility, it is expected to transfer the case to the Department of Labor for a determination under part C with an opportunity for the claimant to supplement the evidence already on record.

I believe it would be inequitable, and contrary to sound program administration, if the Departments of Labor and HEW were to give disparate treatment to claimants in carrying out their dual responsibilities for reviewing previously denied claims. I felt the departments must be mindful not only of the potential impact on the new trust fund, which may be significantly underfunded on the basis of the established sales tax rate, but also that any claims approved on the basis of inadequate evidence may be controverted by operators who may be found liable for benefits. This could lead to an avalanche of costly litigation, and add months and possibly years to the final adjudication process.

Also important to this legislation are the provisions concerning the evidentiary value of lay affidavits and of X-rays submitted by claimants' physicians. With respect to X-ray evidence, I am pleased that the bill essentially retains the intent of my amendment adopted by the Human Resources Committee to the effect that a positive interpretation by a claimant's physician would be accepted as evidence of pneumoconiosis without rereading by expert radiologist consultants to the Government if the submitted X-ray meets the Department of Labor's criteria for X-ray quality, was initially interpreted by a board certified or board eligible radiologist, and there is no reason to believe it is fraudulently misrepresented.

Of course, acceptance by the Secretary of such X-rays, refers to the Department's initial determination, and does not preclude any operator who may be liable for benefits from contesting the claimant's X-ray evidence or from seeking another X-ray. The amendment to section 413(b) concerning affidavits simply means that such evidence may be used to establish disability only where it is the only evidence available that affidavits alone are not sufficient to overcome more tangible evidence if in the record. And, even if there is not other evidence available, the affidavits should contain sufficient evidence that the miner [was] disabled, or died, due to pneumoconiosis in light of the applicable presumptions.

With the adoption of this conference report, I very much hope that the Senate will now broaden its concern to consideration of the wholely inadequate and

inequitable compensation of the victims of other occupational diseases. The improvements in State workers compensation systems necessary to provide compensation in the case of dozens of other categories of employees disabled by occupational diseases—including textile workers, asbestos workers, and many others, will clearly not come about until Federal legislation establishing minimum standards for these state systems has been enacted.

I intend to join with the distinguished chairman of the Senate Human Resources Committee, to renew my efforts, to enact such legislation. Senator WILLIAMS and I have applied ourselves for some years to this problem. I know he feels as I do. We will continue to do so. I hope to enlist again in his leadership in the same activities which have brought so many reforms into the field of health and safety for working people. I know we will be thoroughly joined by Senator RANDOLPH, and I have felt that there is no reason why we should deny the coal miners their opportunity to get elementary justice in this respect because others were left out. We will wage our fight for others, be they asbestos workers or textile workers, because we are learning that these diseases have very long-term incubation periods and are very disabling. We take a lot of our industrial production out on the backs of our workers in terms of their health.

Finally, I would like to congratulate JENNINGS RANDOLPH and CARL PERKINS. Never did people who are injured have two more devoted and impassioned advocates than these two legislators. I think they have scored a signal success, but also one which gives proper accommodation to the fact that the industry should pay its way and that the taxpayers of the United States should not carry that load.

I thank the Chair, and I reserve the remainder of my time.

Mr. LONG. Mr. President, I want to thank the Senator from West Virginia, the Senator from New York, as well as the Senator from New Jersey for their comments here today.

The conferees from the Finance Committee have worked in harmony and concert with the conferees from the Human Resources Committee in order to develop both the black lung tax legislation, which the Senate passed in December, and the black lung benefits bill which we are considering today. Each of the two committees has acted responsibly in recognizing the jurisdiction of the other, with respect to the current legislation and with respect to future oversight and legislation in connection with the black lung program. Thus, the Finance Committee jurisdiction extends to those matters covered in H.R. 5322, the Black Lung benefits revenue act of 1977, including the new excise tax on coal, the establishment of the Black Lung Disability Trust Fund, the structure and administration of the Trust Fund, the purposes authorized for expenditures out of the Trust Fund, and provisions as to self-insurance trusts established by coal mine operators. The human resources committee jurisdiction extends to those matters covered in H.R. 4544, which we are considering today, including eligibility for black lung benefits, rules for evidence of disability, claims adjudication, and related benefit provisions. I assure senators that the Finance Committee, working jointly with the Human Resources Committee, will be alert to the needed levels of funding for approved claims under H.R. 4544. Based on the cost estimates set forth in the committee reports in both the House and Senate, by the end of fiscal year 1984 the new excise tax on coal will have produced more revenue than the estimated payments out of the Trust Fund to that time.

Mr. President, I congratulate the Senator from West Virginia (Mr. RANDOLPH) for his great work on this bill. This has been a long, continuous struggle for him, dating back to 1969. His indefatigable never-say-die efforts have prevailed again.

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

Mr. HUDDLESTON. Mr. President, will the Senator yield me 1 minute?

The PRESIDING OFFICER. The Senator from New York has 1 minute left; the Senator from Louisiana has 2 minutes remaining.

Mr. LONG. I yield 1 minute.

Mr. HUDDLESTON. I thank the Senator. I just want to add my commendations to the Senator from Louisiana (Mr. LONG), the Senator from West Virginia (Mr. RANDOLPH), the Senator from New Jersey (Mr. WILLIAMS) and the Senator from New York (Mr. JAVITS) for joining with our colleague over on the other side of the building, in the House, Congressman PERKINS.

I am sure my colleague from Kentucky (Mr. FORD), who is in the chair at the present time, joins me in expressing our appreciation from a State that has many citizens who are afflicted with this disease, and who will benefit greatly from the far-sightedness that has been demonstrated with this particular bill.

I think it will expedite the process. It shifts the burden from the taxpayer to the coal producers, and it will be of great benefit to our State and to all citizens who have been afflicted by the so-called black lung disease. I thank the Senator very much.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that both Mr. JAVITS and Mr. RANDOLPH have 4 additional minutes equally divided.

The PRESIDING OFFICER. Without objection, it is so ordered. Senators have 4 minutes divided as they wish.

Mr. RANDOLPH. Mr. President, with the Senator from Kentucky (Mr. HUDDLESTON) saying what he said, expressing appreciation to those of us who were perhaps more closely identified with the actual hearing process and the writing of the bill, I want to say that the two Senators from Kentucky, both of them in the Chamber now, have certainly been very ardent advocates of this legislation. Senator FORD and Senator HUDDLESTON understand the problems of coal mining in the State of Kentucky—the largest producer of bituminous coal—and in our Nation. Our action today is to me an indication of their, continuing desire to see that which is right be done in the Congress of the United States for those afflicted with black lung. I thank the Senators.

Mr. JAVITS. Mr. President, I yield 2 minutes to the Senator from Alabama, and I reserve 1 minute to myself.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. ALLEN. I thank the distinguished Senator from New York.

Mr. President, I wish to commend and pay tribute to the distinguished Senator from West Virginia (Mr. RANDOLPH), to the distinguished Senator from New Jersey (Mr. WILLIAMS), the distinguished Senator from New York (Mr. JAVITS), and the distinguished Senator from Louisiana (Mr. LONG) for this excellent and meritorius conference report that has been brought back to the Senate.

Certainly it illustrates that Congress does have a heart, it does have a conscience, because to stabilize the matter of black lung claims and to provide that those who are victims of black lung can obtain the benefits to which they are entitled, make this legislation landmark legislation.

I was very much interested, and the Senator from West Virginia (Mr. RANDOLPH) and the distinguished Senator from New York (Mr. JAVITS) and also the distinguished Senator from New Jersey (Mr. WILLIAMS)—will recall that last year Senator SPARKMAN and I introduced a bill that would have provided for red lung benefits for miners in the iron ore mines, and also were interested in brown lung that textile workers have, and white lung that asbestos workers and lime plant workers have.

I was very much interested in the statement of the distinguished Senator from West Virginia that hearings would be held this year on these and other respiratory illnesses of workers, and I would like for him to state again, if he would, when it is anticipated that those hearings will be held.

Mr. RANDOLPH. Mr. President, I appreciate the question. The chairman of our committee is present. He has an intense interest in this subject as well as others of us. Perhaps the chairman (Mr. WILLIAMS) should make that response and if necessary, I will join with him.

Mr. ALLEN. I thank the Senator.

Mr. WILLIAMS. Mr. President, I assure the Senator from Alabama that he has kept the matter before us——

The PRESIDING OFFICER. The Senator's time is expired.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that I may have 4 more minutes.

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

Mr. ROBERT C. BYRD. I yield 3 minutes to the Senator from New Jersey.

Mr. WILLIAMS. I thank the Senator.

The Senator from Alabama has kept before the fact that there are other respiratory diseases associated with the workplace. Brown lung is one of those diseases; red lung, which affects those who work in iron is another.

Mr. ALLEN. Yes.

Mr. WILLIAMS. I know of the particular concern of the Senator from Alabama about that. The Senator from New York and I are, and have been over quite a period of time, developing comprehensive legislation that will deal expressly with these other diseases that should be compensable.

The timing, we can say, is this: Because the committee must proceed before May 15 on the reauthorization of existing programs. Our wise decision to look at all reauthorizations basically, or nearly from the ground up, will occupy us until that Budget Committee deadline of May 15.

Then the comprehensive workers' compensation bill will be before us, and hearings will be held, and we of course, will welcome at that time——

Mr. ALLEN. That would be this year?

Mr. WILLIAMS. This year. We will welcome whatever input the Senator from Alabama may have.

Mr. ALLEN. I hope that when that time arrives, the distinguished Senators, the Senator from New Jersey, Mr. WILLIAMS) and the Senator from New York (Mr. JAVITS) will allow the Senators from Alabama to join as cosponsors of this legislation.

Mr. WILLIAMS. We certainly will present our legislation to the Senator from Alabama, and would welcome, indeed, his cosponsorship.

Mr. ALLEN. I thank the distinguished Senator.

I would like to commend also the Finance Committee on devising the trust fund approach, whereby claims will be able to be paid through the trust fund. I think that is a very sound and fiscally responsible approach.

I again commend the managers of the conference report.

Mr. JAVITS. Mr. President, let me take just 1 minute to associate myself with Senator WILLIAMS again, and assure him of my cooperation in every way.

Mr. President, as to the especially difficult trust fund issue, Senator LONG, I think, has made every effort to define the substantive responsibilities which we have and the tax responsibilities which the Finance Committee has. He used one phrase regarding Finance Committee juridiction: "Purposes for expenditures of the trust fund." I just wanted to make it clear that his original definition of Finance Committee jurisdiction is satisfactory, and that I would expect that this assertion fits within the context of the basic definition. If understood that way, it is reasonable and proper; but not if understood as an enlargement of Finance Committee jurisdiction. I just wanted to put my own caveat on the Record in that regard.

Finally, Mr. President, I think this has been a most creditable endeavor by all concerned—Senator RANDOLPH, Senator LONG, and Senator WILLIAMS—and I hope very much the Senate will agree to the conference report.

Mr. ROBERT C. BYRD. Mr. President, I wish to add my commendation to those so properly expressed by our colleagues with respect to the work performed by my senior colleague (Mr. RANDOLPH) and by the ranking members, Mr. WILLIAMS and Mr. JAVITS, and also by Mr. LONG and others, on this major legislation. It is a very important piece of legislation, and Senator RANDOLPH and the others have worked long and very hard in the process of the hearings and in the management of the bill on the floor and then in conference. They met with difficult problems in conference, but their dedication, their purpose, and their tenacity have prevailed. These plaudits are well deserved, and I am happy to add my own to those that others have so well expressed.

Mr. RANDOLPH. Mr. President, I thank my colleague. I do not forget what my colleague from West Virginia did in 1969 when we started this long trail, when he joined very, very actively in securing the funds with which the first payments could be made to the sufferers from black lung disease. I want the record to indicate that when I say this, I have a full knowledge of the contribution he has made and is making in helping those afflicted with black lung.

Mr. ROBERT C. BYRD. Mr. President, I thank my colleague for his generous remarks.

Mr. RANDOLPH. Mr. President, I urge the adoption of the conference report on H.R. 4544, the Black Lung Benefits Reform Act of 1977.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The report was agreed to.

Mr. JAVITS. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, in adopting the black lung conference report today, we have recommitted ourselves to assuring that our Nation's miners who have been or will become afflicted with this dread disease will receive just compensation.

During our original consideration of the Senate bill last summer, I indicated that we must assure adequate protection of our most precious resource—the miner. This legislation goes far to assure such protection.

The definition of total disability as contained in this measure assures that employment at the time of death does not arbitrarily bar a survivor's claim for total disability benefits. In the past it would have. Also in the past, if a miner was working when the disease was discovered he or she could not have been found totally disabled. Employment is no longer a conclusive bar to a determination of total disability. However, no miner can receive benefits if he is still employed.

In the past, one of the most controversial aspects of the old law was the determination of whether or not the miner had the disease. Under this legislation a more realistic approach is taken and other medical evidence, as well as affidavits in certain cases, may be used to establish the presence of the illness.

The legislation also assures that miners previously denied black lung benefit payments will be permitted to have their claims reconsidered to determine if they are eligible.

Additionally, the bill provides an insurance mechanism through the Secretary of Labor to provide coverage for coal operators who cannot secure workers compensation coverage or who are unable to do so at a reasonable cost.

Mr. President, we must recognize that one of the costs which we must bear in order to enjoy our energy-oriented lifestyle is the social cost we owe those who make such a lifestyle possible. We must realize that there is no way in which we can completely compensate our miners who suffer from black lung. This bill, however, at least recognizes the debt which we as a society owe them.

CONFERENCE REPORT ON H.R. 4544, BLACK LUNG BENEFTTS REFORM ACT OF 1977

Mr. PERKINS. Mr. Speaker, I call up the conference report on the bill (H.R. 4544) to amend the Federal Coal Mine Health and Safety Act to improve the black lung benefits program established under such act, 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.

(For conference report and statement, see proceedings of the House of February 2, 1978.)

Mr. PERKINS (during the reading). Mr. Speaker, I ask unanimous consent that further reading of the statement be dispensed with.

The SPEAKER. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

The SPEAKER. The gentleman from Kentucky (Mr. PERKINS) will be recognized for 30 minutes, and the gentleman from Illinois (Mr. ERLENBORN) will be recognized for 30 minutes.

The Chair recognizes the gentleman from Kentucky (Mr. PERKINS).

Mr. PERKINS. Mr. Speaker, I yield myself such time as I may consume.

(Mr. PERKINS asked and was given permission to revise and extend his remarks.)

Mr. PERKINS. Mr. Speaker on February 6 the Senate unanimously approved the conference report on this legislation, H.R. 4544, the Black Lung Benefits Reform Act of 1977. Today, it is our turn to do so. With that action, and the President's signature which will soon follow, the end to a long and sometimes discouraging legislative trail will be at hand. But most importantly, our Nation's coal miners and the survivors of those who died crippled from the ravages of black lung disease will begin to participate in the kind of sensitive and equitable Federal program we imagined when we enacted the first black lung benefits law in 1969.

We call this reform legislation—and it is just that. On the one hand, it reforms the existing procedure for making claims determinations—a procedure which, at best, can be described as endless and inconsistent. The current procedure has caused confusion and frustration in the coal regions; and bitterness within families and among friends. This legislation streamlines and makes that process more uniform by narrowing the range of options available to the administrator.

On the other hand, this legislation can fairly be called reform legislation because it provides that—from this day forward—the full cost of this program will be borne by coal operators—either directly if they are found to be responsible for the claim, or indirectly through the trust fund established by the recently passed Black Lung Benefits Act of 1977 (H.R. 5322). In either circumstance, and thus in all circumstances, the coal industry at large will finally and rightly pay for the claims that will be approved in the future and those old claims that will be approved as a result of the review mechanism built into this bill. The winners will be the Federal Treasury and thus the taxpayers of this country, who, through unforeseen weaknesses in the current law, have continued to remain liable for most of the cost of the program.

Mr. Speaker, I believe the joint explanatory statement of the committee of conference does a thorough job of describing the conference agreement. You will note that the House conferees prevailed on most of the critical issues. I would therefore make only a few remarks about some of the more salient areas of the conference substitute.

First. The House bill's provision of automatic review of all denied or pending claims in the light of the changes in the law made by this legislation is retained in substance. Every such claimant is absolutely entitled to a review and also has the oportunity to update his evidence. A limited retroactivity of payments for claims approved on review is provided; and the Secretary of Labor is required to insure that a claim is immediately paid in full. Ultimately, a responsible coal operator or the Black Lung Disability Trust Fund wil be required to assume full financial responsibility for the claim.

Second. The House bill required that the so-called interim medical standards of part B of the program be applied under part C as well. For the most part, the House provision prevailed in conference on this issue and all of the denied and pending claims subject to review under the legislation will be evaluated according to the "interim" standards. These standards will continue to apply into the future as well, until such time as the Secretary of Labor promulgates new regulations consistent with the authority given him by the bill. With respect to the review responsibility of the Secretary of HEW under the legislation, the "interim" standards remain solely applicable, as they have in the past under the HEW-part of the program. As for the Secretary of Labor's review responsibility thereunder, the "interim" standards are exclusively and unalterably applicable with respect to every area they now address, and may not be made or applied more restrictively than they were in the past, but they may be considered by the Labor Secretary within the context of all relevant medical evidence according to the methodology prescribed by the Secretary and published in the Federal Register.

On this question, I would also take note of certain remarks made during Senate consideration of this conference report. To the extent those remarks assert that the Secretary of HEW must, in the course of fulfilling his review responsibilities under this law, utilize and apply the "interim" standards in a manner different from that utilized in the past, then the assertions are totally without legislative support—in the conference report, in the joint explanatory statement, in the remarks of Senator RANDOLPH, who also addressed the subject, nor in the remarks of any other of the conferees on the legislation. I therefore trust that neither the Secretary of HEW nor of Labor will be confused by those remarks and will follow the clarity of the conference report on this issue.

I would add also that there were other remarks by the same speaker, equally gratuitous and without legislative foundation, that spoke to the X-ray and affadavits provisions of the conference report. Again, I trust the administrators of this program will find their duties fully and adequately described in the conference report and that they will not be misguided by any inconsistent references contained in an unspoken floor statement.

Third. Another important provision contained in the House bill which is carried over to the conference substitute requires the Secretary of HEW to notify all miners receiving benefits under part B of their eligibilty to file for medical benefits under part C of the program. Such miners would then have 6 months to file a claim for medical benefits without regard to the current 3-year statute of limitations. The medical claims would be considered according to the interim medical standards and would be paid either by a responsible coal operator or by the trust fund. This renewed opportunity for the medical services benefits provided by the existing law was made necessary because of the widespread and mistaken belief which was prevalent in the coal regions of adverse consequences that would attend the filing of a claim for such services. It is especially important at this time in light of the difficulties many old miners may have recently confronted in having been denied their former access to compensable health care.

Mr. Speaker, there are many other provisions in this conference report of equal significance which I will not address in the interest of time; but I must mention the allocation of the cost of the legislation out of respect for the concern of the administration, and of some Members, that we may not have adequately provided for full coal industry liability. In the unlikely event we have somehow failed to do so, let me say that I would be the first Member to sponsor legislation to increase the contributions to the Black Lung Disability Trust Fund. It should also be noted that all of the principal architects of that trust fund were unanimous in agreeing that the fund should be fully adequate to meet the demands made upon it; and that should any shortfall occur, it would be legislatively remedied in quick order. I am referring specifically to such assurances that were made by Senators LONG, WILLIAMS, RANDOLPH, and other distinguished conferees from the other body; and also by our own esteemed colleagues, Chairman ULLMAN, and Congressmen ROSTENKOWSKI, VANIK, and DUNCAN.

But we will not have a shortfall, Mr. Speaker. That concern was inspired by some estimates submitted by the Labor Department. Our own Congressional Budget Office estimates the fiscal 1978–82 cost of the legislation at $982.5 million. Our congressional tax committees have already told us that the trust fund itself will generate $1.12 billion in contributions during that same period—and by 1982, the trust fund revenues will be increasing at the same time that the cost of the program will have stabilized at a lesser amount. And this comparison does not even take into account that part of the cost that will be borne by responsible coal operators. I therefore sincerely believe, Mr. Speaker, that the black lung program is more than adequately funded and that we have acted in a fiscally responsible manner.

Conversely, we should at least also acknowledge the concern of other interested parties that the funding provisions may be excessive in providing for the needs of the program, and that the trust fund will thus be "overfunded." To them, I would say that we would meet any such future possibility by reducing the contributions that the experience of future years would demonstrate to be excessive.

In closing, I urge the immediate adoption of this conference report. We will then have completed the tremendous task of infusing needed equity into the Federal

black lung program. The equity we achieve will be both with respect to the fiscal soundness of the program and also to the coal miners of America, and to their survivors, for whom the black lung program has become the last vestige of hope and dignity.

May I also take this opportunity to express appreciation and respect to our Senate colleagues on the conference, and particularly to my dear friends Senators WILLIAMS and RANDOLPH and to Senators JAVITS and LONG, all of whom contributed so much to the final content of this legislation: and also, of course, to my colleagues in the House, who were so sincere and supportive in their responsibility to advance the position of the House of Representatives. I am referring to our friends from the Ways and Means Committee, and specifically to its distinguished chairman, Mr. ULLMAN, and to his respected colleagues, Congressmen ROSTENKOWSKI, VANIK, and DUNCAN. These gentlemen attended virtually every session of the conference, even though it often dealt with matters alien to their own jurisdiction; and we appreciate their interest in the black lung program. I am also referring to my gratitude for the service of my outstanding and able colleagues on the Committee on Education and Labor, and especially to Congressmen PAUL SIMON and AUSTIN MURPHY, who were always present to sincerely represent the interests of our Nation's miners. All of these people, and others as well who were less visible in their support, should be justly proud of this moment. These others include, of course, the distinguished but absent subcommittee chairman, Mr. DENT, and the distinguished chairman of the Labor-HEW Appropriations Subcommittee, Mr. FLOOD, and also such tireless and effective colleagues like my dear friend TOM BEVILL, BILL WAMPLER, JOHN MURTHA, the entire West Virginia delegation, others like FRANK THOMPSON and IKE ANDREWS, and simply countless additional supporters who worked selflessly to bring us to this rewarding moment. We are appropriately grateful to each and every one of them.

Mr. Speaker, I yield such time as he may consume to the distinguished chairman of the Committee on Ways and Means, the gentleman from Oregon (Mr. ULLMAN).

Mr. ULLMAN. Mr. Speaker, I thank my friend, the gentleman from Kentucky (Mr. PERKINS), for yielding.

Mr. Speaker on January 24 we approved the black lung tax bill, and today we are considering the conference report on the black lung benefits bill. As I said in supporting the tax bill, the conferees adopted this two-step procedure in order to get back to a sound jurisdictional division with respect to the current bills and with respect to future oversight and legislation in connection with the black lung program.

Thus, the Ways and Means Committee in the House and the Finance Committee in the Senate have jurisdiction over those matters covered in H.R. 5322, the Black Lung Benefits Revenue Act of 1977, including the new excise tax on coal, the establishment of the black lung disability trust fund, the structure and administration of the trust fund, the purposes authorized for expenditures out of the trust fund, and provisions as to self-insurance trusts established by coal mine operators. Those matters covered in H.R. 4544, which we are considering today, including eligibility for black lung benefits, rules for evidence of disability, claims adjudication, and related benefit provisions, fall within the jurisdiction of the Education and Labor Committee in the House and the Human Resources Committee in the Senate.

I want to assure the gentleman from Kentucky (Mr. PERKINS) that the Ways and Means Committee will remain alert to the needed levels of funding for approved claims under H.R. 4544. Based on the cost estimates set forth in the House and Senate committee reports, by the end of fiscal 1984 the new excise tax on coal will have produced more revenue than the estimated payments to that time out of the black lung disability trust fund.

Mr. Speaker, I congratulate the distinguished chairman of the Education and Labor Committee (Mr. PERKINS) for his work on this bill.

Mr. ERLENBORN. Mr. Speaker, I yield such time as he may consume to the gentleman from Connecticut (Mr. SARASIN).

(Mr. SARASIN asked and was given permission to revise and extend his remarks.)

Mr. SARASIN. Mr. Speaker, although I rise in opposition to the conference report on black lung (Rept. No. 95–864), I do appreciate the improvements in the financing mechanism initiated by the Senate Finance Committee. The only other improvement from the House-passed bill contained in the conference report is the elimination of the entitlement of benefits to survivors of miners who served 17 years in the mines and were victims of a mine accident. Otherwise, the conference report takes the most liberal provisions of both H.R. 4544, the House bill, and S. 1538.

For instance, the conference report adopted the changed definitions which were not in the House bill of: First, "pneumoconiosis," to include the "sequelae" to "a chronic dust disease of the lung" and also respiratory and pulmonary "impairments" arising out of coal mine employment; second, "miner," to now include a person who has worked "around" a coal mine including employees of processors, transportation employers and construction employers; and third, "total disability," to provide that the Secretary of HEW and the Secretary of Labor would define total disability as to their respective jurisdictions, but limited their definitions of total disability to include:

First. Situations where pneumoconiosis prevents employment requiring skills and abilities comparable to those of employment in a mine.

Second. In the case of a deceased miner, his employment at a mine at the time of death shall not be used as conclusive evidence that he was not totally disabled; and that in the case of a living miner, where there are changed circumstances of employment which may indicate reduced ability to perform usual coal mine work, the employment condition shall not be used as conclusive evidence that the miner is not totally disabled.

Instead of the House 17-year survivor entitlement, the conference report entitles a survivor to benefits if the miner died on or before enactment of this legislation, and had worked 25 years in mine employment prior to June 30, 1971, unless it is established that the miner was not "partially" or totally disabled due to pneumoconiosis.

X-rays may not be reread.

Affidavits are sufficient to establish a claim of survivors.

Statutes of limitations are removed.

All claims not allowed are to be reviewed, again.

Offsets are to be removed.

The so-called interim criteria are to be used, although criticism of the use of this criteria was contained in a GAO report of January 14, 1976, No. B–164031 (4), pages 6 to 10.

The patent absurdity of this special-interest legislation have been called to the attention of the House in the past. I can only reiterate that this House is acting unwisely when it passes this piece of legislation under the auspices of a "disability" program for pneumoconiosis. For, beginning with the 1972 amendments, and continuing today, the black lung program goes beyond a "chronic dust disease of the lung arising out of employment in a coal mine" to now include just about any "impairment," because one has worked in a coal mine.

This conference report is now mandating that simple pneumoconiosis is rebuttably presumed to be totally disabling, a concept contrary to medical science.

As the fabric of this conference report weaves through the already intricate and complicated provisions of title IV of the Mine Safety and Health Act, it becomes obvious that this House is unconcerned about the disparities it creates vis-a-vis other employees and workers, it is obvious that this House can ignore the broken promises of the sponsors of the original legislation who claimed this program would be a "one-shot" deal, and it becomes obvious that this House can accept the disdain of those knowledgeable in the field of workers' compensation. Certainly, we know that other workers who have been exposed to occupational disease are now learning that they have been ignored in comparison to coal miners, illustrated by the demonstrations of textile workers and asbestos workers. We also know that the program is working, witnessed by the over 365,000 miners and survivors who are being compensated at the rate of almost $1 billion a year due to the 1969 legislation and the 1972 amendments, far beyond the "one-shot" approach originally promised. And, the most telling evidence of how this program has been viewed is an article in the Monthly Labor Review (April 1977) pub-

lished by the U.S. Department of Labor, authored by John F. Burton, Jr., professor of industrial relations and public policy, Graduate School of Business, University of Chicago, entitled "Will Workers' Compensation Standards be Mandated by Federal Legislation?" In speaking of preconditions for Federal involvement, Professor Burton points out that usually there must be a national problem or concern. He goes on to say (page 56):

> Sometimes, however, the geographical concentration of employees can lead to special treatment. Most notable is the Federal black lung problem which provides liberal benefits to coal miners. The beneficiaries were largely concentrated in eastern coal mining States where the emotional issue was used by several influential Federal legislators. The costs of the program particularly in the early years, were paid from Federal revenues. The black lung program *thus is a classic example of pork barrel legislation*, with benefits going to a limited locale and costs spread widely. (Emphasis supplied.)

Further liberalization of what is already recognized to be a "pork barrel legislation," is now contained in this conference report.

Mr. Speaker, I believe the House is acting irresponsibly toward the American public and toward every other worker in this country by passing this conference report today. I join my colleague from Illinois in asking that it be defeated.

Although I oppose the benefit provisions of the bill, H.R. 4544, being considered today, I favor those committees with the greatest expertise bringing their knowledge to bear on important issues such as taxing. It is clear that the Finance Committee of the other body worked in harmony and concert with the Human Resources Committee to develop the taxing portions of the black lung legislation. As a result of that cooperation, the House bill, H.R. 4544, was improved in its financing mechanisms.

Subsequent to consideration in the other body, the House Ways and Means Committee demonstrated their cooperation in assuring an operable financing mechanism for black lung disability trust funds. In the past, the Ways and Means Committee has worked in concert with the Committee on Education and Labor in areas of joint concern such as ERISA, and to a very limited extent, unemployment compensation.

It is important that the Ways and Means Committee continue to work closely with the Education and Labor Committee to assure the needed levels of funding for claims approved under the benefit provisions of the black lung legislation. Pursuant to that authority, conceded by the Committee on Education and Labor, I believe they will have ample opportunity to exercise their powers of oversight to maintain adequate supervision of this program and the purposes for which trust fund moneys will be expended.

Thus, it would appear that the jurisdiction of the Ways and Means Committee extends to those matters covered in H.R. 5322, the Black Lung Benefits Revenue Act of 1977, (which passed the House January 24), including the new excise tax on coal, the establishment of the black lung disability trust fund, the structure and administration of the trust fund, the purposes authorized for expenditures out of the trust fund, and provisions as to self-insurance trusts established by coal mine operators.

The jurisdiction of the Education and Labor Committee extends to those matters covered in H.R. 4544, which is being considered today, including eligibility for black lung benefits, rules for evidence of disability, claims adjudication, and related benefits provisions.

Mr. Speaker, despite the fact that I oppose the benefit provisions of the conference report, this legislation has become an example of our two committees working in concert on a subject in which they share knowledge and jurisdiction. Nevertheless, despite this spirit of cooperation between committees, I must vote against the conference report, because of its extreme liberalizing benefit provisions.

Mr. PERKINS. Mr. Speaker, I yield such time as he may consume to the distinguished author of the substitute in the House, the gentleman from New Jersey (Mr. THOMPSON).

(Mr. THOMPSON asked and was given permission to revise and extend his remarks.)

Mr. THOMPSON. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I rise in support of the conference report on H.R. 4544, the Black Lung Benefits Reform Act of 1977. The legislation was passed by the House on September 19, 1977, by a vote of 283 to 100. I was pleased to have been an active participant in the debate on the bill, and in fact the House passed my substitute, which I offered with the full support of the chairman, the gentleman from Kentucky (Mr. PERKINS), and the majority of the members of the Committee on Education and Labor.

The House conferees, led by Chairman PERKINS, have engaged in lengthy negotiations with the Senate conferees and have emerged with a conference report which makes no significant departures from the position of this body. The conferees have faithfully maintained the position of the House, and the report has my full support.

I would like to congratulate Chairman PERKINS, who is not only my chairman but also a dear friend, for the tireless and fair way in which he conducted these negotiations.

I believe the bill he has hammered out will, at last, bring fairness and justice to the tens of thousands of disabled miners who are afflicted with the dreaded black lung disease. They should know that they have no greater friend in the Congress than the gentleman from Kentucky, CARL D. PERKINS.

Mr. Speaker, I do not plan to go into the details of H.R. 4544 since that will be done by others.

Basically what we have done is to reform and streamline the program to put it on a sound financial footing and to remedy a number of injustices which were brought to the attention of the committee.

We have taken the burden of paying for the black lung program off the backs of the taxpayers and put it where it belongs—on the coal operators. We have done this through a trust fund financed through a tax on coal. I am pleased to say that we worked out the details of this trust fund with our colleagues on the Committee on Ways and Means, chaired by the distinguished gentleman from Oregon (Mr. ULLMAN) and it has their approval as he has just indicated.

I would like to conclude with an observation. This bill has had a long, complicated, and difficult history. It has finally been worked out and I am pleased that I was able to make a small contribution.

We should never lose sight of what we are doing here today. Thousands of elderly, disabled miners are living out their lives around the country in pain and in suffering. What we are doing today is giving them some compensation for that suffering and giving them a measure of fairness, justice, and decency.

I strongly and respectfully urge my colleagues to support the conference report.

Mr. ERLENBORN. Mr. Speaker, I yield 1 minute 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 am hopeful that the House will approve today the conference report on H.R. 4544, the Black Lung Benefits Reform Act of 1977, as approved by the other body. This long-awaited reform legislation will enable miners who suffer from black lung disease to receive the benefits to which they are entitled * * * and with a minimum of redtape.

It is only right that we quickly approve this report, which has been carefully debated by the conferees for several months, and if adopted, urge the President to sign the measure into law without delay.

The U.S. Department of Labor apparently has put a hold on pending black lung claims during congressional consideration of this legislation. Even those miners who might have had their claims favorably considered have had to wait for final legislative action to be taken before obtaining a judgment from the Department.

By giving our approval to this conference report today, we can assure our coal miners of the right to a decision on their claims—a right which they deserve. Our coal miners provide a vital service to this Nation. They are due the assurance of protection provided in this measure for themselves and for their families.

Mr. PERKINS. Mr. Speaker, I yield such time as he may consume to the distinguished chairman of the Subcommittee on Labor—Health, Education, and Welfare of the Committee on Appropriations, the gentleman from Pennsylvania (Mr. FLOOD).

Mr. FLOOD. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, well here we are—you know I have waited for this one for a long time—we are here to vote on the conference report to the black lung bill. Now, I am for that.

Never mind how we got here. You know that it took a lot of hard work in getting this one through. And you can be sure that it would not have been possible if not for the fine work of the distinguished chairman from Kentucky, Mr. PERKINS, and all the members of the committee.

I would like to extend a special debt of gratitude to my very close friend and colleague, the gentleman from Pennsylvania JOHN DENT, for without his insight and guidance, we most certainly would not be here today. I wish he could be here with us.

Now I have gotten hundreds of telephone calls and letters from miners and widows in the hard-coal region of Pennsylvania and they are praying for passage of this conference report. I told them I am asking for everyone's support. That is not too much to ask.

Mr. ERLENBORN. Mr. Speaker, I yield such time as he may consume to the gentleman from Tennessee (Mr. DUNCAN).

(Mr. DUNCAN of Tennessee asked and was given permission to revise and extend his remarks.)

Mr. DUNCAN of Tennessee. Mr. Speaker, I rise in support of the conference report accompanying H.R. 4544, the Black Lung Benefits Reform Act.

Since the black lung benefits program began in 1969, it has evolved to the point where it compensates 500,000 beneficiaries almost $1 billion annually for respiratory diseases contracted as a result of prolonged exposure to coal dust. H.R. 4544 seeks to build on our experience with the program over the past 8 years by improving the claims process and by clarifying the role of medical evidence in establishing a claimant's eligibility.

H.R. 4544 directs the Department of Labor and the Department of Health, Education, and Welfare to develop means to inform potential claimants about the program and assist in the filing of claims. The effectiveness of this worthwhile program would be diminished if positive steps were not taken to reach out and inform the public about the existence of the black lung benefits program. Another noteworthy change involves the definition of the type of work which makes a person eligible for benefits. The bill would expand the term "miner" to include persons who work in the vicinity of a coal mine, such as processors, to the extent they are exposed to coal dust.

The revenue legislation necessary to pay the benefits provided in this bill has already passed the Congress. H.R. 5322 established an excise tax on each ton of coal mined in order to fund the benefits. The compensation of victims of industrial diseases by the industries which occasioned those diseases is a fair and reasonable approach to follow. I believe the excise tax approach is the best means available to carry out the funding of benefits. It can be administered in a straightforward way and can take advantage of the Treasury Department's experience to assure its efficient collection.

Mr. Speaker, I support the conference report accompanying H.R. 4544.

Mr. ERLENBORN. Mr. Speaker, I yield 2 minutes to the gentleman from Ohio (Mr. ASHBROOK).

(Mr. ASHBROOK asked and was given permission to revise and extend his remarks.)

Mr. ASHBROOK. Mr. Speaker, I rise in strong opposition to the conference report on H.R. 4544, the Black Lung Benefits Reform Act. This legislation would unduly expand the Federal responsibility for black lung compensation. It would also establish a bad precedent for handling other occupational diseases. It seems especially inappropriate to be considering the conference report at a time the eventual beneficiaries of this legislation are disrupting the national health and safety by their actions which show no regard for any other citizens.

When the Federal black lung benefits program was enacted in 1969, the sponsors of the bill assured us that Federal involvement would be a one-time affair. We were told that in no way was the goal to federalize the compensation program for the coal industry.

Let me quote what Congressman DENT said at that time:

> 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 its fourth stage—complicated pneumoconiosis.

The conference report before us today would change all that. The promises made in 1969 have been discarded. Instead of a "one-shot effort" H.R. 4544, in conjunction with the Black Lung Benefits Revenue Act of 1977, would make Federal black lung compensation a permanent Federal program. We are being given the permanent "Federal-based compensation" for the coal industry that we were assured would never happen.

I cannot understand why State workmen's compensation funds should not be exclusively responsible for paying black lung benefits. This, after all, is how workers injured or disabled in other industries are compensated.

Instead, the conference report on H.R. 4544 gives coal miners preferential treatment. Never will these workers be treated equally with other workers who are covered under State workmen's compensation programs. One category of worker would be pulled out for special handling as opposed to all other injured or ailing workers.

What we are being urged to do is to create a vast extremely liberalized workmen's compensation program for one disease—pneumoconiosis—at the Federal level through a governmentally administered trust fund. This portends federalization of the entire workmen's compensation program.

It also could become the prototype for dealing with other occupational diseases. Why should not asbestos and textile workers, for example, be given the same benefits? The list of workers subject to occupational diseases could go on and on.

Passage of the conference report on H.R. 4544 would be a serious mistake. It should be defeated.

Mr. PERKINS. Mr. Speaker, I yield such time as he may consume to the distinguished gentleman from Pennsylvania (Mr. MURTHA) who has worked long and hard on this legislation for a long period of time.

(Mr. MURTHA asked and was given permission to revise and extend his remarks.)

Mr. MURTHA. Mr. Speaker, the black lung benefit amendments which we are approving today are vital not only to many mining families, but to our entire Nation.

For the miners and their widows the benefits of this bill are more obvious. It will mean many of them suffering from black lung, and many widows who have lost their husbands to this disease, are able to pay their bills and live a decent life. I am very pleased the bill goes as far as it does in helping older miners and widows. The changes we make in the program will also help to speed up consideration of claims, and that has been a constant problem for the citizens in the area I represent.

On a less obvious basis, Mr. Speaker, this bill is essential for the Nation. Given the national energy picture, we must depend more on coal for the remainder of this century. Quite frankly, we cannot mine the coal without a sufficient number of miners. This bill helps to let young miners know we are aware of the problems of mining and the health problems it can cause. It shows them we will not forget their efforts. It is only through combining this bill with efforts I have been working on with regard to training miners, transporting coal, improving mine safety, and other programs that we can create the national commitment to coal we need to keynote our energy efforts.

Finally, Mr. Speaker, there are three groups or individuals I would like to cite at this time. First, the members of the Black Lung Association in Pennsylvania and throughout the Nation who worked so hard for this bill. Second, the efforts of Chairman CARL PERKINS who is so sensitive to mining problems and recognizes the need for progressive legislation such as this. And third, a special word of praise needs to go to Chairman JOHN DENT who pioneered the effort in black lung protection and who has spent years working to produce a Federal program that helps our Nation's mining families.

Mr. Speaker, I am proud to cast my vote today for this bill that can have such a positive influence on our Nation and mining communities.

Mr. PERKINS. Mr. Speaker, I yield such time as he may consume to another distinguished gentleman from Pennsylvania (Mr. MURPHY).

(Mr. MURPHY of Pennsylvania asked and was given permission to revise and extend his remarks.)

Mr. MURPHY of Pennsylvania. Mr. Speaker, I appreciate the chairman's untiring efforts in this regard.

[Mr. MURPHY of Pennsylvania addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

Mr. ERLENBORN. Mr. Speaker, 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. Speaker, I rise in opposition to this conference report. I am not going to go into the details of the report. I think the gentleman from Connecticut (Mr. SARASIN) has done that adequately. I would join with him in saying that probably the one good thing that occurred in the conference—which was the result, by the way, of a painful confrontation between the Senator from Louisiana and the chairman of our committee—was the removal from this legislation of the financing which was to be under the guise of some sort of an insurance premium and putting it in an honest fashion where it belongs in the tax law. That has the added advantage of seeing that further increases in the tax and further liberalization, therefore, of the benefit program will have the scrutiny of the Committee on Ways and Means and the Senate Finance Committee, taking this program out of the hands of the Committee on Education and Labor. I think this will have the great advantage of stopping the semiannual liberalization of the black lung benefits program.

I should like to repeat a quote that the gentleman from Connecticut utilized in his presentation to the House a moment ago. The quote is by Prof. John F. Burton, Jr.—and I would hasten to add that, to my knowledge, he is not related in any way to any sitting Member of Congress. Certainly I think the Members will recognize that when they hear what he has to say about the black lung program. He says:

> The Black Lung Program, thus, is a classic example of pork barrel legislation.

I might say I agree with him, and this bill today is adding a little more pork to the barrel. That is why I am pleased that in the future the barrel will not be replenished with any additional pork without the scrutiny of the Committee on Ways and Means and the Senate Finance Committee.

What this bill does is in a very timely fashion reopen all of the old claims. Anybody who ever in the past claimed that he had black lung can, now even though his claim has been turned down twice or three times before, have it opened and have it reviewed under liberalized criteria.

I am not certain whether this bill will accomplish the long-sought-after goal of seeing that every ex-coal miner finally gets black lung benefits, but it will come very close to doing that. I say timely; as you know, the United Mine Workers pension fund is now defunct. It is bankrupt. The pension benefits are no longer being paid to the pensioners, because the current coal miners are on strike and no payments are going into the fund.

Now the ex-coal miners will receive their benefits under the black lung program; so I guess it is timely in that way, not only will the ex-coal miners be getting paid under the guise of disability compensation, but the benefits can be fairly liberal, since under this legislation they can also simultaneously get workmen's compensation from the State in which they reside and disability compensation from social security. Those three together will probably offset the loss of their pension payments from the United Mine Worker's pension fund.

I think we can understand from my tongue-in-cheek presentation that I think this legislation is really not necessary. I do not think any more pork should be put in the barrel. The pork barrel which was estimated to cost $40 million or $50 million a year is now costing the Treasury over $1 billion a year. In the future the financing, of course, will now go directly on the backs of coal users. That is, of course, everybody who consumes energy will be paying the additional cost. It is going to be shifted more clearly out to the Western area of the country and the Midwest, because out there the incidence of pneumoconiosis, medically speaking, is zero. They have open-pit mining. Nobody gets black lung or pneumoconiosis out there, and yet the tax will be applied on that Western coal and the people in California and Colorado will be paying the black lung benefit costs by higher electrical bills, or if they are a direct user of coal, higher coal bills. This is the pork barrel nature of this legislation.

I do not expect that it will be defeated, but we ought to know what it is that we have done to ourselves.

Mr. Speaker, I reserve the balance of my time.

Mr. PERKINS. Mr. Speaker, I yield such time as he may consume to the distinguished gentleman from the Committee on Education and Labor, the gentleman from Illinois (Mr. SIMON), who has worked long and hard on this legislation.

(Mr. SIMON asked and was given permission to revise and extend his remarks.)

Mr. SIMON. Mr. Speaker, I thank the great chairman of the committee, who has provided such great leadership in this matter.

Let me point out a few things briefly. This is a compromise, as all compromise committee measures are compromises. It is enough of a compromise that it passed the Senate by voice vote unanimously. I should point that out to my colleagues.

My colleague from the other side of the aisle, the gentleman from Connecticut (Mr. SARASIN) said that we took the most liberal provisions in each House and put them into the final product. I happen to wish that were the case. That is not the case.

Let me just cite a few examples.

The post-1970 part B provision can now be limited.

The 17-year widow provision was dropped.

One of the provisions the gentleman mentioned, that of X-rays, as it passed the House, the X-rays which any physician made had to be accepted. Under the conference committee, we accepted the Senate provision that it had to be a board-certified radiologist who made the X-rays.

Future claims are not judged by the interim standards, but by standards established by the Secretary of Labor. That again is tightening.

My colleague, the gentleman from Illinois (Mr. ERLENBORN), mentioned the taxation provision, which is also a tightening one.

There are a number of others.

Now, I could go into the merits of this thing, but I think the Members understand the situation.

Mr. Speaker, I would like to ask the chairman of the committee a few questions, if I may.

As I understand the current situation, the incorporation of the procedural provisions of the Longshoremen's and Harbor Workers' Compensation Act into part C of the 1969 and 1972 versions of this legislation has resulted in considerable confusion and extended litigation. Does the proposed new legislation clarify this situation?

Mr. PERKINS. Mr. Speaker, will the gentleman yield?

Mr. SIMON. I yield to the chairman of the committee.

Mr. PERKINS. Mr. Speaker, I would say to the distinguished gentleman from Illinois (Mr. SIMON) that the answer is yes.

Mr. Speaker, section 7(a) of the new bill makes clear that the provisions of the Longshoremen's and Harbor Workers' Compensation Act relating to claims processing, hearings and appeals as they now exist, and as they may be amended from time to time in the future, are applicable to the resolution of claims for black lung benefits.

Mr. SIMON. Under social security's administration of part B of this program, appeals from administrative law judges' decisions were first brought before the Agency's Appeals Council and then taken to the local Federal district courts, and now all such appeals will go directly to the Benefits Review Board. Will any claimants be prejudiced by this change in appeals procedure?

Mr. PERKINS. No, the Board will still afford claimants equivalent access to a single appeals body with special expertise in the complex areas within its jurisdiction. Moreover, decisions of the Board will be subject to review by courts of appeals just as district court rulings were previously.

It is important to recognize that the creation of the Board in the 1972 Longshoremen's and Harbor Workers Act amendments was a conscious effort by the Congress to eliminate the inflexibility and delay that attended the procedures displaced by those amendments. Consistent with those objectives, it is our understanding and intent that the Board expedite the full consideration of these black lung claims and do all within its power to avoid the inordinate delays that have unfortunately been in the past a part of this program. We expect the Board to effectuate the intent of Congress in its actions and to exercise all powers consistent with its statutory charge to hear and determine appeals

raising a substantial question of law or fact.

Mr. SIMON. Mr. Speaker, I would also like to ask Chairman PERKINS, who also served as chairman of the conference committee, if in his opinion this legislation clearly requires that all denied or pending claims subject to the review provisions of the new section 435 will be subject to reconsideration under the so-called interim medical criteria applicable under part B of the black lung program?

Mr. PERKINS. That is the intent of the legislation, and I would state to the gentleman that a reading of the conference report and of the joint explanatory statement could lead only to that opinion. The new law speaks clearly to this issue; and the relevant legislative history and intent is equally clear. All claims filed before the date that the Secretary of Labor promulgates new medical standards under part C are subject to evaluation under standards that are no more restrictive than those in effect as of June 30, 1973. And that means the so-called interim standards. These are the standards HEW has applied under part B and they are the precise and only standards HEW will apply to these old claims it must review according to this legislation. As for the Labor Department, it too must apply the interim standards to all of the claims filed under part C, at least until such time as the Secretary of Labor promulgates new standards consistent with the authority this legislation gives him. We do recognize in the joint explanatory statement that the Secretary of Labor may apply the interim standards to its part C claims within the context of all relevant medical evidence. But there is no such directive or requirement imposed on HEW as it fulfills its review duties. We expect that HEW will review these old claims according to the same interim criteria it has applied in the past.

I would also add here that this legislation gives no authority to the Labor Secretary to alter, adjust, or otherwise change the interim standards until such time as he actually promulgates the new standards and those new standards will apply only to claims filed after the effective date of their promulgation. Insofar as the interim standards address a medical criteria, they cannot be made more restrictive.

Mr. SIMON. Mr. Speaker, I thank the chairman for his response. His views are in perfect accord with my own understanding of the intent underlying these provisions.

Mr. Speaker, I would simply add that we have an opportunity, not to do everything we should do, frankly, for the coal miners of this Nation, but at least to take a step forward for justice and what is right. I am confident that this House will do exactly that.

Mr. Speaker, I am pleased that the language in this bill is crystal clear on the subject of the medical standards that must be used by the Secretary of HEW and the Secretary of Labor in reviewing all pending and denied claims filed before the effective date of new medical standards promulgated by the Secretary of Labor for part C cases. Those standards can be no more restrictive than the so-called interim criteria, formally known as the interim adjudicatory standards, applied by the Social Security Administration after the 1972 Black Lung Amendments and before July 1, 1973.

The new section 402(f)(2) of the act created by section 2(c) of the bill reads:

"(2) Criteria applied by the Secretary of Labor in the case of—

"(A) any claim which is subject to review by the Secretary of Health, Education, and Welfare, or subject to a determination by the Secretary of Labor, under section 435(a);

"(B) any claim which is subject to review by the Secretary of Labor under section 435 (b); and

"(C) any claim filed on or before the effective date of regulations promulgated under this subsection by the Secretary of Labor;

shall not be more restrictive than the criteria applicable to a claim filed on June 30, 1973, whether or not the final disposition of any such claim occurs after the date of such promulgation of regulations by the Secretary of Labor."

It should not be possible to misconstrue the meaning of this language. The Department of Labor is required to apply medical criteria no more restrictive than criteria being used by the Social Security Administration on June 30, 1973.

The conference committee agreed that the Secretary of Labor, in his review of denied and pending cases, is to consider all relevant medical evidence and to promulgate regulations for the use of such evidence. An example of this would be for the Secretary to consider and promulgate regulations on the International Labour Organization's respiratory function tests in pneumoconioses, which is not a form of medical evidence included in the interim adjudicatory standards. The relevant language in the report states:

With respect to a claim filed or pending prior to the promulgation of such regulations, such regulations shall not provide more restrictive criteria than those applicable to a claim filed on June 30, 1973 except that in determining claims under such criteria all relevant medical evidence shall be considered in accordance with standards prescribed by the Secretary of Labor and published in the Federal Register.

So the Secretary is not confined to the medical evidence of the interim criteria and yet may not prescribe criteria more restrictive than the social security interim adjudicatory standards.

I believe the language of the bill is very clear on this point. I wanted to reemphasize the intent of the conferees, however, in order to eliminate any confusion that might have arisen because of the language of the conference report.

Mr. ERLENBORN. Mr. Speaker, I yield myself such time as I may consume.

Mr. HAMMERSCHMIDT. Mr. Speaker, will the gentleman yield?

Mr. ERLENBORN. I yield to the gentleman from Arkansas.

Mr. HAMMERSCHMIDT. Mr. Speaker, I appreciate this opportunity to voice my strong support for the conference report accompanying H.R. 4544, to amend the Federal Coal Mine Health and Safety Act to improve the black lung benefits program under such act.

The legislative recognition of black lung disease, enacted in 1969, was an extremely significant action in behalf of the men who mine the Nation's coal. It sought to insure that they would be adequately compensated for the crippling work-related disease affecting them. However, improvements are certainly needed in the program, beyond those amendments enacted in 1972. This report addresses itself in a very positive way to that critical need.

I know that the House Education and Labor Committee has looked long and hard at this program since its inception. I believe the improvements and remedial actions proposed by this measure represent an important clarification of legislative intent. For these reasons I strongly support the conference report accompanying H.R. 4544.

When we consider the importance that coal—our Nation's largest energy resource—is going to play in the development of a national energy policy, we can appreciate the contributions that are going to be made by the miners of this country. And, the dangers they will be facing as far as pneumoconiosis is concerned. The lives of the miners must be protected to the greatest possible extent, a well as compensating those who are sure to contract black lung disease.

The findings of the Congress so clearly expressed in the 1969 act are worth emphasizing once again, because unfortunately, there is much need to act in fulfilling the legislative intent of the original act through legislated improvements in the program: 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 coal mines; there are a number of survivors of coal miners whose deaths were due to this disease or who were totally disabled by this disease at the time of their deaths.

In my view, there are compelling reasons for broadening, strengthening, and improving the program created by the Federal Coal Mine Health and Safety Act of 1969. I strongly endorse this conference report accompanying H.R. 4544, and urge my colleagues to act swiftly on this most important piece of legislation.

Mr. ERLENBORN. Mr. Speaker, if I might have the attention of my colleague, the gentleman from Kentucky (Mr. PERKINS), chairman of our committee, I ask the chairman of the committee to clear up what could be considered some ambiguity in section 7(b) of the conference report as it amended section 422(b) of the act.

When the Federal Mine Safety and Health Amendments Act of 1977 was enacted as Public Law 95-164 on November 9, 1977, the definition of "operator" under the Federal Coal Mine Health and Safety Act of 1969 was amended to include "or any independent contractor performing services or construction at such mine;". Section 7(b) of the conference report amends section 422(b) of the act in the terms "An employer, other than an operator of a coal mine shall

not be required to secure the payment of such benefits . . ." and goes on to require such "employer" to guarantee or secure payment of benefits where a claim is once approved. Does section 7(b) of the conference bill have reference to those transportation or construction employers, now "operators" under Public Law 95–164?

Mr. PERKINS. The gentleman is correct in that the reference is to those transportation or construction employers now designated as operators. The reason for the distinction lies in the intent of the conferees that this amendment (section 7(b) of the conference report) assures that unless a transportation or construction employer is also engaged in the mining of coal, such employer, engaged solely in construction or transporting activities at a coal mine, is not to be required to secure the payment of an employee's black lung claim until the Secretary determines that an employee is, in fact, eligible to receive black lung benefits.

Mr. ERLENBORN. As I understand then, an employer, engaged solely as a construction or transportation employer, not actually mining coal, will not have to buy insurance to secure future claims, but must pay claims or secure the payment of claims once they are determined eligible for payment due to disability from black lung.

Mr. PERKINS. That is correct. Those employers are not required to buy insurance to cover future claims, but are responsible for paying claims once they are approved.

Mr. ERLENBORN. Mr. Speaker, I thank the gentleman.

Mr. PERKINS. Mr. Speaker, I yield such time as he may consume to the distinguished gentleman from Alabama (Mr. BEVILL).

(Mr. BEVILL asked and was given permission to revise and extend his remarks.)

Mr. BEVILL. Mr. Speaker, I rise to urge prompt approval of H.R. 4544, the conference report on the Black Lung Benefits Reform Act of 1977.

With the Senate's unanimous approval of this legislation on Februery 6, only House approval and the signature of the President remain before this much-needed program becomes law.

We have been assured that Presidential approval is forthcoming, so the issue boils down to the action this body takes today on this reform package.

Approval of H.R. 4544 will provide the Nation's coal miners and the survivors of those who died as a result of black lung disease with an equitable Federal program, which was the intent of the first black lung bill passed back in 1969.

Past procedures that have been used in the determination of black lung claims have often been confusing and bogged down in the Federal bureaucracy.

This legislation is designed to streamline the claims process and make the entire system more uniform.

Probably the most significant aspect of the legislation is the provision that requires all black lung claims approved in the future to be paid by the coal industry, or by the related trust fund established recently when H.R. 5322 was approved.

The legislation also provides that old claims that will be approved as a result of the review mechanism built into this bill will also be the financial responsibility of the industry or the trust fund.

This overall transfer of residual liability for black lung benefits from the Federal Government to coal operators is justified and, in my opinion, will be a significant change for the better as far as the black lung program is concerned.

The argument that the black lung benefits program is merely a pension has been debated on numerous occasions. I have always disagreed with this theory. Estimates indicate that a disabled miner who qualifies for black lung can at best expect only 50 percent of what he would normally earn at a regular job in the mines. That statistic would seem to successfully rebut any argument regarding the legitimacy of the black lung program.

Congress is justified in providing assistance to those thousands of miners who are afflicted with the various black lung diseases. Many of these people have literally seen their lives ruined as a result of the disease.

I want to compliment the distinguished chairman from Kentucky for his untiring efforts in support of this legislation. He has guided this bill through a long and at times discouraging legislative trail. The final legislative draft before us today is a tribute to his work and for this he should be commended.

In closing, I again ask this body for prompt and decisive approval of H.R. 4544. Your affirmative vote will be one that will be appreciated by literally thousands of miners and their families who have been victims of this dirty disease.

Mr. PERKINS. Mr. Speaker, I yield such time as he may consume to the gentleman from West Virginia (Mr. RAHALL).

Mr. RAHALL. Mr. Speaker, I rise in strong support of the black lung conference report.

I wish to commend the chairman, the gentleman from Kentucky (Mr. PERKINS) and the members of the Committee on Education and Labor who have worked so long and hard on this piece of legislation. I also wish to commend the members of the conference committee on both sides of the Congress.

This bill, Mr. Speaker, I feel goes a great step forward as far as relieving a lot of the human and economic suffering that our Nation's coal miners are facing every day.

Mr. Speaker, I had a town hall meeting in one of our towns in Wyoming County, Pineville, W. Va., this past weekend, attended by well over 500 coal miners, many of whom could barely make it up the steps of the Wyoming County Courthouse.

To them, Mr. Speaker, this piece of legislation is going to be a bright ray of sunshine in what have truly been dark days recently. The elimination of the offset penalties, the liberalization of the widows' benefits, and the setting up of regional black lung clinics down in the coal fields are going to make these individuals indeed feel a great deal closer to their Government.

Mr. Speaker, I once again want to commend the distinguished chairman of the Committee on Education and Labor, the gentleman from Kentucky (Mr. PERKINS), for his hard and diligent work; and I urge this House to approve this conference report.

Mr. PERKINS. Mr. Speaker, I have no further requests for time.

Mr. ERLENBORN. Mr. Speaker, I have no further requests for time.

Mr. PERKINS. Mr. Speaker, I move the previous question on the conference report.

The previous question was ordered.

The SPEAKER pro tempore (Mr. KAZEN). The question is on the conference report.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. ERLENBORN. 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 pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 264, nays 113, answered "present" 1, not voting 54, as follows:

[Roll No. 62]

YEAS—264

Akaka	Collins, Ill.	Gilman
Alexander	Conyers	Ginn
Allen	Cornell	Glickman
Ambro	Cornwell	Gonzalez
Ammerman	Coughlin	Gore
Anderson, Calif.	D'Amours	Hamilton
Andrews, N.C.	Danielson	Hammer-schmidt
Annunzio	Davis	Hanley
Applegate	de la Garza	Hannaford
Ashley	Delaney	Harkin
Aspin	Dellums	Harris
AuCoin	Derrick	Harsha
Baldus	Derwinski	Hawkins
Barnard	Dicks	Heckler
Beard, R.I.	Dingell	Hefner
Bedell	Dodd	Hightower
Beilenson	Dornan	Holland
Benjamin	Downey	Hollenbeck
Bennett	Drinan	Holtzman
Bevill	Duncan, Oreg.	Howard
Biaggi	Duncan, Tenn.	Hubbard
Blouin	Early	Hughes
Boggs	Eckhardt	Jacobs
Bolling	Edgar	Jenkins
Bonior	Edwards, Calif.	Jenrette
Bonker	Eilberg	Johnson, Calif.
Bowen	Emery	Johnson, Colo.
Breckinridge	English	Jones, N.C.
Brodhead	Ertel	Jordan
Brooks	Evans, Colo.	Kastenmeier
Broomfield	Evans, Del.	Kazen
Brown, Ohio	Evans, Ga.	Keys
Buchanan	Fary	Kildee
Burke, Mass.	Fascell	Kostmayer
Burlison, Mo.	Fenwick	Krebs
Burton, John	Findley	LaFalce
Burton, Phillip	Fish	Le Fante
Byron	Fisher	Leach
Caputo	Fithian	Lederer
Carney	Flippo	Leggett
Carr	Flood	Lehman
Carter	Florio	Levitas
Cavanaugh	Flowers	Lloyd, Calif.
Chappell	Foley	Lloyd, Tenn.
Chisholm	Ford, Tenn.	Long, La.
Clausen, Don H.	Fowler	Long, Md.
Cohen	Fraser	Lujan
Coleman	Fuqua	Luken
	Gaydos	Lundine
	Gephardt	

McCloskey	Obey	Skelton
McDade	Ottinger	Skubitz
McFall	Panetta	Slack
McHugh	Patten	Solarz
Madigan	Patterson	Spellman
Maguire	Pattison	St Germain
Markey	Pease	Staggers
Marks	Pepper	Stark
Marlenee	Perkins	Steers
Mattox	Pike	Studds
Mazzoli	Pressler	Thompson
Metcalfe	Preyer	Traxler
Meyner	Price	Tsongas
Mikulski	Pursell	Ullman
Mikva	Rahall	Van Deerlin
Miller, Calif.	Railsback	Vanik
Miller, Ohio	Rangel	Vento
Mineta	Reuss	Volkmer
Minish	Richmond	Walgren
Mitchell, Md.	Rinaldo	Wampler
Mitchell, N.Y.	Rodino	Watkins
Moffett	Roe	Waxman
Mollohan	Rogers	Weaver
Moss	Rooney	Weiss
Mottl	Rose	Whalen
Murphy, Ill.	Rosenthal	White
Murphy, Pa.	Rostenkowski	Whitley
Murtha	Runnels	Whitten
Myers, John	Ruppe	Wilson, C. H.
Natcher	Sawyer	Wilson, Tex.
Neal	Scheuer	Wirth
Nedzi	Schroeder	Wolff
Nichols	Seiberling	Wright
Nix	Sharp	Yates
Nolan	Shipley	Yatron
Nowak	Shuster	Young, Mo.
O'Brien	Sikes	Young, Tex.
Oakar	Simon	Zablocki
Oberstar	Sisk	Zeferetti

NAYS—113

Abdnor	Goldwater	Pritchard
Andrews, N. Dak.	Goodling	Quayle
Archer	Gradison	Quie
Ashbrook	Grassley	Regula
Badham	Gudger	Roberts
Bauman	Guyer	Robinson
Beard, Tenn.	Hagedorn	Rousselot
Breaux	Hall	Rudd
Brinkley	Hillis	Santini
Brown, Mich.	Holt	Sarasin
Broyhill	Huckaby	Schulze
Burgener	Hyde	Sebelius
Burke, Fla.	Ichord	Smith, Nebr.
Burleson, Tex.	Ireland	Snyder
Butler	Jeffords	Stangeland
Cederberg	Jones, Okla.	Stanton
Clawson, Del	Kasten	Steed
Cleveland	Kelly	Steiger
Cochran	Kemp	Stockman
Collins, Tex.	Ketchum	Stratton
Conable	Kindness	Stump
Conte	Lagomarsino	Symms
Corcoran	Latta	Thone
Cotter	Livingston	Treen
Crane	Lott	Trible
Cunningham	McKinney	Vander Jagt
Daniel, Dan	Mahon	Waggonner
Daniel, R. W.	Mann	Walker
Devine	Marriott	Walsh
Dickinson	Martin	Whitehurst
Edwards, Ala.	Michel	Wiggins
Edwards, Okla.	Milford	Wilson, Bob
Erlenborn	Montgomery	Winn
Flynt	Moore	Wydler
Forsythe	Moorhead, Calif.	Wylie
Fountain	Myers, Gary	Young, Alaska
Frenzel	Pickle	Young, Fla.
Frey	Poage	

ANSWERED "PRESENT"—1

Bafalis

NOT VOTING—54

Addabbo	Gibbons	Myers, Michael
Anderson, Ill.	Hansen	Pettis
Armstrong	Harrington	Quillen
Baucus	Heftel	Rhodes
Bingham	Horton	Risenhoover
Blanchard	Jones, Tenn.	Roncalio
Boland	Krueger	Roybal
Brademas	Lent	Russo
Brown, Calif.	McClory	Ryan
Burke, Calif.	McCormack	Satterfield
Clay	McDonald	Smith, Iowa
Corman	McEwen	Spence
Dent	McKay	Stokes
Diggs	Mathis	Taylor
Evans, Ind.	Meeds	Teague
Ford, Mich.	Moakley	Thornton
Gammage	Moorhead, Pa.	Tucker
Giaimo	Murphy, N.Y.	Udall

The Clerk announced the following pairs:

On this vote:

Mr. Addabbo for, with Mr. Taylor against.

Mr. Bingham for, with Mr. McClory against.

Mr. Moakley for, with Mr. Spence against.

Mr. Brademas for, with Mr. Horton against.

Mr. Murphy of New York for, with Mr. Lent against.

Mr. Harrington for, with Mr. Hansen against.

Mr. Baucus for, with Mr. McDonald against.

Mrs. Burke of California for, with Mr. Risenhoover against.

Mr. Brown of California for, with Mr. Teague against.

Until further notice:

Mr. Udall with Mr. Giaimo.

Mr. Ford of Michigan with Mr. Meeds.

Mr. Stokes with Mr. Clay.

Mr. Boland with Mr. Jones of Tennessee.

Mr. Krueger with Mr. Roybal.

Mr. Ryan with Mr. Thornton.

Mr. Michael O. Myers with Mr. Gibbons.

Mr. Heftel with Mr. Mathis.

Mr. Blanchard with Mr. Corman.

Mr. Dent with Mr. Gammage.

Mr. Moorhead of Pennsylvania with Mr. Diggs.

Mr. McCormack with Mr. Roncalio.

Mr. Satterfield with Mr. Anderson of Illinois.

Mr. Tucker with Mr. McKay.

Mr. McEwen with Mr. Quillen.

Mr. Russo with Mr. Evans of Indiana.

Messrs. MAHON, McKINNEY, and BEARD of Tennessee changed their vote from "yea" to "nay."

Mr. RINALDO changed his vote from "nay" to "yea."

So the conference report was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Public Law 95-239
95th Congress

An Act

To amend the Federal Coal Mine Health and Safety Act to improve the black lung benefits program established under such Act, and for other purposes.

Mar. 1, 1978
[H.R. 4544]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Black Lung Benefits Reform Act of 1977.

SHORT TITLE

SECTION 1. This Act may be cited as the "Black Lung Benefits Reform Act of 1977". 30 USC 801 note.

DEFINITIONS

SEC. 2. (a) Section 402(b) of the Federal Mine Safety and Health Act of 1977 (hereinafter in this Act referred to as the "Act") is amended to read as follows: 30 USC 902.

"(b) The term 'pneumoconiosis' means a chronic dust disease of the lung and its sequelae, including respiratory and pulmonary impairments, arising out of coal mine employment.".

(b) Section 402(d) of the Act is amended to read as follows:

"(d) The term 'miner' means any individual who works or has worked in or around a coal mine or coal preparation facility in the extraction or preparation of coal. Such term also includes an individual who works or has worked in coal mine construction or transportation in or around a coal mine, to the extent such individual was exposed to coal dust as a result of such employment.".

(c) Section 402(f) of the Act is amended to read as follows:

"(f)(1) The term 'total disability' has the meaning given it by regulations of the Secretary of Health, Education, and Welfare for claims under part B of this title, and by regulations of the Secretary of Labor for claims under part C of this title, subject to the relevant provisions of subsections (b) and (d) of section 413, except that— 30 USC 921 *et seq.* 30 USC 931 *et seq.* 30 USC 923.

"(A) in the case of a living miner, such regulations shall provide that a miner shall be considered totally disabled when pneumoconiosis prevents him or her from engaging in gainful employment requiring the skills and abilities comparable to those of any employment in a mine or mines in which he or she previously engaged with some regularity and over a substantial period of time;

"(B) such regulations shall provide that (i) a deceased miner's employment in a mine at the time of death shall not be used as conclusive evidence that the miner was not totally disabled; and (ii) in the case of a living miner, if there are changed circumstances of employment indicative of reduced ability to perform his or her usual coal mine work, such miner's employment in a mine shall not be used as conclusive evidence that the miner is not totally disabled;

"(C) such regulations shall not provide more restrictive criteria than those applicable under section 223(d) of the Social Security Act; and 42 USC 423.

Medical tests criteria, establishment. Consultation.

"(D) the Secretary of Labor, in consultation with the Director of the National Institute for Occupational Safety and Health, shall establish criteria for all appropriate medical tests under this subsection which accurately reflect total disability in coal miners as defined in subparagraph (A).

"(2) Criteria applied by the Secretary of Labor in the case of—

"(A) any claim which is subject to review by the Secretary of Health, Education, and Welfare, or subject to a determination by the Secretary of Labor, under section 435(a);

Post, p. 103.

"(B) any claim which is subject to review by the Secretary of Labor under section 435(b); and

"(C) any claim filed on or before the effective date of regulations promulgated under this subsection by the Secretary of Labor;

shall not be more restrictive than the criteria applicable to a claim filed on June 30, 1973, whether or not the final dispositon of any such claim occurs after the date of such promulgation of regulations by the Secretary of Labor.".

30 USC 902.

(d) Section 402 of the Act is amended by adding at the end thereof the following new subsection:

(h) The term "fund" means the Black Lung Disability Trust Fund established in section 3(a)(1) of the Black Lung Benefits Revenue Act of 1977.".

30 USC 934a.

Ante, p. 12.

SURVIVOR ENTITLEMENTS

30 USC 921.

SEC. 3. (a) Section 411(c) of the Act is amended—

(1) in paragraphs (1) and (2) thereof, by striking out "if" and inserting in lieu thereof "If" and by striking out the semicolon and inserting in lieu thereof a period;

(2) in paragraph (3) thereof, by striking out "if" the first place it appears therein and inserting in lieu thereof "If" and by striking out "; and" and inserting in lieu thereof a period; and

(3) by adding at the end thereof the following new paragraph:

"(5) In the case of a miner who dies on or before the date of the enactment of the Black Lung Benefits Reform Act of 1977 who was employed for 25 years or more in one or more coal mines before June 30, 1971, the eligible survivors of such miner shall be entitled to the payment of benefits, at the rate applicable under section 412(a)(2), unless it is established that at the time of his or her death such miner was not partially or totally disabled due to pneumoconiosis. Eligible survivors shall, upon request by the Secretary, furnish such evidence as is available with respect to the health of the miner at the time of his or her death.".

30 USC 922.

30 USC 922.

(b)(1)(A) Section 412(a)(3) of the Act is amended by striking out "and" the first place it appears therein, and by inserting after "the time of her death," the following: "and in the case of any child or children entitled to the payment of benefits under paragraph (5) of section 411(c),".

Supra.

(B) The first sentence of section 412(a)(5) of the Act is amended—

(i) by striking out "or" the fifth place it appears therein; and

(ii) by inserting after "child, or parent," the following: "in the case of the dependent parent or parents of a miner (who is not survived at the time of his or her death by a widow or a child) who are entitled to the payment of benefits under paragraph (5) of section 411(c), or in the case of the dependent surviving brother(s) or sister(s) of a miner (who is not survived at the time of his or her death by a widow, child, or parent) who are entitled to the payment of benefits under paragraph (5) of section 411(c),".

(2) Section 414(e) of the Act is amended by striking out "or" the second place it appears therein and by striking out the period at the end thereof and inserting in lieu thereof the following: ", or (3) any such individual is entitled to benefits under paragraph (5) of section 411(c).". 30 USC 924.

Ante, p. 96.

(3) Section 421(a) of the Act is amended by inserting after "pneumoconiosis" the second place it appears therein the following: ", and in any case in which benefits based upon eligibility under paragraph (5) of section 411(c) are involved.". 30 USC 931.

(4) The first sentence of section 422(a) of the Act is amended by inserting before the period at the end thereof the following: ", or with respect to entitlements established in paragraph (5) of section 411(c)". 30 USC 932.

OFFSET LIMITATION

SEC. 4. The first sentence of section 412(b) of the Act is amended by inserting after "disability of such miner" the following: "due to pneumoconiosis". 30 USC 922.

EVIDENCE REQUIRED TO ESTABLISH CLAIM

SEC. 5. (a) Section 413(b) of the Act is amended by inserting after the second sentence thereof the following new sentences: "Where there is no medical or other relevant evidence in the case of a deceased miner, such affidavits shall be considered to be sufficient to establish that the miner was totally disabled due to pneumoconiosis or that his or her death was due to pneumoconiosis. In any case in which there is other evidence that a miner has a pulmonary or respiratory impairment, the Secretary shall accept a board certified or board eligible radiologist's interpretation of a chest roentgenogram which is of a quality sufficient to demonstrate the presence of pneumoconiosis submitted in support of a claim for benefits under this title if such roentgenogram has been taken by a radiologist or qualified technician, except where the Secretary has reason to believe that the claim has been fraudulently represented. In order to insure that any such roentgenogram is of adequate quality to demonstrate the presence of pneumoconiosis, and in order to provide for uniform quality in the roentgenograms, the Secretary of Labor may, by regulation, establish specific requirements for the techniques used to take roentgenograms of the chest. Unless the Secretary has good cause to believe that an autopsy report is not accurate, or that the condition of the miner is being fraudulently misrepresented, the Secretary shall accept such autopsy report concerning the presence of pneumoconiosis and the stage of advancement of pneumoconiosis.". 30 USC 923.

Roentgenogram techniques, regulations.

(b) Section 413(b) of the Act, as amended in subsection (a), is further amended by adding at the end thereof the following new sentence: "Each miner who files a claim for benefits under this title shall upon request be provided an opportunity to substantiate his or her claim by means of a complete pulmonary evaluation.".

(c) The fifth sentence of section 413(b) of the Act is amended by striking out "(f)," and by striking out "and (l)," and inserting in lieu thereof "(l), and (n),".

(d) Section 413 of the Act is amended by adding at the end thereof the following new subsection:

Benefits entitlement, limitation.

"(d) No miner who is engaged in coal mine employment shall (except as provided in section 411(c)(3)) be entitled to any bene- 30 USC 921.

fits under this part while so employed. Any miner who has been determined to be eligible for benefits pursuant to a claim filed while such miner was engaged in coal mine employment shall be entitled to such benefits if his or her employment terminates within one year after the date such determination becomes final.".

APPROVAL OF STATE WORKERS' COMPENSATION LAWS

30 USC 931.

SEC. 6. (a) Section 421(b)(2)(A) of the Act is amended by inserting before the semicolon the following: ", except that (i) such law shall not be required to provide such benefits where the miner's last employment in a coal mine terminated before the Secretary's approval of the State law pursuant to this section; and (ii) each operator of a coal mine shall secure the payment of benefits pursuant to section 423 with respect to any miner whose last employment in a coal mine terminated before the Secretary's approval of the State law pursuant to this section".

Post, p. 100.

(b) Section 421(b)(2)(C) of the Act is amended by striking out "part B of this title" and inserting in lieu thereof "this part", by striking out "of Health, Education, and Welfare", and by striking out "thereunder" and inserting in lieu thereof "under this part".

(c) Section 421(b)(2)(D) of the Act is amended to read as follows:

"(D) any claim for benefits on account of total disability of a miner due to pneumoconiosis is deemed to be timely filed if such claim is filed within three years after a medical determination of total disability due to pneumoconiosis;".

DETERMINATION OF CLAIMS FOR BENEFITS UNDER PART C OF TITLE IV OF THE ACT

30 USC 932.

SEC. 7. (a) The first sentence of section 422(a) of the Act is amended—

(1) by inserting after "as amended" the following: ", and as it may be amended from time to time";

(2) by inserting a comma after "and 51 thereof)"; and

(3) by striking out "and except as the Secretary shall by regulation otherwise provide" and inserting in lieu thereof "or by regulations of the Secretary and except that references in such Act to the employer shall be considered to refer to the trustees of the fund, as the Secretary considers appropriate and as is consistent with the provisions of section 424".

30 USC 934.

(b) Section 422(b) of the Act is amended by adding at the end thereof the following new sentence: "An employer, other than an operator of a coal mine, shall not be required to secure the payment of such benefits with respect to any employee of such employer to the extent such employee is engaged in the transportation of coal or in coal mine construction. Upon determination by the Secretary of the eligibility of the employee, the Secretary may require such employer to secure a bond or otherwise guarantee the payment of such benefits to the employee.".

(c) Section 422(c) of the Act is amended—

(1) by striking out "and the Secretary of Health, Education, and Welfare"; and

(2) by striking out "the period" and inserting in lieu thereof "a period after December 31, 1969,".

(d) Section 422(e) of the Act is amended by inserting "or" at the end of paragraph (1) thereof, by striking out ", or" at the end of

paragraph (2) thereof and inserting in lieu thereof a period, and by striking out paragraph (3) thereof.

(e) Section 422(f) of the Act is amended to read as follows: 30 USC 932.

"(f) Any claim for benefits by a miner under this section shall be filed within three years after whichever of the following occurs later—

"(1) a medical determination of total disability due to pneumoconiosis; or

"(2) the date of the enactment of the Black Lung Benefits Reform Act of 1977.".

(f) Section 422(h) of the Act is amended by striking out the first sentence thereof.

(g) Section 422(i) of the Act is amended to read as follows:

"(i)(1) During any period in which this section is applicable to the operator of a coal mine who on or after January 1, 1970, acquired such mine or substantially all the assets thereof, from a person (hereinafter in this subsection referred to as a 'prior operator') who was an operator of such mine, or owner of such assets on or after January 1, 1970, such operator shall be liable for and shall, in accordance with section 423, secure the payment of all benefits which would have been payable by the prior operator under this section with respect to miners previously employed by such prior operator as if the acquisition had not occurred and the prior operator had continued to be an operator of a coal mine. *Post*, p. 100.

"(2) Nothing in this subsection shall relieve any prior operator of any liability under this section.

"(3)(A) For purposes of paragraph (1) of this subsection, the provisions of this paragraph shall apply to corporate reorganizations, liquidations, and such other transactions as are specified in this paragraph.

"(B) If an operator ceases to exist by reason of a reorganization or other transaction or series of transactions which involves a change in identity, form, or place of business or organization, however effected, the successor operator or other corporate or business entity resulting from such reorganization or other change shall be treated as the operator to whom this section applies.

"(C) If an operator ceases to exist by reason of a liquidation into a parent or successor corporation, the parent or successor corporation shall be treated as the operator to whom this section applies.

"(D) If an operator ceases to exist by reason of a sale of substantially all his or her assets, or as the result of a merger, consolidation, or division, the successor operator, corporation, or other business entity shall be treated as the operator to whom this section applies.

"(4) In any case in which there is a determination under section 424 that no operator is liable for the payment of benefits to a claimant, nothing in this subsection may be construed to require the payment of benefits to a claimant by or on behalf of any operator.". 30 USC 934.

(h) Section 422 of the Act is amended by adding at the end thereof the following new subsections: 30 USC 932.

"(j) Notwithstanding the provisions of this section, section 424 shall govern the payment of benefits in cases—

"(1) described in section 424(a)(1); or

"(2) in which the miner's last coal mine employment was before January 1, 1970.

"(k) The Secretary shall be a party in any proceeding relative to a claim for benefits under this part.

"(1) In no case shall the eligible survivors of a miner who was determined to be eligible to receive benefits under this title at the time of his or her death be required to file a new claim for benefits, or refile or otherwise revalidate the claim of such miner.".

30 USC 932a note.

(i) Notwithstanding the provisions of section 422(a) of the Act, individuals appointed to hear and determine claims for benefits under part C of title IV of the Act and under section 415 of the Act pursuant to Public Law 94-504 (90 Stat. 2428) may continue to adjudicate such claims during the one-year period following the date of the enactment of this Act.

Ante, p. 98.
30 USC 931 *et seq.*
30 USC 925.
30 USC 932a.

PENALTIES FOR FAILURE TO SECURE PAYMENT OF BENEFITS

30 USC 933.

SEC. 8. Section 423 of the Act is amended by adding at the end thereof the following new subsection:

"(d)(1) Any employer required to secure the payment of benefits under this section who fails to secure such benefits shall be subject to a civil penalty assessed by the Secretary of not more than $1,000 for each day during which such failure occurs. In any case where such employer is a corporation, the president, secretary, and treasurer thereof also shall be severally liable to such civil penalty as provided in this subsection for the failure of such corporation to secure the payment of benefits. Such president, secretary, and treasurer shall be severally personally liable, jointly with such corporation, for any benefit which may accrue under this title in respect to any disability which may occur to any employee of such corporation while it shall so fail to secure the payment of benefits as required by this section.

"(2) Any employer of a miner who knowingly transfers, sells, encumbers, assigns, or in any manner disposes of, conceals, secrets, or destroys any property belonging to such employer, after any miner employed by such employer has filed a claim under this title, and with intent to avoid the payment of benefits under this title to such miner or his or her dependents, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than $1,000, or by imprisonment for not more than one year, or both. In any case where such employer is a corporation, the president, secretary, and treasurer thereof also shall be severally liable for such penalty of imprisonment as well as jointly liable with such corporation for such fine.

"(3) This subsection shall not affect any other liability of the employer under this part.".

CLINICAL FACILITIES

30 USC 937.

SEC. 9. The first sentence of section 427(c) of the Act is amended by striking out "of the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975" and inserting in lieu thereof "fiscal year".

APPLICABILITY OF AMENDMENTS

30 USC 940.

SEC. 10. Section 430 of the Act is amended—

(1) by inserting "and by the Black Lung Benefits Reform Act of 1977" after "1972"; and

(2) by striking out the colon and all that follows it and inserting in lieu thereof a period.

MEDICAL CARE

SEC. 11. The Secretary of Health, Education, and Welfare shall notify each miner receiving benefits under part B of title IV of the Act on account of his or her total disability who such Secretary has reason to believe became eligible for medical services and supplies on January 1, 1974, of his or her possible eligibility for such benefits. Where such Secretary so notifies a miner, the period during which he or she may file a claim for medical services and supplies under part C of title IV of the Act shall not terminate before six months after such notification is made.

Eligibility, notification to miners. 30 USC 924a. 30 USC 921.

Termination.

PENALTIES FOR FALSE STATEMENTS AND FAILURES TO FILE REPORTS

SEC. 12. (a) Section 431 of the Act is amended to read as follows: 30 USC 941.

"SEC. 431. Any person who willfully makes any false or misleading statement or representation for the purpose of obtaining any benefit or payment under this title shall be guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not more than $1,000, or by imprisonment for not more than one year, or both.".

(b) Part C of title IV of the Act is amended by adding at the end thereof the following new section:

Miner benefit entitlement reports, filing. 30 USC 942.

"SEC. 432. (a) The Secretary may by regulation require employers to file reports concerning miners who may be or are entitled to benefits under this part, including the date of commencement and cessation of benefits and the amount of such benefits. Any such report shall not be evidence of any fact stated therein in any proceeding relating to death or total disability due to pneumoconiosis of any miner to which such report relates.

"(b) Any employer who fails or refuses to file any report required of such employer under this section shall be subject to a civil penalty of not more than $500 for each such failure or refusal.".

INSURANCE FUND

SEC. 13. Part C of title IV of the Act, as amended by section 12(b), is further amended by adding at the end thereof the following new section:

Compensation program establishment, authorization. 30 USC 943.

"SEC. 433. (a) The Secretary is authorized to establish and carry out a black lung insurance program which will enable operators of coal mines to purchase insurance covering their obligations under section 422.

Ante, p. 98.

"(b) The Secretary may exercise his or her authority under this section only if, and to the extent that, insurance coverage is not otherwise available, at reasonable cost, to operators of coal mines.

"(c)(1) The Secretary may enter into agreements with operators of coal mines who may be liable for the payment of benefits under section 422, under which the Black Lung Compensation Insurance Fund established under subsection (a) (hereinafter in this section referred to as the 'insurance fund') shall assume all or part of the liability of such operator in return for the payment of premiums to the insurance fund, and on such terms and conditions as will fully protect the financial solvency of the insurance fund. During any period in which such agreement is in effect the operator shall be deemed in compliance with the requirements of section 423 with respect to the risks covered by such agreement.

Agreements with coal mine operators.

Ante, p. 100.

Reinsurance agreements.

"(2) The Secretary may also enter into reinsurance agreements with one or more insurers or pools of insurers under which, in return for the payment of premiums to the insurance fund, and on such terms and conditions as will fully protect the financial solvency of the insurance fund, the insurance fund shall provide reinsurance coverage for benefits required to be paid under section 422.

Ante, p. 98.

Insurability terms and conditions, regulations.

"(d) The Secretary may by regulation provide for general terms and conditions of insurability as applicable to operators of coal mines or insurers eligible for insurance or reinsurance under this section, including—

"(1) the types, classes, and locations of operators or facilities which shall be eligible for such insurance or reinsurance;

"(2) the classification, limitation, and rejection of any operator or facility which may be advisable;

"(3) appropriate premiums for different classifications of operators or facilities;

"(4) appropriate loss deductibles;

"(5) experience rating; and

"(6) any other terms and conditions relating to insurance or reinsurance coverage or exclusion which may be appropriate to carry out the purposes of this section.

Premium schedule studies and investigations.

"(e) The Secretary may undertake and carry out such studies and investigations, and receive or exchange such information, as may be necessary to formulate a premium schedule which will enable the insurance and reinsurance authorized by this section to be provided on a basis which is (1) in accordance with accepted actuarial principles; and (2) fair and equitable.

Premium rates, regulations.

"(f)(1) On the basis of estimates made by the Secretary in formulating a premium schedule under subsection (e), and such other information as may be available, the Secretary shall from time to time prescribe by regulation the chargeable premium rates for types and classes of insurers, operators of coal mines, and facilities for which insurance or reinsurance coverage shall be available under this section and the terms and conditions under which, and the area within which, such insurance or reinsurance shall be available and such rates shall apply.

"(2) Such premium rates shall be (A) based on a consideration of the risks involved, taking into account differences, if any, in risks based on location, type of operations, facilities, type of coal, experience, and any other matter which may be considered under accepted actuarial principles; and (B) adequate, on the basis of accepted actuarial principles, to provide reserves for anticipated losses.

"(3) All premiums received by the Secretary shall be paid into the insurance fund.

Black Lung Compensation Insurance Fund.

"(g)(1) The Secretary may establish in the Department of Labor a Black Lung Compensation Insurance Fund which shall be available, without fiscal year limitation—

"(A) to pay claims of miners for benefits covered by insurance or reinsurance issued under this section;

"(B) to pay the administrative expenses of carrying out the black lung compensation insurance program under this section; and

Repayment to Treasury Secretary.

"(C) to repay to the Secretary of the Treasury such sums as may be borrowed in accordance with the authority provided in subsection (i).

"(2) The insurance fund shall be credited with—

"(A) premiums, fees, or other charges which may be collected in connection with insurance or reinsurance coverage provided under this section;

"(B) such amounts as may be advanced to the insurance fund from appropriations in order to maintain the insurance fund in an operative condition adequate to meet its liabilities; and

"(C) income which may be earned on investments of the insurance fund pursuant to paragraph (3).

Investments.

"(3) If, after all outstanding current obligations of the insurance fund have been liquidated and any outstanding amounts which may have been advanced to the insurance fund from appropriations authorized under subsection (i) have been credited to the appropriation from which advanced, the Secretary determines that the moneys of the insurance fund are in excess of current needs, he or she may request the investment of such amounts as he or she deems advisable by the Secretary of the Treasury in public debt securities with maturities suitable for the needs of the insurance fund and bearing interest at prevailing market rates.

Fund financial condition, annual report to Congress.

"(h) The Secretary shall report to the Congress not later than the first day of April of each year on the financial condition of the insurance fund and the results of the operations of the insurance fund during the preceding fiscal year and on its expected condition and operations during the fiscal year in which the report is made.

Appropriation authorization.

"(i) There are authorized to be appropriated to the insurance fund, as repayable advances, such sums as may be necessary to meet obligations incurred under subsection (g). All such sums shall remain available without fiscal year limitation. Advances made pursuant to this subsection shall be repaid, with interest, to the general fund of the Treasury when the Secretary determines that moneys are available in the insurance fund for such repayments. Interest on such advances shall be computed in the same manner as provided in subsection (b)(2) of section 3 of the Black Lung Benefits Revenue Act of 1977.".

Interest rates.

Ante, p. 12.

STATEMENT OF REASONS FOR DENIAL OF CLAIMS

SEC. 14. Part C of title IV of the Act, as amended by sections 12(b) and 13, is further amended by adding at the end thereof the following new section:

30 USC 944.

"SEC. 434. Any individual whose claim for benefits under this title is denied shall receive from the Secretary a written statement of the reasons for denial of such claim, and a summary of the administrative hearing record or, upon good cause shown, a copy of any transcript thereof.".

REVIEW OF PENDING AND PREVIOUSLY DENIED CLAIMS

Notification to claimants.

SEC. 15. Part C of title IV of the Act, as amended by sections 12(b), 13, and 14, is further amended by adding at the end thereof the following new section:

30 USC 945.

"SEC. 435. (a)(1) The Secretary of Health, Education, and Welfare shall promptly notify each claimant who has filed a claim for benefits under part B of this title and whose claim is either pending on the effective date of this section or has been denied on or before

that effective date, that, upon the request of the claimant, the claim shall be either—

"(A) reviewed by the Secretary of Health, Education, and Welfare under paragraph (2) for a determination based on the evidence on file, taking into account the amendments made by the Black Lung Benefits Reform Act of 1977; or

Referral to Labor Secretary.

"(B) referred directly by the Secretary of Health, Education, and Welfare to the Secretary of Labor for a determination under paragraph (3), with an opportunity for the claimant to present additional medical or other evidence in accordance with that paragraph, taking into account the amendments made by the Black Lung Benefits Reform Act of 1977.

Approval and certification.

"(2)(A) The Secretary of Health, Education, and Welfare shall approve forthwith each claim for which review is requested under paragraph (1)(A) if, based upon the evidence on file, the provisions of part B of this title, as amended by the Black Lung Benefits Reform Act of 1977, require such approval. The Secretary of Health, Education, and Welfare shall certify such approval to the Secretary of Labor and such approval shall be binding upon the Secretary of Labor as an initial determination of eligibility. Upon receipt of that certification, the Secretary of Labor shall immediately make or otherwise provide for the payment of the claim in accordance with this part.

Payment.

Referral to Labor Secretary, notification to claimants.

"(B)(i) The Secretary of Health, Education, and Welfare shall refer to the Secretary of Labor any claim not approved under subparagraph (A) for a determination under paragraph (3), and shall notify the claimant of that referral to the Secretary of Labor for such a determination.

"(ii) The Secretary of Health, Education, and Welfare shall notify each claimant whose claim has been approved under subparagraph (A) that, if the claimant disputes the scope or terms of the award, such dispute shall be referred to the Secretary of Labor for a determination under paragraph (3).

Determinations, transfers to Labor Secretary.

"(C) Upon the completion of the review of any claim by the Secretary of Health, Education, and Welfare under this paragraph, the responsibility for further action with respect to such claim shall be transferred to the Secretary of Labor. The Secretary of Labor shall consider each such claim in accordance with paragraph (3).

"(3)(A) Except as provided in this section, the Secretary of Labor shall treat each claim referred by the Secretary of Health, Education, and Welfare under paragraph (1)(B) or (2)(B) as if it were a claim filed under this part. The provisions of subsection (b) shall apply to any determination of the Secretary with respect to any such claim referred to the Secretary.

"(B) The Secretary of Health, Education, and Welfare shall promptly furnish to the Secretary of Labor all pertinent information in the possession of the Department of Health, Education, and Welfare relating to claims referred to the Secretary of Labor under this subsection.

"(4) For the purposes of any determination by the Secretary of Labor under paragraph (3), the date of the request under paragraph (1) shall be considered the date of filing of the claim.

30 USC 925.

"(b)(1) The Secretary of Labor shall review each claim which has been denied under this part (or under section 415) on or before the effective date of this subsection, and each claim which is pending under this part (or under section 415) on such effective date, taking into account the amendments made to this part by the Black Lung Benefits Reform Act of 1977. The Secretary shall approve any such claim forth-

with if the provisions of this part, as so amended, require that approval, and the Secretary shall immediately make or otherwise provide for the payment of the claim in accordance with this part.

"(2)(A) The Secretary, in carrying out the review of any claim under paragraph (1) and in making any determination under subsection (a)(3), shall not require any additional medical or other evidence to be submitted if the evidence on file is sufficient for approval of the claim, taking into account the amendments made to this part by the Black Lung Benefits Reform Act of 1977. Evidence requirement.

"(B) If the evidence on file is not sufficient for approval of the claim, the Secretary shall provide an opportunity for the claimant to present additional medical or other evidence to substantiate his or her claim and shall notify each claimant of that opportunity.

"(c) Any individual whose claim is approved pursuant to this section shall be awarded benefits on a retroactive basis for a period which begins no earlier than January 1, 1974.".

SHORT TITLE FOR THE ACT

SEC. 16. Section 401 of the Act is amended by inserting "(a)" after "SEC. 401." and by adding at the end thereof the following new subsection: 30 USC 901.

"(b) This title may be cited as the 'Black Lung Benefits Act'.".

OCCUPATIONAL DISEASE STUDY

SEC. 17. (a) The Secretary of Labor, in cooperation with the Director of the National Institute for Occupational Safety and Health, shall conduct a study of all occupationally related pulmonary and respiratory diseases, including the extent and severity of such diseases in the United States. Such study shall further include analyses of (1) any etiologic, symptomatologic, and pathologic factors which are similar to such factors in coal workers' pneumoconiosis and its sequelae; (2) the adequacy of current workers' compensation programs in compensating individuals with such diseases; and (3) the status and adequacy of Federal health and safety laws and regulations relating to the industries with which such diseases are associated. 29 USC 675 note.

(b) The study required in subsection (a) shall be completed and a report thereon submitted to the President and to the appropriate committees of the Congress no later than 18 months after the date of the enactment of this Act. Report to President and congressional committees.

FIELD OFFICES

SEC. 18. (a) The Secretary of Labor shall establish and operate such field offices as may be necessary to assist miners and survivors of miners in the filing and processing of claims under title IV of the Act. Such field offices shall, to the extent feasible, be reasonably accessible to such miners and survivors. The Secretary, in connection with the establishment and operation of field offices, may enter into arrangements with other Federal departments and agencies, and with State agencies, for the use of existing facilities operated by such departments and agencies. Where the establishment of separate facilities is not feasible the Secretary may enter into such arrangements as he deems necessary with the heads of Federal departments, agencies, and instrumentalities and with State agencies for the use of existing facilities and personnel under their control. Establishment. 30 USC 903. 30 USC 901. Arrangements with Federal and State agencies.

(b) There are authorized to be appropriated for the purposes of subsection (a) such sums as may be necessary. Appropriation authorization.

INFORMATION TO POTENTIAL BENEFICIARIES

30 USC 904.
30 USC 901.
Assistance.

SEC. 19. The Secretary of Health, Education, and Welfare and the Secretary of Labor shall disseminate to interested persons and groups the changes in title IV of the Act made by this Act, together with an explanation of such changes, and shall undertake, through appropriate organizations, groups, and coal mine operators, to notify individuals who are likely to have become eligible for benefits by reason of such changes. Individual assistance in preparing and processing claims shall be offered by the Secretary of Health, Education, and Welfare and the Secretary of Labor and provided to potential beneficiaries.

EFFECTIVE DATES

30 USC 901 note.

SEC. 20. (a) The provisions of this Act shall take effect on the date of the enactment of this Act.

30 USC 934a note.
Ante, p. 12.
Additional rules and regulations.

(b) In the event that the payment of benefits to miners and to eligible survivors of miners cannot be made from the Black Lung Disability Trust Fund established by section 3(a) of the Black Lung Benefits Revenue Act of 1977, the provisions of the Act relating to the payment of benefits to miners and to eligible survivors of miners, as in effect immediately before the date of the enactment of this Act, shall take effect, as rules and regulations of the Secretary of Labor until such provisions are revoked, amended, or revised by law. The Secretary of Labor may promulgate additional rules and regulations to carry out such provisions and shall make benefit payments to miners and to eligible survivors of miners in accordance with such provisions.

26 USC 4121 note.
Ante, p. 24.

(c) In accordance with the requirements of section 5 of the Black Lung Benefits Revenue Act of 1977, it is hereby provided that such Act shall take effect in accordance with the provisions of such Act. The provisions of this subsection are hereby deemed to be in explicit satisfaction of the requirements of section 5 of such Act.

Approved March 1, 1978.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 95-151 (Comm. on Education and Labor) and No. 95-864 (Comm. of Conference).
SENATE REPORTS: No. 95-209 accompanying S. 1538 (Comm. on Human Resources) and No. 95-336 (Comm. on Finance).
CONGRESSIONAL RECORD:
Vol. 123 (1977): July 21, S. 1538 considered in Senate.
July 25, Sept. 19, considered and passed House.
Sept. 20, considered and passed Senate, amended, in lieu of S. 1538.
Vol. 124 (1978): Feb. 6, Senate agreed to Conference report.
Feb. 15, House agreed to Conference report.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS:
Vol. 14, No. 9 (1978): Mar. 1, Presidential statement.

○

FOR IMMEDIATE RELEASE March 1, 1978

Office of the White House Press Secretary

THE WHITE HOUSE

STATEMENT BY THE PRESIDENT

THE PRESIDENT. I think the attendance here this morning at this signing ceremony indicates the extreme importance of this legislation. Coal mining has always been a difficult and a dangerous trade, and among its most tragic risks has been black lung disease.

Three weeks ago, I signed a bill that provided for a new trust fund to be supported by an excise tax on coal to pay for black lung benefits. Today, I'm quite pleased to sign House bill 4544, the Black Lung Benefits Act of 1977, to strengthen the administration of that program.

These two bills, in conjunction with the Mine Safety and Health Amendments Act of 1977, which was signed last year, amount to a comprehensive Federal effort to reduce the human and social costs to our growing dependence on coal.

Coal miners have a right to working conditions as free as possible from dangerous coal dust. The black lung program recognizes that miners and their families also deserve compensation under a fair system when they contract this terrible disease and die or are disabled as a result of their work in the mines.

In the past, miners disabled by black lung disease too often have been denied the benefits they deserve. This bill will remedy many defects in the program. It simplifies and streamlines the process of filing for benefits and expands the eligibility to include respiratory and pulmonary impairment other than just to the lungs.

It eliminates unfair rules and time limits that have prevented disabled miners and their survivors from receiving benefits. The Labor Department will now be allowed to set fair standards of eligibility, based on the latest medical developments. Together, these amendments will ensure that more miners and their families will receive the benefits that they deserve.

The Congress and my administration have worked closely to develop these bills because of our great concern about the tragic effects of black lung disease. Many Members of the Congress have worked for this bill and the companion revenue bill already passed.

I want especially to thank Congressman Perkins in the House and Jennings Randolph in the Senate, who have visited me frequently about this legislation since I've been in office, and also, of course, Congressmen Thompson and Ullman, Senators Byrd, Williams, Long, and Dee Huddleston, and many others on the committees for the passage of these good reforms.

We could not restore life or health to the victims of this disease, but we can at least help to lift the financial burdens that these disabled miners and their families must bear. This bill accomplishes that goal.

As we've come to recognize, increased coal production is vital to our success in meeting future energy needs. But increased coal production must not be accomplished at the expense of greater suffering for coal miners and their families. This bill is another demonstration that the Federal Government will do all it can to give miners the support and the fair treatment that they deserve.

On behalf of the people of our country and particularly those States where coal mining is a major industry, I want to express my deep thanks to the Members of the Congress, to the members of the Cabinet, and to other interested persons who have made this comprehensive legislation--three major bills in the last 6 or 8 months--possible to alleviate the affliction that has for so long been suffered by the brave and courageous and dedicated and sometimes long-suffering coal miners of our country.

[At this point, the President signed the bill.]

Senator Randolph, would you like to say a word?

SENATOR RANDOLPH. Mr. President, there is a commitment not only of your administration but of the Congress and, especially, I think, of the American people to do justice in connection with what has now become law. It's been a long battle, really, to aid the miners and their survivors. We began in 1969, and that was the first bill.

Senator Williams, Senator Byrd, Senator Javits, Senator Stafford, many, many in the Senate remember those days. We did that, Mr. President--and I must not speak too long--we did it one year before we passed the occupational health and safety legislation, because it was believed in the House and in the Senate that this had a priority, this type of work done by the miners.

Then, as you know, and others who are gathered here--and I express appreciation to all of them--we had the amendments of 1972, where we had relied on the X-ray, practically without any other proof, and we brought in pulmonary and respiratory ailments as possible proof of black lung. And then in 1977, we continued with legislation that, I think, is the finalization of this effort.

And as you and all who are here know, we have moved from the Federal payments of the Government, now, to the tonnages which will be produced by the miners--50 cents a ton on deep mining, 25 cents a ton on surface mining. And so, I'm sure Arnold Miller will recognize the need for productivity of coal, because this is the manner in which the money will come in with which the black lung payments will be made.

This final thought: We believe there are approximately 170,000 to 190,000 pending and denied cases that will be reviewed and, hopefully, acted on as quickly as possible.

I think this is a good day for America, Mr. President. It's a day not just of compassion, but it's a day of the realization of the responsibility of people to help those who deserve help. And I take this moment--and I'll be forgiven--I want to say that Anice Floyd stands here at the left, never missing a day in working on these matters. And I want to thank her, because she represents, really, thousands and thousands of people.

I never am a partisan in the sense of being, you know, a partisan that goes too far. [Laughter] But I want to say in the final days of the enactment of this legislation--Bob, and you know it--on the Hill, Senator Javits deserves very, very much credit. He helped us in a very difficult time, when in the conference it looked as if we might not make it.

And although we had some rather rough words--and I hope Carl Perkins somehow will know what I've said about him--that no one labored more diligently than Carl Perkins, certainly, who understands the problems of coal and coal mining, than did this Representative in the Congress.

Now, if I've spoken too long, it's only to express appreciation to all the Members of the Congress who worked since '69, including now, '78, on this vital legislation, and to express the belief that when you, Mr. President, with your close attention to these later bills, which really summarize what has been done--and these are very vital because of the changeover that takes place--that justice has been done, and these men, their survivors will live with more dignity and with comfort and, yes, with faith in America.

THE PRESIDENT. Congressman Perkins is not here, and I'm very sorry that he can't be, because he's devoted a major part of his effort to this legislation, as has been so generously recognized by Senator Randolph. But Frank Thompson is here. Frank, perhaps you'd like to say a word.

REPRESENTATIVE THOMPSON. Mr. President, I'd like to express my deep appreciation to you for your interest and the cooperation that we had from your administration on this, to my colleagues in the other body, to my House Members. It fell upon me to introduce the substitute at my distinguished friend and chairman's request, Carl Perkins.

And happily, the substitute carried healthily, as did the conference report. This is a great day of joy for me and for my distinguished New Jersey colleague, Senator Williams, chairman of the Senate committee. We don't have much coal mining in New Jersey, Mr. President, but we sure use a lot of it, and we need it.

Thank you.

THE PRESIDENT. Well, almost all of the Members of Congress here could make a very heartfelt statement about this legislation. The bills that have been passed in other years, 1969 and before, only set up temporary programs. And one thing that hasn't been mentioned is that this now makes these programs permanent.

There's no future threat, I don't believe, that the coal miners would be deprived of this fair and just right to expect compensation for their suffering.

I want to express again my thanks to all of you. I's always difficult to know whom to call on to speak and whom to ignore. But I think in my choice this morning, you've heard the eloquence and the deep feelings of both the House and Senate expressed.

Thank you very much.

NOTE: The President spoke at 9:33 a.m. at the signing ceremony in the State Dining Room at the White House.

As enacted, H.R. 4544 is Public Law 95-239, approved March 1.

LISTING OF REFERENCE MATERIALS

U.S. Congress. House. Committee on Education and Labor. *Hearings on Black Lung Benefits Provisions of the Federal Coal Mine Health and Safety Act.* March 14-17 and 21, 1977. 95th Congress, 1st session.

U.S. Congress. Senate. Committee on Finance. Subcommittee on Taxation and Debt Management Generally. *Hearing on S. 1538, Tax Aspects of the Black Lung Benefits Reform Act of 1977.* 95th Congress, 1st session.

U.S. Congress. Senate. Committee on Human Resources. Subcommittee on Labor. *Hearings on Examination of the Administration of the Black Lung Program.* 95th Congress, 1st session.

TABLE OF CONTENTS

94TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 94-770

BLACK LUNG BENEFITS REFORM ACT OF 1975

DECEMBER 31, 1975.—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. 10760]

together with

MINORITY AND SEPARATE VIEWS

The Committee on Education and Labor, to whom was referred the bill (H.R. 10760) to amend the Federal Coal Mine Health and Safety Act to revise the black lung benefits program established under such Act in order to transfer the residual liability for the payment of benefits under such program from the Federal Government to the coal industry, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment strikes out all after the enacting clause and inserts in lieu thereof a substitute text which appears in italic type in the reported bill.

PURPOSE OF THE BILL

The primary purpose of the bill is to establish objective criteria for determining entitlement to benefits payments arising out of employment in the Nation's coal mines; to transfer from the Federal Government to the coal industry the residual liability for black lung benefits payments; and to establish a Black Lung Disability Insurance Fund to be maintained by contributions from the coal industry.

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 irrebuttable 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 conclusive presumption that a miner is totally disabled if he is so afflicted. Rather, the present test is administratively determined except that a miner is to be deemed 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."

The Black Lung Benefits Act of 1972 amended the basic law in several important respects; generally broadening claimant eligibility in the light of the experience gained during the operation of the program, and extending Federal responsibility for the payment of benefits in an attempt to enable States "a reasonable and necessary additional period of time * * * to prepare to assume responsibilities for the payment of black lung benefits, thereby relieving the Federal Government of future responsibilities." (H. Rept. 92–460, at 7–8) As will be discussed in a following section, this latter objective was not achieved. With respect to the changes broadening claimant eligibility, it should be noted that the Committee initiated the 1972 amendments in large part because of dissatisfaction with the administration of the law by the Department of Health, Education, and Welfare (Social Security Administration), which in some respects, clearly contravened discernible legislative guidelines.

The amendments proposed by H.R. 10760 rest on a comprehensive analysis of the program since its inception. They are remedial in nature—in several instances again redefining misapprehended legislative intent—and ultimately excise the Federal Treasury from continued responsibility for the payment of black lung benefits claims.

A concluding comment on the general health of coal miners compared with that of other workers, taken from the digest of a 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 Consideration

The development of the instant bill actually began in 1973 with an oversight inquiry into the processing and adjudication of black lung benefits claims. Subsequently, the Subcommittee on Labor Standards held five days of legislative hearings on a precursor to H.R. 10760.

In 1975 the Subcommittee conducted seven days of hearings on H.R. 8 and H.R. 3333. On November 12, 1975, the Subcommittee, by a roll-call vote of 10–4, ordered reported H.R. 8, amended.

Four legislative meetings were held by the Committee on Education and Labor in consideration of H.R. 8, amended. On December 9, by a roll-call vote of 31–9, the Committee ordered reported H.R. 10760, amended by striking out all after the enacting clause and substituting in lieu thereof the text of H.R. 8 as further amended by the Committee.

Summary and Discussion of Major Provisions

Section 1. *Short Title.*—Provides that the bill may be cited as the "Black Lung Benefits Reform Act of 1975".

Sec. 2. *Entitlements.*—This section amends sections 411, 412, 414, 421, and 430 of the Federal Coal Mine Health and Safety Act of 1969 to provide that a miner (or eligible survivors of a deceased miner) shall be entitled to the payment of benefits if the miner was employed for 30 years or more in underground coal mines. The entitlement is applicable with respect to employment for 25 years or more in anthracite coal mines.

These entitlements also apply to a miner whose conditions of employment in a coal mine other than an underground mine were substantially similar to those in an underground coal mine.

The entitlements need not be incorporated into a State workmen's compensation law in order to qualify as providing adequate coverage for black lung benefits.

In establishing periods of employment in underground coal mines for purposes of determining the applicability of the entitlements under part C of the program (coal industry responsibility), no consideration may be given to periods of employment after June 30, 1971, the date the dust standards became fully effective.

Based on data tabulated through 1974, 80.89 percent of the claims involving miners with a known coal mining employment experience of 30 or more years have been allowed under part B of the program (Federal responsibility).

On June 23, 1973, pursuant to growing complaints regarding eligibility determination inequities, the Subcommittee conducted an oversight hearing in Eastern, Kentucky, a major coal-producing area, and received testimony from more than 100 miners and widows who generally alleged wrongful denials of their benefits claims. Virtually all who appeared testified with regard to claims involving coal mining work exposures well in excess of 30 years. It was immediately apparent to the Subcommittee that the greater number of the miner-witnesses were severely and dramatically handicapped by respiratory difficulties. And it was equally apparent that the widows were testifying about the disabilities of husbands arising out of work experiences identical to those of the miners who appeared before the Subcommittee. Subsequent investigation revealed that the Eastern (Ky.) universe was not unique in that respect; indeed, that many seemingly allowable claims involving miners with extended coal mining work experiences were curiously being denied. The justifications given in individual cases more often turned on disputed or unavailable medical evidence; and proved ultimately unsatisfactory to the Subcommittee, and thereafter to the full Committee as well.

In recognition of the historically demonstrated and exceedingly high probability of total disability (80.89%), and out of concern for an equally probable risk of error in the remaining cases, an objective test was established to simply provide part B benefits payments to all

claimants whose claims had been denied and who could demonstrate 30 or more years of underground coal mining experience. This assertedly rational and reasonable approach was elected over discretely restructuring the eligibility determination process in order to reach such legitimate and compelling cases; a restructuring, incidentally, which would have produced a complex, unmanageable, and enormously costly approach to ascertaining benefits entitlements.

The Committee approach was supported by eminent medical testimony:

(a) Dr. Daniel Fine, specialist in internal medicine:

> To affirm that any single test, or even combination of tests can by themselves accurately define the relationship between a given lung disorder and the ability of a miner to work suggests a gross misconception of the process of disability, a mesmerization by numbers and technology and a delusional acceptance of pseudo-science, rather than true science. * * * [B]earing in mind the unlikelihood of establishing a meaningful objective quantifiable test of disability, recognizing the progressive and almost inevitable exposure of coal miners to dust inhalation over a period of years, and accepting the reasonable presumption that deposition of coal and silica and other minerals in the lungs is a deleterious body burden, it would seem eminently fair and humane to recognize as a matter of law that the passage of a given number of years as a coal miner is, in and of itself, reasonable evidence of a substantial burden of lung damage from coal mining and to compensate the miner accordingly. Such a law would be simple to administrate, would save government funds and the efforts of administrators, medical examiners and miners. Most importantly, it would recognize that coal mining practiced under present conditions produces continued exposure to dust inhalation and deposition which is cumulative, permanent and potentially injurious to the miner and by compensating for this exposure would provide a strong incentive to limit human exposure to this hazard. Such legislation would declare that we place at least as much value on human lives as we place on profit and a continuing source of cheap fuel.

(b) Dr. Lowell Martin, practicing physician among coal miners:

> This [entitlement] that we are all being concerned with, in my experience, is a good screening mechanism and a good practical way of getting rid of a lot of paperwork, a good way of getting rid of a lot of claims that have no reason to be processed through the usual manners in which we are processing claims. * * * Pathologically, it has been proven that the coal dust itself does cause damage to the lungs that is permanent, that cannot be demonstrated on X-ray maybe for several years, and maybe not at all.

(c) Dr. Murray B. Hunter, Director, Fairmont Clinic, Fairmont, W. Va.:

> It is exposure over time that produces coal workers pneumoconiosis and the enactment of a reasonable presumption that thus and so many years of exposure to coal mine dust, be it 25, 30 or 35 is enough, represents sound social policy.

It will take both the doctors and the lawyers out of the black lung business, a development devoutly to be wished.

A miner, wishing to establish disability, whose exposure comes to less than the stipulated number of years, would have to establish his disability by medical evidence. Presumptions as to disability are not new as matters of social policy. An individual who has made a career out of military service and has developed a psychosis while in the military, is presumed to have developed that psychosis as a result of his military service, irrespective of the fact that psychosis also exists in the general population. The presumption is that the military life is somehow or other psychologically noxious. The sense of H.R. 8 and 3333, by analogy, presumes that 35 years of dust exposure is noxious to the respiratory system. Soldiers and sailors do survive a lifetime of service without emotional sequelae and there are many coal miners who work for 35 years without pulmonary deficits. These facts in no way gainsay the social desirability of a statutory mechanism for the presumption of disability after a critical exposure has been reached. * * * If the law requires a test, the test should be as objective as man can devise it. There is nothing intrinsically wrong with a panel of experts, provided that such panelists are oriented as to the social policy objectives and human requirements that the Congress intends.

Dr. Edgar L. Dessen, Chairman, Task Force on Pneumoconiosis, American College of Radiology, pointed out the inherent invalidity of excessive reliance upon isolated medical testing in ascertaining disability (in this case, by chest roentgenogram) :

"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 funtional 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. * * *

"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 condi-

> tions. 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."
>
> Our point, as in 1971, is to urge upon you an awareness of the extent and limitations of X-ray findings in this instance and to emphasize the need to avoid prejudicing their use in other circumstances where [other] studies can be more explicit in defining health problems. We would doubt that radiology will become a statistically exact science.

Finally, the Committee was deeply impressed by comments received from James L. Weeks, a noted consultant in the area of pneumoconiosis. Though Mr. Weeks advocated an entitlements test based on 15 or more years of coal mining employment, the impact of his summary bears as well on the 30-year provision incorporated in the bill—in fact, with more compelling emphasis. (Note: Mr. Weeks' comments appear in the Appendix to this Report.)

Under this provision, the Social Security Administration will be required to allow all claims filed by June 30, 1973—the filing date after which full Federal responsibility for the payment of benefits terminated—involving miners with 30 or more years of employment in underground coal mining by that date (notwithstanding the claim was filed prior to that date). Though section 15 of the bill makes all of the amendments made by section 2 (of the bill) effective on and after December 30, 1969 (the initial effective date of the black lung benefits program), claims approved solely because of such amendments (filed before the bill's enactment) shall be awarded benefits only for the period beginning on the date of the bill's enactment. Thus, a miner, for instance, who achieved 30 full years of underground coal mining employment by 1972, and who filed a timely part B claim which was subsequently denied, will be entitled to benefits payments under part B pursuant to this provision. If the entitlement derives solely from amendments made by this section, the award of benefits may not commence prior to the bill's enactment.

A test of 25 or more years was adopted with respect to employment in anthracite coal mines. A lesser test in the case of anthracite miners is easily supportable. Initially, it is significant that the Administration has advised the Committee that the 25-year requirement applicable to anthracite miners "would have minimal fiscal impact * * * since anthracite miners [with that amount of work experience] would have qualified for benefits on the basis of medical evidence."

Beyond that, the Subcommittee hearing record contains the following medical testimony suggesting peculiarly adverse qualities about anthracite coal dust:

(a) Dr. Keith Morgan:

> * * * in the anthracite area of Pennsylvania 14 percent of working coal miners had complicated pneumoconiosis. In Utah and Colorado it was around 0.1 percent. * * *

(b) Dr. Leroy Lapp:

> * * * there is a higher prevalence of abnormal respiratory function in anthracite miners than bituminous miners. * * *

> We are not certain [what would cause that]. * * * It could be something different about anthracite dust.

(c) Dr. Murray Hunter:

> The difference [in the increased prevalence of potentially disabling respiratory disease of coal miners as compared to the general population] is highest for anthracite miners, least for miners in the Western States.

Moreover, a study to determine the prevalence of coal workers' pneumoconiosis (CWP) in U.S. coal miners (conducted by the National Institute of Occupational Safety and Health of the U.S. Public Health Service) encompassed analyses among the major coal-producing geographic areas and according to years of employment. It revealed that progressive massive fibrosis (complicated pneumoconiosis) is nearly seven times more prevalent among anthracite miners than Appalachian bituminous miners, and infinitely more prevalent when compared to Midwestern and Western bituminous miners. In the potentially crippling stages of simple pneumoconiosis, the relevant comparisons are approximately 3.5:1 and 8:1, respectively. When years of employment are related to the prevalence of CWP according to region, it is observed that a similar pattern of increased prevalence among anthracite miners occurs over their bituminous counterparts in all other regions. The study report also contains the following relevant excerpts:

> * * * it is [also] evident that anthracite miners are not only at an increased risk of contracting the disease, but once they have developed category 1 (simple pneumoconiosis), they may also be more likely to progress to the more advanced stages more often than are their bituminous counterparts. * * * [I]t is difficult not to conclude that there is something in the environment of the anthracite miners that puts them in special jeopardy. However, it is doubtful that the quantity of respirable dust alone is responsible.

The entitlements established by section 2 of the bill are made expressly inapplicable as minimum requirements that must be incorporated into a State workmen's compensation law in order that it may qualify as providing adequate coverage for black lung benefits. The Committee did not wish to add any additional impediments to States contemplating revision of applicable workmen's compensation laws such that the State law would be then deemed "adequate" as a substitute for the Federal program with respect to claims otherwise covered by any such State law.

The entitlements do apply to a miner whose conditions of employment in a coal mine other than an underground mine were substantially similar to those in an underground coal mine. A similar provision exists in the current law regarding the application of certain presumptions. In this respect, the Committee was considering, for instance, surface mine employment in a preparation plant, or tipple, where the exposure to coal dust is no less intense than that in underground mines.

Under part C of the program, the entitlements apply only insofar as the required years of employment may be achieved by June 30, 1971.

Here again, an identical provision exists in the current law in determining whether a miner was employed for 15 years or more in underground coal mining. If that test is met, the claimant may be benefited by the application of certain rebuttable presumptions. Thus, the counting mechanism in the bill is keyed to the same period. The underlying purpose of a specified date certain in this application is that, prior to that date, the generation of coal dust in mining operations was virtually uncontrolled. By June 30, 1971, all coal operators were required (by title II of the Federal Coal Mine Health and Safety Act of 1969) to continuously maintain the average concentration of respirable dust in the mine atmosphere at or below 3.0 milligrams of respirable dust per cubic meter of air—a level of concentration which, if achieved and maintained, is not now believed to be unusually dangerous to the health of coal miners. Those miners employed for long periods prior to the onset of Federal regulation were inevitably and constantly exposed to dust concentrations devastating to the human condition. To the extent the requisite years of employment were accumulated prior to the advent of effective dust control, it is equally rational and reasonable to apply a comparable entitlements test to both parts B and C claimants without regard to the essential insignificance of whether a claim happened to be filed on June 30, 1973, or July 1, 1973 (dates surrounding the demarcation of full Federal responsibility for benefits payments).

The amendments made by this section provide further that a claim for benefits may be filed under part B of the program (Federal responsibility) at any time on and after the date of enactment of the bill in the case of a miner whose date of last coal mine employment occurred before December 30, 1969 (the date the black lung benefits program commenced). This provision recognizes that coal operators were not put on notice with respect to federally-mandated and rigorous dust control requirements until the date of enactment of the Federal Coal Mine Health and Safety Act of 1969. It was felt that miners whose total coal mining work experiences occurred prior to that date should therefore be regarded as Federal beneficiaries under the black lung benefits program. This is accomplished by adding the provision within the ambit of part B. Except to the extent this provision expressly renders inapplicable any other requirement, condition, or application of part B, it is applicable as well to this provision. The provision merely provides possible access to part B benefits payments for claimants in cases where all of the miner's coal mining employment occurred before December 30, 1969.

SEC. 3. *Offset Against Workmen's Compensation Benefits.*—Benefits received under the Act may be offset by an amount equal to any payment received under a State workmen's compensation, unemployment compensation, or disability insurance law on account of disability *due to pneumoconiosis.* This provision merely brings part B of the program into accord with the treatment afforded offsetting State benefits under part C of current law. Only State benefits received due to pneumoconiosis, and not those received due to an unrelated condition, may act to reduce Federal benefits payments in this respect. This amendment becomes effective on the date of the bill's enactment.

SEC. 4. *Current Employment As a Bar to Benefits.*—This section prohibits under certain circumstances denial of a claim solely on the

basis of employment as a miner at the time of filing or death. The provision is clearly not intended to reduce the fact of a miner's employment at the time of filing a claim for benefits or death to a state of irrelevance. Obviously, the employment circumstance itself bears very heavily against any contention of total disability at such time. Rather, the section isolates specific situations of employment change which may suggest the existence of legal disability notwithstanding continued employment status. The section thus bars denial of a claim for benefits payments solely on the basis of employment as a miner if (1) the location of such employment was recently (from the perspective of the date of filing, or death, as the case may be) changed to a mine area having a lower concentration of dust particles, (2) the nature of such employment was changed so as to involve less rigorous work, or (3) the nature of such employment was changed so as to result in the receipt of substantially less pay.

The Committee believes this understanding is already implicit in current law and seeks, by this amendment, to underscore the significance that mere status as an employee is not always accompanied by the absence of total disability or death due to pneumoconiosis (within the meaning of the Act). The Conference Report accompanying the 1972 amendments should have been instructive in this respect:

> * * * 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. (Emphasis supplied) H. Rept. 92–1048, at 7.

Despite this legislative mandate, claims have continuously been denied solely on the basis that the miner is or was working in a mine with no consideration as to the type of work being performed. Because of this administrative misapplication of the law, the amendment is made retroactive to December 30, 1969, the initial effective date of the black lung benefits program.

The section also provides that a miner may file a claim for benefits irrespective of his employment status at the time of such filing. The miner shall thereafter be notified as to whether he would be eligible for the payments of benefits except that the circumstances of his employment do not comport with the limited circumstances under which a claim may not be denied solely on the basis of employment as a miner. This provision augments the preceding provision by ensuring that miners who believe they are afflicted with disabling pneumoconiosis, and who are also employed in coal mining at the time, need not engage in an exercise of "Catch-22" futility by having to elect between maintaining employment (thus probably disqualifying themselves from eligibility on the basis of a threshold employment circumstances inquiry) and forsaking employment (thereby incurring the risk of denial, and a consequent loss of all income support) in the absence of any meaningful indication of benefits eligibility.

At this point, it should be noted that the so-called "typical" coal miner, because of both the one-industry (coal) characteristic of his

region and his socioeconomic circumstance, continues to engage in the rigorous activity of his employment beyond the point where prudence and human compassion would dictate otherwise. It is a sorry and unconscionable specter indeed to witness that self-destruction, which itself is most often compelled by considerations apart from the miner's control. To the extent these provisions make some of the attendant decisions somewhat more manageable, and provide an alternative, they are amply justified.

SEC. 5. *Appeals.*—Except upon the motion of a claimant, the decision of an administrative law judge favorable to a claimant cannot be appealed or reviewed. This provision was born out of Committee concern that decisions favorable to claimants of certain administrative law judges were being selectively received by the Social Security Administration's Bureau of Hearings and Appeals, and reversed at a curiously high rate. According to data requested by the Subcommittee from the Social Security Administration, Appeals Council reversals of favorable decisions issued by administrative law judges approached 90 percent of its own motion review cases completed to that point. The data was revelant to determinations made during FY 1974.

Heightening this concern was a memorandum from the Director of the Bureau of Hearings and Appeals to all black lung administrative law judges, issued October 20, 1975. It states in relevant part:

> * * * I am very pleased that there has been a substantial increase in the number of Black Lung case dispositions. However, I am concerned that this increase in production has been accompanied by a significant increase in the Black Lung reversal rate.
>
> During the period January through July 1975, the reversal rate in Black Lung showed a slight decline. * * * The recent increase in the reversal rate during the last two months is * * * difficult to understand. Our review of the individual production records shows that the higher reversal rate was caused largely by an increase in the reversal rate of a relatively small number of judges.
>
> In consideration of the overall increase in the reversal rate, I have decided to reinstitute the review of favorable Black Lung hearing decisions by the Appeals Council's support staff in the Division of Appeals Operations. Therefore, *all* such decisions (with the claim file) should be forwarded to (the Bureau of Hearings and Appeals). (Emphasis supplied)

The closing paragraph of the memorandum states: "The action being taken should not be construed as an attempt to interfere with the independence of Black Lung judges." It would appear that this somewhat belated exercise in propriety may have been lost in the rather profound implications of the preceding excerpts.

The Committee therefore believes reversals of favorable decisions issued by administrative law judges are suspect to the point where they should be summarily set aside. Such reversals are tainted beyond individual redemption and are impossible to isolate within the universe of favorable decisions reviewed. The only fair and appropriate response is to retroactively reinstate all favorable decisions issued by administrative law judges.

SEC. 6. *Individual Notifications.*—This section directs the Secretary of Health, Education, and Welfare, in cooperation with the Secretary of the Interior and coal operators, to locate potentially eligible persons (under part B of the program) who have not filed a black lung benefits claim and afford such persons an opportunity to do so. A 6-month filing limitation is imposed when notification is accomplished and claims filed will be considered as if filed on June 30, 1973 (under part B of the program).

The Committee is aware that the Social Security Administration, in nearing the conclusion of that part of the black lung benefits program delineating full Federal responsibility for the payment of benefits (versus coal operator responsibility), cooperated with certain coal operators in furnishing information sufficient to assist such operators in ascertaining former employees who had not yet filed a claim and thereafter to advise and encourage such employees to undertake a timely filing within the period of full Federal responsibility. Though the nature of this cooperation is itself questionable, it appears the Social Security Administration could have minimally extended such cooperation to all, in a genuine effort to reach as many of those possibly entitled to black lung benefits as was feasible.

Some Members of the Committee also asserted that the Social Security Administration had not undertaken a program sufficiently adequate to apprise potential claimants of the existence and availability of the black lung benefits program; indeed, that many miners and widows did not learn of the program until the period of full Federal responsibility had passed. At a Subcommittee hearing on June 6, 1974, Bernard Popick, former Director of the (SSA) Bureau of Disability Insurance responded:

> * * * I would like to go back to an earlier point that you made or implied and that is the question of how many people have not applied or did not apply for benefits with the Social Security Administration up to July 1973 and lost benefits by having failed to apply.
>
> I think we went into that question a little bit in an earlier hearing. We expressed our serious doubts and reservations as to whether there were very many people who by July 1973, going all the way back to December 1969, over that period, had failed to file a claim with us and would have had a valid claim if they had.
>
> That is why I began my remarks earlier with pointing out the lengths to which we went and the steps we took to make sure that eligibles under the program were informed of their rights and those who failed to file under the original law up to May 1972, we felt those additional ones had then filed after the amendments in May 1972 and as of July 1973 with over a half a million claims having been filed, we were not under the impression that there were very many people who failed to file and who should have filed as far as part B of the program was concerned.

This provision of the bill requires only that the Secretary (HEW) undertake a good faith and diligent effort to locate individuals who are likely to be eligible for part B benefits and who have not filed a

claim for such benefits. In this pursuit, the Secretary is directed to cooperate with specified parties in identifying individuals having long periods of employment in coal mining (and, if deceased, their potentially eligible survivors). He shall then appropriately inform those who have never filed a claim for benefits under either parts B or C of the program of the possibility of their eligibility for benefits and offer them assistance in preparing their claims where it is appropriate that a claim be filed. Any individual informed under this provision has six months from the date of notification within which to file a part B claim. Although any claim filed during any such period shall be considered on the same basis as if it had been filed on June 30, 1973, benefits payments need not be provided for any period before the date of the bill's enactment.

It is emphasized that this provision is intended to focus solely on those individuals who may have been eligible for part B benefits had they made a timely filing by June 30, 1973, but who did not do so because of their essential unawareness of such eligibility. To the extent they have since filed a claim for black lung benefits payments, they are aware of the program and therefore excluded from these notification requirements. It is also emphasized that the Secretary is expected to measure the eligibility of claimants notified under this provision according to eligibility criteria and conditions in effect and existing on June 30, 1973. The only exceptions to this date of assessment (regarding the application of such eligibility criteria) are covered by the amendments provided by sections 4 and 8 of this bill, which are made effective retroactive to December 30, 1969, because the Committee believes the law has been misapplied in these respects. The sections indicated address limited circumstances under which current employment shall not constitute a bar to benefits, and evidence required to establish a claim. Beyond those exceptions, a claimant notified under this provision will have his benefits eligibility determined as though he had filed on June 30, 1973.

The only guidance provided the Secretary in determining those who should be notified under this provision is couched within the language, "individuals who are likely to be eligibile for such [part B] benefits" and "individuals having long periods of employment in coal mining [including survivors]." It is undesirable that the Committee attempt to further define this universe, except by again underscoring that the focus of this provision is the individual who may have qualified for part B benefits had he not been uninformed. A variety of conditions are inevitably assessed in the claims determinations process, and all claimants are surely not alike. The Secretary is best able to describe those characteristics which tend to be associated with favorable claims and the matter must necessarily therefore be committed to his discretion. The Committee expects only that the Secretary discharge this responsibility with good faith and diligence.

SEC. 7. *Definitions.*—This section provides that the criteria for determining total disability with respect to claims filed after June 30, 1973, shall be no more restrictive than those applicable to claims filed on June 30, 1973. For some inexplicable reason, the Department of Health, Education, and Welfare, exercising authority provided under the current law, has literally saddled the Department of Labor with rigid and difficult medical standards for measuring claimant eligibility under part C of the program. The so-called "permanent" medical

standards now in effect under part C are much more demanding than the so-called "interim" standards applied by HEW under part B of the program. HEW points to "substantial legal and other reasons" for applying restrictive medical standards to a claim filed on and after July 1, 1973, and less restrictive criteria to a claim filed before July 1, 1973. That assertedly "substantial" support apparently arises out of language contained in the Senate Report accompanying the 1972 amendments. In actual fact, HEW has completely misplaced the emphasis of the Senate Report. The Senate directive with regard to the "interim" standards clearly spoke to standards that would obtain until "the establishment of new facilities or the development of new medical procedures." (S. Rept. 92–743, at 18) That was the clear and explicit condition underscoring the need for and the duration of "interim" medical standards. Under the HEW interpretation, these developments somehow magically occurred at the onset of part C of the program. The Congress *did not* intend in adopting the Senate initiative, as HEW so unequivocally asserts, that this "interim" approach would suddenly conclude at the termination date for new part B filings. And HEW could hardly intimate that the "new facilities" or "new medical procedures" referenced so specifically in the Senate Report have, in fact, become reality.

This provision of the bill would require that standards no more restrictive than the "interim" medical standards shall be equally applicable to part C claims. To the extent that more restrictive standards are justified by the presence of "new facilities" or "new medical procedures," it is apparent that the Congress must in the future make that determination.

It is significant that the Department of Labor shares the Committee's view of the inapplicability of the "permanent" criteria to part C claims. The following letter from the Solicitor of Labor to the General Counsel of HEW urges the latter to permit the use of the "interim" criteria in Department of Labor cases:

U.S. DEPARTMENT OF LABOR,
OFFICE OF THE SOLICITOR,
Washington, D.C., September 13, 1974.

JOHN B. RHINELANDER,
General Counsel, U.S. Department of Health, Education, and Welfare, Washington, D.C.

DEAR MR. RHINELANDER: On August 5, 1974, a meeting was held between Social Security and Department of Labor black lung officials with a view toward resolving the dispute which has arisen concerning the appropriateness of the medical and evidentiary standards promulgated by Social Security for use by the Department of Labor in its black lung program. This meeting was first requested by my letter of June 14, 1974.

We are sorry to report that no satisfactory resolution of the problem was achieved at the meeting.

As you may recall, the substance of the issue is that Social Security, which has the exclusive authority under the Black Lung Benefits Act to promulgate medical-evidentiary standards, has issued regulations which require that certain more restrictive medical screening criteria are to be applied in determining the eligibility of Department of Labor

black lung claimants than are applied in determining the eligibility of Social Security black lung claimants. It has been our belief that this variance in standards is unjust and completely unsupported by the mandate of the statute.

We have received your comments concerning this matter at the August 5 meeting, in your letter of August 1, 1974, as well as in Mr. Gerald Altman's letter of August 14, 1974. In light of these contacts it is now apparent that Social Security is unwilling to amend its medical regulations in the interest of uniform permanent medical criteria.

In defense of its decision not to change the interim regulations to make them applicable to Department of Labor claims, Social Security officials have advanced a number of arguments. For the reasons detailed herein we find the Social Security arguments unacceptable in all respects, and remain firm in our belief that there is no justification for the continued limitation on the use of the interim criteria in Department of Labor claims.

1. *DOL is not authorized, by law, to adopt the interim criteria without SSA action.* The Social Security suggestion that the Department of Labor is authorized by law to adopt the interim criteria without a change in the regulations is legally unsupportable. The suggestion is predicated upon the language of section 422(h) of the Act and 20 CFR 410.414 and 410.426 of the permanent criteria.

Section 422(h) of the Act provides in pertinent part:

> * * * 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 coal mine or mines.* * * * [Emphasis supplied.]

We interpret this provision to give the Secretary of Labor authority to develop a formula for assessing liability against a particular coal operator. Clearly the language of 422(h) does not authorize a Labor Department foray into the medical standards area. More importantly, perhaps, is the clear congressional intention that the promulgation of medical standards be exclusively within the province of the Department of HEW. This fact is attested to on page 1 of the August 1 letter. Mr. Altman suggested that a presumption of disability based upon specific medical facts is not a medical standard but a standard of evidence within the province of the Secretary of Labor. We believe this position to be logically unsound, especially in light of the fact that the interpretation of all the medical-evidentiary presumptions contained in the Act itself are within the province of Social Security, and totally inadequate to support what appears to be a Department of Labor intrusion into an area from which it is clearly excluded by the express terms of the Act.

As Mr. Altman points out, sections 410.414 and 426 are incorporated in the Department of Labor's regulations. However, it is clear that any construction of those provisions which arguably permits the Department of Labor to utilize the interim standards does not comport with accepted canons of statutory interpretation. Sections 410.414 and 426 of the regulations contain general provisions which permit the use of "other relevant evidence." Section 410.490, the interim criteria, con-

tains an explicit delineation of the "other relevant evidence" in question and *prohibits* the Department of Labor from using such specific "other relevant evidence." It is impossible to see how the Department of Labor could appropriately utilize a general provision of law to incorporate by means of questionable regulatory authority a specific provision of law which by its own terms is not available for use by the Department. We think any court when faced with these facts would be compelled to rule that the Secretary of Labor had abused his authority under the Act.

2. *The variance in standards adversely impacts on DOL claimants.* The further Social Security conclusion that there need be no appreciable effect on claimants as a result of the variance in screening criteria is, we believe, unrealistic.

It is becoming increasingly clear that many of those claimants who can meet the interim criteria, but not the 1969 criteria are, in fact, totally disabled by pneumoconiosis and should be entitled to benefits. In the August 5 meeting Mr. Altman verified this conclusion. In any event, under the current criteria prescribed by Social Security for the Department of Labor's program, a great number of these claimants who file with the Department of Labor must be tentatively denied benefits at an early stage in the adjudication of their claims. Although further pursuit of such claims might result in a determination of eligibility, it is our experience that claimants who are initially denied benefits on medical grounds become discouraged and do not fully utilize the rights available to them to obtain a more intensive review of their claims. This type of claimant will encounter greater difficulty in obtaining legal assistance and often abandon or neglect to pursue his claim.

It must also be noted that those few claimants of this type who are willing to engage in the further pursuit of proof of entitlement must subject themselves to a battery of expensive, time consuming and often unpleasant medical procedures. Frequently, there are no facilities available to conduct these tests near the claimant's residence. The 1972 amendments were enacted largely to ease the difficult evidentiary burden facing all black lung claimants. Social Security has negated this intent insofar as transitional and Part C claimants are concerned by promulgating variant standards of eligibility which will certainly result in the denial of benefits to an unknown number of worthy claimants who, within the intent of the 1972 amendments, should be found eligible.

3. *The legislative history does not support variant standards.* The passage from the legislative history which Social Security argues authorizes the limited applicability of the interim criteria lends no support to their position in this regard. The passage in question, contained in S. Rep. No. 92-743, 92d Cong., 2d Sess. 17-19 (1972) affirms Congress' intent to ensure the liberalization of eligibility screening criteria in light of the inadequacy and unavailability of clinical facilities with black lung testing capability, a condition which has not significantly changed. This passage clearly authorizes Social Security to liberally *evaluate* the evidence submitted in respect of a backlog claim but it does not authorize the promulgation of special breathing test screening standards which are applicable to Part B claims but not Part C claims. In fact, the passage refers specifically to evalua-

tory criteria "other than breathing tests." The relevant portions of the interim criteria are predicated largely on the results of "breathing tests." This passage, by its express terms, simply does not empower Social Security to create by regulation a legal discrimination between Part B and Part C claimants not authorized by the Act. It only directs Social Security to make a lesser effort to rebut the evidence submitted by a backlog claimant.

On the other hand, we believe Congress made it clear that *all* liberalized medical-evidentiary procedures mandated by the 1972 amendments were to be applied to both Part B and Part C claimants.

Section 430 of the Act makes all 1972 medical-evidentiary amendments applicable to Part C claims. In his explanation of section 430, Senator Randolph noted:

> Questions were raised during the committee deliberations over whether the amendments to Part B would automatically be applicable, * * * to Part C.
>
> * * * * *
>
> Although it would appear clear that the same standards are to govern, the committee concluded that it would be best to so specify. S. Rep. No. 92-743, 92d Cong., 2d Sess. 21 (1972).

The July 10, 1974 letter from Congressman Sieberling to Secretary Weinberger reaffirms our view in this regard. Congressman Sieberling points out:

> It was clearly the intent of Congress in passing the Black Lung Benefits Act that all black lung claims be considered under less restrictive medical standards than those established pursuant to the 1969 Act. When the [amendments were] being considered by Congress, the Senate added section 430 to the [Act] to insure that the standards * * * would be substantially equivalent whether the Black Lung Benefits Program was being administered by the Social Security Administration, the Department of Labor, or by the states.

In view of these fairly clear pronouncements, we do not believe that the exclusivity of the interim criteria represents either a correct or appropriate expression of congressional intent.

4. *The interim criteria would not suffer from constitutional infirmity if applied by DOL.* We do not believe that Social Security's fears concerning the constitutionality of the interim criteria, if they are applied in cases involving private liability, are justified. It has been pointed out that the interim criteria do no more than establish a rebuttable presumption of eligibility for benefits. The criteria by their terms set forth a number of avenues of rebuttal. A rebuttable presumption suffers from constitutional infirmity only if it is, in fact, irrebuttable in light of the circumstances surrounding its applicability. This is clearly not the case with respect to the interim criteria. Any coal operator has ample opportunity and resources available to him to present sound medical evidence tending to rebut the presumption of eligibility created by the interim criteria. Indeed, a coal operator often has greater resources at his disposal than does a claimant. Expert medical testimony, as well as a claimant's actual work responsibilities, are only

two examples of possible rebutting evidence. There is clearly no due process problem with the procedural application of the interim criteria in respect of claims involving coal industry liability.

5. *Variant standards may themselves be unconstitutional.* On the other hand, in light of recent pronouncements by the Supreme Court, there appears to be a strong likelihood that the *failure* to permit the interim standards to be applied to ease the evidentiary burden of Department of Labor black lung claimants may be unconstitutional. The variance in standards unquestionably creates a discrimination between Part B and Part C claimants. As we have indicated in this letter, such discrimination is not supported by the facts or the law. A discrimination created by law among persons within the same class, which may result in the denial of a benefit to certain members of that class, meets the requirements of equal protection only if a rational basis exists for such discrimination. We do not believe that a genuine rational basis can be constructed to justify the discrimination created by the variance in criteria.

6. *Conclusion.* It is our firm belief that the only appropriate way to remedy the existing difficulty is for Social Security to amend its medical regulations to permit the use of the interim criteria in Department of Labor cases. We, therefore, request that you re-evaluate your legal position in this regard, taking into consideration the matters discussed in this letter and inform us of your findings at the earliest possible date.

If we can be of any further assistance to you in this matter, please do not hestitate to contact us.

I look forward to your reply.

Sincerely,

WILLIAM J. KILBERG,
Solicitor of Labor.

Copies to Congressman John H. Dent, Chairman, General Subcommittee on Labor and Bernard E. DeLury, Assistant Secretary for Employment Standards.

SEC. 8. *Evidence Required To Establish Claim.*—This section establishes that affidavits regarding a miner's physical condition shall be sufficient evidence, in the case of a deceased miner for whom no relevant medical evidence exists, that such miner was totally disabled due to pneumoconiosis or that his death was due to pneumoconiosis. The provision, though applicable to both part B and part C claims, is directed primarily at the former. It addresses the dilemma of survivors who, because of the absence of any relevant medical evidence regarding the physical condition of deceased miners, cannot establish the validity of an otherwise valid claim. In most cases, the miner died many years ago, and such evidence has been lost or destroyed by the miner's physician, or is otherwise now non-existent. The provision merely permits affidavits of persons with knowledge of the miner's physical condition to supplant this void. It is not intended to eliminate the applicable employment test (as modified by section 4 of this bill) in determining eligibility for benefits under the program. In this context, an appropriately disqualifying mine employment at the time of death would constitute "relevant medical evidence."

Like the amendment provided by section 4, the Committee believes this amendment would have been unnecessary if the Social Security Administration had conformed its eligibility determinations process to accommodate all of the evidentiary considerations specified in section 413(b) of the Act. That subsection already establishes the significance of affidavits in the case of a deceased miner, and reads in pertinent part:

> 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 the deceased miner, other appropriate affidavits of persons with knowledge of the miner's physical condition, and other supportive materials.

Because of administrative omissions in this regard, the amendment is made retroactive to December 30, 1969.

SEC. 9. *Claims Filed After December 31, 1973.*—Part C of the black lung benefits program was designed to transfer claims liability from the Federal Government to the States through State workmen's compensation programs. A State program must meet certain minimum requirements before the Secretary of Labor is authorized to deem it "adequate." In the event a State program is not "adequate", provisions of the Longshoreman's and Harbor Workers Compensation Act are applied by the Secretary of Labor and liability is assessed against coal operators found to be responsible for a claim. An insurance contract or self-insuring mechanism is required to be maintained by coal operators for the purpose of meeting obligations incurred under this part. Where a responsible operator cannot be assessed, the Secretary is responsible for the payment of benefits.

Two significant realities have acted to frustrate the objective of transferring claims liability from the Federal Treasury to States and coal operators: (1) no State workmen's compensation law has yet been deemed "adequate" under part C, and (2) the Department of Labor has been successful in identifying responsible operators only with respect to about 50 percent of the part C claims. Moreover, recent testimony before the Subcommittee indicated that 97 percent of putative responsible operator cases are being contested by the industry.

The confluence of these unanticipated occurrences has meant continued Federal liability for black lung claims filed after the period when such liability was expected to end. In mid-1974, a Labor Department official advised the Subcommittee that the projected Federal liability under part C was already estimated at approximately $500 million. That estimate was subsequently revised upwards to $800 million and the Department has not yet submitted a current official estimate.

Section 9 of the bill conclusively ends this lingering Federal liability by the creation of a coal industry trust fund, into which all coal operators will contribute, and from which all part C benefits will flow. In accomplishing this objective, the Committee establishes that the costs of the occupational disease should be now borne by the industry from which it arises. It continues to recognize that an "adequate" State

workmen's compensation plan may cushion this industry liability; and that to the extent individual coal operators can be assessed with liability in individual cases, that liability should attach. But it substitutes the industry-wide trust fund mechanism for the Federal Treasury in those cases where residual liability now falls to the Secretary of Labor.

In a statesmanlike appearance before the Subcommittee on March 13, 1975, the president of the industry's trade association made the following statement:

> We recommend that legislation be enacted to establish an industry financed, industry administered trust fund to pay for claims arising under part C, title IV of the Coal Mine Health and Safety Act of 1969.

Though that spokesman has recently communicated the trade association's "concern" with what he perceives to be "potential adverse effects" of H.R. 10760, the Committee has not received any communication from the industry which would effectively countermand the endorsement for an industry financed, industry administered trust fund set forth above. The industry is to be congratulated for its forthright—albeit belated—willing acceptance of this heretofore primarily Federal burden.

The Committee also wishes to note that it regards this concept of an industry financed, industry administered trust fund as a possible prototype for future legislative treatment of other occupational diseases. Surely, lessons of the black lung program indicate that the incidence and prevalence of an occupational disease may far exceed the most exaggerated estimate; that an occupational disease is as debilitating as any other work-related injury and clearly occurs as a manifestation of employment alone; that liability may be difficult to attach to an individual employer because of the slow but steady progression of such diseases; and that the role of the Federal Government in addressing the essential vacuum of State activity in this area should not inevitably extend to providing Federal monies in the form of benefits payments—but rather, should be one of ensuring the provision of such necessary compensation to afflicted employees by placing the responsibility on the very source of its occurrence.

A summary description of section 9 of the bill is provided at this point.

During any period after December 31, 1973, black lung benefits deemed payable, where a State workmen's compensation law has not been approved by the Secretary of Labor, shall be paid from the Black Lung Disability Insurance Fund established by this section.

Part C of the program is made permanent by repealing the provision contained in existing law which would otherwise terminate benefit payments after 1981.

Claims for benefits under this section must be filed within 3 years of the discovery of total disability due to pneumoconiosis or from the date of death due to pneumoconiosis.

In the case of a living miner, a claim filed under this section based upon presumptions in existing law and the entitlements established in section 2 shall be filed within 3 years from the date of last exposed employment in a coal mine. In the case of death for which benefits would be payable pursuant to such presumptions or entitlements, the

claim shall be filed within 15 years from the date of last exposed employment in a coal mine.

The amount of benefits payable under this section shall 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 pneumoconiosis.

The Secretary shall provide for the prompt hearing of appeals by aggrieved claimants within 45 days after a claimant requests such a hearing, at a time and place convenient to a claimant, and subject to relevant provisions of title 5, United States Code, relating to administrative procedures. A claimant may obtain review of any final decision of the Secretary pursuant to such a hearing, provided a civil action is commenced in the appropriate Federal district court no later than 90 days after receiving notice of such decision. The court shall have the power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Secretary, without remanding the case for a rehearing. Provision is also made for remanding the case for a rehearing and for ordering that additional evidence be taken at such rehearing.

The Federal Coal Mine Health and Safety Act is amended to establish in the Treasury of the United States a trust fund designated as the Black Lung Disability Insurance Fund.

The Fund shall essentially consist of assessments and premiums paid by coal operators and shall be managed and administered by trustees elected by coal operators. Provisions for the election of trustees, their duties and responsibilities, and other matters relevant to the organization and maintenance of the trust, are included in this section. Generally, the trustees shall control the Fund and have the authority to hold, sell, buy, exchange, invest, and reinvest the corpus and income of the Fund. Investment decisions are to be in accordance with corresponding provisions of the Employee Retirement Income Security Act of 1974. Any profit or return on any investment or reinvestment made by the trustees shall not be considered as income for tax purposes.

In addition to the payment of black lung benefits, amounts in the Fund shall be available to defray operating expenses and for providing medical benefits required under the program. The trustees may enter into agreements with any self-insurer or insurance carrier who has incurred an obligation under the Act under which the Fund will assume such obligation in return for prescribed payments to the Fund. Beginning January 1, 1976, the Fund shall assume benefit payment obligations incurred by the Secretary of Labor prior to that date under existing law.

The trustees are required to submit an annual report to the Secretary of Labor and to coal operators on the operation and financial condition of the Fund and the Secretary shall report annually to the Congress with respect to such matters.

No coal operator may bring any proceeding, or intervene in any proceeding, held for determining claims for benefits; the trustees shall act on behalf of all operators with respect to claims filed under part C of the program. The Fund may not participate or intervene as a party to any proceeding held for the purpose of determining claims for benefits under part C, except that the Fund may, if dissatisfied with any claim determination of the Secretary under part C, seek

review in the appropriate Federal court of appeals, *Provided, however*, that any finding of fact of the Secretary relating to the interpretation of medical evidence which demonstrates the existence of pneumoconiosis or any other disabling respiratory or pulmonary impairment, shall not be subject to such review. This provision does not, however, act as a complete bar to the Fund's right to seek judicial review in the event of dissatisfaction with any claims determination made by the Secretary of Labor. The Fund clearly has the unfettered right to full review in contesting claims determinations involving only findings of fact other than those the bill expressly precludes from review.

Where a State workmen's compensation law has not been approved by the Secretary of Labor, coal operators in such State shall secure the payment of assessments to the Fund and shall also pay premiums into the Fund in amounts sufficient to ensure the payment of benefits. Assessments may be secured according to requirements currently applicable under existing law with respect to the securing of benefits payments by coal operators: self-insurance or insurance contracts. Although the Fund will provide all benefits payments under part C, any operator who is determined to be liable by the Secretary (pursuant to provisions currently applicable under existing law) for a claim for benefits shall be annually assessed by the Fund to the full extent of such operator's aggregate liability for each year. Premiums shall be paid into the Fund by all coal operators (except by operators located in any State where the workmen's compensation law has been approved by the Secretary) irrespective of liability for individual benefits payments. The total premiums received by the Fund shall be applied, among other purposes, to obligations incurred by the Fund as a result of claims determinations for which no operator is found by the Secretary to be liable for a claim for benefits payments (and consequently. the payment of assessments to the Fund).

The initial premium rate is established by the Secretary as a rate per ton of a coal mined by operators. Beginning one year later, the trustees may modify the premium rate to reflect the experience and expenses of the Fund, except that the Secretary may further adjust the rate to ensure that all obligations of the Fund will be met. Premium rates shall be uniform for all mines, mine operators, and amounts of coal mined. Premiums paid by operators shall be considered ordinary and necessary business expenses for Federal tax purposes.

Premiums are collected by the Secretary of the Treasury together with, and in the same manner as, quarterly payroll reports of employers. The Secretary of the Interior shall regularly certify the names of all operators subject to the Act in order to guarantee the payment of premiums by all operators. Any operator who fails or refuses to pay a required premium or assessment will be subject to a civil penalty pursuant to an action brought by the Fund in the appropriate U.S. district court.

Federal expenditures under part C of the program are limited to those necessary for carrying out administrative responsibilities. All other expenses shall be borne by the Fund, and if borne by the Federal Government, shall be reimbursed by the Fund. In this context,

Federal expenditures shall be limited to the greatest extent consistent with the purpose of transferring Federal liability under part C to the Fund.

This section also authorizes the appropriation to the Fund of such sums as may be necessary to provide the Fund with amounts equal to 50 percent of the amount which the Secretary estimates is necessary for the payment of benefits under the foregoing provisions during the first year of the Fund's existence. Any amounts appropriated may be used only for the payment of benefits and are to be repaid with interest into the general fund of the Treasury no later than 5 years after the first appropriation made hereunder.

SEC. 10. *Clinical Facilities.*—The sum of $10 million is authorized to be appropriated each fiscal year to the Secretary of Health, Education, and Welfare, for the purpose of contracting with and making grants to agencies, organizations, and individuals for fixed-site and mobile clinical facilities for the analysis, examination, and treatment of respiratory and pulmonary impairments in active and inactive coal miners. The authorization provided herein will ensure the continued expansion of the program initiated under current law.

SEC. 11. *Medical Care.*—This section continues the provisions of section 7 of the Longshoremen's and Harbor Workers' Compensation Act (providing for medical services and supplies) to persons entitled to benefits on account of total disability.

Where the Secretary of Health, Education, and Welfare, has reason to believe a miner receiving benefits under part B of the black lung benefits program became eligible for medical services and supplies on January 1, 1974, the Secretary shall notify the miner of such possible eligibility. A miner so notified has 6 months from the date of notification to file a claim for medical services and supplies.

SEC. 12. *Transitional Provisions.*—The Secretaries of Health, Education, and Welfare, and of Labor, are required to disseminate to interested persons the changes in the Black Lung Benefits Act made by the bill. Additionally, the Secretaries are directed to undertake a program to give individual notice to persons who they believe are likely to become eligible for benefits by reason of such changes. Each claim denied and each claim pending under the Black Lung Benefits Act shall be reviewed in the light of the amendments made by this bill.

SEC. 13. *Short Title.*—This section amends title IV of the Federal Coal Mine Health and Safety Act of 1969 by identifying it as the "Black Lung Benefits Act".

SEC. 14. *Mine Accident Widows.*—This section provides that benefits payments shall be provided under part B to an eligible survivor of a miner who was employed for at least 17 years in underground coal mines and died as a result of an accident which occurred in any such coal mine. Benefits payments to survivors are reduced by an amount equal to any payment received by such survivors under the workmen's compensation, unemployment compensation, or disability laws of the miner's State.

SEC. 15. *Effective Dates.*—This section provides that the effective date of this bill (Black Lung Benefits Reform Act of 1975) shall be on the date of its enactment, except that—

(1) the amendments made by section 2 shall be effective on and after December 30, 1969, but claims approved solely because of

such amendments, which were filed before the date of enactment of this bill, shall be awarded benefits only for the period beginning on such date of enactment;

(2) the amendments made by sections 4, 5, and 8 shall be effective retroactive to December 30, 1969;

(3) the amendments made by section 6 shall not require the payment of benefits for any period before the date of enactment of this bill; and

(4) the amendments made by section 9 become effective on January 1, 1976.

This section also provides that the provisions of existing law relating to the payment of benefits shall remain in force after the effective date of the amendments made by this bill as rules and regulations of the Secretary, and that such provisions shall be revived as appropriate by the Secretary in the event that benefits payments cannot be made (for any reason) from the Fund.

Oversight

No oversight findings have been presented to the Committee by the Committee on Government Operations. The Committee's (Education and Labor) own findings are incorporated throughout the discussion above, "Summary and Discussion of Major Provisions".

Inflationary Impact

Since the total costs of the bill (including Federal receipts generated by the trust fund mechanism established under section 9) are not substantial, the Committee anticipates minimal inflationary impact on prices and costs in the operation of the national economy. The net costs (Federal expenditures less receipts) for fiscal 1977 are estimated at $150.77 million (of which $66.58 million is in the nature of a reimbursable Federal loan to the Fund), and amount to only 0.00036 percent of the anticipated (fiscal 1977) Federal budget. This estimate will also equal only 0.000081 percent of the projected (fiscal 1977) gross national product.

The fiscal 1978 estimate is $34.15 million, and represents 0.000082 percent of the fiscal 1977 Federal budget anticipation and 0.000018 percent of the fiscal 1977 projected gross national product. The fiscal 1979 estimated net costs of the bill is $31.08 million, and represents 0.000074 percent and 0.000016 percent of those comparisons, respectively.

Costs

The Committee has received cost estimates on the bill as reported both from the Congressional Budget Office and the Administration. The Committee adopts the estimates supplied by the Congressional Budget Office in fulfillment of the requirements of clause 7 of Rule XIII. The Administration's estimates were supplied by the Departments of Health, Education, and Welfare, and of Labor, according to their separate responsibilities under the black lung benefits program. A comparison of the Congressional Budget Office costs with those of the Administration requires combining the relevant fiscal year estimates of both Departments.

The cost estimates follow:

(a) *Congressional Budget Office.—*

CONGRESS OF THE UNITED STATES,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., December 29, 1975.

Hon. CARL D. PERKINS,
Chairman, Committee on Education and Labor, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for H.R. 10760, the Black Lung Benefits Reform Act of 1975.

Should the Committee so desire, we would be pleased to provide further details on the attached cost estimate.

Sincerely,

ALICE M. RIVLIN, *Director.*

Attachment.

CONGRESSIONAL BUDGET OFFICE

COST ESTIMATE

DECEMBER 29, 1975.

1. Bill number: H.R. 10760.

2. Bill title: Black Lung Benefits Reform Act of 1975.

3. Purpose of bill: Amends the Federal Coal Mine Health and Safety Act of 1969 to provide increased entitlement under Parts B and C of that Act. Also, establishes a nongovernmental trust fund which assumes total liability for all benefit payments under Part C, and which is to be financed by an assessment on all mine operators. Among the provisions which would expand the beneficiary population are:

(A) A 30 year irrebuttable presumption for eligibility.

(B) Removal of current employment bar to eligibility.

(C) Removal of offsets for workmen's compensation.

(D) Requirement of notification by HEW Secretary of all eligibles.

(E) Removal of deadline for filing under Part B for miners retiring before December 30, 1969.

(F) Acceptance of affidavits as evidence in survivors' claims.

(G) Utilization of interim medical standards under Part C.

(H) Expansion of eligibility to survivors of miners killed in mine accidents.

4. Budget impact: (millions of dollars).

This bill would add the following amounts to the approximately $1 billion (FY 1976) spent on the existing disabled coal miners program.

	Fiscal year—							
	1977	1978	1979	1980	1981	1982	1983	1984
Budget authority	150.77	21.37	17.34	12.03	6.09	(—1.16)	(—8.07)	(—15.87)
Outlays	150.77	21.37	17.34	12.03	6.09	(—1.16)	(—8.07)	(—15.87)
Foregone revenue	51.72	51.97	53.48	54.61	55.92	57.74	59.14	61.03

5. Basis for estimate: Estimates are based upon data provided by SSA, DOL, and the UMW Welfare and Retirement Fund for present beneficiary and allowance levels, projected application rates under Part C, termination rates, and age specific information on the general mining population. Benefit levels were based upon present SSA and DOL rates and inflated by CBO projections for federal pay increases. Future beneficiary levels are calculated on the basis of increases in claims as a result of this bill and natural growth under Part C. Budget Authority and Outlays reflect the net change in costs as generated by this bill over previous legislation. Increased costs under Part B are offset in (increasing amounts) by the savings under Part C as a result of the transfer of liability for unidentified operators to the trust fund. Outlays for 1977 include a reimbursable loan to the trust fund from general revenues of $66.58 million. These funds will be provided to the trust fund to meet 1977 obligations before trust fund revenues are totally collected. In the above calculations, we have assumed an 8 percent interest rate and a repayment period of seven years.

The additional payments to the trust fund that mine owners would make under Part C of the new law would result in reduced revenues to the Treasury. These payments would be regarded as business expenses for tax purposes and are estimated to be 48 percent (the marginal tax rate paid by corporate mine owners) of the additional payments.

6. Projected costs of the trust fund: The trust fund will be a non-governmental entity and will thus not impact on federal outlays. Income and outlays of the trust fund, including expanded coverage for new beneficiaries under this bill, are projected at:

	Fiscal year—							
	1977	1978	1979	1980	1981	1982	1983	1984
Income	199.74	141.93	149.60	156.23	163.52	171.77	180.32	189.80
Outlays	133.16	151.44	159.11	165.74	173.03	181.28	189.83	199.32

7. Estimate comparison: Earlier projections by SSA (now being revised) set FY 1977 levels for Part B at $334 million. DOL projections (also being revised) for increased 1977 expenditures under Part C were $97 million. The higher projections by SSA and DOL resulted from their early overestimates of new beneficiaries under this program.

8. Previous CBO estimate: None.

9. Estimate prepared by: Jeffrey C. Merrill (225–4972).

10. Estimate approved by:

C. G. Nuckols,
Deputy Assistant Director for Budget Estimates.

Black Lung Benefits Reform Act of 1975

H.R. 10760

Description of Legislation

The Black Lung Benefits Reform Act of 1975 amends the Federal Coal Mine and Safety Act of 1969 and the Black Lung Benefits Act of 1972. The substantive provisions proposed by the bill include the following:

1. An irrebuttable presumption for miners having completed 30 years in an underground mine before 1972;
2. Removal of the provision barring miners from benefits because of current employment status;
3. Termination of offsets for state compensation benefits;
4. Establishment of a Black Lung Disability Insurance Fund which would assume responsibility for payments under Part C (for both located and unidentified operators);
5. A broad publicity campaign to inform people of the Black Lung program;
6. Acceptance of affidavits as evidence in survivors' claims;
7. The utilization of interim medical standards under Part C;
8. Expansion of eligibility of survivors of miners killed in mine accidents; and
9. Removal of deadline for filing under Part B if miner's last exposed employment was before December 30, 1969.

The above does not include all of the proposed provisions in the Act. Rather, it is limited to those with significant direct or indirect cost implications.

Cost Analysis

I

(a) A 30 year irrebuttable presumption would have an impact on those claimants who had served 30 years as of 1971 and whose claims had been previously denied. These claimants would now automatically become eligible.

The potential beneficiaries include, according to SSA data, 13,900 claimants. The cost to the Treasury of including this group is based upon the product of this number and average yearly payments for those benefits. In 1975, the average monthly benefit was $235.70. Accounting for the 5.0 perecnt increase in benefits (benefits are based on the federal pay scale), yearly amounts in 1976 are $2,992. Future year projections, based on CBO estimates for federal pay raises, are 12.0 percent in 1977, 8.8 percent in 1978, 8.3 percent in 1979, and 6.9 percent for 1980–1984. A 7.3 percent mortality rate for miners (with a .3 percent increase per year) and a 4.2 percent rate for widows (.2 percent annual increase) was also used.

TABLE I—*Claims under 30 year presumption*

Fiscal year:	(*Millions*)	Fiscal year:	(*Millions*)
1977	$38.12	1982	$38.54
1978	38.81	1983	38.14
1979	39.20	1984	37.60
1980	39.02		
1981	38.80	Total	308.23

b. The provision that eliminates present employment as a bar to receiving benefits will also have an effect on social security expenditures.

According to SSA, this provision would cost an additional $5 million in FY 1976 (this includes retroactive payments to 1969) and $2 million for FY 1977. Projections for FY 1978 through 1984 are based on this SSA estimate, using CBO projected increases in federal pay raises (and assuming the same mortality rates):

TABLE II—*From elimination of present employment bar*

Fiscal year:	(*Millions*)	Fiscal year:	(*Millions*)
1977	$5.0	1982	$1.5
1978	2.0	1983	1.2
1979	1.9	1984	1.0
1980	1.9		
1981	1.7	Total	16.2

c. The provision that ends offsets for state workmen's compensation benefits is projected by SSA to cost $11 million in FY 1976. Projecting expenses for FY 1976–1984, including CBO projected increases in federal pay and applying the same mortality rates, would be the following:

TABLE III—*Elimination of workmen's compensation offset*

Fiscal year:	(*Millions*)	Fiscal year:	(*Millions*)
1977	$11.0	1982	$7.5
1978	10.9	1983	6.1
1979	10.4	1984	4.9
1980	9.6		
1981	8.7	Total	69.1

d. Increased payments under Part B that result from the provision that would permit acceptance of affidavits as sufficient evidence for a survivor to receive benefits will amount to $29 million (including retractive payments) in 1977 according to S.S.A. Using this as a base for the potential beneficiary population (1,477 beneficiaries in 1977) and S.S.A. data for benefits inflated by C.B.O. federal pay raise projections as well as SSA mortality rates, the following are projected costs through 1984:

TABLE IV—*Acceptance of Affidavits*

Fiscal year:	(*Millions*)	Fiscal year:	(*Millions*)
1977	$29.00	1982	$4.94
1978	5.00	1983	4.89
1979	5.06	1984	4.80
1980	5.03		
1981	4.99	Total	63.71

e. The provision under H.R. 10760 which prohibits appeal or review of administrative law judges' decisions will benefit approximately 1,000 claimants. Increased costs (including retroactive payments) resulting from this provision utilizing S.S.A. data for benefits and mortality, are projected at:

TABLE V—*Prohibition of Appeal of A.L.J. Decisions*

Fiscal year:	(*Millions*)	Fiscal year:	(*Millions*)
1977	$19.78	1982	$3.35
1978	3.44	1983	3.31
1979	3.42	1984	3.26
1980	3.40		
1981	3.38	Total	43.34

f. The provisions which remove the deadline for filing under Part B and require notification of potential eligibles will increase the beneficiary population under Part B. Based upon S.S.A. data for approval rates and numbers of claims by age, as well as utilizing U.M.W. Welfare and Retirement Fund data for an age breakdown of miners and

extrapolating figures calculated for the universe of miners with over 30 years in the mines (used to calculate the increase in beneficiaries under the 30 year presumption for Part C), a total of 3,960 new beneficiaries was calculated. Projected additional costs, including retroactive payments in FY 1977, are:

TABLE *VI—Increased Beneficiaries Under Notification and Removal of Deadline Provisions*

Fiscal year:	(*Millions*)	Fiscal year:	(*Millions*)
1977	$15.24	1982	$12.46
1978	12.60	1983	12.32
1979	12.74	1984	12.12
1980	12.66		
1981	12.58	Total	102.72

g. Dependents of miners who were employed for 17 or more years in the mines and who were killed in mine accidents on or before June 30, 1971 would be eligible for benefits under a provision in the bill.

According to the U.M.W.A., a rough estimate of 200 miners a year were killed in mine accidents. Also, approximately 75 percent of the miners had worked for 17 years or more. Assuming that widows and dependents who would become eligible under this provision would be those where the miner had died in an accident no earlier than 1960 (obviously, there might be some widows or dependents still alive where the miner died earlier, but given the 16 years that has transpired since that date, and the minimum age of miners who had been employed at least 17 years, the number of additional miners would be very small), a total of 1650 eligible beneficiaries are included. Calculations of expenditures are further based on an SSA estimated annual termination rate of 4.2 percent (increasing 0.2%/year) and the assumption that workmen's compensation or other offsets do not apply (this is not necessarily the case, therefore, the lost projections represent a maximum figure).

TABLE VII—*Extension of benefits to survivors of mine accident victims*

Fiscal year:	(*Millions*)		(*Millions*)
1977	$4.25	1982	$5.31
1978	4.55	1983	5.36
1979	5.09	1984	5.38
1980	5.16		
1981	5.24	Total	40.34

II

PART C

(a) Provisions in the proposed legislation for the establishment of a Black Lung Disability Insurance Fund will have the effect of eliminating the present liability of the federal government of providing Department of Labor beneficiaries whose last place of employment involves an operator who can no longer be located. Benefits under this provision would be for all miners who have already been approved by the Department of Labor as well as those who, in the future, will qualify.

In estimating the future savings to be accrued under this provision, based on information provided by the Department of Labor, the following assumptions were made:

1. There are, presently, 80,000 claims filed with DOL. Also, based on a new UMW contract to go into effect in 1976, an additional 15,000 claims will be filed.

2. The influx of new claims filed is expected to continue at the present rate of 1,000 per month. According to DOL, this rate will not diminish during the period ending in 1984.

3. The present rate of location of mine operators is 50 percent and is expected to continue at this level in the future.

4. The approval rate, according to the Department of Labor will average 18 percent.

5. A 10 percent mortality rate (according to DOL) is used in these estimates.

6. Although there are still over 50,000 claims that have not yet been adjudicated, plans for increasing staff processing these claims at DOL indicate that this activity will be completed by FY 1977. Also, approved claims will be paid retroactively to the date of filing. Thus, all beneficiaries who have already filed and who will be approved are included.

7. One hundred percent of all approved claimants will receive medical services covered under the Department of Labor program and the average annual cost of such services (according to the D.O.L.) will be $400 for FY 1976 with an average increase of 8 percent per year.

8. The trust fund will not begin operations until FY 1977 and, in that year, will require support from general revenues on a loan basis for half that year.

The savings accrued with the creation of the trust fund are projected at:

TABLE VIII—*Savings from establishment of trust fund*

Fiscal year:	(*Millions*)	Fiscal year:	(*Millions*)
1977	$38.20	1982	$61.98
1978	43.15	1983	66.61
1979	47.69	1984	72.15
1980	51.96		
1981	56.52	Total	437.76

b. Sections 2, 7, and 8 of H.R. 10760 would expand the potential population eligible for Black Lung Benefits under Part C. It should be noted that the resulting increases in trust fund outlays would not be a cost incurred by the federal government. The trust fund, as a separate entity, would absorb the increased expenditures. Therefore, such outlays should not be viewed as affecting the savings to the federal government that would be accrued by the establishment of the trust fund under this Bill.

1. Section 2 provides entitlement for miners or their survivors if the miner was employed for 30 years or more in an underground mine (or 25 or more years in an anthracite mine). The impact of this presumption would be the addition of 4,900 beneficiaries to the program. As-

suming the same benefit levels and mortality as in the previous section, the following costs are projected for Section 2:

TABLE IX—*30 year presumption under Part C*

Fiscal year:	(*Millions*)	Fiscal year:	(*Millions*)
1977	$21.88	1982	$18.65
1978	21.43	1983	17.95
1979	20.86	1984	17.30
1980	20.07		
1981	19.33	Total	157.47

2. Section 7 would require the utilization of interim medical standards. Based on DOL calculations for 1976, the following projections were made for 1977–1984:

TABLE X—*Interim Medical Standards*

Fiscal year:	(*Millions*)	Fiscal year:	(*Millions*)
1977	$27.90	1982	$23.78
1978	27.34	1983	22.89
1979	26.61	1984	22.05
1980	25.61		
1981	24.65	Total	200.83

3. Section 8 would require acceptance of affidavits as evidence in survivors' claims. Based on a DOL projection for the first year of the program, the following projections are made:

TABLE XI—*Acceptance of Affidavits*

Fiscal year:	(*Millions*)	Fiscal year:	(*Millions*)
1977	$7.00	1982	$3.12
1978	3.59	1983	3.00
1979	3.49	1984	2.89
1980	3.36		
1981	3.23	Total	29.68

The income and liability of the trust fund for 1977–1984 are projected at:

TABLE XII.—PART C PROJECTED OUTLAYS AND INCOME

[In millions of dollars]

Fiscal year	Income	Outlays
1977	[1] 199.74	133.16
1978	141.93	151.44
1979	149.60	159.11
1980	156.23	165.74
1981	163.52	173.03
1982	171.77	181.28
1983	180.32	189.83
1984	189.80	199.32
Total	1,352.91	1,352.91

[1] For 1977, given the lag time necessary for the full operation of the trust fund, there will be an approximate 6-month build-up period during which payments will be made from general revenues on the basis of a loan to the fund. Thus, $66,580,000 in 1977 will initially come from general revenues with no commensurate receipts. The 1st year income reflects the full assessment on coal operators plus the advance from the Federal Treasury. In future years, however, this loan will be paid back by the trust fund with interest. In the above calculations, we have assumed an 8-percent interest rate and a repayment period of 7 years.

COSTS OF H.R. 10760

[In millions of dollars]

Table No.	Fiscal year—							
	1977	1978	1979	1980	1981	1982	1983	1984
I. 30-Year Presumption	38.12	38.81	39.20	39.02	38.80	38.54	38.14	37.60
II. Present Employment Bar	5.00	2.00	1.90	1.90	1.70	1.50	1.20	1.00
III. Workmen's Compensation Offset	11.00	10.90	10.40	9.60	8.70	7.50	6.10	4.90
IV. Acceptance of Affidavits	29.00	5.00	5.06	5.03	4.99	4.94	4.89	4.80
V. No Appeal of ALJ Decisions	19.78	3.44	3.42	3.40	3.38	3.35	3.31	3.26
VI. Notification and Removal of Deadlines	15.24	12.60	12.74	12.66	12.58	12.46	12.32	12.12
VII. Mine Accident Provisioo	4.25	4.55	5.09	5.16	5.24	5.31	5.36	5.38
Subtotal	122.39	77.30	77.81	76.77	75.39	73.60	71.32	69.06
Savings to Federal Government as a result of assumption of liability by the trust fund	38.20	43.15	47.69	51.96	56.52	61.98	66.61	72.15
Net Federal outlays [1]	150.77	21.37	17.34	12.03	6.09	(−1.16)	(−8.07)	(−15.87)

[1] Includes a reimbursable loan to the trust fund of $66,580,000 in fiscal year 1977, which is assumed to be paid back in future years at 8-percent interest. Net Federal outlays for fiscal year 1978–84 are therefore reduced by $12,780,000 annually in interest and principal.

(b) *Department of Health, Education, and Welfare.*—

MEMORANDUM

DECEMBER 29, 1975.

From: Harry C. Ballantyne.

Subject: Estimates of Additional Black Lung Benefit Payments Under Part B That Would Result From Enactment of Selected Provisions in H.R. 10760, as Reported by the Committee on Education and Labor (Revised).

The attached tables contain our estimates of the amount of additional black lung benefit payments, under part B of title IV of the Federal Coal Mine Health and Safety Act of 1969, that would be paid in fiscal years 1977–81 as a result of enactment of selected provisions in H.R. 10760, as reported by the Committee on Education and Labor. Benefits under part B are paid from the general fund of the Treasury. The proposed changes, for which estimates are shown in the table, are:

1. Offset against black lung benefit payments due to payments under state programs shall be eliminated, unless such payments are due to pneumoconiosis (section 3 of the bill).

2. If a miner was employed for 30 years or more in one or more coal mines, or for 25 years or more in one or more anthracite coal mines, he shall be entitled to benefits; and, in the case of such a miner who is deceased, his eligible survivors shall be entitled to benefits (section 2).

3. If a miner was employed for 17 years or more in one or more underground coal mines, and died as a result of an accident in any such coal mine which occurred on or before June 30, 1971, his eligible survivors shall be entitled to benefits under part B (amendment added during full Committee deliberations).

4. No claim, from either a miner or the survivor of a deceased miner, can be denied solely on the basis of employment as a miner if such employment had recently been changed to a less dusty part of the mine, to less rigorous work, or to a position of substantially less pay (section 4).

5. In the absence of relevant medical evidence, affidavits may be sufficient to establish that a deceased miner was totally disabled due to pneumoconiosis or that his death was due to pneumoconiosis (section 8).

6. A decision by an administrative law judge in favor of a claimant may not be appealed or reviewed, except upon motion of the claimant (section 5).

7. A claim for benefits under part B may be filed at any time on or after the date of enactment of H.R. 10760 by a miner (or, in the case of a deceased miner, the eligible survivors of such miner) if the date of the last exposed employment of such miner occurred before December 30, 1969 (section 2).

8. An effort shall be made by the Department of Health, Education, and Welfare to identify individuals who may be eligible for benefits under part B, but who have not filed for benefits under either part B or part C. They are to be notified by the Department of their possible eligibility for benefits. Any claim filed within 6 months of the date of notification shall, for the purpose of determining eligibility to benefits under part B, be considered on the same basis as if it had been filed on June 30, 1973 (section 6).

Each claim which has been denied and each claim which is pending under part B in present law shall be reviewed in light of the changes made by the bill.

The estimates for the foregoing changes that are presented in the attached table are based on the following assumed interpretations of various provisions in the bill:

1. In order to be eligible for benefits under part B, as amended by the bill, the requirements for eligibility—such as the requirement of 30 years of employment in coal mines, or the medical requirements for establishment of disability due to pneumoconiosis—must have been met as of June 30, 1973, unless the miner's last exposed employment occurred before December 30, 1969 (see item 2 below). Thus, in order to become eligible for benefits under part B, a miner who files a claim after enactment of the bill, and whose last exposed employment occurred after December 29, 1969, must have sufficient medical evidence to establish onset of disability due to pneumoconiosis on or before June 30, 1973.

2. A claim for benefits under part B may be filed at any time if the miner's last exposed employment occurred before December 30, 1969, whether or not a claim had already been filed under part C. The eligibility requirements for benefits under part B must be met at the time the claim is filed.

3. Under section 6, the Secretary is required to notify the following groups of persons who have not filed a claim under either part B or part C:

(*a*) Those persons who may have been eligible for benefits under part B as in effect before enactment of the bill, and

(*b*) Those persons who may become eligible for benefits under part B solely because of the enactment of the bill.

Thus, for example, the Secretary would be required to notify miners who had worked in coal mines for 30 years or more by June 30, 1973,

but who have not filed a claim for benefits under either part B or part C.

4. Under section 8, the survivor of any miner who was working in the coal mine at the time of his death may be eligible for benefits solely on the basis of an affidavit, since the language of the bill states that "where there is no relevant medical evidence . . . such affidavits shall be considered to be sufficient to establish that the miner was totally disabled due to pneumoconiosis."

For the purpose of determining eligibility to benefits under part B, sections 2, 4, 5, and 8 are effective as of December 30, 1969. Additional benefit payments resulting from sections 4, 5, and 8 are retroactive to the date of filing, for miners' claims filed before July 1, 1973, and for survivors' claims filed before January 1, 1974, or are first payable for the month of enactment of the bill, for claims filed after those dates. Additional benefit payments resulting from sections 2, 3, and 6 are first payable for the month of enactment of the bill. It is assumed that additional benefit payments resulting from the added amendment are also first payable for the month of enactment of the bill.

Estimates of additional benefit payments under part B that would result from enactment of the bill are shown in the attached table by major provision. The estimates of additional benefit payments in fiscal year 1977 include payments for those months prior to fiscal year 1977 for which the claimant was eligible for such payments.

The estimates are based on the following assumptions:

1. Enactment of the bill will occur in June 1976.

2. The backlog of claims (those previously denied as well as all new claims) that would be allowed if the bill is enacted will be processed to payment in fiscal year 1977, and all retroactive benefit payments for months in prior fiscal years are included in the estimates for fiscal year 1977.

3. The estimates reflect the effects of annual benefit increases, assumed to be effective for October of each calendar year 1975–79. Black lung benefit rates are based on the salary paid to Federal Government employees at step 1 of grade GS–2.

The percentage increases in benefits that are reflected in the estimates are equal to the following increases in Federal salaries:

	Percent
1975	5.00
1976	12.25
1977	6.75
1978	6.50
1979	6.00

These increases are consistent with economic assumptions in the Mid-Session Review of the 1976 Budget.

Estimates of the number of miners and widows (or other primary survivors of deceased miners) who could immediately begin to receive benefits under part B as a result of enactment of selected provisions in the draft bill are as follows:

Benefits for miners employed for 30 or more years in coal mines (25 or more years in anthracite mines)	17,000
Benefits for survivors of miners employed for 17 or more years in underground coal mines who died because of an accident in such a mine	1,000
Preclude denial solely on the basis of employment status of the miner	600
Accept affidavits as sufficient evidence to establish total disability in the case of a deceased miner	2,000
Prohibit appeal or review of a decision by an administrative law judge in favor of a claimant	1,300
Elimination of deadline for claiming part B benefits if miner's last exposed employment was before December 30, 1969	15,000
Notification of individuals who may be eligible for benefits under part B	3,200

In addition, an estimated 6,000 miners and widows (or other primary survivors of deceased miners) already receiving benefits could begin to receive higher benefits as a result of the elimination of the offset against black lung benefits due to reasons other than pneumoconiosis.

In the presentation of (1) the foregoing estimates of the number of newly eligible persons and (2) the estimates of additional benefit payments shown on the attached table, any interaction between two or more provisions is included in the first of the interacting provisions shown. Thus, for example, the estimated amount of additional benefit payments resulting from the interaction of both items 2 and 8, in the list of proposed changes, is included with the estimate for item 2.

HARRY C. BALLANTYNE,
Acting Deputy Chief Actuary, Office of the Actuary,
Social Security Administration.

Attachment.

ESTIMATED AMOUNT OF ADDITIONAL BENEFIT PAYMENTS UNDER PART B THAT WOULD RESULT FROM ENACTMENT OF SELECTED CHANGES IN THE BLACK LUNG PROGRAM AS PROPOSED IN H.R. 10760, AS REPORTED BY THE COMMITTEE ON EDUCATION AND LABOR, BY MAJOR PROVISION, FISCAL YEARS 1977-81

[In millions of dollars]

Fiscal year	Total	Eliminate offset against black lung benefits due to reasons other than penumoconiosis	Benefits for miners employed for 30 or more years in coal mines (25 or more years in anthracite mines)	Benefits for survivors of miners employed for 17 or more years in underground coal mines who died as a result of an accident in such a mine	Preclude denial solely on the basis of the employment status of the miner	Accept affidavits as sufficient evidence to establish total disability in the case of a deceased miner	Prohibit appeal or review of administrative law judges' decisions in favor of claimants	Remove deadline for filing part B claims if miner's last exposed employment was before Dec. 30, 1969	Notification of individuals potentially eligible for benefits under part B
Total	779	44	273	16	17	48	39	279	63
1977	204	10	61	4	5	25	23	62	14
1978	139	9	51	3	3	5	4	52	12
1979	144	9	53	3	3	6	4	54	12
1980	145	8	54	3	3	6	4	55	12
1981	147	8	54	3	3	6	4	56	13

Note: A description of the specifications and assumptions underlying the above estimates is contained in the covering memorandum.

Source: Office of the Actuary, Social Security Administration, Dec. 29, 1975.

MEMORANDUM FROM DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, SOCIAL SECURITY ADMINISTRATION

Refer to: IAD:41

From: Fred Schutzman, Director, Office of Financial Management.

Subject: Administrative Cost and Manpower Information Related to the Enactment of the Black Lung Benefits Reform Act of 1975 (H.R. 10760—Information.

In response to your request, we are providing administrative cost and manpower information related to H.R. 10760. We are estimating that enactment of the legislation will result in a 5-year SSA cost of approximately 5,000 man-years and $90–100 million. After the 5-year period small costs would continue indefinitely for maintenance of the beneficiary roll for the new people added as a result of the law. We do not have ready at this time a year-by-year breakout of the total cost. If this is necessary we can provide this by January 7 at the earliest.

Barring assignment of the very highest priority to the implementation of the proposed law, implementation could not be accomplished by the beginning of FY 1977. In fact, BDP has indicated that, unless top priority is given to implementation of the bill, the search of earnings histories for length of coal mine employment might have to be delayed until January 1978. If the necessary priority were given to the program, other social security programs would of course suffer. In any case, the added responsibilities resulting from the enactment of this legislation would require substantial increases in SSA employment and would place a further strain on SSA at a time when we are trying to recover from the effects of the SSI program.

FRED SCHUTZMAN.

Attachment.

PRELIMINARY 5-YEAR ADMINISTRATIVE COST ESTIMATES FOR H.R. 10760

Workload category	Workload volume	Cost	
		Man-years	Money (millions)
1. Review prior denials	200,000	1,051	$14.3
2. New claims with 25 to 30 years coal mine employment	6,000	46	.7
3. Current working miner claims	125,000	787	13.0
4. DOL pending cases returned to SSA	40,000	300	4.2
5. Reconsideration claims	59,000	481	10.5
6. Hearings and appeals	71,000	1,757	35.2
7. Other related workloads	64,500	298	4.6
Subtotal operating functions		[1] 4,720	82.5
8. Special BDP machine rental			.5
9. Federal staff support		342	6.4
Grand total		[1] 5,062	89.4

[1] Includes 301 non-Federal man-years for DI State agency operations.

(c) *Department of Labor.*—The Black Lung Benefits Reform Act of 1975 proposes several amendments to the current Act which would increase the total cost of the Black Lung Program but would eliminate almost all Department of Labor (DOL) financial liability. DOL would continue to be responsible for the administration of Part C of the Act relating to the determination of eligibility of claimants. Under the proposed legislation it appears that medical examinations related to determinations would be considered an administrative cost rather than a benefit cost.

Current DOL Claims

Section 2 of the bill establishes entitlement for miners or their survivors if the miner was employed 30 or more years in an underground coal mine or 25 or more years in the anthracite coal mine.

A study by DOL indicates that about 11% of DOL denials involve miners with at least 30 years in the mines. A review of all DOL denial and pending claims (required in Section 12(b)(1) under the 30 year entitlement rule would result in benefit costs of approximately $30 million in the first year after enactment of the bill. Whereas Section 2 does not allow payment for any period prior to the date of enactment of the Act, Section 7, which provides for use of the interim medical standards (see below), does allow retroactive benefits. Thus, any individual eligible under the 30 year entitlement *and* the interim medical standards would fare better under the latter because of retroactive payments. The $30 million estimate takes into account those individuals who would be potentially eligible under the 30 year rule but approved under the interim medical standards.

The 25 year rule would not add significant costs since most anthracite miners with that amount of work experience qualify for benefits on the basis of medical evidence which would allow these miners to receive retroactive benefits.

Section 4 of the bill provides that a claim for benefits under Part B may not be denied solely on the basis of employment. It is assumed that Section 430 of the Act allows Section 4 of the bill to be applied to Part C claims. A DOL study indicates that about 13% of the denials are currently employed miners. Few of these miners would qualify under the reassignment requirements of Section 4; therefore, the benefit cost is not considered significant. This provision will raise administrative costs as these claims must be fully developed.

Section 7 would statutorily require the utilization of the interim medical standards. A DOL study indicates that about 7% of the denials would be eligible for benefits under the interim medical standards. The cost of implementation of the interim medical standards in DOL would be approximately $25 million in the first year after enactment.

Section 8 of the bill. which provides for the acceptance of affidavits as evidence in survivors claims. will cause an increase in benefit costs. However, in most survivor's claims filed with DOL, the miner had ceased employment in the coal mines prior to December 30, 1969.

Therefore, most DOL survivor claimants (approximately 90%) will have to file with SSA to receive benefits under Part B. Since Section 8 allows for retroactive payment of benefits, it is estimated that the remaining Part C survivor claims will cost approximately $7 million in the first year of the Act.

The administrative cost of DOL's review of denied and pending claims, including medical development costs is estimated at $2.5 million.

Part C Refilings

Section 11 of the bill would direct the Secretary of HEW to notify each miner receiving benefits under Part B of his possible eligibility for medical treatment benefits under Part C. Since most SSA black lung beneficiaries are over 65 years of age and are eligible for Medicare and are assumed to already be receiving comprehensive medical care, the additional cost of benefits under Part C may be estimated at only $5 million in the first year after the bill's enactment.

Public Information Program

Section 12 requires both the Secretary of Hew and the Secretary of Labor to inform any possible eligible individuals of their rights to file a claim for black lung benefits. The Department of Labor estimates that it would cost $80,000 to inform Part C claimants of their rights.

New Part C Claims

The public information program would not be expected to have a major impact on Part C filings. The Department of Labor does not anticipate any significant increase in claims as a result of this program.

Summary of Claims

The Department of Labor estimates that its total additional benefit costs under Part C of the Act would be approximately $67 million in the first year. The current estimate of the benefit costs for the calendar year 1976 is $30 million for a total calendar year cost of $97 million. Under the proposed legislation, however, a Trust Fund would assume liability for all Part C claims on January 1, 1976. This means that instead of full year costs, DOL would only pay benefits equal to 50 percent of the amount estimated that is necessary for benefits in the first year of the Act (Section 9(e)(1)) until sufficient monies are collected for the operation of the Fund. Therefore, the Department's liability would be only $48.5 million, or half of the total of its projected annual costs. This amount would be reimbursable with interest to the Treasury from the Fund within five years.

After the Trust Fund assumes the payment of benefits, DOL would be liable only for the administrative cost of claim determinations and medical treatment. The proposed legislation would not reduce administrative costs significantly because: (1) Responsible Operator identifications would still have to be made because the Trust Fund would impose individual operator assessments based on experience factors: and (2) the administrative costs of obtaining medical treatment would be categorized as administrative, rather than benefit costs, as is currently the case. The additional administrative cost in the first year due to the

review of the denials, the public information program and the inclusion of medical determination costs would be $2,580,000.

SECTION-BY-SECTION EXPLANATION OF THE BILL

SHORT TITLE

Section 1 of the bill provides that the bill may be cited as the "Black Lung Benefits Reform Act of 1975".

ENTITLEMENTS

Section 2(a) of the bill amends section 411(c) of the Federal Coal Mine Health and Safety Act of 1969 (hereinafter in this explanation referred to as the "Act") to provide that a miner (or, in the case of a deceased miner, the eligible survivors of such miner) shall be entitled to the payment of benefits (1) if such miner was employed for 30 years or more in one or more underground coal mines; or (2) if such miner was employed for 25 years or more in one or more anthracite coal mines. Section 2(a) also amends section 411(c) of the Act to provide that the Secretary of Health, Education, and Welfare shall not apply any requirement of subsection (c) relating to a miner's having worked in an underground coal mine if the Secretary determines that conditions of such miner's employment in a coal mine other than an underground mine were substantially similar to conditions in an underground mine. Such waiver of the applicability of requirements, in existing law, applies only with respect to paragraph (4) of subsection (c).

Section 2(b) amends section 412(a)(1) of the Act to make conforming amendments based upon the new entitlements established by the amendments made by section 2(a) of the bill.

Section 2(c) amends section 414(a) of the Act by adding a new paragraph (4). Paragraph (4) provides that a claim for benefits under part B of title IV may be filed any time on or after the date of the enactment of the bill by a miner (or, in the case of a deceased miner, the eligible survivors of such miner) if the date of the last exposed employment of the miner involved occurred before December 30, 1969.

Section 2(d) amends section 414(e) of the Act to make conforming amendments based upon the new entitlements established by the amendments made by section 2(a) of the bill.

Section 2(e)(1) makes a similar conforming amendment to section 421(a) of the Act.

Section 2(e)(2) amends section 421(b)(2)(C) of the Act to provide that any State workmen's compensation law shall not be required, in order to be considered to provide adequate coverage for pneumoconiosis, to include standards for the payment of benefits based upon conditions substantially the same as conditions described in paragraphs (5) and (6) of section 411(c) of the Act, as added by section 2(a) of the bill.

Section 2(f) amends section 430 of the Act to provide that the amendments made by the bill to part B shall, to the extent appropriate, also apply to part C of title IV.

Section 2(f) also makes conforming amendments to section 430 of the Act based upon the entitlements established by the amendments made by section 2(a) of the bill.

OFFSET AGAINST WORKMEN'S COMPENSATION BENEFITS

Section 3 of the bill amends section 412(b) of the Act to provide that reductions in the amount of benefit payments to a miner under section 412 resulting from payments received by the miner under the workmen's compensation, unemployment compensation, or disability insurance laws of his State may be made only if the payments to the miner under such laws are made on account of the disability of such miner due to pneumoconiosis. In existing law, the reductions are made whether or not the disability of a miner is due to pneumoconiosis.

CURRENT EMPLOYMENT AS A BAR TO BENEFITS

Section 4(a) of the bill amends section 413(b) of the Act to provide that a claim for benefits under part B may not be denied solely on the basis of employment as a miner if (1) the location of such employment has recently been changed to a mine area having a lower concentration of dust particles; (2) the nature of such employment has been changed so as to involve less rigorous work; or (3) the nature of such employment has been changed to employment which receives substantially less pay.

Section 4(b) amends section 413 of the Act by adding a new subsection (d). Subsection (d) provides that a miner may file a claim for benefits whether or not he is employed by an operator of a coal mine at the time he files such claim. The Secretary of Health, Education, and Welfare is required to notify a miner whether, in the opinion of the Secretary, the miner (1) is eligible for benefits on the basis of the provision of paragraph (1), (2), or (3) of subsection (b), as added by section 4(a) of the bill; or (2) would be eligible for benefits, except for the circumstances of the employment of the miner at the time he filed his claim.

APPEALS

Section 5 of the bill amends section 413(b) of the Act to provide that, notwithstanding the provisions of the Social Security Act which are made applicable to part B of title IV of the Act, any decision by an administrative law judge in favor of a claimant may not be appealed or reviewed, except upon motion of the claimant.

INDIVIDUAL NOTIFICATIONS

Section 6 of the bill adds a new section 416 to part B of title IV of the Act.

Section 416(a) requires the Secretary of Health, Education, and Welfare to undertake a program to locate individuals who are likely to be eligible for benefits under part B and have not filed a claim for such benefits.

Section 416(b) requires the Secretary, in cooperation with mine operators and with the Secretary of the Interior, to determine the

names and addresses of individuals having long periods of employment in coal mining. The Secretary is required to inform any such individuals, other than those who have filed a claim for benefits under title IV, of the possibility of their eligibility for benefits, and offer them assistance in preparing their claims.

Section 416(c) provides that, notwithstanding any other provision of part B, a claim for benefits under part B filed by an individual informed by the Secretary under subsection (b) of section 416 shall, if filed no later than 6 months after the date the individual was so informed, be considered on the same basis as if it had been filed on June 30, 1973.

DEFINITIONS

Section 7(a) of the bill amends section 402(f) of the Act to provide that regulations of the Secretary of Health, Education, and Welfare relating to the definition of "total disability" shall not provide, with respect to claims filed after June 30, 1973, more restrictive criteria than those applicable to a claim filed on June 30, 1973.

Section 7(b) amends section 402 of the Act to provide that the term "fund" means the Black Lung Disability Insurance Fund established by section 423(a) of the Act, as added by amendments made by the bill.

EVIDENCE REQUIRED TO ESTABLISH CLAIM

Section 8(a) of the bill amends section 413(b) of the Act to provide that, with respect to affidavits submitted by the wife of a decreased miner or by persons with knowledge of the miner's physical condition, if there is no relevant medical evidence in the case of such deceased miner, such affidavits shall be considered to be sufficient to estabilsh that the miner was totally disabled because of pneumoconiosis or that his death was due to pneumoconiosis.

Section 8(b) amends section 413(b) of the Act to make the provisions of section 205(n) of the Social Security Act applicable to part B of title IV of the Act.

CLAIMS FILED AFTER DECEMBER 31, 1973

Section 9(a)(1) of the bill amends section 422(a) of the Act to make a conforming amendment based upon the entitlements established by the amendments made by section 2(a) of the bill, and to provide that specified provisions of the Longshoremen's and Harbor Workers' Compensation Act shall apply to mine operators only to the extent consistent with the provisions of part B of title IV of the Act.

Section 9(a)(2) amends the last sentence of section 422(a) of the Act to make reference to premiums and assessments which are required to be paid by mine operators under the amendments made by the bill.

Securing of assessment payments

Section 9(a)(3) amends section 422(b) of the Act by adding a new paragraph (2). Paragraph (2)(A) provides that, during any period in which a State workmen's compensation law is not included on the list of approved laws published by the Secretary of Labor, each mine operator in the State involved shall secure the payment of assessments

against such operator by (1) qualifying as a self-insurer in accordance with regulations prescribed by the Secretary; or (2) insuring the payment of such assessments with any stock company or similar organization, or with any other person or fund, while such company, person, or fund is authorized to insure workmen's compensation under the laws of any State.

Paragraph (2)(B) provides that, in order to meet the insurance requirements described in the preceding paragraph, every policy or contract of insurance shall contain (1) a provision to pay assessments, even if the provisions of the State workmen's compensation law may provide for payments less than the amount of such assessments; (2) a provision that bankruptcy of the operator shall not relieve the insurance carrier from liability for the payment of the assessments; and (3) such other provisions as the Secretary may require.

Paragraph (2)(C) provides that no policy or contract of insurance may be cancelled before the expiration date of the policy or contract, until at least 30 days have elapsed after notice of cancellation has been sent to the Secretary and to the mine operator involved.

Section 9(a)(4) amends section 422(b)(1) of the Act to make reference to premiums and assessments which mine operators are required to pay under amendments made by the bill.

Benefit payments

Section 9(a)(5) rewrites the provisions of section 422(c) of the Act. Subsection (c), as so rewritten, provides that benefits shall be paid under section 422 by the Black Lung Disability Insurance Fund (hereinafter in this explanation referred to as the "fund"), subject to reimbursement to the fund by mine operators. Such benefits shall be paid to the categories of persons entitled to benefits under section 412(a) of the Act in accordance with regulations of the Secretary of Labor and the Secretary of Health, Education, and Welfare, except that (1) the Secretary of Labor may modify any regulation of the Secretary of Health, Education, and Welfare; and (2) no mine operator shall be liable for payment of any benefit on account of death or total disability due to pneumoconiosis, or on account of any entitlement under paragraphs (5) and (6) of section 411(c), which did not arise, at least in part, out of employment in a mine during the period when it was operated by such operator.

Section 9(a)(6) amends section 422(e) of the Act to strike out a provision that no payment of benefits would be made under section 422 for any period after 12 years after the date of the enactment of the Act.

Section 9(a)(7) makes conforming amendments to section 422(f)(2) of the Act based upon the entitlements established by the amendments made by section 2(a) of the bill.

Section 9(a)(8) amends section 422(h) of the Act to eliminate the provision that the regulations of the Secretary of Health, Education, and Welfare prescribed under section 411 of the Act shall also apply to claims under section 422.

Consideration of claims; appeals procedure

Section 9(a)(9) rewrites section 422(i) of the Act. Subsection (i)(1), as so rewritten, requires the Secretary of Labor to prescribe

regulations providing for the prompt consideration of claims under section 422.

Subsection (i)(2) requires the Secretary to prescribe regulations for the prompt hearing of appeals by claimants who are aggrieved by any decision of the Secretary. Any such hearing must be held no later than 45 days after a request is made by the claimant involved. A hearing may be postponed at the request of the claimant for good cause. A hearing shall be held at a time and place convenient to the claimant, and shall be of record and subject to the provisions of sections 554, 555, 556, and 557 of title 5, United States Code.

Subsection (i)(3) provides that any individual, after final decision by the Secretary in the hearing to which such individual was a party, may obtain a review of the decision by a civil action brought no later than 90 days after he receives notice of the decision, or no later than such further time as the Secretary may allow. The action must be brought in the district court of the United States in the State in which the clamant resides. The Secretary is required to file a certified copy of the transcript of the record in conjunction with any such appeal. The district court may affirm, modify, or reverse the decision of the Secretary, with or without remanding the case for rehearing. The findings of the Secretary shall be conclusive if supported by the weight of the evidence. If the Secretary so requests, the district court must remand the case to the Secretary for further action by the Secretary. The district court may order additional evidence to be taken by the Secretary, and the Secretary shall, after the case is remanded, modify his fact findings or decision, and file with the district court any additional or modified findings and decision. The additional or modified findings and decision shall be reviewable by the district court only to the extent provided for review of the original findings and decision. The judgment of the district court shall be final, except that it is subject to review in the same manner as a judgment in any other civil action. Any action brought under paragraph (3) shall not be affected by a change in the person serving as Secretary of Labor or a vacancy in such office.

Period for filing

Section 9(a)(10) provides that, in the case of any miner or any survivor of a miner eligible for benefits under section 422 of the Act because of any amendment made by the bill, the miner or survivor may file a claim for benefits under section 422 no later than 3 years after the date of the enactment of the bill, or no later than the close of the applicable period for filing claims under section 422(f) of the Act, whichever is later.

Black Lung Disability Insurance Fund

Section 9(b) rewrites section 423 of the Act. Section 423(a)(1), as so rewritten, establishes the fund in the Treasury of the United States. The fund consists of such sums as may be appropriated under section 424(e)(1) of the Act, assessments paid into the fund under section 424(g) of the Act, premiums paid into the fund under section 424(a), interest and proceeds relating to the sale or redemption of any investment held by the fund, and any penalties recovered under section 424

(c), including such earnings, income, and gains as may accrue from time to time.

Section 423(a)(2) requires that fund assets be used solely and exclusively to discharge obligations of mine operators under part C. Operators have no right, title, or interest in fund assets, and none of the earnings of the fund shall inure to the benefit of any person, other than through benefit payments under part C.

Section 423(b)(1) provides that the fund shall have 7 trustees. Except for trustees first elected, trustees shall serve for terms of 4 years. Of the trustees first elected (1) 4 shall be elected for terms of 2 years; and (2) 3 shall be elected for terms of one year. The Secretary is required to determine, before the date of the first election, whether each trustee office shall be for a term of one year or 2 years. The determination made by the Secretary must be made through the use of an appropriate method of random selection, except that at least one trustee nominated by small mine operators shall serve for a term of 2 years. Any trustee may be a full-time employee of a mine operator, except that no more than one trustee may be employed by any one mine operator.

Section 423(b)(2) provides that 2 trustees shall be nominated and elected by small mine operators, which are defined as those operators having an annual payroll which does not exceed $1,500,000. Five trustees shall be nominated and elected by all mine operators.

Section 423(b)(3) provides that mine operators must certify to the Secretary, no later than 60 days after the date of the enactment of the bill, their payrolls for the 12-month period ending December 31, 1974. The Secretary is required to publish a list stating the number of votes to which each small operator and each mine operator is entitled, computed on the basis of one vote for each $500,000 of payroll. Trustees are required to be elected no later than 180 days after the date of the enactment of the bill.

Subsection (b)(4) requires candidates for trustee to submit to the Secretary petitions of nomination showing the approval of small operators or all mine operators, as the case may be, representing at least 2 percent of the aggregate annual payroll of all such operators.

Subsection (b)(5) requires the Secretary to prescribe regulations regarding the nomination and election of trustees. Two or more trustees may file a petition in the United States district court where the fund has its principal office, for removal of a trustee for malfeasance, misfeasance, or nonfeasance. The cost of such an action must be paid from the fund, and the Secretary may intervene in any such action.

Subsection (b)(6) requires the trustees to elect a Chairman and Secretary and requires the trustees to adopt necessary or appropriate rules for governing the conduct of their business. Five trustees shall constitute a quorum and a simple majority of trustees may conduct the business of the fund.

Subsection (c)(1) provides that the trustees of the fund shall act on behalf of all mine operators regarding claims filed under part C.

Subsection (c)(2) provides that, except in specified cases, the fund may not participate or intervene in any proceeding held for the purpose of determining benefit claims under part C.

If, however, the fund is dissatisfied with any determination of the Secretary regarding benefit claims, the fund may, no later than 30 days

after the date of the determination of the Secretary, file a petition for review in the appropriate United States court of appeals. The Secretary then is required to file in the court a record of the proceedings upon which he based his determination, in accordance with section 2112 of title 28, United States Code. The fact findings of the Secretary, if supported by substantial evidence, shall be conclusive. The court, however, may for good cause shown remand the case to the Secretary to take further evidence, and the Secretary may make new findings of fact and may modify his previous determination. Any new finding of facts shall be conclusive if supported by substantial evidence. The court may affirm or set aside the action of the Secretary, and the judgment of the court is subject to review by the Supreme Court in accordance with section 1254 of title 28, United States Code.

Any finding of fact of the Secretary relating to the interpretation of any chest roentgenogram or any other medical evidence demonstrating the existence of pneumoconiosis or any other disabling respiratory or pulmonary impairment, shall not be subject to review under the provisions described in the preceding paragraphs.

Subsection (c)(3) prohibits any mine operator from bringing any proceeding, or intervening in any proceeding, held for the purpose of determining benefit claims under part C.

Subsection (c)(4) requires the trustees to report annually to the Secretary and to mine operators regarding the financial condition of the fund and the operation of the fund, and regarding its expected condition during the current and ensuing fiscal year. The Secretary is required to make a report to the Congress each year, and the report of the fund is required to be included in the report of the Secretary.

Subsection (c)(5) requires the trustees to take control and management of the fund. Premiums paid into the fund by mine operators shall be held by the trustees as a single fund, and the trustees may not be required to segregate and invest separately any part of the fund assets. Assets of the fund which are not required to meet obligations under part C must be invested by the trustees, except that advances made to the fund under section 424(e) may not be invested. The trustees are required to make investments in accordance with section 404(a)(1)(C) of the Employee Retirement Income Security Act of 1974. Any profit or return on any investment made by the trustees may not be considered as income for purposes of Federal or State income taxation.

Subsection (c)(6) provides that amounts in the fund shall be available for expenditures to meet obligations under part C, including expenses of providing medical benefits under section 432 of the Act. The trustees may enter into agreements with any self-insured person or any insurance carrier incurring obligations regarding claims under part C before the effective date of paragraph (6), under which the fund assumes the obligations of such person or carrier in return for payments to the fund in amounts which fully protect the financial interest of the fund. Payments shall be made from the fund, beginning on the effective date of paragraph (6), to meet obligations incurred by the Secretary regarding claims under part C before such effective date. The Secretary shall not be subject to any such obligations beginning on such effective date.

Subsection (c)(7) requires the trustees to keep accounts and records of their administration of the fund.

Subsection (c)(8) provides that the trustees are not required to obtain approval by any court of the United States or any other court regarding actions taken by the trustees in the performance of their duties. The trustees may file in the appropriate United States district court for a judicial declaration regarding the powers, authority, and responsibilities of the trustees under the Act, other than the processing and payments of claims. Only the trustees and the Secretary shall be necessary parties in any such proceeding, and no other person (whether or not such person has any interest in the fund) may participate in any such proceeding. Any final judgment resulting from such a proceeding shall be conclusive upon any person or other entity having an interest in the fund.

Subsection (c)(9) permits the trustees to employ such counsel, accountants, agents, and other employees as the trustees consider advisable. The trustees may charge against the fund the compensation of such persons and other specified expenses. Subsection (c)(10) grants to the trustees the power to execute any instrument they consider proper to carry out the provisions of the fund.

Subsection (c)(11) permits the trustees to vote any share of stock which the fund may hold. Subsection (c)(12) permits the trustees to employ actuaries to the extent they consider advisable. Any such actuary, however, must be enrolled under section 3042(a) of the Employee Retirement Income Security Act of 1974.

Premium payments

Section 9(c) of the bill rewrites section 424 of the Act. Section 424 (a)(1), as so rewritten, provides that, during any period in which a State workmen's compensation law is not included on the list of approved laws published by the Secretary, each mine operator in the State involved must pay premiums into the fund in amounts sufficient to ensure the payment of benefits under part C.

Subsection (a)(2) provides that the initial premium rate of each operator shall be established by the Secretary as a rate per ton of coal mined by the operator. The trustees may, beginning one year after the date initial premium rates are established, modify or adjust the premium rates per ton to reflect the experience and expenses of the fund. The Secretary, however, may further modify or adjust the premium rate to ensure that obligations of the fund will be met. Any premium rate must be uniform for all mines, mine operators, and amounts of coal mined.

Subsection (a)(3) provides that, for purposes of section 162(a) of the Internal Revenue Code of 1954 (relating to trade or business expenses), premiums paid by mine operators shall be considered to be an ordinary and necessary expense in carrying on the trade or business of operators.

Subsection (a)(4) contains the following definitions:

(1) The term "coal" is defined to mean any material composed predominantly of hydrocarbons in solid states.

(2) The term "ton" is defined to mean a short ton of 2,000 pounds.

Paragraph (4) also provides that the amount of coal mined shall be determined at the first point at which such coal is weighed.

Subsection (b) requires the Secretary of the Treasury or his delegate to collect premiums due from mine operators and transmit such premiums to the fund. Such collections shall be made by the Secretary of the Treasury in the same manner as, and together with, quarterly payroll reports of employers. In order to ensure premium payments, the Secretary of Labor shall certify annually the names of all operators subject to the Act.

Subsection (c)(1) permits the trustees to bring a civil action in the appropriate United States district court to require premium payments in any case in which an operator fails or refuses to make such payments. In any such action, the court may issue an order requiring the operator involved to make past and future payments, together with 9 percent annual interest on past due premiums.

Subsection (c)(2) permits the Secretary of the Treasury to assess a civil penalty against any operator who fails or refuses to pay any premium. The amount of such penalty may be in such amount as the Secretary may prescribe, except that it may not exceed the amount of the premium which the operator failed or refused to pay. Any civil penalty shall be in addition to any other liability of the operator involved under the Act, and civil penalties may be recovered in a civil action brought by the Secretary of the Treasury. Penalties so recovered shall be deposited in the fund.

Subsection (d) provides that the Secretary of Labor is required to make expenditures under part C only for the purpose of carrying out his obligation to administer part C. Other expenses incurred under part C shall be borne by the fund, and if borne by the Secretary, shall be reimbursed to him.

Subsection (e)(1) authorizes to be appropriated to the fund such sums as may be necessary to provide the fund with amounts equal to 50 percent of the amount which the Secretary of Labor estimates is necessary for benefit payments during the first 12-month period after the effective date of section 424. Any amounts appropriated under paragraph (1) may be used only for benefit payments.

Subsection (e)(2) provides that sums authorized to be appropriated by paragraph (1) are repayable advances to the fund. These advances must be repaid with interest into the general fund of the Treasury no later than 5 years after the first appropriation. The Secretary of the Treasury is required to establish a rate of interest on such advances in accordance with a specified formula.

Subsection (f) provides that any operator who purchases a coal mine from a prior operator shall be liable for the payment of benefits for which the prior operator would have been liable with respect to miners previously employed in such mine. Nothing in subsection (f), however, shall relieve any prior operator of any liability under section 422.

Subsection (g)(1) requires the fund to make an annual assessment against any mine operator liable for benefit payments under section 422. The assessments shall be in an amount equal to the amount of benefits for which the operator involved is liable under section 422 regarding death or total disability due to pneumoconiosis arising out of employment in a coal mine operated by the operator, or with respect to entitlements established in paragraph (5) or paragraph (6) of section 411(c) of the Act, as added by section 2(a) of the bill.

Subsection (g)(2) provides that any operator against whom an assessment is made must pay the amount involved into the fund no later than 30 days after receiving notice of the assessment.

Subsection (g)(3) provides that the provisions of subsection (c), relating to civil penalties, shall apply in the case of an operator who fails or refuses to pay an assessment.

Section 9(d) of the bill amends section 421(b)(2)(E) of the Act to make a technical reference amendment.

CLINICAL FACILITIES

Section 10 of the bill amends section 427(c) of the Act to extend the authorization of appropriations contained in such subsection, and to authorize to be appropriated $2,500,000 for the period beginning July 1, 1976, and ending September 30, 1976. The extension made by the amendment does not have any fiscal year cut-off. The amount authorized in existing law under subsection (c) is $10,000,000.

MEDICAL CARE

Section 11(a) of the bill adds a new section 432 to part C of title IV of the Act. Section 432 makes applicable certain provisions of section 7 of the Longshoremen's and Harbor Workers' Compensation Act to any person entitled to benefits under part C on account of total disability or on account of eligibility under paragraph (5) or (6) of section 411(c) of the Act, as added by section 2(a) of the bill.

Section 11(b) requires the Secretary of Health, Education, and Welfare to notify each miner receiving benefits under part B of title IV of the Act on account of his total disability that such miner may be eligible for medical services and supplies, if the Secretary has reason to believe that such miner became eligible for such benefits on January 1, 1974. In any case in which the Secretary makes such a notification, the period during which the miner involved may file a claim for medical services and supplies under part C of title IV of the Act shall not terminate before 6 months after such notification was made.

TRANSITIONAL PROVISIONS

Section 12(a) of the bill requires the Secretary of Health, Education, and Welfare, and the Secretary of Labor, to distribute to interested persons and groups information relating to changes in the Act made by the bill. Each such Secretary is required to undertake a program to give specific notice to individuals who are believed to be likely to have become eligible for benefits as a result of the changes made in the Act.

Section 12(b)(1) requires the Secretary of Health, Education, and Welfare (with respect to part B) and the Secretary of Labor (with respect to part C) to review each pending claim and each claim which has been denied under each such part, taking into account amendments made to each such part by the bill. Each such Secretary must approve any such claim if changes made by the amendments require such approval. Section 12(b)(2) provides that each such Secretary, in undertaking the review of claims, shall not require the resubmission of any claim.

SHORT TITLE FOR ACT

Section 13 of the bill amends section 401 of the Act to provide that title IV may be cited as the "Black Lung Benefits Act".

MINE ACCIDENT WIDOWS

Section 14(a) of the bill provides that any eligible survivor of a miner shall be entitled to benefits under part B of the Black Lung Benefits Act if (1) such miner was employed for 17 years or more in one or more underground coal mines; and (2) such miner died in a coal mine accident which occurred on or before June 30, 1971.

Section 14(b) provides that benefit payments to a widow, child, parent, brother, or sister of a miner under subsection (a) shall be reduced on the basis of payments received by the widow, child, parent, brother, or sister under the workmen's compensation, unemployment compensation, or disability laws of the miner's State.

EFFECTIVE DATES

Section 15(a) of the bill provides that the bill shall take effect on the date of its enactment, with the following exceptions:

(1) Amendments made by section 2 shall take effect on December 30, 1969, except that any claim approved as a result of such amendments, which was filed before the date of the enactment of the bill, shall be awarded benefits only for the period beginning on such date of enactment.

(2) Amendments made by sections 4, 5, and 8 shall take effect on December 30, 1969.

(3) Amendments made by section 6 shall not require benefit payments for any period before the date of the enactment of the bill.

(4) Amendments made by section 9 shall take effect on January 1, 1976, except that (A) the Secretary of Labor must establish initial premium rights for mine operators not later than January 1, 1976; and (B) the Secretary of Labor must make an estimate relating to the amounts necessary to make benefit payments under part C as soon as practicable after the date of the enactment of the bill.

Section 15(b) provides that, in the event benefit payments cannot be made from the fund, the provisions of the Act relating to the payment of benefits (as in effect immediately before January 1, 1976) shall remain in force as rules of the Secretary of Labor until such provisions are revoked, amended, or revised by law. The Secretary of Labor shall make benefit payments in accordance with such provisions.

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):

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969

* * * * * * *

TITLE IV—BLACK LUNG BENEFITS

PART A—GENERAL

SEC. 401. (*a*) 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 coal mines; that there are a number of survivors of coal miners whose deaths were due to this 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 or who were totally disabled by this disease at the time of their deaths 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 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.

(*b*) *This title may be cited as the "Black Lung Benefits Act".*

SEC. 402. For purposes of this title—

(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.

(b) The term "pneumoconiosis" means a chronic dust disease of the lung 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 coal mine.

(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), 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, 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.

With respect to a claim filed after June 30, 1973, such regulations shall not provide more restrictive criteria than those applicable to a claim filed on June 30, 1973.

(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

(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.

(h) The term "fund" means the Black Lung Disability Insurance Fund established by section 423(a).

Part B—Claims for Benefits Filed on or Before December 31, 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 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 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 coal mines and died from a respirable disease there shall be a rebuttable presumption that his death was due to pneumoconiosis;

(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; [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 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 worked 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[.]*;*

(5) if a miner was employed for thirty years or more in one or more underground coal mines such miner (or, in the case of a deceased miner, the eligible survivors of such miner) shall be entitled to the payment of benefits; and

(6) if a miner was employed for twenty-five years or more in one or more anthracite coal mines such miner (or, in the case of a deceased miner, the eligible survivors of such miner) shall be entitled to the payment of benefits.

The Secretary shall not apply all or a portion of any requirement of this subsection that a miner shall have worked in an underground mine if the Secretary determines that conditions of such miner's employment in a coal mine other than an underground mine were substantially similar to conditions in an underground 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, *or in the case of a miner entitled to benefits under paragraph (5) or (6) of section 411(c) of this title,* the [disabled] miner shall be paid benefits during the disability, *or during the period of such entitlement,* 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 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).

(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 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.

(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.

(b) Notwithstanding subsection (a), benefit payments under this section to a miner or his 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, 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 *due to pneumoconiosis*, 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, 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, but no claim for benefits under this part shall be denied solely on the basis of the results of a chest roentgenogram *or solely on the basis of employment as a miner if (1) the location of such employment has recently been changed to a mine area having a lower concentration of dust particles; (2) the nature of such employment has been changed so as to involve less rigorous work; or (3) the nature of such employment has been changed so as to result in the receipt of substantially less pay.* 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 de-

ceased miner, other appropriate affidavits of persons with knowledge of the miner's physical condition, and other supportive materials. *Where there is no relevant medical evidence in the case of a deceased miner, such affidavits shall be considered to be sufficient to establish that the miner was totally disabled due to pneumoconiosis or that his death was due to pneumoconiosis.*

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), *and* (*n*), 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, *except that a decision by an administrative law judge in favor of a claimant may not be appealed or reviewed, except upon motion of the claimant.*

(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.

(d) (1) A miner may file a claim for benefits whether or not such miner is employed by an operator of a coal mine at the time such miner files such claim.

(2) The Secretary shall notify a miner, as soon as practicable after the Secretary receives a claim for benefits from such miner, whether, in the opinion of the Secretary, such miner—

(A) is eligible for benefits on the basis of the provisions of paragraph (1), (2), or (3) of subsection (b); or

(B) would be eligible for benefits, except for the circumstances of the employment of such miner at the time such miner filed a claim for benefits.

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, 1973, or, in the case of a claimant who is a widow, within six months after the death or her husband or by December 31, 1973, 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 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 first been 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, entitlements 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.

(4) A claim for benefits under this part may be filed at any time on or after the date of the enactment of the Black Lung Benefits Reform Act of 1975 by a miner (or, in the case of a deceased miner, the eligible survivors of such miner) if the date of the last exposed employment of such miner occurred before December 30, 1969.

(b) No benefits shall be paid under this part after December 31, 1973, if the claim therefor was filed after June 30, 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, 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, *or with respect to an entitlement under paragraph (5) or paragraph (6) of section 411(c) of this title*, prior to his death, or (2) the death of such miner occurred prior to January 1, 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 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—

(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 claims, 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, 1972), 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.

SEC. 416. (a) For purposes of assuring that all individuals who may be eligible for benefits under this part are afforded an opportunity to apply for and, if entitled thereto, to receive such benefits, the Secretary shall undertake a program to locate individuals who are likely to be eligible for such benefits and have not filed a claim for such benefits.

(b) The Secretary shall seek to determine, in cooperation with operators and with the Secretary of the Interior, the names and current addresses of individuals having long periods of employment in coal mining and, if such individuals are deceased, the names and addresses of their widows, children, parents, brothers, and sisters. The Secretary shall then directly, by mail, by personal visit by a delegate of the Secretary, or by other appropriate means, inform any such individuals (other than those who have filed a claim for benefits under this title) of the possibility of their eligibility for benefits, and offer them individualized assistance in preparing their claims where it is appropriate that a claim be filed.

(c) Notwithstanding any other provision of this part, a claim for benefits under this part, in the case of an individual who has been informed by the Secretary under subsection (b) of the possibility of

his eligibility for benefits, shall, if filed no later than six months after the date he was so informed, be considered on the same basis as if it had been filed on June 30, 1973.

PART C—CLAIMS FOR BENEFITS AFTER DECEMBER 31, 1973

SEC. 421. (a) On and after January 1, 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, *and in any case in which benefits based upon eligibility under paragraph (5) or paragraph (6) of section 411(c) are involved.* 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 section 402(f) of this title and to those standards established under part B of this title, and by the regulations of the Secretary of Health, Education, and Welfare promulgated thereunder, *except that such standards shall not be required to include provisions for the payment of benefits based upon conditions substantially equivalent to conditions described in paragraphs (5) and (6) of section 411(c);*

(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)] *424(f)* 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 of 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 sixth month following the month in which such amendments are enacted.

SEC. 422. (a) During any period after December 31, 1973, 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, 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 to the extent consistent with the provisions of this part*, and except as the Secretary shall by regulation otherwise provide), be applicable to each operator of a coal mine in such State with respect to death or total disability due to pneumoconiosis arising out of employment in such mine, *or with respect to entitlement established in paragraph (5) or paragraph (6) of section 411(c) of this title.* 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] *premiums and assessments* by such operator [to persons entitled thereto] as provided in this part and thereafter those provisions shall be applicable to such operator.

(b) (*1*) During any such period each such operator shall be liable for and shall secure the payment of [benefits] *premiums and assessments*, as provided in this section and section [423] *424* of this part.

(*2*) (*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) of this part each operator of a coal mine in such State shall secure the payment of assessments against such operator under section 424(g) of the part by (i) qualifying as a self-insurer in accordance with regulations prescribed by the Secretary; or (ii) insuring and keeping insured the payment of such assessments 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 (ii) of subparagraph (A) of this paragraph, every policy or contract of insurance shall contain—*

(*1*) *a provision to pay assessments required under section 424 (g) of this part, notwithstanding the provisions of the State work-*

men's compensation law which may provide for payments which are less than the amount of such assessments;

(2) a provision that insolvency or bankruptcy of the operator or discharge therein (or both) shall not relieve the carrier from liability for the payment of such assessments; 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 (ii) of subparagraph (A) of this paragraph 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.

[(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.]

(c) Benefits shall be paid during such period under this section by the fund, subject to reimbursement to the fund by operators in accordance with the provisions of section 424(g) of this title, 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, except that (1) the Secretary may modify any such regulation promulgated by the Secretary of Health, Education, and Welfare; and (2) no operator shall be liable for the payment of any benefit (except as provided in section 424(f) of this title) on account of death or total disability due to pneumoconiosis, or on account of any entitlement based upon conditions described in paragraphs (5) and (6) of section 411(c), 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] *made* 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, 1974 [, or].

[(3) for any period after twelve 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 *paragraph (4), (5), or (6) of* 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] *any of such paragraphs*, 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 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.]

(i)(1) The Secretary shall promulgate regulations providing for the prompt and expeditious consideration of claims under this section.

(2)(A) The Secretary shall promulgate regulations providing for the prompt and equitable hearing of appeals by claimants who are aggrieved by any decision of the Secretary.

(B) Any such hearing shall be held no later than forty-five days after the date upon which the claimant involved requests such hearing. A hearing may be postponed at the request of the claimant involved for good cause.

(C) Any such hearing shall be held at a time and a place convenient to the claimant requesting such hearing.

(D) Any such hearing shall be of record and shall be subject to the provisions of sections 554, 555, 556, and 557 of title 5, United States Code.

(3)(A) Any individual, after any final decision of the Secretary made after a hearing to which he was a party, may obtain a review of such decision by a civil action commenced no later than ninety days after the mailing to him of notice of such decision, or no later than such further time as the Secretary may allow.

(B) Such action shall be brought in a district court of the United States in the State in which the claimant resides.

(C) The Secretary shall file, as part of his answer, a certified copy of the transcript of the record, including the evidence upon which the findings and decision complained of are based.

(D) The court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Secretary, with or without remanding the case for a rehearing. The findings of the Secretary as to any fact, if supported by the weight of the evidence, shall be conclusive.

(E) The court shall, on motion of the Secretary made before he files his answer, remand the case to the Secretary for further action by the Secretary, and may, at any time, on good cause shown, order additional evidence to be taken before the Secretary, and the Secretary shall, after the case is remanded, and after hearing such additional evidence if so ordered, modify or affirm his findings of fact or his decision, or both, and shall file with the court any such additional and modified findings of fact and decision, and a transcript of the additional record and testimony upon which his action in modifying or affirming was based. Such additional or modified findings of fact and decision shall be reviewable only to the extent provided for review of the original findings of fact and decision.

(F) The judgment of the court shall be final, except that it shall be subject to review in the same manner as a judgment in other civil actions. Any action instituted in accordance with this paragraph shall survive notwithstanding any change in the person occupying the office of Secretary or any vacancy in such office.

[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 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 regulations, 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. 423. (a) (1) There is hereby established in the Treasury of the United States a trust fund to be known as the Black Lung Disability Insurance Fund. The fund shall consist of such sums as may be appropriated as advances to the fund under section 424(e) (1) of this part, the assessments paid into the fund as required by section 424(g), the premiums paid into the fund as required by section 424(a), the interest on, and proceeds from, the sale or redemption of any investment held by the fund, and any penalties recovered under section 424(c), including such earnings, income, and gains as may accrue from time to time which shall be held, managed, and administered by the trustees in trust in accordance with the provisions of this part and the fund.

(2) Fund assets, other than such assets as may be required for necessary expenses, shall be used solely and exclusively for the purpose of discharging obligations of operators under this part. Operators shall have no right, title, or interest in fund assets, and none of the earnings of the fund shall inure to the benefit of any person, other than through the payment of benefits under this part, together with appropriate costs.

(b) (1) (A) The fund shall have seven trustees. Except as provided in subparagraph (B), trustees shall serve for terms of four years.

(B) Of the trustees first elected under this subsection—

(i) four shall be elected for terms of two year; and

(ii) three shall be elected for terms of one year.

The Secretary shall determine, before the date of the first election under this subsection, whether each trustee office involved in such election shall be for a term of one year or two years. Such determination shall be made through the use of an appropriate method of random selection, except that at least one trustee nominated under paragraph (2) (A) shall serve for a term of two years.

(C) Any trustee may be a full-time employee of an operator, except that no more than one trustee may be employed by any one operator or any affiliate of such operator.

(2) (A) Two trustees shall be nominated and elected by operators having an annual payroll not in excess of $1,500,000 (hereinafter referred to as "small operators").

(B) Five trustees shall be nominated and elected by all operators.

(3) No later than 60 days after the date of the enactment of the Black Lung Benefits Reform Act of 1975, all operators shall certify to the Secretary their payrolls for the 12-month period ending December 31, 1974. The Secretary shall then publish a list setting forth the number of votes to which each small operator and each operator is entitled, computed on the basis of one vote for each $500,000 or fraction thereof of payroll. Trustees shall be elected no later than 180 days after the date of the enactment of such Act.

(4) Candidates seeking nomination for election to the office of trustee under paragraph (2) (A) shall submit to the Secretary petitions of nomination reflecting the approval of small operators representing not less than 2 per centum of the aggregate annual payroll of all small operators. Candidates seeking such nomination under paragraph (2) (B) shall submit petitions reflecting the approval of oper-

utors representing not less than 2 per centum of the aggregate annual payroll of all operators.

(5) The Secretary shall promulgate regulations for the nomination and election of trustees. Such regulations shall include provisions for the nomination and election of trustees, including the nomination and election of trustees to fill any vacancy caused by the death, disability, resignation, or removal of any trustee. The Secretary shall certify the results of all nominations and elections. Two or more trustees may at any time file a petition, in the United States district court where the fund has its principal office, for removal of a trustee for malfeasance, misfeasance, or nonfeasance. The cost of any such action shall be paid from the fund, and the Secretary may intervene in any such action as an interested party.

(6) The trustees shall organize by electing a Chairman and Secretary and shall adopt such rules governing the conduct of their business as they consider necessary or appropriate. Five trustees shall constitute a quorum and a simple majority of those trustees present and voting may conduct the business of the fund.

(c)(1) The trustees shall act on behalf of all operators with respect to claims filed under this part.

(2)(A) Except as provided by subparagrah (B), the fund may not participate or intervene as a party to any proceeding held for the purpose of determining claims for benefits under this part.

(B)(i) If the fund is dissatisfied with any determination of the Secretary with respect to a claim for benefits under this part, the fund may, no later than thirty days after the date of such determination, file with the United States court of appeals for the circuit in which such determination was made a petition for review of such determination. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which he based his determination, as provided in section 2112 of title 28, United States Code.

(ii) The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive, except that the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary thereupon may make new or modified findings of fact and may modify his previous determination, and shall certify to the court the record of the further proceedings, Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(iii) The court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject 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.

(iv) Any finding of fact of the Secretary relating to the interpretation of any chest roentgenogram or any other medical evidence which demonstrates the existence of pneumoconiosis or any other disabling respiratory or pulmonary impairment, shall not be subject to review under the provisions of this subparagraph.

(3) No operator may bring any proceeding, or intervene in any proceeding, held for the purpose of detemining claims for benefits under this part.

(4) It shall be the duty of the trustees to report to the Secretary and to the operators no later than January 1 of each year on the financial condition and the results of the operations of the fund during the preceding fiscal year and on its expected condition during the current and ensuing fiscal year. Such report shall be included in a report to the Congress by the Secretary not later than March 1 of each year on the financial condition and the results of the operations of the fund during the preceding fiscal year and on its expected condition and operations during the current and next ensuing fiscal year. The report of the Secretary shall be printed as a House document of the session of the Congress to which the report is made.

(5)(A) The trustees shall take control and management of the fund and shall have the authority to hold, sell, buy, exchange, invest, and reinvest the corpus and income of the fund. All premiums paid to the fund under section 424(a)(1) shall be held and administered by the trustees as a single fund, and the trustees shall not be required to segregate and invest separately any part of the fund assets which may be claimed to represent accruals or interests of any individuals. It shall be the duty of the trustees to invest such portion of the assets of the fund as is not required to meet obligations under this part, except that the trustees may not invest any advances made to the fund under section 424(e). The trustees shall make investments under this paragraph in accordance with the provisions of section 404(a)(1)(C) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104(a)(1)(C)).

(B) Any profit or return on any investment or reinvestment made by the trusees under subparagraph (A) shall not be considered as income for purposes of Federal or State income taxation.

(6)(A) Amounts in the fund shall be available for making expenditures to meet obligations of the fund which are incurred under this part, including the expenses of providing medical benefits as required by section 432 of this title, and the operation, maintenance, and staffing of the office of the fund. The trustees may enter into agreements with any self-insured person or any insurance carrier who has incurred obligations with respect to claims under this part before the effective date of this paragraph, under which the fund will assume the obligations of such self-insured person or insurance carrier in return for a payment or payments to the fund in such amounts, and on such terms and conditions, as will fully protect the financial interests of the fund.

(B) Beginning on the effective date of this paragraph, payments shall be made from the fund to meet any obligation incurred by the Secretary with respect to claims under this part before such effective date. The Secretary shall cease to be subject to such obligations on such effective date.

(7) The trustees shall keep accounts and records of their administration of the fund, which shall include a detailed account of all investments, receipts, and disbursements.

(8) At no time during the administration of the fund shall the trustees be required to obtain any approval by any court of the United States or by any other court of any act required of them in connection with the performance of their duties or in the performance of any act required of them in the administration of their duties as trustees. The

trustees shall have the full authority to exercise their judgment in all matters and at all times without any such approval of such decisions. The trustees may file an application in the United States district court where the fund has its principal office for a judicial declaration concerning their power, authority, or responsibility under this Act (other than the processing and payment of claims). In any such proceeding, only the trustees and the Secretary shall be necessary or indispensable parties, and no other person, whether or not such person has any interest in the fund, shall be entitled to participate in any such proceeding. Any final judgment entered in such proceeding shall be conclusive upon any person or other entity claiming an interest in the fund.

(9) The trustees may employ such counsel, accountants, agents, and employees as they consider advisable. The trustees may charge the compensation of such persons and any other expenses, including the cost of fidelity bonds and indemnification and fiduciary insurance for trustees and other fund employees, necessary in the administration of the fund, against the fund.

(10) The trustees shall have the power to execute any instrument which they consider proper in order to carry out the provisions of the fund.

(11) The trustees may, through any duly authorized person, vote any share of stock which the fund may hold.

(12) The trustees may employ actuaries to such extent as they consider advisable. No actuary may be employed by the trustees under this paragraph unless such actuary is enrolled under section 3042(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1242(a)).

[SEC. 424. If a totally disabled miner or a 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, child, parent, brother, or sister under this title.]

SEC. 424. (a)(1) 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 a coal mine in such State shall pay premiums into the fund in amounts sufficient to ensure the payment of benefits under this part.

(2) The initial premium rate of each operator shall be established by the Secretary as a rate per ton of coal mined by such operator. Beginning one year after the date upon which the Secretary establishes initial premium rates, the trustees may modify or adjust the premium rate per ton of coal mined to reflect the experience and expenses of the fund to the extent necessary to permit the trustees to discharge their responsibilities under this Act, except that the Secretary may further modify or adjust the premium rate to ensure that all obligations of

the fund will be met. Any premium rate established under this subsection shall be uniform for all mines, mine operators, and amounts of coal mined.

(3) For purposes of section 162(a) of the Internal Revenue Code of 1954 (relating to trade or business expenses), any premium paid by an operator of a coal mine under paragrpah (1) shall be considered to be an ordinary and necessary expense in carrying on the trade or business of such operator.

(4) For purposes of this subsection—

(A) the term "coal" means any material composed predominantly of hydrocarbons in a solid state;

(B) the term "ton" means a short ton of two thousand pounds; and

(C) the amount of coal mined shall be determined at the first point at which such coal is weighed.

(b) The Secretary shall advise the Secretary of the Treasury or his delegate of premium rates established under subsection (a)(1). The Secretary of the Treasury or his delegate shall collect all premiums due and payable by operators under subsection (a)(1), and transmit such premiums to the fund. Collections shall be effected by the Secretary of the Treasury or his delegate in the same manner as, and together with, quarterly payroll reports of employers. In order to ensure the payment of premiums by all operators, the Secretary, after consultation with the Secretary of the Interior, shall certify, not less than annually, the names of all operators subject to this Act.

(c)(1) In any case in which an operator fails or refuses to pay any premium required to be paid under subsection (a)(1), the trustees of the fund shall bring a civil action in the appropriate United States district court to require the payment of such premium. In any such action, the court may issue an order requiring the payment of such premiums in the future as well as past due premiums, together with 9 per centum annual interest on all past due premiums.

(2) An operator who fails or refuses to pay any premium required to be paid under subsection (a)(1) may be assessed a civil penalty by the Secretary of the Treasury or his delegate in such amount as such Secretary or his delegate may prescribe, but not in excess of an amount equal to the premium the operator failed or refused to pay. Such penalty shall be in addition to any other liability of the operator under this Act. Penalties assessed under this paragraph may be recovered in a civil action brought by such Secretary or his delegate, and penalties so recovered shall be deposited in the fund.

(d) The Secretary shall be required to make expenditures under this part only for the purpose of carrying out his obligation to administer this part. All other expenses incurred under this part shall be borne by the fund, and if borne by the Secretary, shall be reimbursed by the fund to the Secretary.

(e)(1) There are hereby authorized to be appropriated to the fund such sums as may be necessary to provide the fund with amounts equal to 50 per centum of the amount which the Secretary estimates is necessary for the payment of benefits under this part during the first twelvemonth period after the effective date of this section. Any amounts appropriated under this paragraph may be used only for the payment of benefits under this part.

(2)(A) Sums authorized to be appropriated by paragraph (1) shall be repayable advances to the fund.

(B) Such advances shall be repaid with interest into the general fund of the Treasury no later than five years after the first appropriation made under paragraph (1).

(3) Interest on such advances shall be at a rate determined by the Secretary of the Treasury, taking into consideration the current average yield during the month preceding the date of the advance involved, on marketable interest-bearing obligations of the United States of comparable maturities then forming a part of the public debt rounded to the nearest one-eighth of 1 per centum.

(f)(1) During any period in which section 422 of this title is applicable with respect to a coal mine an operator of such mine who, after the date of the enactment of this title, acquired such mine or substantially all the assets thereof from a person (hereinafter in this paragraph referred to 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 this section and section 423 of this title, secure the payment of all benefits for which the prior operator would have been liable under section 422 of this title with respect to miners previously employed in such mine if the acquisition had not occurred and the pevious operator had continued to operate such mine.

(2) Nothing in this subsection shall relieve any prior operator of any liability under section 422 of this title.

(g)(1) The fund shall make an annual assessment against any operator who is liable for the payment of benefits under section 422 of this title. Such assessment against any operator of a coal mine shall be in an amount equal to the amount of benefits for which such operator is liable under section 422 of this title with respect to death or total disability due to pneumoconiosis arising out of employment in such mine, or with respect to entitlements established in paragraph (5) or paragraph (6) of section 411(c) of this title.

(2) Any operator against whom an assessment is made under paragraph (1) shall pay the amount involved in such assessment into the fund no later than thirty days after receiving notice of such assessment.

(3) The provisions of subsection (c) of this section shall apply in the case of any operator who fails or refuses to pay any assessment required to be paid under this subsection.

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, 1974, 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] *fiscal year, and $2,500,000 for the period beginning July 1, 1976, and ending September 30, 1976.* 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. 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. 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.

(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 *and by the Black Lung Benefits Reform Act of 1975* 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) *and the applicability of entitlements based upon conditions described in paragraphs (5) and (6) of section 411(c)*, 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] *the period during which the miner was employed* in one or more underground mines.

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. 432. The provisions of subsections (a), (b), (c), (d), and (g) of section 7 of the Longshoremen's and Harbor Workers Compensation Act (33 U.S.C. 907 (a), (b), (c), (d), and (g)) shall be applicable to persons entitled to benefits under this part on account of total disability or on account of eligibility under paragraph (5) or paragraph (6) of section 411(c), except that references in such section to the employer shall be considered to refer to the trustees of the fund.

Appendix

Summary of comments by James L. Weeks, Consultant, relative to medical knowledge supportive of an objective provision for establishing entitlements to black lung benefits payments based upon years of coal mining employment.

What do doctors know about black lung,[1] and what are they still relatively ignorant about? What can the state of medical knowledge contribute to making fair and efficient policy for awarding black lung benefits? The answers to these questions will be summarized from the medical literature listed in the appendix of this report.

There is broad agreement among doctors concerning the following:

1. Chronic disabling respiratory disease is significantly more widespread and more severe among deep coal miners than it is among the general population. (See articles Nos. 3, 5, 9, 12, 13, 17, 18, 19, 21, 22, 28.)
2. The probability of developing new cases of black lung and of worsening existing cases increases regularly with increased years underground. (See same articles as No. 1.)
3. The effects of exposure to underground mine environments are cumulative and the effects result in progressive disease which result in irreversible damage to miners' lungs with frequent complications of heart disease. Since treatment is not possible, prevention is all the more important. (See 9, 11, 12, 13, 21, 22, 28.)
4. The probability that coal miners will develop black lung increases regularly after about ten years of working underground. (5, 9, 13, 17, and see attached unpublished data from the National Coal Workers Autopsy Study.)
5. Some sort of respiratory disease is likely to begin after as little as one year underground and, because of the cumulative damage and progressive nature of black lung, symptoms get progressively worse with more years spent underground. (5, 28)

One study with the most carefully selected sample of miners and ex-miners showed, for example, 46% of their sample of 264 miners had some degree of x-ray evidence of pneumoconiosis. (5, p. 389) "There was little pneumoconiosis until miners had worked at least eleven years in the mines. The prevalence then rose progressively with increased years underground." (See Fig. 1, p. 389) In this same study, the authors found that "pulmonary function (as measured by breathing tests) becomes impaired with increasing years the men work underground. This effect seems to be separate from the effects of age, smoking, and roentgenographic categories." (p. 393–394)

Another study showed similar results. "Among working miners, the prevalence of roentgenographic evidence of pneumoconiosis is related directly to increasing age and years of underground experience." * * * (See Fig. 2) (13, p. 52) * * * "In all age groups, there is an incremental increase in the incident percentage with increase of under-

[1] Following the statutory definition, black lung refers to any disabling respiratory disease among coal miners and does not mean only coal workers pneumoconiosis.

ground experience." * * * "The prevalence of pneumoconiosis exceeded 17% in working miners 45 years of age and older having more than thirty years underground. Definite pneumoconiosis was found in over 20% of those non-working miners over 45 years of age who had more than 20 years mining experience." (13, p. 52)

The National Coal Study found similar results. "Roentgenographic category of simple pneumoconiosis increases with the number of years worked underground." (17, p. 222) (See Fig. 3) The same study found marked differences between different regions but the same general trend showing a regular increase in the percentage of miners with x-ray evidence of pneumoconiosis with increased years spent underground. (See Fig. 4) And again, "the relationship between mean years spent underground and roentgenographic category of simple pneumoconiosis is a monotonic increasing trend." (p. 223)

In all of these studies, the regular increase in the percentage of cases of pneumoconiosis begins after ten years underground, a factor the U.S. Surgeon General noted in his testimony to the Senate Labor Subcommittee in 1969. (See those Hearings, p. 751.)

One might argue that these trends would not hold in the future since mines will be less dusty with increased compliance with the dust standard set with the 1969 Coal Mine Safety and Health Act. This contention is not supported by existing facts. In the second round of x-ray examinations under the National Coal Study, 13% of those miners examined progressed from category "0" to category "1" in their x-ray findings while the dust records for these mines showed a downward trend below the 2 mg/M^3 standard. These new cases of pneumoconiosis are much more than would be expected if the dust in the mines were below the standard. These new cases of CWP could mean that dust data are inaccurate or it could mean that CWP is caused by more than just coal mine dust. The x-rays that showed the increases in CWP were read by five different readers and the results are consistent. (See the Transcript the National Coal Advisory Council, March, 1974.)

Most of the data for these studies comes from examinations of large numbers of miners. During these examinations, miners usually are given chest x-rays, lung function (breathing) tests for airway obstruction and lung restriction, and questionnaires concerning symptoms such as cough, wheezing, shortness of breath, etc. Most of the data concerning the prevalence and severity of black lung is based on chest x-ray data.

There is some autopsy data that provides a basis for some important and more reliable conclusions. Data collected from 405 autopsies as part of of the National Coal Workers Autopsy Study at the Appalachian Laboratory for Occupational Respiratory Diseases (ALFORD) shows that of all the miners examined, 84% had CWP. When these autopsies were arranged by years worked underground, there was a sharp increase in the percentage of cases after fifteen years, with those with less than fifteen years underground showing 64% with CWP and those with more than fifteen years underground showing 88% with CWP. (See data attached.)

In testimony given to the Congress when it was considering the 1972 amendments to the black lung law, it was clearly demonstrated that the chest x-ray was an inadequate measure of disability when used to determine eligibility for black lung claims.[2] The chest x-ray does not relate to lung disability and it identifies only Coal Workers Pneumoconiosis and not other disabling lung diseases associated with underground coal mining. These limitations on the use of chest x-rays were recognized and policy for determining eligibility for black lung claims was changed accordingly. If the chest x-ray is limited in its usefulness for the clinical determination of disability, it follows that it is also limited in its usefulness for the epidemiological determination of the prevalence of black lung. Since x-rays do not accurately indicate disability, epidemiological studies based on x-ray screening thus likely underreport the prevalence of black lung. Further, it also follows that any regular increase in the prevalence and severity of black lung is likely greater than existing studies show.

Other diagnostic tools for determination of eligibility on a case by case basis are similarly limited. The lung function tests have shown impairment of lung function but impairment by this test has been slight and results vary widely. (5, 12, 13, 16, 17) Lung function tests measure only the person's ability to move air in and out of their lungs and do not measure the basic function of the lung, namely, its ability to provide oxygen to the rest of the body and to remove carbon dioxide and other waste. Questionnaires concerning symptoms are similarly unreliable indicators of impairment and disability because they involve so much subjective information.

Other diagnostic tools for either clinical determination of disability or epidemiological determination of prevalence are inadequate for other reasons. Lung biopsy is major surgery and a person would have to be healthy in the first place to take it. Blood gas test taken during exercise is dangerous, painful, and expensive. Older persons, persons with heart conditions, or persons with some other deformity that would make it impossible for them to do the exercise cannot take the test. (21, 22) Autopsies, while useful, do not help living miners.

Thus in summary, existing medical evidence demonstrates not only the five general conclusions * * * [presented above] but also strongly suggests: (1) epidemiological data underreports the prevalence of black lung, and (2) existing diagnostic tools for case-by-case determination of eligibility for black lung payments are inadequate.

Thus it is reasonable that eligibility for receiving benefits not be based on a case-by-case clinical determination of disability but that eligibility for receiving payment be made on a simple determination of the number of years spent underground. Such an administrative device

---

[2] Later studies of x-ray readers further demonstrate their limited usefulness for determining eligibility for black lung payments. One recent study found that, on comparing British and American readers (all of the American readers in this study were those regularly used by the Social Security Administration in their determination of eligibility for claims), American readers agreed with British readers as seldom as 45% of the time and among each other as seldom as 48% of the time. After noting the disturbing results of this study, the researcher quipped, "Clearly, coal workers pneumoconiosis, like beauty, is in the eye of the beholder." (23, p. 1190) Black lung claimants cannot be so glib. Other studies have found similar inconsistencies and variations among readers of chest x-rays. (1, 4, 23, 24)

would be consistent with existing medical knowledge that shows the regular progression of black lung with increasing years underground, a progression that begins after ten years underground. It would also be consistent with the limitations on existing diagnostic tools. Further, given the regular increase in the prevalence of the disease after fifteen years spent underground, we suggest that the time period for determining eligibility for receiving benefits be set at fifteen years underground. After that time, a miner could exercise his option to leave underground work and receive a guaranteed payment of benefits.

A fifteen-year policy would have an additional advantage of allowing medical research and practice to continue unhampered by the confining constraints of administrative agencies. It would allow doctors to look after their patients rather than to leap through too many bureaucratic hoops. And it would allow researchers to conduct their research based on more factual information, thus making future policy based on more reliable fact than on medical knowledge that has been forced to serve too many masters—the needs of miner's health, public policy, and scientific research.

A fifteen-year policy would also be good preventive medicine. The effects of respiratory hazards in coal mines are cumulative and lead to progressive and chronic disease. Once many of these hazards are breathed in, they do irreparable damage and further exposure makes it worse. Black lung is a one-way street to ill health.

Given the cumulative effects and the progressive nature of black lung, it is good preventive medicine to fix a time limit after which a miner would be guaranteed the option of either continuing to work in the mines or of retiring with a black lung payment. This payment would be in recognition of the miner's massive exposure to respiratory hazards and of the significantly greater probability of developing black lung with more years underground. At least the miner would be given the option of either staying in the mines or not.

Currently, many miners stay in the mines because of uncertainty about whether they will be awarded black lung benefits and in spite of their doctor's advice that they are doing irreparable damage to their health. With the establishment of a guaranteed black lung payment after fifteen years underground, a miner would not be forced by economic pressure to stay in a situation where his health would be permanently damaged and he would face premature death.

There is ample precedent for such a policy based on cumulative and progressive damage and oriented to prevention of disease before the fact rather than compensation for the disease after the fact. The health standard for workers who are exposed to radioactive materials is one such precedent. The adverse effects of radioactive materials are cumulative just as are the adverse effects of coal mine dust. Accordingly, workers exposed to radioactive materials are not supposed to be exposed to more than five rems of radioactivity per year, according to standards set by the Occupational Safety and Health Administration. This health standard is conceptually different from the standard for coal mine dust which is set at 2 mg/M^3 regardless of the length of time of exposure. A standard that does not consider

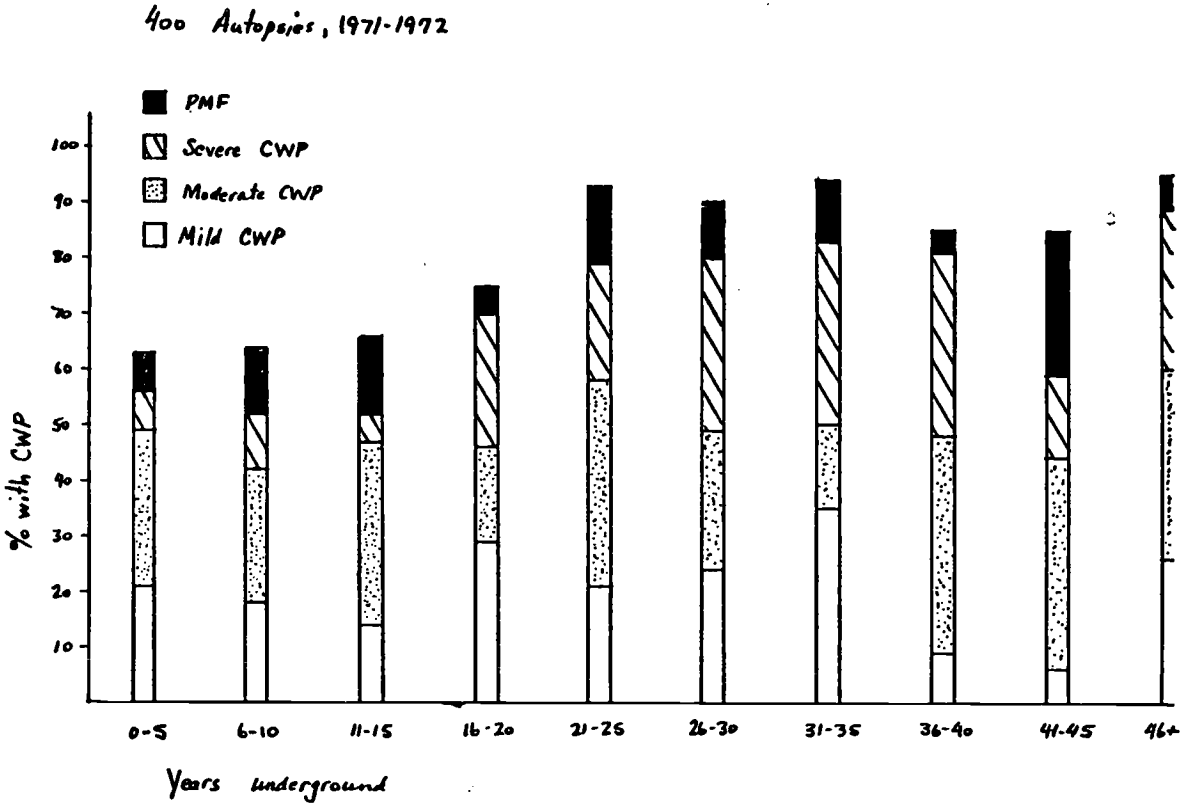
length of exposure may be convenient to enforce but it does not guarantee the health of miners. The relevant measure for the protection of miners' health is not the average concentration of dust but rather the total amount of dust (and other hazards) the individual miner has taken into his lungs. This is measured in other coal mining countries but not in the United States. One way to guarantee the health of miners, then, is in addition to setting a dust standard for average exposure, to set a time limit on underground employment after which a miner could exercise his option to leave the mines and be awarded a black lung payment. Such a policy would be consistent with the cumulative effects of work underground and with the progressive nature of black lung. It is simple, it is fair, it is consistent with medical knowledge concerning black lung, and it is good preventive medicine.

FIG. 1.—DISTRIBUTION OF 264 MINERS BY NUMBER OF YEARS WORKED UNDERGROUND AND ASSOCIATED ROENTGENOGRAPHIC FINDINGS[1]

Years underground	Number[2]	Roentgenographic category					Percent with pneumoconiosis
		0	1	2	3	Progressive massive fibrosis	
Less than 1	23	21	1	1	0	0	9
1 to 10	12	12	0	0	0	0	0
11 to 20	31	23	3	2	0	3	26
21 to 30	94	46	14	18	8	8	51
More than 30	104	41	16	34	5	8	61
Total	264	143	34	55	13	19	46
Percent		54	13	21	5	7	

[1] Classified according to new international classification "Geneva 1958" of pneumoconioses (17), described in text under "Roentgenographic methods."

[2] Number in each group by years worked underground. Figures under roentgenographic categories are numbers of subjects.


400 Autopsies, 1971-1972
PMF
Severe CWP
Moderate CWP
Mild CWP
% with CWP
100
90
80
70
60
50
40
30
20
10
0-5
6-10
11-15
16-20
21-25
26-30
31-35
36-40
41-45
46+
Years underground

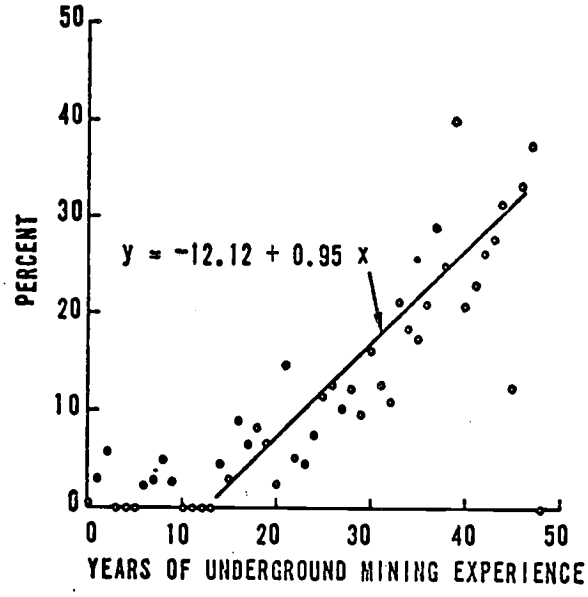


FIGURE 2.—Definite pneumoconiosis by years of underground experience, working miners

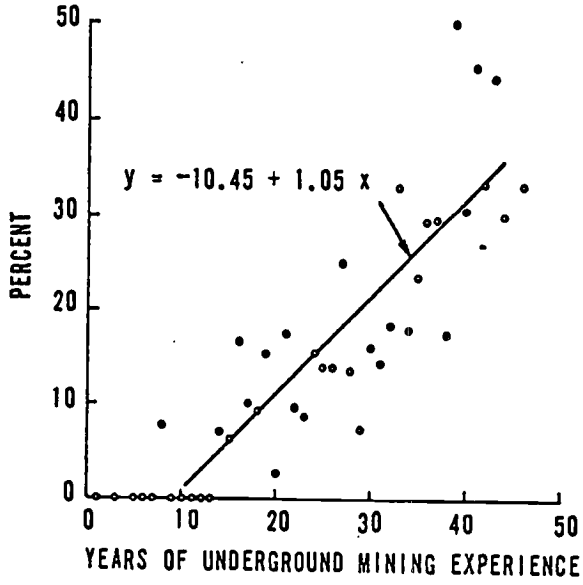


FIGURE 2A.—Definite pneumoconiosis by years of underground experience, working face workers

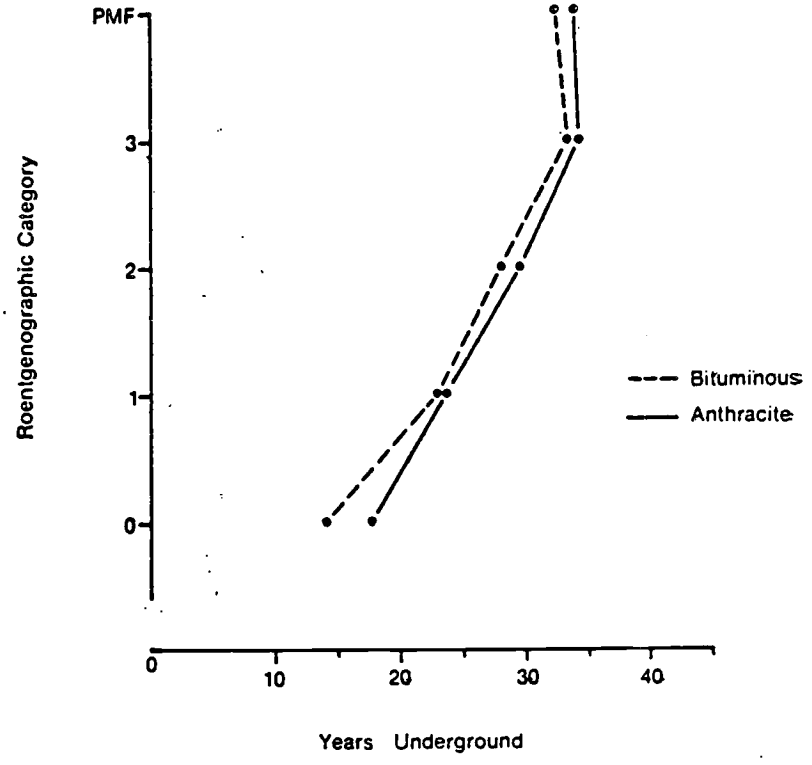


FIGURE 3.—Relationship of CWP to years underground

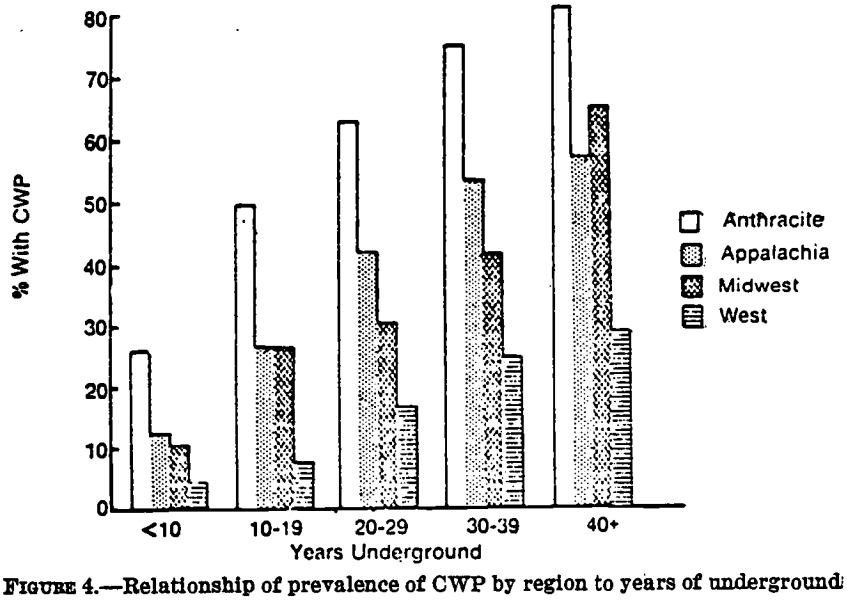


FIGURE 4.—Relationship of prevalence of CWP by region to years of underground exposure

REFERENCES

1. Amandus, H. E., et al. "The Pneumoconiosis: Methods of Measuring Progression," *Chest*, Vol. 63, (May, 1973), p. 736–743.
2. Amandus, H. E., et al. "Pulmonary Zonal Involvement in Coal Workers Pneumoconiosis," *Journal of Occupational Medicine*, Vol. 16, (April, 1974), p. 245–247.
3. Enterline, Phillip E., "A Review of Mortality Data for American Coal Miners," *Annals, New York Academy of Sciences*, Vol. 200, (December 29, 1972). p. 260–272.
4. Felson, Benjamin, et al. "Observations on the Results of Multiple Readings of Chest Films in Coal Miners' Pneumoconiosis," *Radiology*, Vol. 109, (October, 1973), p. 19–23.
5. Hyatt, R. E., et al. "Respiratory Disease in Southern West Virginia Coal Miners," *The American Review of Respiratory Disease*, Vol. 89, (March, 1964), p. 387–401.
6. Jacobson, M. "The Basis of the New Coal Dust Standard," *The Mining Engineer*, (U.K.), Vol. 131, (March, 1972), p. 269–279.
7. Jacobson, M. "The British Pneumoconiosis Field Research and New Dust Standards," presented to the *International Conference on Harmful Dust in Mines*, Gottwaldov, Czechoslovakia, October 27–29, 1970.
8. Jacobson, M., et al. "New Dust Standards for British Coal Mines," *Nature*, (U.K.), Vol. 227 (August 1, 1970), p. 445–447.
9. Jacobson, M. "Evidence of Dose-Response Relation in Pneumoconiosis, (2)," *Transactions of the Society of Occupational Medicine*, (U.K.), Vol. 22, (1972), p. 88–94.
10. Jacobson, M., et al. "The Relation Between Pneumoconiosis and Dust Exposure in British Coal Mines," in W. H. Walton, ed., *Inhaled Particles, #3, Proceedings of the Royal Society of Industrial Hygiene, 1970.* (Unwin Bros., Old Woking, England: 1971), p. 903–919.
11. Jacobson, M. "Progression of Coal Workers' Pneumoconiosis in Britain in Relation to Environmental Conditions Underground," in *Proceedings of Conference on Technical Measures of Dust Prevention and Suppression in Mines*, Luxemburg, Oct. 11–13, 1972, (Luxemburg, European Coal & Steel Community: 1973), p. 77–93.
12. Kibelstis, John A., et al. "Prevalence of Bronchitis and Airway Obstruction in American Bituminous Coal Miners," *The American Review of Respiratory Disease*, Vol. 108, (1973), p. 886–893.
13. Lainhart, H. N., et al. *Pneumoconiosis in Appalachian Bituminous Coal Miners*, (Washington, D.C.: U.S. Government Printing Office, 1969).
14. Lapp, N. LeRoy, et al., Correspondence, *The Lancet* (U.K.) (March 2, 1974), p. 351.
15. Morgan, W. K. C., et al. "A Comparison of the Prevalence of Coal Workers Pneumoconiosis and Respiratory Impairment in Pennsylvania Bituminous and Anthracite Miners," *Annals of the New York Academy of Sciences*, Vol. 200 (December 29, 1972), p. 252–259.
16. Morgan, W. K. C., et al. "Lung Volumes in Working Coal Miners," *Annals of the New York Academy of Sciences*, Vol. 200 (December 29, 1972), p. 478–493.
17. Morgan, W. K. C., et al. "The Prevalence of Coal Workers Pneumoconiosis in U.S. Coal Miners," *Archives of Environmental Health*, Vol. 27, (1973), p. 221–226.
18. Morgan. W. K. C., et al. "Ventilatory Capacity and Lung Volumes of U.S. Coal Miners," *Archives of Environmental Health*, Vol. 28, (1974), p. 182–189.
19. Ortmeyer, Carl E., et al. "The Mortality of Appalachian Coal Miners, 1963–1971," *Archives of Environmental Health*, Vol. 29, (1974), p. 67–72.
20. Phelps, Harvey. "Observations on High Altitude Coal Miners," *Rocky Mountain Medical Journal*, Vol. 69, (1972), p. 59–63.
21. Rasmussen, Donald L. "Patterns of Physiological Impairment in Coal Workers Pneumoconiosis," *Annals of the New York Academy of Sciences*, Vol. 200, (December 29, 1972), p. 455–462.
22. Rasmussen, Donald L., et al. "Respiratory Function in Southern Appalachian Coal Miners," *American Review of Respiratory Disease*, Vol. 103, (1971), p. 240–248.

23. Reger, R. B., et al. "On the Diagnosis of Coalworkers Pneumoconiosis, Anglo-American Disharmony," *American Review of Respiratory Disease*, Vol. 108. (1973), p. 1186–1191.
24. Reger, R. B., et al. "On the Factors Influencing Consistency in the Radiologic Diagnosis of Pneumoconiosis," *American Review of Respiratory Disease*, Vol. 102, (1970), p. 905–915.
25. Reisner, M. "Pneumoconiosis and Exposure to Dust in Coal Mines in the German Federal Republic," in *Proceedings of Conference on Technical Measures of Dust Prevention and Suppression in Mines*, Luxemburg, Oct. 11–13, 1972, (Luxemburg, European Coal & Steel Community: 1973), p. 49–64.
26. Rogan, J. M., et al. "Role of Dust in the Working Environment in the Development of Chronic Bronchitis in British Coal Miners," *British Journal of Industrial Medicine*, (U.K.), Vol. 30, (1973), p. 217–226.
27. Rossiter, C. E. "Relation of Lung Dust Content to Radiological Changes in Coal Workers," *Annals of the New York Academy of Sciences*, Vol. 200, (December 29, 1972), p. 465–477.
28. Stoekle, John D., et al. "Respiratory Disease in U.S. Soft Coal Miners: Clinical and Etiological Considerations, A Study of 30 Cases," *Journal of Chronic Diseases*, (U.K.), Vol. 15, (1970), p. 887–905.

OTHER SOURCES

U.S. Congress, Senate, Subcommittee on Labor, Hearings, *Coal Mine Health and Safety*, 91st Cong., 1st Sess., (March, 1969).

U.S. Congress, Senate, Subcommittee on Labor, Hearings, *Black Lung Legislation*, 1971–1972, 92nd Cong., 1st & 2nd Sess., (December 1971, January & February, 1972).

MINORITY VIEWS ON H.R. 10760

We are strongly opposed to the bill H.R. 10760 as reported by the Committee. We are equally opposed to the bills H.R. 7 and H.R. 8 which were the bills considered in hearings by the subcommittee. It is our position that neither approach addresses the problems and criticisms of the administration and application of the black lung benefits program.

History Prior to 1972

The black lung benefits program commenced in 1969 with the enactment of Title IV of the Federal Coal Mine Health and Safety Act. The Act provided for payment of benefits to miners totally disabled from complicated pneumoconiosis and to 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 an individual's employment in a coal mine. That Act also provided that if a miner was employed in an underground mine for 10 years or more, there would be a rebuttable presumption that the disease arose out of his employment and that if the miner were not so employed, the individual must demonstrate that the disease arose out of his employment in a coal mine.

In the House Committee Report (H. Rept. No. 91-563) explaining these particular provisions of the Act, it was asserted as follows:

> 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 in 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.

During the Flood debate on the compensation provisions of the Federal Coal Mine Health and Safety Act of 1969, it was made clear that these provisions were for past damage to a coal miner's health, and were to be considered a Federal responsibility inasmuch as existing State compensation laws were inadequate to meet the needs of miners disabled by black lung. However, these provisions were not intended to establish a Federal prerogative or precedent, but were in the nature of a special compensation plan. (See House debate, October 27, 1969, H–10031). The effort to provide compensation for those miners who were totally disabled by complicated pneumoconiosis was explained as follows (October 27, 1969, H–10047) Mr. Dent:

> 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 its fourth stage—complicated pneumoconiosis . . .
>
> However, this is only one shot. I want to say this today and I want to have it placed on the record indelibly . . ."

and on October 27, 1969, H–10067, Mr. Burton:

> One of the very little-known facts about the temporary, one-shot black lung pay provision is that this provision ripened as a result of a conversation held between the gentleman from Pennsylvania and me.
>
> It was the gentleman from Pennsylvania who advanced one of the essential concepts of the bill, in order to avoid what was the justifiable concern expressed in the very early days of this black [lung] payment idea, that we might be running the risk of federalizing in some way the workman's compensation program.

As the gentleman from Pennsylvania and I know full well, it was the concept advanced by the gentleman from Pennsylvania, embodied in this bill, that avoids that which all of us at least at this stage are delighted we have avoided; that is, that we would be creating any unnecessary or unhealthy precedent.

In that particular I want to now spread on the public record that of which the gentleman from Pennsylvania is so clearly aware as part of the background of this measure.

I would think the gentleman from Pennsylvania, in addition to that, deserves great credit along with others I shall mention during the course of my statement, for bringing virtually all the men representing the coal areas into very full and vigorous support of this amendment.

and Mr. Dent:

This is because the gentleman understood then and understands now that this need be only a one-shot proposition. The reason for this is that we believe if they live up to the law as we hope to write it, there will be no more disease in the mines.

and H–10069, Mr. Daniels:

Section 112(b) is clearly not intended to establish a Federal prerogative or 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. I am sure none of us would want to excuse inaction elsewhere. We must make progress where we can, and whenever we can.

On October 29, 1969, Mr. Scherle offered an amendment to strike the compensation provisions from the bill and the House received these reassurances from the sponsor of that provision and the chief sponsor of the bill:

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-short 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. Dent:

I want to reassure the gentleman from Wisconsin [Wm. Steiger] 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.

We are not going to restrict this to miners except that we are restricting it to a certain disease.

Despite these and other assurances, the Conference Report established a broad program of benefits to miners totally disabled by pneumoconiosis and of financing disability benefits after a certain date (December 31, 1972) until a time certain for discontinuation of the program, except for lifetime benefits to miners and their survivors coming under the Federal lifetime program. The bill as it emerged from conference became law (Public Law 91–173).

Under Public Law 91–173, some 364,600 claims were filed with the Social Security Administration. Prior to the May 1972 amendments, decisions had been made in 345,000 cases, with about 171,000 claims allowed and 174,000 claims denied. While administration costs have been substantial, they become dwarfed when compared with the cumulative payment of benefits which amounted to almost $700 million (on a program that was originally estimated to cost, in total, anywhere from $40 million to $355 million). In May of 1972, monthly benefits in current payment status were quickly approaching $33 million, an amount almost equal to the original estimated total of the whole cost of the program.

History Since 1972

Mainly because the Committee discovered that orphans of miners eligible for black lung benefits were not eligible as surviving dependents, the Committee reported a bill amending the 1969 Act which eventually became the "Back Lung Benefits Act of 1972" (P.L. 92–303, 30 U.S.C. 901, May 19, 1972). As that bill evolved from conference, the 1972 Act not only extended benefits to "double orphans," but to other dependents and eligible survivors, as well as to surface miners, their dependents and eligible survivors. In addition, according to the September 5, 1972, GAO Report, the 1972 Act liberalized the eligibility requirements by:

(1) Providing a rebuttable presumption that miners are totally disabled due to complicated pneumoconiosis, that their deaths were due to complicated pneumoconiosis, or that they were totally disabled by complicated pneumoconiosis at the time of their deaths if they were employed for at least 15 years in underground coal mines or in com-

parable dusty conditions in surface mines and if other than X-ray evidence demonstrated the existence of totally disabling respiratory or pulmonary impairments. This provision may be rebutted only by establishing that the miners do not, or did not, have pneumoconiosis, or that their resporatory or pulmonary impairments did not arise out of their coal mine employment.

(2) Providing that death benefit claims be allowed irrespective of the causes of the deaths if the miners were totally disabled due to pneumoconiosis at the time of their deaths. The 1969 law allowed payment of death benefits only when the deaths were due to complicated pneumoconiosis or when the miners were entitled to benefits at the time of their deaths.

(3) Providing that miners be considered totally disabled when pneumoconiosis prevents them from engaging in gainful employment requiring skills and abilities comparable to those of any coal mine employment in which they previously engaged with some regularity over substantial periods of time.

(4) Providing that no claims for benefits be denied solely on the basis of X-ray evidence. Under the 1969 Act, the Social Security Administration frequently denied claims solely on the basis of X-ray evidence.

The 1972 Act also:

(1) Specifies that black lung benefits paid by the Social Security Administration not be considered as benefits under a workmen's compensation law or plan for purposes of section 224 of the Social Security Act, (effective December 1, 1969). Section 224 limits the amount of combined income from social security benefits and workmen's compensation benefits. Under the 1969 Act the Social Security Administration regarded black lung benefits as benefits under a workmen's compensation law or plan and therefore reduced social security disability for about 5 percent of those who had been awarded black lung benefits.

(2) Required the Department of Health, Education, and Welfare to (a) generally disseminate information on the new legislation to persons who filed claims prior to enactment of the 1972 Act and (b) advise all persons whose claims were denied under the 1969 Act or whose claims were pending at the time of the 1972 Act that their claims will be revised under the provisions of the new legislation.

(3) Authorizes (a) $10 million a year for 3 years to the Department of Health, Education, and Welfare for establishing and operating clinical facilities for analysis, examination, and treatment of miners' lung impairments and (b) additional funds, as appropriate, to the Department of Health, Education, and Welfare for research grants to devise simple and effective tests for measuring, detecting, and treating miners' lung impairments.

Under the 1972 legislation, the Social Security Administration is responsible for: (1) miners' claims filed before July 1973; (2) widows' claims filed before 1974; and (3) widows' claims filed after 1973 if the deceased miners either died due to complicated pneumoconiosis before January 1974 or were entitled to benefits from the Social Security Administration at the time of their deaths *and* and widows file within 6 months after the miner's deaths. SSA is responsible also for the fol-

lowing claims if deceased miners either died due to complicated pneumoconiosis before January 1974 or were entitled to benefits from the Social Security Administration at the time of their deaths:

Claims of orphans of miners which are filed within 6 months after the deaths of the miners or their widows or by December 31, 1973, whichever is later.

Claims of totally dependent surviving parents, brothers, sisters which are filed within 6 months after the deaths of the miners or by December 31, 1973, whichever is later. However, surviving widows or children preclude parents from succeeding to benefits and surviving widows, children, or parents preclude brothers and sisters from succeeding to benefits.

The Department of Labor will be responsible for all other claims under Part C. The Department of Labor's administrative responsibilities for the program include: (1) taking, adjudicating, and paying claims during the transition period from July 1, 1973, through December 31, 1973; (2) starting January 1, 1974, to continue taking and determining claims, but only paying benefits when a responsible operator (interpreted as last responsible operator for whom the claimant worked a year) cannot be identified and when the State does not have a Worker's Compensation program that meet Federal criteria (no State has been certified); (3) notifying coal mine operators of their liability to pay after December 31, 1973; and (4) adjudicating differences that claimant or operator may have with the Department of Labor's findings. The Department of Labor, where a State does not qualify and no responsible operator can be found, has residual responsibility for paying an eligible claim out of general revenue funds. The 1972 legislation also extends—from 1976 to 1981—the end of the period during which the Department of Labor or coal mine operators are required to pay benefits in States where State workmen's compensation does not provide appropriate coverage.

Since enactment of the 1972 amendments, the operating and administrative experience of the black lung benefits program has become staggering. As of the end of 1974, a cumulative total of 556,200 claims had been filed with the Social Security Administration. Payment awards have been made to 58.6% of the miner claimants and 74.7% of the survivor claimants, with over 509,000 individuals being black lung beneficiaries, including dependents. Cumulative payments at the end of 1974 totaled $3 billion, with monthly recurring payments over $75 million.

By December of 1975, total cumulative benefit payments amounted to $3,923,000,000, that is, almost $4 billion. Over 565,000 claims have been filed with the Social Security Administration, and filings are continuing at a rate of about 1,000 survivor claims a month. The Department of Labor, by December of 1975, had received 80.000 claims with an approval rate at about 20%. Outlays by the Department of Labor in 1975 for payment of black lung benefits is estimated to be about $36,000,000.

Present Conditions

Now, for the second time, we are being asked to reconsider and reform the Black Lung Benefits reform program, this time, under the guise of establishing objective criteria for determining entitlement

to benefit payments arising out of employment in the Nation's coal mines; of transferring from the Federal Government to the coal industry the residual liability for black lung benefits payments: and by establishing a Black Lung Disability Insurance Fund to be maintained by contributions from the coal industry. However, the alleged purposes of the pending legislation are not accomplished by the provisions in the bill; the bill is not endorsed by any interested party: the bill is incompatible with the intent of the original legislation and inconsistent with prior assertions that the program was to be limited: the bill is contrary to the assertion that the reduced dust levels will lessen the prevalence of pneumoconiosis; and the bill further intrudes into the more comprehensive study of federalization of workmen's compensation. More succinctly, the bill is discriminatory, ambiguous and irresponsible.

Section-by-Section Criticism

Section 2 provides black lung benefits for miners (and their widows, dependents and survivors) who worked 30 years or more in an underground mine (or 25 years in an anthracite mine) or in a surface mine where the Secretary determinees conditions were substantially similar to conditions in an underground mine whether or not the miner has or had pneumoconiosis or any other disease or disability. This provision establishes an "entitlement" for miners who are not and were not disabled; amounting, in effect, to a Federal pension or retirement based on years of service. Besides adding to the present administrative burden of the Social Security Administration, there is absolutely no justification to expand the benefits program to those who do not suffer from pneumoconiosis and add also to the taxpayers' burden.

We cannot stress too strongly the inequitable features of this section. Nowhere else does Federal law provide a compensation program for disability comparable to the disability benefits for pneumoconiosis provided for coal miners. Now this program is to be expanded even further to provide for benefits based, not on any actual disability, but simply on number of years of employment. Although coal mining is a hazardous occupation, considering the safety factors along with the potential health hazards, it would be completely unreasonable, and discriminatory for this Congress to enact legislation providing for what amounts to early retirement benefits for only one of the many hazardous occupations in the Nation.

Workers who are occupationally disabled should be compensated, but their compensation should be related to their disability rather than to their prior occupation. Medical testimony (Dr. Keith Morgan, West Virginia Medical Center, formerly Director, Appalachian Laboratory for Occupational Respiratory Disease; Dr. Leroy Lapp, West Virginia Medical Center; Dr. Donald Rasmussen, Appalachian Regional Hospital) before our Committee demonstrated that miners with clear X-rays and miners with simple pneumoconiosis, even with 35 or more years of coal dust exposure, have normal ventilatory capacities—that is the ability to get air in and out of the lungs—and only a slight reduction of diffusing capacity— gas transfer—a decrease of insufficient severity to be associated with disability. As a matter of fact, Dr. Morgan stated: "The United States Public Health Service

studies indicate that cigarette smoking is between 5 and 10 times as important as dust exposure in producing impairment of ventilatory capacity." Actual disability is usually associated with complicated pneumoconiosis, which may be found in only about 2.9% of the working miners, 10–12% of the retired miners, and only about 0.1% of the coal miners in Utah and Colorado. Despite this medical testimony, these "entitlements" would provide the equal of black lung disability benefits to those who are in no way disabled. The Majority Views cite the testimony of certain practicing doctors in support of the "entitlements" approach. However, we note that those doctors (Dr. Daniel Fine, Dr. Lowell Martin and Dr. Murray B. Hunter) testified from a "social policy" point of view and not from a medical disability point of view, and in no way disputed the recent studies conducted under the auspices of Dr. Keith Morgan when he was Director of ALFORD. Certain of those recent studies are of some relevant interest. A study by Dr. Kibelstis of ALFORD of over 130 miners attempted to relate the slight decrement in diffusing capacity of workers with simple pneumoconiosis, which could not be associated with disability, to years spent working underground. Dr. Kibelstis "was unable to show that years underground in any way affected this index of pulmonary function." Furthermore, other studies related to life expectancy of Appalachian and Pennsylvania miners show a normal life expectancy unless the miner had either complicated pneumoconiosis or chronic bronchitis and emphysema, conditions that frequently occur in the general population.

Dr. Rasmussen, who has in the past been extremely sympathetic to the plight of coal miners, testified in response to a direct question as to whether the number of years that a miner is exposed has any relationship to his condition that:

> We see quite a wide variation, Congresman Dent. We would show you some miners with, let's say, fewer than 15 years who exhibit impairment in functions. We could show you miners with 50 years or more and no impairment. I can't really relate it to years of employment.

Dr. Lapp, involved in numerous recent studies at ALFORD stated:

> Thus, the preponderance of medical evidence does not support the presumption that because a man has worked for 25 years or more in an underground coal mine that he should be necessarily totally disabled due to pneumoconiosis or that his death should have occurred as a result of such pneumoconiosis unless the individual has radiographic evidence of the complicated form of the disease.

and

> The assumption that the employment for 35 years or more in an underground mine necessarily results in total disability due to pneumoconiosis is not supported by the medical evidence to date.

Furthermore, the Majority cites a letter by Dr. Dressen allegedly pointing out the inherent invalidity of excessive reliance on the X-ray (chest roentgenogram) without including Dr. Dressen's concluding

sentence. That sentence, which substantially alters the use for which the letter is put in the Majority Views, reads: "But we do know that in the current state of medical practice and technology, our examinations [i.e., X-ray] often provide the only objective information which can be obtained without harm to the patient." These medical findings are reinforced by the Report of the Coal Mine Health Research Advisory Council, dated June 3, 1974, attached as an "appendix" to our Minority views.

Thus, all present available medical evidence shows that the Social Security Administration and the Department of Labor have already erred on the basis of being too liberal, in view of the multitude of claims that have been approved. We see no reason to further compensate miners for the reason of their occupation.

Another consideration which the proponents of this section have not addressed is the general schematization of the Federal labor laws. If these provisions are enacted, the Congress will be plagiarizing the National Labor Relations Act by doing for miners what labor organizations representing them have failed to do through collective bargaining. We would be undermining our Federal scheme relating to labor relations for the benefit of just one group of workers. Besides substituting Congressional action for the collective bargaining process, these provisions are completely inconsistent with the purpose and intent of title IV, which, as originally envisioned, was to compensate those individuals who were totally disabled as a result of complicated pneumoconiosis.

We are not the only individuals who object to these particular provisions. We note that the coal industry objects, the Administration objects, and even the United Mine Workers of America object. The UMWA complain that equal treatment is not given to anthracite and bituminous miners and would have the 25-year rule of eligibility apply to all. In addition, the UMWA mentioned the discriminatory aspects of the June 30, 1971, cut-off date for entitlement, claiming that the cut-off date fails to protect present working miners who continue to work in dustry conditions. Since the Mining Enforcement Safety Administration reports that most mine areas are complying with the dust standards, we do not cite the UMWA's claim for its truth, but merely to point out that efforts to alleviate the problems of some miners of the past may cause rise to accusations of discrimination against those miners of the present. It is obvious that until all miners are automatically eligible for a premature retirement or pension, for what should be a disability benefit, the UMWA will not be satisfied, and we can look forward to even a further extension of an already special interest program.

We regret that these "entitlements" were not in the bills considered in hearings before the subcommittee. We believe that had they been, we could have dispensed with much of the relevant medical and scientific testimony, and concentrated instead on the social issues and legal effects of such provisions on our conscience and laws.

Section 3 provides that federal black lung benefits are to be reduced under part B only if other worker's compensation benefits are being received because of pneumoconiosis. In our view, where State worker's compensation or other State payments based on disability are payable

concurrently with black lung benefits, it is reasonable that those black lung benefits should be offset regardless of whether State payments are based only on black lung, since all such payments are designed to replace, in part, earnings from work which are lost when the worker loses his ability to work. It is immaterial whether this ability to work is lost because of one severe impairment or because of a combination of impairments which give rise to payments from several different sources. It is obvious, however, that miners, whether disabled or "entitled", would collect more in benefits than any other workers totally disabled due to other reasons. Furthermore, limiting the offset of black lung benefits to State payments based only on black lung could possibly result in situations where a beneficiary could receive total benefits exceeding the amounts of his earnings before he became disabled. This section, moreover, imposes a retroactive burden on the Social Security Administration of reviewing numerous part B claims, despite its severe case backlog with other programs.

Section 4 provides that no claim for benefits could be denied on the basis of employment as a miner if such employment had recently been changed to a less dusty part of the mine, to less rigorous work, or to a position of substantially less pay, and that the miner is to be thereafter notified as to whether he would be eligible for payment of benefits or, if not, whether he would be if he were not working.

This provision appears a little confusing, but to put it into perspective, under present law, if a miner has complicated pneumoconiosis, he will be found to be disabled even if he is currently working. The presence of complicated pneumoconiosis meets the tests of 411(c)(3) of total disability. However, if a miner does not have complicated pneumoconiosis, which is not always disabling, he is denied benefits if he is currently working, in a mine earning substantial wages. This obviously comports with the intent of the Conference on the Black Lung Benefits Act of 1972 (H. Rept. 92–1048, page 7):

> 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 previously engaged with some regularity and over a substantial period of time, or if it clearly demonstarted that he is capable of performing such work and such work is available to him in the immediate area of his residence."

There is no reason to liberalize the law beyond that agreed to in Conference in 1972. It seems extremely clear to us that a person cannot be totally disabled when he is working in a mine earning substantial wages. It is equally inconsistent and illogical to say that a miner is totally disabled when he is not totally disabled. It is obvious that this section attempts to accomplish what is impossible to accomplish without a legal fiction. If this section were ever to become law, we would hope that some language could be written that would require a miner

to elect either to continue working or to receive benefits under this anomaly.

We have another important reason for criticizing this particular section: That is, it again interferes with labor relations matters, and would penalize the general taxpayer for the management prerogatives of a mine operator of the past. Assumedly, operators move and moved their employees for a variety of reasons, many of which are probably not associated with black lung benefits. Nevertheless, under this provision as written, a claim cannot be denied if the operator had changed the miner's location, nature of his work, or reduced his pay. We realize that this surely could not be the intent of this section, but the intent and language are as incompatible as the reasoning behind it.

Section 5 provides that a decision of an administrative law judge favorable to a claimant cannot be appealed or reviewed except upon the motion of the claimant.

We have reservations about the Constitutionality of such a provision. Those reservations aside, such a provision is clearly inconsistent with the Administrative Procedures Act, and constitutes a separate, privileged appeals process for a favored group. It is abhorrent to our system of justice and the fact that it is directed at part B rather than part C does not make is less objectionable.

Section 6 provides that the Secretary of Health, Education, and Welfare must locate potentially eligible claimants who have not filed claims and afford such persons the opportunity to do so.

The "one-shot" effort by the Federal Government now becomes a continuing burden on the Secretary of Health, Education, and Welfare. The previous information programs conducted by the Social Security Administration which have produced almost 600,000 claims is not inadequate, but the Social Security Administration must now go out and hunt down potentially eligible claimants who failed to file under the 1969 Act and the extensions granted in 1972. The extension becomes not only permanent but also an affirmative duty on an already overloaded bureaucracy to seek out those who may or may not exist. This extension is contrary to the prior promises of those who have backed the black lung program. This extension is unnecesary from all that we have heard during our hearing. The hearings have produced numerous witnesses claiming they have been unjustly denied and none who have claimed they were prejudiced in filing because they were unaware of their rights to do so until too late. We can see no rational or legal basis for this provision.

Section 7 provides that criteria for determining total disability shall be no more restrictive than those applicable to claims filed on June 30, 1973.

With the ongoing medical and scientific research regarding disability associated with black lung, we feel that the Secretary of Health, Education, and Welfare should be allowed to adjust the criteria in line with advanced knowledge, and not be restricted to antiquated concepts.

Section 8 provides that affidavits are sufficient to establish a claim of a deceased miner where no relevant medical evidence exists.

An affidavit only procedure to establish total disability due to pneumoconiosis would be open to abuse. Additionally, this section precludes the use of anything other than relevant medical evidence to rebut such

affidavits, which "shall be considered to be sufficient" to establish a claim. We are opposed to this affidavit-only procedure whose only purpose is to assure that all survivor claims will be found eligible for benefits.

Section 9 establishes a Black Lung Disability Insurance Fund to meet obligations incurred under part C and makes the part C program permanent. The fund would receive premiums, based initially on tonnage of coal mined, from operators, and would assess any operator found liable for benefit payments annually. Much complicated language in this section is devoted to a timely appeals process and duties of the trustees.

Other than to extend part C from a definite termination date to a continuing program, we fail to see the need for revisions in part C and the establishment of this fund. Apparently, the problems of delay are part of the reason, but the problems contributing to delay are not resolved by establishment of a new procedure. The establishment of medical criteria will continue to cause delay as will the proof of employment. Nor will the establishment of the Trust Fund diminish the volume of litigation surrounding part C. Instead, it can be expected that the establishment of a new, and certainly unique, program under Federal law to provide occupational disease compensation, as well as entitlements, to only one group of workers will be a cause for escalation of the volume of litigation.

The Department of Labor, in a statement by Assistant Secretary Bernard E. DeLury, when testifying before our Committee on March 6, 1975, stated very succinctly:

> However, a Trust Fund, by itself, may not resolve the difficulties I have previously noted.
>
> Clearly, the existence of a trust fund will not encourage physicians to expedite the handling of a claimant's medical evidence. Furthermore, a Trust Fund will not necessarily decrease litigation.
>
> Under the present proposed legislation, the coal industry's liability will be determined each year, on the basis of claims experience, and there is no way we can predict the level of litigation which would result from an indirect, as opposed to the present direct, assessment of liability. However, we can predict that any new system which levies costs will be challenged in court, and delays may result.
>
> Furthermore, the method of financing the fund in H.R. 8 is a flat per-ton assessment. A tonnage assessment bears little or no relation to the employers' risk or incidence of employee disability arising out of his business. It distributes costs unevenly between mechanized production and labor-intensive production of coal without regard to the possibility of efforts of labor-intensive procedures to protect the health and safety of their workers. We believe that additional study of its effects on employer incentives to provide safe and healthful working conditions is warranted before moving further away from basic principles of workers' compensation.
>
> We do not view the Trust Fund as an easy solution to the problems of the Black Lung program as we see them. The extent to which a Trust Fund approach may be useful in deal-

ing generally with the problem of occupational disease is a matter which should be given further consideration. In this regard, we would note that the Workers' Compensation Task Force is studying the whole area of occupational disease and various means for dealing with it.

We believe that we should consider the Trust Fund approach in perspective. Adherence to the standards set forth in the Coal Mine Health and Safety Act should lead to a decline in the incidence of black lung; the number of black lung claims is likewise projected to substantially diminish.

Black lung is only one occupational disease. As I noted a moment ago, there is a task force working on the larger problem of reform of workers' compensation. Concentrated efforts are being made to encourage the States to improve their compensation systems; among the goals which the Administration proposes for the States to meet is the complete coverage of occupational disease. The detection, prevention and compensation of occupational disease is one of the most complex problems facing our society. As we have indicated, the approach taken in H.R. 8 and H.R. 3333 presents many difficulties. Any legislation in this area could serve as a precedent for dealing with the entire area of occupational diseases. We believe that further consideration is necessary in arriving at viable approaches to the problems of compensation for occupational disease. Accordingly, we feel that the piecemeal approach taken in these bills is not useful and that these problems should be considered systematically and comprehensively.

In addition to the concerns of the Department of Labor, we are also concerned about questions of due process. For instance, all operators must pay premiums and assessments to the fund and the fund, in turn, must pay all claims awarded by the Secretary of Labor. No operator may intervene in any way in any claims process and the fund may appeal awards only in limited circumstances. The result is that an operator's money can be required to be given claimants by a process in which neither the fund nor the operator may participate. Furthermore, an operator will be required to pay premiums when none of that operator's employees have ever experienced any disability from pneumoconiosis and may never contract pneumoconiosis. In our opinion, these provisions are a violation of procedural due process.

The proponents of this section have not addressed the issue of why it is necessary to make this program permanent by eliminating the 1981 cut-off date for filing claims. The most recent Report of the Secretary of the Interior under the Federal Coal Mine Health and Safety Act shows that 92% of the dust samples taken in December 1974 met the current dust standard of two milligrams of dust per million parts of air. Over 50% showed less than 1.0 mg/m. Although the validity of some samples are questioned, the Report illustrates that the conditions which may have caused pneumoconiosis in the past are being eliminated. Since the disease itself may disappear, it does not seem reasonable to establish a new and elaborate bureaucratic procedures for financing and paying claims.

We have many other technical reservations to this section, i.e., whether the fund is subject to the provisions of the Employee Retirement Income Security Act of 1974; whether certain provisions effect changes to the Internal Revenue Code; whether the Department of the Treasury is the proper agency to effectuate the collection and enforcement responsibilities of this Act; and whether the hearing procedures are adequately set out and administratively possible. Furthermore, we have absolutely no idea of the inflationary impact aspects of this section other than the coal industry's estimate of an additional cost of a ton of coal of from $1 to $4.

Section 10 provides for a continuation of an authorization for appropriations of $10,000,000 annually for clinical facilities relating to respiratory inpairments in coal miners.

We have no objection to a more limited extension of this authorization for appropriations, although we are unable to say from our hearings, which did not focus on this issue, just how much is needed or for how long.

Section 11 requires the Secretary of Health, Education, and Welfare to notify part B miner beneficiaries of possible eligibility for medical services and supplies.

Section 12 requires both HEW and Labor Departments to advise interested persons of the amendments provided by this bill, to give additional notices to those who may have become eligible, and to review each claim denied and each claim pending in light of the amendments made by this bill.

The 1972 amendments provided for a review of denied claims. This bill is now providing for still another review. At considerable cost, Social Security would have to identify, reopen, and review more than 180,000 previously denied claims, many of which have already been reviewed several times, and process the subsequent hearings and appeals that would occur as a result of the new liberalized eligibility requirements created by the bill. Actually, this section of the bill would result in a one-time hearing workload of up to 50,000 requests and have an adverse impact on other social securit yhearings and supplemental security income claimants. As the Chairman of the Social Security Subcommittee of the Committee on Ways and Means, Mr. Burke, concluded in his November 14, 1975, letter to Chairman Perkins: "Needless to say, this would greatly exacerbate the current Social Security Appeals crisis."

Section 14, added as a Committee amendment, provides that an eligible survivor of any miner who had worked 17 years in underground coal mining, and who died as a result of an accident in a coal mine is entitled to benefits, reduced only by State payments for worker's compensation, unemployment or disability laws.

In our opinion, this section epitomizes the extent to which the original proponents of coal miner's benefits will go to insure that the Black Lung Benefits Program provides benefits for all miners and survivors, regardless of the existence of black lung, regardless of the existence of disability, and regardless of the burden on the taxpayers of this Nation. Any death resulting from an accident has absolutely no relationship to black lung. It certainly has no relationship to disability due to black lung since the miner would have been working in a mine

at the time of the accident. This section has no relationship to inhalation of coal dust and further supports our position that the Federal Coal Mine Health and Safety Act is becoming a Federal welfare act for coal miners and their survivors.

Conclusion

We have been unusually lengthy in our statement of opposition to this bill, but we feel our colleagues should be apprised of the history of this black lung legislation, its origin and intent, and the eventual consequences of this extension. It is our belief that the responsibility for occupational hazards belongs with the employers in the industries where the hazards exist. It is generally agreed that the black lung benefits program was intended to be a temporary compensation program in order to give States an opportunity to develop programs that would hold the industry responsible for supporting such benefits. Any responsibility the Federal Government has had in this area is being fulfilled; any further expansion of Federal responsibility will go beyond what was intended by the original sponsors of the Federal Coal Mine Health and Safety Act.

Enactment of this bill would impose severe financial burdens on the Federal budget. As we have pointed out, the actual costs of providing black lung benefits have greatly exceeded the initial estimates, even discounting the cost of the very expensive 1972 amendments, which greatly liberalized the law. The changes proposed by the Committee's bill substantially increase these costs. It has been estimated that enactment of this bill could cost the taxpayers up to $1 billion over the next 5 years alone. Considering the continuing pressures on the Federal budget, we think these expenditures cannot be justified. Moreover, the savings effectuated by the creation of an industry financed fund under part C is completely offset by the liberalization of part B and the consequent loss of tax monies in allowing premiums to be considered ordinary and necessary business expenses for purposes of the Internal Revenue Code.

Although costs are a significant consideration, we strongly oppose enactment of this bill for other reasons as well. It would again extend Federal responsibility in an area that appropriately is the responsibility of the States and the industry involved. It would establish a permanent, ongoing black lung benefits program at a time when the Congress is considering proposals to establish a national workers' compensation program. It would provide for compensation to those who are not disabled. It would provide additional Federal compensation to only one group of workers, thereby discriminating against all other workers who work in dusty environments and all other workers generally. It would create even more delays and litigation.

For all the foregoing reasons, we oppose enactment of this bill.

Appendix to Minority Views

Report to the Coal Mine Health Research Advisory Council for Criteria for the Diagnosis of Disability and Death from Coal Workers' Pneumoconiosis, the Coal Mine Health Research Advisory Council,

Department of Health, Education and Welfare, Public Health Service Center for Disease Control of the National Institute for Occupational Safety and Health.

RECOMMENDATIONS

Disability from CWP

1. The committee feels that the etiologic basis for loss of capacity to work due to respiratory disease cannot be defined by pulmonary function tests and miners may have more than one etiologic factor producing respiratory impairment. The Committee further believes that when the chest X-ray is negative or shows only simple CWP and when ventilation is normal or near normal, a significant impairment due to pulmonary disease is most unlikely. The Committee therefore recommends that NIOSH consider appropriate administrative changes or statutory changes to deal with these facts.

2. Disability testing should be confined to those with X-ray evidence of CWP (requiring statutory change) and should consist in (1) screening ventilatory tests, (2) a determination of oxygen uptake ability commensurate with the job of coal mining, i.e., 1.75 L O/min., and a careful evaluation for the presence of heart and other lung diseases.

Death from CWP

3. In order to be sure that death can have been caused by CWP, the lung must contain the typical lesions of CWP, there must be premortem evidence of pulmonary hypertension and arterial hypoxemia and/or postmortem evidence of cor pulmonale and there must be no evidence of some other obvious and overriding cause of death. Postmortem assessment of right ventricular hypertrophy is reliably done by the method of Bove et al., Circulation 33:558, 1966.

Research in CWP

4. Research on the effects of inhalation of coal dust and the diagnosis and treatment of CWP can be carried out most effectively as a coordinated part of a research program on the health effects of all types of occupational exposure to dusts, fumes, and vapors. For this reason, and for economy, it is recommended that research on CWP be merged, within NIOSH with research on all other occupational inhalants.

5. Areas in need of more research include:

(*a*) Long term longitudinal studies of the natural history of coal workers versus control populations.

(*b*) The only satisfactory end point for epidemiologic studies is currently death. Another useful end point would be respiratory disability if it could be precisely defined.

(*c*) The total (outside the mine) environment in which miners and their families live needs careful delineation.

(*d*) The energy demands (i.e., oxygen costs) of various coal mining tasks.

(*e*) Continuing studies of the oxygen transport assessment of disability.

(*f*) Lungs obtained at postmortems on coal workers should have electromicroscopic and X-ray diffraction studies designed to determine the exact location and nature of any minerals present.

(*g*) Correlation of postmortem lung findings with X-ray and physiologic changes during life.

General

6. It should be made possible for any working coal miner to continue his usual work, if he so desires, regardless of the presence or degree of abnormal findings on his chest X-ray.

7. In addition to improving the safety of the evnironment in which coal miners work, other efforts at prevention are needed. Recognizing that much of the respiratory impairment and disability in coal miners cannot be attributed to CWP but rather to smoking and respiratory infections, especially smoking, the committee recommends expanded preventive and educational efforts in this direction.

DR. E. CUYLER HAMMOND,
DR. JOHN D. STOECKLE,
DR. ROGER S. MITCHELL.
Chairman, Coal Mine Health Research Advisory Council Work Group.

JOHN N. ERLENBORN.
ALBERT H. QUIE.
JOHN M. ASHBROOK.
ALPHONZO BELL.
EDWIN D. ESHLEMAN.
RONALD A. SARASIN.
WILLIAM F. GOODLING.
VIRGINIA SMITH.

SEPARATE VIEWS OF MR. ERLENBORN ON H.R. 10760

The Minority Views spell out in detail broad opposition to this bill. There are some areas that I feel need amplification and further clarification. In this regard, the Minority views have restated some of the legislative history by the original architects of the black lung benefits program. That history clearly reflects that the black lung benefits program was to be a "one-shot" deal—that is, that because the States failed to provide compensation for what was previously an unrecognized disease, the Federal Government had an obligation to compensate those who had contracted the disease while working in the Nation's coal mines. The disease to be compensated was complicated pneumoconiosis, or progressive massive fibrosis (PMF), an advanced stage of pneumoconiosis that is usually disabling. The Federal program was not to be considered a worker's compensation program and was not to set any precedent in that regard.

Despite those assurances, and despite the fact that almost all States now provide for occupational disease coverage, those original architects are now claiming that the program should be permanent. Despite those assurances and despite the safety and health protection offered by the Federal Coal Mine Health and Safety Act, those same architects are now claiming the black lung benefits program should set a precedent for federalization of workers' compensation laws. This claim is well beyond the original intent of the legislation and certainly well beyond our oversight hearings on the black lung benefits program. As a

matter of fact, this Committee has yet to have even one day of hearings on workers' compensation, so whether this special interest legislation is appropriate for becoming a precedent is unknown.

Another area of particular concern is the medical evidence of whether pneumoconiosis causes disability. Over the years of hearings on black lung, it has become fairly evident that complicated pneumoconiosis or progressive massive fibrosis (PMF) can cause disability. PMF usually produces marked pulmonary impairment and can cause considerable respiratory disability. PMF is usually progressive and irreversible, that is, it is progressive without further mine exposure. Because of the possible disabling affects of PMF, the present law irrebuttably presumes disability if a miner has contracted PMF, and the miner, or his survivors, as a consequence are entitled to benefits.

However, medical evidence does not substantiate the claim that simple pneumoconiosis, in either stages 1, 2, or 3, is, in itself, disabling. Neither does medical evidence substantiate the claim that simple pneumoconiosis is progressive without further exposure to the inhalation of coal mine dust. Simple pneumoconiosis, combined with other respiratory diseases found as well in the general population, can be disabling, but even then, simple pneumoconiosis may not be totally disabling.

While complicated pneumoconiosis (PMF) can be easily established by X-ray, and consequently, disability benefits afforded, simple pneumoconiosis, particularly in stage one, is not always obvious to the X-ray reader, even though the readers are technically trained. Although stages of simple pneumoconiosis are difficult to decipher by different readers, the architects of this legislation attempted to totally discredit the X-ray in the 1972 amendments by providing that no claims for benefits could be denied on the basis of a negative X-ray if a miner had been employed for more than 15 years in the mines. Accordingly, numerous other medical tests are used to attempt to establish pulmonary impairment. Since the Federal Government was responsible for claims filed prior to June 30, 1973, a relatively liberal criteria for establishing disability based on those medical tests was used. However, when the program transferred on July 1, 1973, to the private sector, the more liberal criteria, not based on scientific fact, could not be transferred without the possibility of involved litigation.

In addition to the "entitlement" provisions of the present bill, the authors want to expand the more liberal criteria for disability, i.e., the interim standards, in Part C of the program. Thus, recent scientific research is to be ignored and disability is to be established, based not on scientific and medical fact, but on the basis of employment. As Gerald R. Riso, Managing Director of the American Lung Association, stated in his letter of April 7, 1975, to Chairman Dent:

> We note that your Committee has responsibility for considering legislation which includes provisions to extend eligibility for disability benefits under the Black Lung Program. The fact that the legislation does this without consideration of the original intent of the Coal Mine Health & Safety Act compels us to comment on these provisions.
>
> Through our medical section, the American Thoracic Society, the organization represents an important segment of the

scientific community with special interests in pulmonary diseases. As such, it has an obligation to point out practices which are counter to the advancement of medical and scientific standards in pulmonary medicine.

In the opinion of the American Lung Association, the legislation under review reinforces a regrettable trend to ignore medical criteria and differential diagnosis in establishment of a diagnosis of coal workers' pneumoconiosis. The result will be to compensate many persons for disability which is not related to their working environment. In effect, social and economic considerations will take precedence over medical evidence.

The American Lung Association also reinforces the studies of Dr. Morgan and Dr. Lapp while of ALFORD. The April 7, 1975 letter continues:

Coal workers' pneumoconiosis is a condition that has been shown to develop in certain miners as a consequence of their occupation, diagnosis of which depends on the chest X-ray. Disability is not necessarily a corollary of the condition. There is little evidence that other pulmonary disability in miners is occupational in origin, nor is there evidence to prove that pulmonary impairment occurs in direct relationship to the number of years spent in the coal mine.

Tying eligibility for benefits to length of time employed in coal mining sets a precedent which must inevitably come to the attention of long-time workers in equally hazardous working environments. Congress must then ask itself whether it is prepared to award occupational compensation to workers on the basis of length of time spent in various working environments, to the exclusion of other factors which may cause or contribute to the development of disability.

We realize that many injustices have existed in coal mining, and indeed in many American industries. We are closely involved with and sympathetic to the needs of disabled persons. However, as an agency dedicated to promoting high medical standards, we cannot support an approach to compensation for occupational disease which is based on medically unsound premises.

I am in complete agreement with the American Lung Association. I am in agreement with my Minority colleagues that we should not award disability benefits not based on any disability. I, for one, would have more than welcomed a chance to examine James L. Weeks, a consultant whose summary is attached to the Committee's Report but who did not present himself to the Committee during hearings. Although the Committee states that it was "deeply impressed" by "comments " received from Mr. Weeks, there is nothing in Mr. Weeks comments that proves that simple pneumonconiosis is disabling or that PMF cannot be read from an X-ray. In view of his footnote that he regards Black Lung as "any disabling respiratory disease" and "does not mean only coal workers pneumonconiosis". I am curious as to exactly what he would have Congress compensate, other than coal

miners who have worked 15 or more years underground. And therein lies the basis for this bill—compensation benefits to coal miners, whether disabled by pneumonconiosis or not. That, of course, is discriminating—discriminating against all other workers and discriminating against those with disabilities.

There are other serious problems with this bill. In extending Part C, this bill creates a type of trust fund supported by an imposed "premium" on tonnage of mined coal. Whether the monies to support the trust fund are called "insurance", "premiums", "assessments" or "contributions", they are essentially a tax. Clearly, the so-called premiums are a severance tax on the amount of coal extracted, and we should call it for what it is—a tax. I am not satisfied that this Committee has the authority, jurisdiction or expertise to report legislation dealing with tax matters.

The matter of costs in relation to the disease to be compensated has also been of some concern to me. As has been pointed out, the original legislation was enacted to compensate those miners who had, in the past, contracted disabling pneumoconiosis previously from working in the nation's coal mines. The costs were underestimated substantially. The main reason the costs were dramatically underestimated can be found in a statement of an extremely competent medical witness, Dr. W. K. C. Morgan:

> If I may elaborate, I must say many men have been compensated for obstructive air way diseases and the point I would like to bring up is they are incapacitated from chronic bronchitis and emphysema and not coal dust.
>
> Then to expect that over the years coal dust programs will lessen the incidence and prevalence of obstructive air way diseases on which black lung benefits are now currently awarded is a deception.

That is why we have seen so many allowable claims, and, contrary to the assertions in the Committee Report, the incidence of pneumoconiosis is considerably less than the percentage of allowable claims. As a consequence of this policy, costs have escalated beyond any expectations, and this bill, H.R. 10760, will again dramatically increase federal costs.

Besides the fact that the costs are not necessarily related to disabling pneumoconiosis, the problem with the costs of this program is that they are incurred for just one occupation—coal mining. I believe that workers should be compensated, but the compensation ought to be related to the worker's disability rather than their prior occupation. Were the benefits of the original black lung legislation and this bill extended to all workers, the economic impact would be profound. Since there is no justification for this bill, there is certainly no justification for this program setting a precedent for future workers compensation. I urge my colleagues to seriously consider the far-reaching consequences of this legislation.

JOHN N. ERLENBORN.

O

Union Calendar No. 379

94TH CONGRESS
1ST SESSION

H. R. 10760

[Report No. 94–770]

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 14, 1975

Mr. DENT (for himself, Mr. PERKINS, Mr. PHILLIP BURTON, Mr. FLOOD, Mr. CLAY, Mr. MURTHA, Mr. YATRON, Mr. HAYES of Indiana, Mr. WAMPLER, Mr. RONCALIO, Mr. BEVILL, Mr. MELCHER, Mr. SLACK, Mr. YATES, Mr. HUBBARD, Mr. EVANS of Colorado, Mr. MOLLOHAN, Mr. HALL, Mr. WHALEN, Mr. CARNEY, Mr. MITCHELL of Maryland, Mr. SEIBERLING, Mr. DUNCAN of Tennessee, and Mr. RAILSBACK) introduced the following bill; which was referred to the Committee on Education and Labor

DECEMBER 31, 1975

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To amend the Federal Coal Mine Health and Safety Act to revise the black lung benefits program established under such Act in order to transfer the residual liability for the payment of benefits under such program from the Federal Government to the coal industry, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

~~SHORT TITLE~~

~~SECTION 1. This Act may be cited as the "Black Lung Benefits Reform Act of 1975".~~

~~ENTITLEMENTS~~

~~SEC. 2. (a) Section 411(c) of the Federal Coal Mine Health and Safety Act of 1969 (30 U.S.C. 921(c)), hereinafter in this Act referred to as the "Act", is amended—~~

~~(1) in paragraph (3) thereof, by striking out "and" at the end thereof;~~

~~(2) in paragraph (4) thereof, by striking out the next to the last sentence thereof, and by striking out the period at the end thereof and inserting in lieu thereof a semicolon; and~~

~~(3) by adding at the end thereof the following:~~

~~"(5) if a miner was employed for thirty years or more in one or more underground coal mines such miner (or, in the case of a deceased miner, the eligible survivors of such miner) shall be entitled to the payment of benefits; and~~

~~"(6) if a miner was employed for twenty-five years or more in one or more anthracite coal mines such miner (or, in the case of a deceased miner, the eligible survivors of such miner) shall be entitled to the payment of benefits.~~

~~The Secretary shall not apply all or a portion of any requirement of this subsection that a miner shall have worked in an underground mine if the Secretary determines that conditions~~

of such miner's employment in a coal mine other than an underground mine were substantially similar to conditions in an underground mine.".

(b) Section 412 (a) (1) of the Act (30 U.S.C. 922 (a) (1)) is amended—

(1) by inserting immediately after "pneumoconiosis," the following: "or in the case of a miner entitled to benefits under paragraph (5) or paragraph (6) of section 411 (c) of this title,";

(2) by striking out "disabled" the first place it appears therein; and

(3) by inserting immediately after "disability" the second place it appears therein the following: ", or during the period of such entitlement,".

(c) Section 414 (a) of the Act (30 U.S.C. 924 (a)) is amended by adding at the end thereof the following new paragraph:

"(4) A claim for benefits under this part may be filed at any time on or after the date of the enactment of the Black Lung Benefits Reform Act of 1975 by a miner (or, in the case of a deceased miner, the eligible survivors of such miner) if the date of the last exposed employment of such miner occurred before December 30, 1969.".

(d) Section 414 (c) of the Act (30 U.S.C. 924 (c)) is amended by inserting immediately after "pneumoconiosis"

~~the following: ", or with respect to an entitlement under paragraph (5) or paragraph (6) of section 411(c) of this title,"~~.

~~(c) (1) Section 421(a) of the Act (30 U.S.C. 931(a))~~ is ~~amended~~ by inserting ~~immediately after "pneumoconiosis" the second place it appears therein the following: ", and in any case in which benefits based upon eligibility under paragraph (5) or paragraph (6) of section 411(c) are involved,"~~.

~~(2) Section 421(b)(2)(C) of the Act (30 U.S.C. 931(b)(2)(C))~~ is ~~amended by inserting immediately before the semicolon at the~~ end thereof ~~the following: ", except that such standards shall not be required to include provisions for the payment of benefits based upon conditions substantially equivalent to conditions described in paragraphs (5) and (6) of section 411(c)"~~.

~~(f) Section 430 of the Act (30 U.S.C. 938) is amended by~~ inserting ~~"and by the Black Lung Benefits Reform Act of 1975" immediately after "1972", by inserting immediately after "section 411(c)(4)" the following: "and the applicability of entitlements based upon conditions described in paragraphs (5) and (6) of section 411(c),", and by striking out "whether a miner was employed at least fifteen years" and inserting in lieu thereof the following: "the period during which the miner was employed"~~.

~~OFFSET AGAINST WORKMEN'S COMPENSATION BENEFITS~~

~~SEC. 3. The first sentence of section 412 (b) of the Act (30 U.S.C. 922 (b)) is amended by inserting immediately after "disability of such miner" the following: "due to pneumoconiosis".~~

~~CURRENT EMPLOYMENT AS A~~ BAR TO BENEFITS

~~SEC. 4. (a) The first sentence of section 413 (b) of the Act (30 U.S.C. 923 (b)) is amended by inserting immediately before the period at the end thereof the following: "or solely on the basis of employment as a miner if (1) the location of such employment has recently been changed to a mine area having a lower concentration of dust particles; (2) the nature of such employment has been changed so as to involve less rigorous work; or (3) the nature of such employment has been changed so as to result in the receipt of substantially less pay".~~

~~(b) Section 413 of the Act (30 U.S.C. 923) is amended by adding at the end thereof the following new subsection:~~

~~"(d) (1) A miner may file a claim for benefits whether or not such miner is employed by an operator of a coal mine at the time such miner files such claim.~~

~~"(2) The Secretary shall notify a miner, as soon as practicable after the Secretary receives a claim for benefits from such miner, whether, in the opinion of the Secretary, such miner—~~

"(A) is eligible for benefits on the basis of the provisions of paragraph (1), (2), or (3) of subsection (b); or

"(B) would be eligible for benefits, except for the circumstances of the employment of such miner at the time such miner filed a claim for benefits.".

APPEALS

SEC. 5. The last sentence of section 413(b) of the Act (30 U.S.C. 923(b)) is amended by inserting immediately before the period at the end thereof the following: ", except that a decision by an administrative law judge in favor of a claimant may not be appealed or reviewed, except upon motion of the claimant".

INDIVIDUAL NOTIFICATIONS

SEC. 6. Part B of title IV of the Act (30 U.S.C. 911 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 416. (a) For purposes of assuring that all individuals who may be eligible for benefits under this part are afforded an opportunity to apply for and, if entitled thereto, to receive such benefits, the Secretary shall undertake a program to locate individuals who are likely to be eligible for such benefits and have not filed a claim for such benefits.

"(b) The Secretary shall seek to determine, in cooperation with operators and with the Secretary of the Interior,

the names and current addresses of individuals having long periods of employment in coal mining and, if such individuals are deceased, the names and addresses of their widows, children, parents, brothers, and sisters. The Secretary shall then directly, by mail, by personal visit by a delegate of the Secretary, or by other appropriate means, inform any such individuals (other than those who have filed a claim for benefits under this title) of the possibility of their eligibility for benefits, and offer them individualized assistance in preparing their claims where it is appropriate that a claim be filed.

"(c) Notwithstanding any other provision of this part, a claim for benefits under this part, in the case of an individual who has been informed by the Secretary under subsection (b) of the possibility of his eligibility for benefits, shall, if filed no later than six months after the date he was so informed, be considered on the same basis as if it had been filed on June 30, 1973.".

DEFINITIONS

SEC. 7. (a) Section 402(f) of the Act (30 U.S.C. 902(f)) is amended by adding at the end thereof the following new undesignated paragraph:

"With respect to a claim filed after June 30, 1973, such regulations shall not provide more restrictive criteria than those applicable to a claim filed on June 30, 1973.".

~~(b) Section 402 of the Act (30 U.S.C. 902) is amended by inserting immediately after paragraph (g) the following new paragraph:~~

~~"(h) The term 'fund' means the Black Lung Disability Insurance Fund established by section 423(a).".~~

~~EVIDENCE REQUIRED TO ESTABLISH CLAIM~~

~~SEC. 8. (a) Section 413(b) of the Act (30 U.S.C. 923(b)) is amended by inserting immediately after the second sentence thereof the following new sentence: "Where there is no relevant medical evidence in the case of a deceased miner, such affidavits shall be considered to be sufficient to establish that the miner was totally disabled due to pneumoconiosis or that his death was due to pneumoconiosis.".~~

~~(b) The last sentence of section 413(b) of the Act (30 U.S.C. 923(b)) is amended by striking out "and (l)," and inserting in lieu thereof "(l), and (n),".~~

~~CLAIMS FILED AFTER DECEMBER 31, 1973~~

~~SEC. 9. (a)(1) The first sentence of section 422(a) of the Act (30 U.S.C. 932(a)) is amended—~~

~~(A) by inserting immediately before the period at the end thereof the following: ", or with respect to entitlements established in paragraph (5) or paragraph (6) of section 411(c) of this title"; and~~

~~(B) by inserting immediately after "except as otherwise provided in this subsection" the following: "and~~

~~to the extent consistent with the provisions of this part,~~".

~~(2) The last sentence of section 422 (a) of the Act (30 U.S.C. 932 (a)) is amended—~~

~~(A) by striking out "benefits" and inserting in lieu thereof "premiums and assessments"; and~~

~~(B) by striking out "to persons entitled thereto".~~

~~(3) Section 422 (b) of the Act (30 U.S.C. 932 (b)) is amended by inserting "(1)" immediately after "(b)", and by adding at the end thereof the following new paragraph:~~

~~"(2) (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) of this part each operator of a coal mine in such State shall secure the payment of assessments against such operator under section 424 (g) of this part by (i) qualifying as a self-insurer in accordance with regulations prescribed by the Secretary; or (ii) insuring and keeping insured the payment of such assessments 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 (ii)~~

of subparagraph (A) of this paragraph, every policy or contract of insurance shall contain—

"(1) a provision to pay assessments required under section 424(g) of this part, notwithstanding the provisions of the State workmen's compensation law which may provide for payments which are less than the amount of such assessments;

"(2) a provision that insolvency or bankruptcy of the operator or discharge therein (or both) shall not relieve the carrier from liability for the payment of such assessments; 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 (ii) of subparagraph (A) of this paragraph 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.".

(4) Section 422(b)(1) of the Act, as so redesignated by paragraph (3), is amended—

(A) by striking out "benefits" and inserting in lieu thereof "premiums and assessments"; and

~~(B) by striking out "section 423" and inserting in lieu thereof "section 424".~~

~~(5) Section 422 (e) of the Act (30 U.S.C. 932 (e)) is amended to read as follows:~~

~~"(e) Benefits shall be paid during such period under this section by the fund, subject to reimbursement to the fund by operators in accordance with the provisions of section 424 (g) of this title, 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, except that (1) the Secretary may modify any such regulation promulgated by the Secretary of Health, Education, and Welfare; and (2) no operator shall be liable for the payment of any benefit (except as provided in section 424 (f) of this title) on account of death or total disability due to pneumoconiosis, or on account of any entitlement based upon conditions described in paragraphs (5) and (6) of section 411 (c), which did not arise, at least in part, out of employment in a mine during the period when it was operated by such operator.".~~

~~(6) Section 422 (c) of the Act (30 U.S.C. 932 (c)) is amended—~~

~~(A) by striking out "required" and inserting in lieu thereof "made"; and~~

~~(B) by adding "or" immediately after the semicolon in paragraph (1) thereof, by striking out ", or" at the end of paragraph (2) thereof and inserting in lieu thereof a period, and by striking out paragraph (3) thereof.~~

~~(7) Section 422 (f) (2) of the Act (30 U.S.C. 932 (f) (2)) is amended—~~

~~(A) by inserting "paragraph (4), (5), or (6) of" immediately after "eligibility under";~~

~~(B) by striking out "section 411 (c) (4)" the first place it appears therein and inserting in lieu thereof "section 411 (c)";~~

~~(C) by striking out "from a respiratory or pulmonary impairment"; and~~

~~(D) by striking out "section 411 (c) (4) of this title, incurred as a result of employment in a coal mine" and inserting in lieu thereof "any of such paragraphs".~~

~~(8) Section 422 (h) of the Act (30 U.S.C. 932 (h)) is amended by striking out the first sentence thereof.~~

~~(9) Section 422 (i) of the Act (30 U.S.C. 932 (i)) is amended to read as follows:~~

~~"(i) (1) The Secretary shall promulgate regulations providing for the prompt and expeditious consideration of claims under this section.~~

~~"(2) (A) The Secretary shall promulgate regulations~~

providing for the prompt and equitable hearing of appeals by claimants who are aggrieved by any decision of the Secretary.

"(B) Any such hearing shall be held no later than forty-five days after the date upon which the claimant involved requests such hearing. A hearing may be postponed at the request of the claimant involved for good cause.

"(C) Any such hearing shall be held at a time and a place convenient to the claimant requesting such hearing.

"(D) Any such hearing shall be of record and shall be subject to the provisions of sections 554, 555, 556, and 557 of title 5, United States Code.

"(E) A hearing examiner presiding at any hearing held under this subsection shall receive compensation at a rate not less than the rate prescribed for GS-16 under section 5332 of title 5, United States Code.

"(3) (A) Any individual, after any final decision of the Secretary made after a hearing to which he was a party, may obtain a review of such decision by a civil action commenced no later than ninety days after the mailing to him of notice of such decision, or no later than such further time as the Secretary may allow.

"(B) Such action shall be brought in a district court of the United States in the State in which the claimant resides.

~~"(C) The Secretary shall file, as part of his answer, a certified copy of the transcript of the record, including the evidence upon which the findings and decision complained of are based.~~

"(D) The ~~court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Secretary, with or without remanding the case for a rehearing. The findings of the Secretary as to any fact, if supported by the weight of the evidence, shall be conclusive.~~

~~"(E) The court shall, on motion of the Secretary made before he files his answer, remand the case to the Secretary for further action by the Secretary, and may, at any time, on good cause shown, order additional evidence to be taken before the Secretary, and the Secretary shall, after the case is remanded, and after hearing such additional evidence if so ordered, modify or affirm his findings of fact or his decision, or both, and shall file with the court any such additional and modified findings of fact and decision, and a transcript of the additional record and testimony upon which his action in modifying or affirming was based. Such additional or modified findings of fact and decision shall be reviewable only to the extent provided for review of the original findings of fact and decision.~~

~~"(F) The judgment of the court shall be final, except~~

~~that it shall be subject to review in the same manner as a judgment in other civil actions. Any action instituted in accordance with this paragraph shall survive notwithstanding any change in the person occupying the office of Secretary or any vacancy in such office.".~~

~~(10) In the case of any miner or any survivor of a miner who is eligible for benefits under section 422 of the Act (30 U.S.C. 932) as a result of any amendment made by any provision of this Act, such miner or survivor may file a claim for benefits under such section no later than three year after the date of the enactment of this Act, or no later than the close of the applicable period for filing claims under section 422 (f) of the Act (30 U.S.C. 932 (f)), whichever is later.~~

~~(b) Section 423 of the Act (30 U.S.C. 933) is amended to read as follows:~~

~~"SEC. 423. (a) (1) There is hereby established in the Treasury of the United States a trust fund to be known as the Black Lung Disability Insurance Fund. The fund shall consist of such sums as may be appropriated as advances to the fund under section 424 (c) (1) of this part, the assessments paid into the fund as required by section 424 (g), the premiums paid into the fund as required by section 424 (a), the interest on, and proceeds from, the sale or redemption of any investment held by the fund, and any penalties~~

~~recovered under section 424(c), including such earnings, income, and gains as may accrue from time to time which shall be held, managed, and administered by the trustees in trust in accordance with the provisions of this part and the fund.~~

~~"(2) Fund assets, other than such assets as may be required for necessary expenses, shall be used solely and exclusively for the purpose of discharging obligations of operators under this part. Operators shall have no right, title, or interest in fund assets, and none of the earnings of the fund shall inure to the benefit of any person, other than through the payment of benefits under this part, together with appropriate costs.~~

~~"(b)(1)(A) The fund shall have seven trustees. Except as provided in subparagraph (B), trustees shall serve for terms of four years.~~

~~"(B) Of the trustees first elected under this subsection—~~

~~"(i) four shall be elected for terms of two years; and~~

~~"(ii) three shall be elected for terms of one year. The Secretary shall determine, before the date of the first election under this subsection, whether each trustee office involved in such election shall be for a term of one year or two years. Such determination shall be made through the use of an appropriate method of random selection, except that at~~

~~least one trustee nominated under paragraph (2) (A) shall serve for a term of two years.~~

~~"(C) Any trustee may be a full-time employee of an operator, except that no more than one trustee may be employed by any one operator or any affiliate of such operator.~~

~~"(2) (A) Two trustees shall be nominated and elected by operators having an annual payroll not in excess of $1,500,000 (hereinafter referred to as 'small operators').~~

~~"(B) Five trustees shall be nominated and elected by all operators.~~

~~"(3) No later than 60 days after the date of the enactment of the Black Lung Benefits Reform Act of 1975, all operators shall certify to the Secretary their payrolls for the 12 month period ending December 31, 1974. The Secretary shall then publish a list setting forth the number of votes to which each small operator and each operator is entitled, computed on the basis of one vote for each $500,000 or fraction thereof of payroll. Trustees shall be elected no later than 180 days after the date of the enactment of such Act.~~

~~"(4) Candidates seeking nomination for election to the office of trustee under paragraph (2) (A) shall submit to the Secretary petitions of nomination reflecting the approval of small operators representing not less than 2 per centum of the aggregate annual payroll of all small operators.~~

~~Candidates seeking such nomination under paragraph (2) (B) shall submit petitions reflecting the approval of operators representing not less than 2 per centum of the aggregate annual payroll of all operators.~~

~~"(5) The Secretary shall promulgate regulations for the nomination and election of trustees. Such regulations shall include provisions for the nomination and election of trustees, including the nomination and election of trustees to fill any vacancy caused by the death, disability, resignation, or removal of any trustee. The Secretary shall certify the results of all nominations and elections. Two or more trustees may at any time file a petition, in the United States district court where the fund has its principal office, for removal of a trustee for malfeasance, misfeasance, or nonfeasance. The cost of any such action shall be paid from the fund, and the Secretary may intervene in any such action as an interested party.~~

~~"(6) The trustees shall organize by electing a Chairman and Secretary and shall adopt such rules governing the conduct of their business as they consider necessary or appropriate. Five trustees shall constitute a quorum and a simple majority of those trustees present and voting may conduct the business of the fund.~~

~~"(c) (1) The trustees shall act on behalf of all operators with respect to claims filed under this part.~~

~~"(2)(A) Except as provided by subparagraph (B), the fund may not participate or intervene as a party to any proceeding held for the purpose of determining claims for benefits under this part.~~

~~"(B)(i) If the fund is dissatisfied with any determination of the Secretary with respect to a claim for benefits under this part, the fund may, no later than thirty days after the date of such determination, file with the United States court of appeals for the circuit in which such determination was made a petition for review of such determination. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which he based his determination, as provided in section 2112 of title 28, United States Code.~~

~~"(ii) The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive, except that the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary thereupon may make new or modified findings of fact and may modify his previous determination, and shall certify to the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.~~

~~"(iii) The court shall have jurisdiction to affirm the~~

~~action of the Secretary or to set aside, in whole or in part. The judgment of the court shall be subject 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.~~

~~"(iv) Any finding of fact of the Secretary relating to the interpretation of any chest roentgenogram or any other pneumoconiosis or any other disabling respiratory or pulmonary impairment, shall not be subject to review under the provisions of this subparagraph.~~

~~"(3) No operator may bring any proceeding, or intervene in any proceeding, held for the purpose of determining claims for benefits under this part.~~

~~"(4) It shall be the duty of the trustees to report to the Secretary and to the operators no later than January 1 of each year on the financial condition and the results of the operations of the fund during the preceding fiscal year and on its expected condition during the current and ensuing fiscal year. Such report shall be included in a report to the Congress by the Secretary not later than March 1 of each year on the financial condition and the results of the operations of the fund during the preceding fiscal year and on its expected condition and operations during the current and next ensuing fiscal year. The report of the Secretary shall be~~

printed as a House document of the session of the Congress to which the report is made.

"(5) (A) The trustees shall take control and management of the fund and shall have the authority to hold, sell, buy, exchange, invest, and reinvest the corpus and income of the fund. All premiums paid to the fund under section 124 (a) (1) shall be held and administered by the trustees as a single fund, and the trustees shall not be required to segregate and invest separately any part of the fund assets which may be claimed to represent accruals or interests of any individuals. It shall be the duty of the trustees to invest such portion of the assets of the fund as is not required to meet obligations under this part, except that the trustees may not invest any advances made to the fund under section 124 (c). The trustees shall make investments under this paragraph in accordance with the provisions of section 404 (a) (1) (C) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104 (a) (1) (C)).

"(B) Any profit or return on any investment or reinvestment made by the trustees under subparagraph (A) shall not be considered as income for purposes of Federal or State income taxation.

"(6) (A) Amounts in the fund shall be available for making expenditures to meet obligations of the fund which

~~are incurred under this part, including the expenses of providing medical benefits as required by section 432 of this title, and the operation, maintenance, and staffing of the office of the fund. The trustees may enter into agreements with any self-insured person or any insurance carrier who has incurred obligations with respect to claims under this part before the effective date of this paragraph, under which the fund will assume the obligations of such self-insured person or insurance carrier in return for a payment or payments to the fund in such amounts, and on such terms and conditions, as will fully protect the financial interests of the fund.~~

~~"(B) Beginning on the effective date of this paragraph,~~ payments ~~shall be made from the fund to meet any obligation incurred by the Secretary with respect to claims under this part before such effective date. The Secretary shall cease to be subject to such obligations on such effective date.~~

~~"(7) The trustees shall keep accounts and records of their administration of the fund, which shall include a detailed account of all investments, receipts, and disbursements.~~

~~"(8) At no time during the administration of the fund shall the trustees be required to obtain any approval by any court of the United States or by any other court of any act required of them in connection with the performance of their duties or in the performance of any act required of them in~~

~~the administration of their duties as trustees. The trustees shall have the full authority to exercise their judgment in all matters and at all times without any such approval of such decisions. The trustees may file an application in the United States district court where the fund has its principal office for a judicial declaration concerning their power, authority, or responsibility under this Act (other than the processing and payment of claims). In any such proceeding, only the trustees and the Secretary shall be necessary or indispensable parties, and no other person, whether or not such person has any interest in the fund, shall be entitled to participate in any such proceeding. Any final judgment entered in such proceeding shall be conclusive upon any person or other entity claiming an interest in the fund.~~

~~"(9) The trustees may employ such counsel, accountants, agents, and employees as they consider advisable. The trustees may charge the compensation of such persons and any other expenses, including the cost of fidelity bonds and indemnification and fiduciary insurance for trustees and other fund employees, necessary in the administration of the fund, against the fund.~~

~~"(10) The trustees shall have the power to execute any instrument which they consider proper in order to carry out the provisions of the fund.~~

~~"(11) The trustees may, through any duly authorized person, vote any share of stock which the fund may hold.~~

~~"(12) The trustees may employ actuaries to such extent as they consider advisable. No actuary may be employed by the trustees under this paragraph unless such actuary is enrolled under section 3042(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1242(a)).".~~

~~(c) Section 424 of the Act (30 U.S.C. 934) is amended to read as follows:~~

~~"SEC. 424. (a)(1) 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 a coal mine in such State shall pay premiums into the fund in amounts sufficient to insure the payment of benefits under this part.~~

~~"(2) The initial premium rate of each operator shall be established by the Secretary as a rate per ton of coal mined by such operator. Beginning one year after the date upon which the Secretary establishes initial premium rates, the trustees may modify or adjust the premium rate per ton of coal mined to reflect the experience and expenses of the fund to the extent necessary to permit the trustees to discharge their responsibilities under this Act, except that the Secretary may further modify or adjust the premium rate to insure that all obligations of the fund will be met. Any premium rate~~

~~established under this subsection shall be uniform for all mines, mine operators, and amounts of coal mined.~~

~~"(3) For purposes of section 162(a) of the Internal Revenue Code of 1954 (relating to trade or business expenses), any premium paid by an operator of a coal mine under paragraph (1) shall be considered to be an ordinary and necessary expense in carrying on the trade or business of such operator.~~

~~"(4) For purposes of this subsection—~~

~~"(A) the term 'coal' means any material composed predominantly of hydrocarbons in a solid state;~~

~~"(B) the term 'ton' means a short ton of two thousand pounds; and~~

~~"(C) the amount of coal mined shall be determined at the first point at which such coal is weighed.~~

~~"(b) The Secretary shall advise the Secretary of the Treasury or his delegate of premium rates established under subsection (a)(1). The Secretary of the Treasury or his delegate shall collect all premiums due and payable by operators under subsection (a)(1), and transmit such premiums to the fund. Collections shall be effected by the Secretary of the Treasury or his delegate in the same manner as, and together with, quarterly payroll reports of employers. In order to insure the payment of premiums by all operators, the Secretary, after consultation with the Secretary of the~~

~~Interior, shall certify, not less than annually, the names of all operators subject to this Act.~~

~~"(c) (1) In any case in which an operator fails or refuses to pay any premium required to be paid under subsection (a) (1), the trustees of the fund shall bring a civil action in the appropriate United States district court to require the payment of such premium. In any such action, the court may issue an order requiring the payment of such premiums in the future as well as past due premiums, together with 9 per centum annual interest on all past due premiums.~~

~~"(2) An operator who fails or refuses to pay any premium required to be paid under subsection (a) (1) may be assessed a civil penalty by the Secretary of the Treasury or his delegate in such amount as such Secretary or his delegate may prescribe, but not in excess of an amount equal to the premium the operator failed or refused to pay. Such penalty shall be in addition to any other liability of the operator under this Act. Penalties assessed under this paragraph may be recovered in a civil action brought by such Secretary or his delegate, and penalties so recovered shall be deposited in the fund.~~

~~"(d) The Secretary shall be required to make expenditures under this part only for the purpose of carrying out his obligation to administer this part. All other expenses incurred under this part shall be borne by the fund, and if~~

borne by the Secretary, shall be reimbursed by the fund to the Secretary.

"(e) (1) There are hereby authorized to be appropriated to the fund such sums as may be necessary to provide the fund with amounts equal to 50 per centum of the amount which the Secretary estimates is necessary for the payment of benefits under this part during the first twelve-month period after the effective date of this section. Any amounts appropriated under this paragraph may be used only for the payment of benefits under this part.

"(2) (A) Sums authorized to be appropriated by paragraph (1) shall be repayable advances to the fund.

"(B) Such advances shall be repaid with interest into the general fund of the Treasury no later than five years after the first appropriation made under paragraph (1).

"(3) Interest on such advances shall be at a rate determined by the Secretary of the Treasury, taking into consideration the current average yield during the month preceding the date of the advance involved, on marketable interest bearing obligations of the United States of comparable maturities then forming a part of the public debt rounded to the nearest one-eighth of 1 per centum.

"(f) (1) During any period in which section 122 of this title is applicable with respect to a coal mine an operator of such mine who, after the date of the enactment of this

~~title, acquired such mine or substantially all the assets thereof from a person (hereinafter in this paragraph referred to 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 this section and section 423 of this title, secure the payment of all benefits for which the prior operator would have been liable under section 422 of this title with respect to miners previously employed in such mine if the acquisition had not occurred and the previous operator had continued to operate such mine.~~

~~"(2) Nothing in this subsection shall relieve any prior operator of any liability under section 422 of this title.~~

~~"(g) (1) The fund shall make an annual assessment against any operator who is liable for the payment of benefits under section 422 of this title. Such assessment against any operator of a coal mine shall be in an amount equal to the amount of benefits for which such operator is liable under section 422 of this title with respect to death or total disability due to pneumoconiosis arising out of employment in such mine, or with respect to entitlements established in paragraph (5) or paragraph (6) of section 411(c) of this title.~~

~~"(2) Any operator against whom an assessment is made under paragraph (1) shall pay the amount involved in such~~

~~assessment into the fund no later than thirty days after receiving notice of such assessment.~~

~~"(3) The provisions of subsection (c) of this section shall apply in the case of any operator who fails or refuses to pay any assessment required to be paid under this subsection.".~~

~~(d) Section 121(b)(2)(E) of the Act (30 U.S.C. 931(b)(2)(E)) is amended by striking out "section 122(i)" and inserting in lieu thereof "section 121(f)".~~

~~CLINICAL FACILITIES~~

~~SEC. 10. The first sentence of section 127(c) of the Act (30 U.S.C. 937(c)) is amended by striking out "of the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975" and inserting in lieu thereof "fiscal year, and $2,500,000 for the period beginning July 1, 1976, and ending September 30, 1976".~~

~~MEDICAL CARE~~

~~SEC. 11. (a) Part C of title IV of the Act (30 U.S.C. 931 et seq.) is amended by adding at the end thereof the following new section:~~

~~"SEC. 432. The provisions of subsections (a), (b), (c), (d), and (g) of section 7 of the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 907(a), (b), (c), (d), and (g)) shall be applicable to persons entitled to benefits under this part on account of total disabil-~~

~~ity or on account of eligibility under paragraph (5) or paragraph (6) of section 411(c), except that references in such section to the employer shall be considered to refer to the trustees of the fund.".~~

~~(b) The Secretary of Health, Education, and Welfare shall notify each miner receiving benefits under part B of the Black Lung Benefits Act on account of his total disability who the Secretary has reason to believe became eligible for medical services and supplies on January 1, 1974, of his possible eligibility for such benefits. Where the Secretary so notifies a miner, the period during which he may file a claim for medical services and supplies under part C of such Act shall not terminate before six months after such notification was made.~~

~~TRANSITIONAL PROVISIONS~~

~~SEC. 12. (a) The Secretary of Health, Education, and Welfare, and the Secretary of Labor shall disseminate to interested persons and groups the changes in the Black Lung Benefits Act made by this Act. Each such Secretary shall undertake a program to give individual notice to individuals who they believe are likely to have become eligible for benefits by reason of such changes.~~

~~(b)(1) The Secretary of Health, Education, and Welfare (with respect to part B of the Black Lung Benefits Act)~~

~~and the Secretary of Labor (with respect to part C of such Act) shall review each claim which has been denied, and each claim which is pending, under each such part, taking into account the amendments made to each such part by this Act. Each such Secretary shall approve any such claim if the provisions of either such part, as so amended, require such approval.~~

~~(2) Each such Secretary, in understanding the review required by paragraph (1), shall not require the resubmission of any claim which is the subject of any such review.~~

~~SHORT TITLE FOR ACT~~

~~SEC. 13. Section 401 of the Act (30 U.S.C. 901) is amended by inserting "(a)" immediately after "SEC. 401." and by adding at the end thereof the following new subsection:~~

~~"(b) This title may be cited as the 'Black Lung Benefits Act'.".~~

~~EFFECTIVE DATES~~

~~SEC. 14. (a) This Act shall take effect on the date of its enactment, except that—~~

~~(1) the amendments made by section 2 shall be effective on and after December 30, 1969, except that claims approved solely because of the amendments made by section 2, which were filed before the date of the~~

~~enactment of this Act, shall be awarded benefits only for the period beginning on such date of enactment;~~

~~(2) the amendments made by sections 4, 5, and 8 shall be effective on and after December 30, 1969;~~

~~(3) the amendments made by section 6 shall not require the payment of benefits for any period before the date of the enactment of this Act; and~~

~~(4) the amendments made by section 9 shall take effect on January 1, 1976, except that (A) the Secretary of Labor shall establish initial premium rates for operators under section 424 (a) (1) of the Black Lung Benefits Act, as added by section 9 (c) of this Act, no later than January 1, 1976; and (B) such Secretary shall make the estimate required by section 424 (c) (1) of such Act, as added by section 9 (c) of this Act, as soon as practicable after the date of the enactment of this Act.~~

~~(b) In the event that the payment of benefits to miners and to eligible survivors of miners cannot be made from the Black Lung Disability Insurance Fund established by section 423 (a) of the Act, as added by section 9 (b) of this Act, the provisions of the Act relating to the payment of benefits to miners and to eligible survivors of miners, as in effect immediately before January 1, 1976, shall remain in force as~~

~~rules and regulations of the Secretary of Labor, until such provisions are revoked, amended, or revised by law. Such Secretary shall make benefit payments to miners and to eligible survivors of miners in accordance with such provisions.~~

SHORT TITLE

SECTION 1. *This Act may be cited as the "Black Lung Benefits Reform Act of 1975".*

ENTITLEMENTS

SEC. 2. *(a) Section 411(c) of the Federal Coal Mine Health and Safety Act of 1969 (30 U.S.C. 921(c)), hereinafter in this Act referred to as the "Act", is amended—*

(1) in paragraph (3) thereof, by striking out "and" at the end thereof;

(2) in paragraph (4) thereof, by striking out the next to the last sentence thereof, and by striking out the period at the end thereof and inserting in lieu thereof a semicolon; and

(3) by adding at the end thereof the following:

"(5) if a miner was employed for thirty years or more in one or more underground coal mines such miner (or, in the case of a deceased miner, the eligible survivors of such miner) shall be entitled to the payment of benefits; and

"(6) if a miner was employed for twenty-five years or more in one or more anthracite coal mines such miner (or, in the case of a deceased miner, the eligible survivors of such miner) shall be entitled to the payment of benefits. The Secretary shall not apply all or a portion of any requirement of this subsection that a miner shall have worked in an underground mine if the Secretary determines that conditions of such miner's employment in a coal mine other than an underground mine were substantially similar to conditions in an underground mine.".

(b) Section 412(a)(1) of the Act (30 U.S.C. 922 (a)(1)) is amended—

(1) by inserting immediately after "pneumoconiosis," the following: "or in the case of a miner entitled to benefits under paragraph (5) or paragraph (6) of section 411(c) of this title,";

(2) by striking out "disabled" the first place it appears therein; and

(3) by inserting immediately after "disability" the second place it appears therein the following: ", or during the period of such entitlement,".

(c) Section 414(a) of the Act (30 U.S.C. 924(a)) is amended by adding at the end thereof the following new paragraph:

"(4) A claim for benefits under this part may be filed at

any time on or after the date of the enactment of the Black Lung Benefits Reform Act of 1975 by a miner (or, in the case of a deceased miner, the eligible survivors of such miner) if the date of the last exposed employment of such miner occurred before December 30, 1969.".

(d) Section 414(e) of the Act (30 U.S.C. 924(e)) is amended by inserting immediately after "pneumoconiosis" the following: ", or with respect to an entitlement under paragraph (5) or paragraph (6) of section 411(c) of this title,".

(e)(1) Section 421(a) of the Act (30 U.S.C. 931(a)) is amended by inserting immediately after "pneumoconiosis" the second place it appears therein the following: ", and in any case in which benefits based upon eligibility under paragraph (5) or paragraph (6) of section 411(c) are involved,".

(2) Section 421(b)(2)(C) of the Act (30 U.S.C. 931 (b)(2)(C)) is amended by inserting immediately before the semicolon at the end thereof the following: ", except that such standards shall not be required to include provisions for the payment of benefits based upon conditions substantially equivalent to conditions described in paragraphs (5) and (6) of section 411(c)".

(f) Section 430 of the Act (30 U.S.C. 938) is amended by inserting "and by the Black Lung Benefits Reform Act of

1975" immediately after "1972", by inserting immediately after "section 411(c)(4)" the following: "and the applicability of entitlements based upon conditions described in paragraphs (5) and (6) of section 411(c),", and by striking out "whether a miner was employed at least fifteen years" and inserting in lieu thereof the following: "the period during which the miner was employed".

OFFSET AGAINST WORKMEN'S COMPENSATION BENEFITS

SEC. 3. The first sentence of section 412(b) of the Act (30 U.S.C. 922(b)) is amended by inserting immediately after "disability of such miner" the following: "due to pneumoconiosis".

CURRENT EMPLOYMENT AS A BAR TO BENEFITS

SEC. 4. (a) The first sentence of section 413(b) of the Act (30 U.S.C. 923(b)) is amended by inserting immediately before the period at the end thereof the following: "or solely on the basis of employment as a miner if (1) the location of such employment has recently been changed to a mine area having a lower concentration of dust particles; (2) the nature of such employment has been changed so as to involve less rigorous work; or (3) the nature of such employment has been changed so as to result in the receipt of substantially less pay".

(b) Section 413 of the Act (30 U.S.C. 923) is amended by adding at the end thereof the following new subsection:

"(d)(1) A miner may file a claim for benefits whether or not such miner is employed by an operator of a coal mine at the time such miner files such claim.

"(2) The Secretary shall notify a miner, as soon as practicable after the Secretary receives a claim for benefits from such miner, whether, in the opinion of the Secretary, such miner—

"(A) is eligible for benefits on the basis of the provisions of paragraph (1), (2), or (3) of subsection (b); or

"(B) would be eligible for benefits, except for the circumstances of the employment of such miner at the time such miner filed a claim for benefits.".

APPEALS

SEC. 5. The last sentence of section 413(b) of the Act (30 U.S.C. 923(b)) is amended by inserting immediately before the period at the end thereof the following: ", except that a decision by an administrative law judge in favor of a claimant may not be appealed or reviewed, except upon motion of the claimant".

INDIVIDUAL NOTIFICATIONS

SEC. 6. Part B of title IV of the Act (30 U.S.C. 911 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 416. (a) For purposes of assuring that all in-

dividuals who may be eligible for benefits under this part are afforded an opportunity to apply for and, if entitled thereto, to receive such benefits, the Secretary shall undertake a program to locate individuals who are likely to be eligible for such benefits and have not filed a claim for such benefits.

"(b) The Secretary shall seek to determine, in cooperation with operators and with the Secretary of the Interior, the names and current addresses of individuals having long periods of employment in coal mining and, if such individuals are deceased, the names and addresses of their widows, children, parents, brothers, and sisters. The Secretary shall then directly, by mail, by personal visit by a delegate of the Secretary, or by other appropriate means, inform any such individuals (other than those who have filed a claim for benefits under this title) of the possibility of their eligibility for benefits, and offer them individualized assistance in preparing their claims where it is appropriate that a claim be filed.

"(c) Notwithstanding any other provision of this part, a claim for benefits under this part, in the case of an individual who has been informed by the Secretary under subsection (b) of the possibility of his eligibility for benefits, shall, if filed no later than six months after the date he was so informed, be considered on the same basis as if it had been filed on June 30, 1973.".

DEFINITIONS

SEC. 7. (a) Section 402(f) of the Act (30 U.S.C. 902 (f)) is amended by adding at the end thereof the following new undesignated paragraph:

"With respect to a claim filed after June 30, 1973, such regulations shall not provide more restrictive criteria than those applicable to a claim filed on June 30, 1973.".

(b) Section 402 of the Act (30 U.S.C. 902) is amended by inserting immediately after paragraph (g) the following new paragraph:

"(h) The term 'fund' means the Black Lung Disability Insurance Fund established by section 423(a).".

EVIDENCE REQUIRED TO ESTABLISH CLAIM

SEC. 8. (a) Section 413(b) of the Act (30 U.S.C. 923 (b)) is amended by inserting immediately after the second sentence thereof the following new sentence: "Where there is no relevant medical evidence in the case of a deceased miner, such affidavits shall be considered to be sufficient to establish that the miner was totally disabled due to pneumoconiosis or that his death was due to pneumoconiosis.".

(b) The last sentence of section 413(b) of the Act (30 U.S.C. 923(b)) is amended by striking out "and (l)," and inserting in lieu thereof "(l), and (n),".

CLAIMS FILED AFTER DECEMBER 31, 1973

SEC. 9. (a)(1) The first sentence of section 422(a) of the Act (30 U.S.C. 932(a)) is amended—

(A) by inserting immediately before the period at the end thereof the following: ", or with respect to entitlements established in paragraph (5) or paragraph (6) of section 411(c) of this title"; and

(B) by inserting immediately after "except as otherwise provided in this subsection" the following: "and to the extent consistent with the provisions of this part,".

(2) The last sentence of section 422(a) of the Act (30 U.S.C. 932(a)) is amended—

(A) by striking out "benefits" and inserting in lieu thereof "premiums and assessments"; and

(B) by striking out "to persons entitled thereto".

(3) Section 422(b) of the Act (30 U.S.C. 932(b)) is amended by inserting "(1)" immediately after "(b)", and by adding at the end thereof the following new paragraph:

"(2)(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) of this part each operator of a coal mine in such State shall secure the payment of assessments against such operator under section 424(g) of this part by (i) qualifying as a self-insurer in accordance with regulations prescribed by the Secretary; or (ii) insuring

and keeping insured the payment of such assessments 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 (ii) of subparagraph (A) of this paragraph, every policy or contract of insurance shall contain—

"(1) a provision to pay assessments required under section 424(g) of this part, notwithstanding the provisions of the State workmen's compensation law which may provide for payments which are less than the amount of such assessments;

"(2) a provision that insolvency or bankruptcy of the operator or discharge therein (or both) shall not relieve the carrier from liability for the payment of such assessments; 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 (ii) of subparagraph (A) of this paragraph 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 can-

cellation has been sent by registered or certified mail to the Secretary and to the operator at his last known place of business.".

(4) Section 422(b)(1) of the Act, as so redesignated by paragraph (3), is amended—

(A) by striking out "benefits" and inserting in lieu thereof "premiums and assessments"; and

(B) by striking out "section 423" and inserting in lieu thereof "section 424".

(5) Section 422(c) of the Act (30 U.S.C. 932(c)) is amended to read as follows:

"(c) Benefits shall be paid during such period under this section by the fund, subject to reimbursement to the fund by operators in accordance with the provisions of section 424(g) of this title, 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, except that (1) the Secretary may modify any such regulation promulgated by the Secretary of Health, Education, and Welfare; and (2) no operator shall be liable for the payment of any benefit (except as provided in section 424(f) of this title) on account of death or total disability due to pneumoconiosis, or on account of any entitlement based upon

conditions described in paragraphs (5) and (6) of section 411(c), which did not arise, at least in part, out of employment in a mine during the period when it was operated by such operator.".

(6) Section 422(e) of the Act (30 U.S.C. 932(e)) is amended—

(A) by striking out "required" and inserting in lieu thereof "made"; and

(B) by adding "or" immediately after the semicolon in paragraph (1) thereof, by striking out ", or" at the end paragraph (2) thereof and inserting in lieu thereof a period, and by striking out paragraph (3) thereof.

(7) Section 422(f)(2) of the Act (30 U.S.C. 932(f)(2)) is amended—

(A) by inserting "paragraph (4), (5), or (6) of" immediately after "eligibility under";

(B) by striking out "section 411(c)(4)" the first place it appears therein and inserting in lieu thereof "section 411(c)";

(C) by striking out "from a respiratory or pulmonary impairment"; and

(D) by striking out "section 411(c)(4) of this title, incurred as a result of employment in a coal mine"

and inserting in lieu thereof "any of such paragraphs".

(8) Section 422(h) of the Act (30 U.S.C. 932(h)) is amended by striking out the first sentence thereof.

(9) Section 422(i) of the Act (30 U.S.C. 932(i)) is amended to read as follows:

"(i)(1) The Secretary shall promulgate regulations providing for the prompt and expeditious consideration of claims under this section.

"(2)(A) The Secretary shall promulgate regulations providing for the prompt and equitable hearing of appeals by claimants who are aggrieved by any decision of the Secretary.

"(B) Any such hearing shall be held no later than forty-five days after the date upon which the claimant involved requests such hearing. A hearing may be postponed at the request of the claimant involved for good cause.

"(C) Any such hearing shall be held at a time and a place convenient to the claimant requesting such hearing.

"(D) Any such hearing shall be of record and shall be subject to the provisions of sections 554, 555, 556, and 557 of title 5, United States Code.

"(3)(A) Any individual, after any final decision of the Secretary made after a hearing to which he was a party, may obtain a review of such decision by a civil action commenced no later than ninety days after the mailing to him of

notice of such decision, or no later than such further time as the Secretary may allow.

"(B) Such action shall be brought in a district court of the United States in the State in which the claimant resides.

"(C) The Secretary shall file, as part of his answer, a certified copy of the transcript of the record, including the evidence upon which the findings and decision complained of are based.

"(D) The court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Secretary, with or without remanding the case for a rehearing. The findings of the Secretary as to any fact, if supported by the weight of the evidence, shall be conclusive.

"(E) The court shall, on motion of the Secretary made before he files his answer, remand the case to the Secretary for further action by the Secretary, and may, at any time, on good cause shown, order additional evidence to be taken before the Secretary, and the Secretary shall, after the case is remanded, and after hearing such additional evidence if so ordered, modify or affirm his findings of fact or his decision, or both, and shall file with the court any such additional and modified findings of fact and decision, and a transcript of the additional record and testimony upon which his action in

modifying or affirming was based. Such additional or modified findings of fact and decision shall be reviewable only to the extent provided for review of the original findings of fact and decision.

"(F) The judgment of the court shall be final, except that it shall be subject to review in the same manner as a judgment in other civil actions. Any action instituted in accordance with this paragraph shall survive notwithstanding any change in the person occupying the office of Secretary or any vacancy in such office.".

(10) In the case of any miner or any survivor of a miner who is eligible for benefits under section 422 of the Act (30 U.S.C. 932) as a result of any amendment made by any provision of this Act, such miner or survivor may file a claim for benefits under such section no later than three years after the date of the enactment of this Act, or no later than the close of the applicable period for filing claims under section 422(f) of the Act (30 U.S.C. 932(f)), whichever is later.

(b) Section 423 of the Act (30 U.S.C. 933) is amended to read as follows:

"SEC. 423. (a)(1) There is hereby established in the Treasury of the United States a trust fund to be known as the Black Lung Disability Insurance Fund. The fund shall consist of such sums as may be appropriated as advances to

the fund under section 424(e)(1) of this part, the assessments paid into the fund as required by section 424(g), the premiums paid into the fund as required by section 424(a), the interest on, and proceeds from, the sale or redemption of any investment held by the fund, and any penalties recovered under section 424(c), including such earnings, income, and gains as may accrue from time to time which shall be held, managed, and administered by the trustees in trust in accordance with the provisions of this part and the fund.

"(2) Fund assets, other than such assets as may be required for necessary expenses, shall be used solely and exclusively for the purpose of discharging obligations of operators under this part. Operators shall have no right, title, or interest in fund assets, and none of the earnings of the fund shall inure to the benefit of any person, other than through the payment of benefits under this part, together with appropriate costs.

"(b)(1)(A) The fund shall have seven trustees. Except as provided in subparagraph (B), trustees shall serve for terms of four years.

"(B) Of the trustees first elected under this subsection—

"(i) four shall be elected for terms of two years; and

"(ii) three shall be elected for terms of one year.

The Secretary shall determine, before the date of the first election under this subsection, whether each trustee office involved in such election shall be for a term of one year or two years. Such determination shall be made through the use of an appropriate method of random selection, except that at least one trustee nominated under paragraph (2)(A) shall serve for a term of two years.

"(C) Any trustee may be a full-time employee of an operator, except that no more than one trustee may be employed by any one operator or any affiliate of such operator.

"(2)(A) Two trustees shall be nominated and elected by operators having an annual payroll not in excess of $1,500,000 (hereinafter referred to as 'small operators').

"(B) Five trustees shall be nominated and elected by all operators.

"(3) No later than 60 days after the date of the enactment of the Black Lung Benefits Reform Act of 1975, all operators shall certify to the Secretary their payrolls for the 12-month period ending December 31, 1974. The Secretary shall then publish a list setting forth the number of votes to which each small operator and each operator is entitled, computed on the basis of one vote for each $500,000 or fraction thereof of payroll. Trustees shall be elected no later than 180 days after the date of the enactment of such Act.

"(4) Candidates seeking nomination for election to the

office of trustee under paragraph (2)(A) shall submit to the Secretary petitions of nomination reflecting the approval of small operators representing not less than 2 per centum of the aggregate annual payroll of all small operators. Candidates seeking such nomination under paragraph (2)(B) shall submit petitions reflecting the approval of operators representing not less than 2 per centum of the aggregate annual payroll of all operators.

"(5) The Secretary shall promulgate regulations for the nomination and election of trustees. Such regulations shall include provisions for the nomination and election of trustees, including the nomination and election of trustees to fill any vacancy caused by the death, disability, resignation, or removal of any trustee. The Secretary shall certify the results of all nominations and elections. Two or more trustees may at any time file a petition, in the United States district court where the fund has its principal office, for removal of a trustee for malfeasance, misfeasance, or nonfeasance. The cost of any such action shall be paid from the fund, and the Secretary may intervene in any such action as an interested party.

"(6) The trustees shall organize by electing a Chairman and Secretary and shall adopt such rules governing the conduct of their business as they consider necessary or appropriate. Five trustees shall constitute a quorum and a simple

majority of those trustees present and voting may conduct the business of the fund.

"(c)(1) The trustees shall act on behalf of all operators with respect to claims filed under this part.

"(2)(A) Except as provided by subparagraph (B), the fund may not participate or intervene as a party to any proceeding held for the purpose of determining claims for benefits under this part.

"(B)(i) If the fund is dissatisfied with any determination of the Secretary with respect to a claim for benefits under this part, the fund may, no later than thirty days after the date of such determination, file with the United States court of appeals for the circuit in which such determination was made a petition for review of such determination. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which he based his determination, as provided in section 2112 of title 28, United States Code.

"(ii) The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive, except that the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary thereupon may make new or modified findings of fact and may modify his previous determination, and shall certify to the

court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

"(iii) The court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject 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.

"(iv) Any finding of fact of the Secretary relating to the interpretation of any chest roentgenogram or any other medical evidence which demonstrates the existence of pneumoconiosis or any other disabling respiratory or pulmonary impairment, shall not be subject to review under the provisions of this subparagraph.

"(3) No operator may bring any proceeding, or intervene in any proceeding, held for the purpose of determining claims for benefits under this part.

"(4) It shall be the duty of the trustees to report to the Secretary and to the operators no later than January 1 of each year on the financial condition and the results of the operations of the fund during the preceding fiscal year and on its expected condition during the current and ensuing fiscal year. Such report shall be included in a report to the Congress by the Secretary not later than March 1 of each year

on the financial condition and the results of the operations of the fund during the preceding fiscal year and on its expected condition and operations during the current and next ensuing fiscal year. The report of the Secretary shall be printed as a House document of the session of the Congress to which the report is made.

"(5)(A) The trustees shall take control and management of the fund and shall have the authority to hold, sell, buy, exchange, invest, and reinvest the corpus and income of the fund. All premiums paid to the fund under section 424(a)(1) shall be held and administered by the trustees as a single fund, and the trustees shall not be required to segregate and invest separately any part of the fund assets which may be claimed to represent accruals or interests of any individuals. It shall be the duty of the trustees to invest such portion of the assets of the fund as is not required to meet obligations under this part, except that the trustees may not invest any advances made to the fund under section 424(e). The trustees shall make investments under this paragraph in accordance with the provisions of section 404(a)(1)(C) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104(a)(1)(C)).

"(B) Any profit or return on any investment or reinvestment made by the trustees under subparagraph (A) shall

not be considered as income for purposes of Federal or State income taxation.

"(6)(A) Amounts in the fund shall be available for making expenditures to meet obligations of the fund which are incurred under this part, including the expenses of providing medical benefits as required by section 432 of this title, and the operation, maintenance, and staffing of the office of the fund. The trustees may enter into agreements with any self-insured person or any insurance carrier who has incurred obligations with respect to claims under this part before the effective date of this paragraph, under which the fund will assume the obligations of such self-insured person or insurance carrier in return for a payment or payments to the fund in such amounts, and on such terms and conditions, as will fully protect the financial interests of the fund.

"(B) Beginning on the effective date of this paragraph, payments shall be made from the fund to meet any obligation incurred by the Secretary with respect to claims under this part before such effective date. The Secretary shall cease to be subject to such obligations on such effective date.

"(7) The trustees shall keep accounts and records of their administration of the fund, which shall include a detailed account of all investments, receipts, and disbursements.

"(8) At no time during the administration of the fund shall the trustees be required to obtain any approval by any court of the United States or by any other court of any act required of them in connection with the performance of their duties or in the performance of any act required of them in the administration of their duties as trustees. The trustees shall have the full authority to exercise their judgment in all matters and at all times without any such approval of such decisions. The trustees may file an application in the United States district court where the fund has its principal office for a judicial declaration concerning their power, authority, or responsibility under this Act (other than the processing and payment of claims). In any such proceeding, only the trustees and the Secretary shall be necessary or indispensable parties, and no other person, whether or not such person has any interest in the fund, shall be entitled to participate in any such proceeding. Any final judgment entered in such proceeding shall be conclusive upon any person or other entity claiming an interest in the fund.

"(9) The trustees may employ such counsel, accountants, agents, and employees as they consider advisable. The trustees may charge the compensation of such persons and any other expenses, including the cost of fidelity bonds and indemnification and fiduciary insurance for trustees and

other fund employees, necessary in the administration of the fund, against the fund.

"(10) The trustees shall have the power to execute any instrument which they consider proper in order to carry out the provisions of the fund.

"(11) The trustees may, through any duly authorized person, vote any share of stock which the fund may hold.

"(12) The trustees may employ actuaries to such extent as they consider advisable. No actuary may be employed by the trustees under this paragraph unless such actuary is enrolled under section 3042(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1242(a)).".

(c) Section 424 of the Act (30 U.S.C. 934) is amended to read as follows:

"SEC. 424. (a)(1) 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 a coal mine in such State shall pay premiums into the fund in amounts sufficient to ensure the payment of benefits under this part.

"(2) The initial premium rate of each operator shall be established by the Secretary as a rate per ton of coal mined by such operator. Beginning one year after the date upon which the Secretary establishes initial premium rates, the

trustees may modify or adjust the premium rate per ton of coal mined to reflect the experience and expenses of the fund to the extent necessary to permit the trustees to discharge their responsibilities under this Act, except that the Secretary may further modify or adjust the premium rate to ensure that all obligations of the fund will be met. Any premium rate established under this subsection shall be uniform for all mines, mine operators, and amounts of coal mined.

"(3) For purposes of section 162(a) of the Internal Revenue Code of 1954 (relating to trade or business expenses), any premium paid by an operator of a coal mine under paragraph (1) shall be considered to be an ordinary and necessary expense in carrying on the trade or business of such operator.

"(4) For purposes of this subsection—

"(A) the term 'coal' means any material composed predominantly of hydrocarbons in a solid state;

"(B) the term 'ton' means a short ton of two thousand pounds; and

"(C) the amount of coal mined shall be determined at the first point at which such coal is weighed.

"(b) The Secretary shall advise the Secretary of the Treasury or his delegate of premium rates established under subsection (a)(1). The Secretary of the Treasury or his delegate shall collect all premiums due and payable by oper-

ators under subsection (a)(1), and transmit such premiums to the fund. Collections shall be effected by the Secretary of the Treasury or his delegate in the same manner as, and together with, quarterly payroll reports of employers. In order to ensure the payment of premiums by all operators, the Secretary, after consultation with the Secretary of the Interior, shall certify, not less than annually, the names of all operators subject to this Act.

"(c)(1) In any case in which an operator fails or refuses to pay any premium required to be paid under subsection (a)(1), the trustees of the fund shall bring a civil action in the appropriate United States district court to require the payment of such premium. In any such action, the court may issue an order requiring the payment of such premiums in the future as well as past due premiums, together with 9 per centum annual interest on all past due premiums.

"(2) An operator who fails or refuses to pay any premium required to be paid under subsection (a)(1) may be assessed a civil penalty by the Secretary of the Treasury or his delegate in such amount as such Secretary or his delegate may prescribe, but not in excess of an amount equal to the premium the operator failed or refused to pay. Such penalty shall be in addition to any other liability of the operator under this Act. Penalties assessed under this paragraph may be recovered in a civil action brought by such Secretary or

his delegate, and penalties so recovered shall be deposited in the fund.

"(d) The Secretary shall be required to make expenditures under this part only for the purpose of carrying out his obligation to administer this part. All other expenses incurred under this part shall be borne by the fund, and if borne by the Secretary, shall be reimbursed by the fund to the Secretary.

"(e)(1) There are hereby authorized to be appropriated to the fund such sums as may be necessary to provide the fund with amounts equal to 50 per centum of the amount which the Secretary estimates is necessary for the payment of benefits under this part during the first twelve-month period after the effective date of this section. Any amounts appropriated under this paragraph may be used only for the payment of benefits under this part.

"(2)(A) Sums authorized to be appropriated by paragraph (1) shall be repayable advances to the fund.

"(B) Such advances shall be repaid with interest into the general fund of the Treasury no later than five years after the first appropriation made under paragraph (1).

"(3) Interest on such advances shall be at a rate determined by the Secretary of the Treasury, taking into consideration the current average yield during the month preceding the date of the advance involved, on marketable interest-

bearing obligations of the United States of comparable maturities then forming a part of the public debt rounded to the nearest one-eighth of 1 per centum.

"(f)(1) During any period in which section 422 of this title is applicable with respect to a coal mine an operator of such mine who, after the date of the enactment of this title, acquired such mine or substantially all the assets thereof from a person (hereinafter in this paragraph referred to 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 this section and section 423 of this title, secure the payment of all benefits for which the prior operator would have been liable under section 422 of this title with respect to miners previously employed in such mine if the acquisition had not occurred and the previous operator had continued to operate such mine.

"(2) Nothing in this subsection shall relieve any prior operator of any liability under section 422 of this title.

"(g)(1) The fund shall make an annual assessment against any operator who is liable for the payment of benefits under section 422 of this title. Such assessment against any operator of a coal mine shall be in an amount equal to the amount of benefits for which such operator is liable under section 422 of this title with respect to death or total

disability due to pneumoconiosis arising out of employment in such mine, or with respect to entitlements established in paragraph (5) or paragraph (6) of section 411(c) of this title.

"(2) Any operator against whom an assessment is made under paragraph (1) shall pay the amount involved in such assessment into the fund no later than thirty days after receiving notice of such assessment.

"(3) The provisions of subsection (c) of this section shall apply in the case of any operator who fails or refuses to pay any assessment required to be paid under this subsection.".

(d) Section 421(b)(2)(E) of the Act (30 U.S.C. 931 (b)(2)(E)) is amended by striking out "section 422(i)" and inserting in lieu thereof "section 424(f)".

CLINICAL FACILITIES

SEC. 10. The first sentence of section 427(c) of the Act (30 U.S.C. 937(c)) is amended by striking out "of the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975" and inserting in lieu thereof "fiscal year, and $2,500,000 for the period beginning July 1, 1976, and ending September 30, 1976".

MEDICAL CARE

SEC. 11. (a) Part C of title IV of the Act (30 U.S.C. 931 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 432. The provisions of subsections (a), (b), (c), (d), and (g) of section 7 of the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 907 (a), (b), (c), (d), and (g)) shall be applicable to persons entitled to benefits under this part on account of total disability or on account of eligibility under paragraph (5) or paragraph (6) of section 411(c), except that references in such section to the employer shall be considered to refer to the trustees of the fund.".

(b) The Secretary of Health, Education, and Welfare shall notify each miner receiving benefits under part B of the Black Lung Benefits Act on account of his total disability who the Secretary has reason to believe became eligible for medical services and supplies on January 1, 1974, of his possible eligibility for such benefits. Where the Secretary so notifies a miner, the period during which he may file a claim for medical services and supplies under part C of such Act shall not terminate before six months after such notification was made.

TRANSITIONAL PROVISIONS

SEC. 12. (a) The Secretary of Health, Education, and Welfare, and the Secretary of Labor shall disseminate to interested persons and groups the changes in the Black Lung Benefits Act made by this Act. Each such Secretary shall undertake a program to give individual notice to individuals

who they believe are likely to have become eligible for benefits by reason of such changes.

(b)(1) The Secretary of Health, Education, and Welfare (with respect to part B of the Black Lung Benefits Act) and the Secretary of Labor (with respect to part C of such Act) shall review each claim which has been denied, and each claim which is pending, under each such part, taking into account the amendments made to each such part by this Act. Each such Secretary shall approve any such claim if the provisions of either such part, as so amended, require such approval.

(2) Each such Secretary, in undertaking the review required by paragraph (1), shall not require the resubmission of any claim which is the subject of any such review.

SHORT TITLE FOR ACT

SEC. 13. Section 401 of the Act (30 U.S.C. 901) is amended by inserting "(a)" immediately after "SEC. 401." and by adding at the end thereof the following new subsection:

"(b) This title may be cited as the 'Black Lung Benefits Act'.".

MINE ACCIDENT WIDOWS

SEC. 14. (a) If a miner was employed for seventeen years or more in one or more underground coal mines, and died as a result of an accident in any such coal mine which

occurred on or before June 30, 1971, any eligible survior of such miner shall be entitled to the payment of benefits under part B of the Black Lung Benefits Act.

(b) For purposes of this section, benefit payments to a widow, child, parent, brother, or sister of any miner to whom subsection (a) applies shall be reduced, on a monthly or other appropriate basis, by an amount equal to any payment received by such widow, child, parent, brother, or sister under the workmen's compensation, unemployment compensation, or disability laws of the miner's State.

EFFECTIVE DATES

SEC. 15. (a) This Act shall take effect on the date of its enactment, except that—

(1) the amendments made by section 2 shall be effective on and after December 30, 1969, except that claims approved solely because of the amendments made by section 2, which were filed before the date of the enactment of this Act, shall be awarded benefits only for the period beginning on such date of enactment;

(2) the amendments made by sections 4, 5, and 8 shall be effective on and after December 30, 1969;

(3) the amendments made by section 6 shall not require the payment of benefits for any period before the date of the enactment of this Act; and

(4) the amendments made by section 9 shall take

effect on January 1, 1976, except that (A) the Secretary of Labor shall establish initial premium rates for operators under section 424(a)(1) of the Black Lung Benefits Act, as added by section 9(c) of this Act, no later than January 1, 1976; and (B) such Secretary shall make the estimate required by section 424(e)(1) of such Act, as added by section 9(c) of this Act, as soon as practicable after the date of the enactment of this Act.

(b) In the event that the payment of benefits to miners and to eligible survivors of miners cannot be made from the Black Lung Disability Insurance Fund established by section 423(a) of the Act, as added by section 9(b) of this Act, the provisions of the Act relating to the payment of benefits to miners and to eligible survivors of miners, as in effect immediately before January 1, 1976, shall remain in force as rules and regulations of the Secretary of Labor, until such provisions are revoked, amended, or revised by law. Such Secretary shall make benefit payments to miners and to eligible survivors of miners in accordance with such provisions.

Union Calendar No. 379

94TH CONGRESS
1ST SESSION

H. R. 10760

[Report No. 94–770]

A BILL

To amend the Federal Coal Mine Health and Safety Act to revise the black lung benefits program established under such Act in order to transfer the residual liability for the payment of benefits under such program from the Federal Government to the coal industry, and for other purposes.

By Mr. DENT, Mr. PERKINS, Mr. PHILLIP BURTON, Mr. FLOOD, Mr. CLAY, Mr. MURTHA, Mr. YATRON, Mr. HAYES of Indiana, Mr. WAMPLER, Mr. RONCALIO, Mr. BEVILL, Mr. MELCHER, Mr. SLACK, Mr. YATES, Mr. HUBBARD, Mr. EVANS of Colorado, Mr. MOLLOHAN, Mr. HALL, Mr. WHALEN, Mr. CARNEY, Mr. MITCHELL of Maryland, Mr. SEIBERLING, Mr. DUNCAN of Tennessee, and Mr. RAILSBACK

NOVEMBER 14, 1975

Referred to the Committee on Education and Labor

DECEMBER 31, 1975

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

purposes. After general debate, which shall be confined to the bill and shall continue not to exceed two hours, 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. It shall be in order to consider the amendment in the nature of a substitute recommended by the Committee on Education and Labor now printed in the bill as an original bill for the purpose of amendment under the five-minute rule, and all points of order against said substitute for failure to comply with the provisions of clause 5, rule XXI, are hereby waived. At the conclusion of such consideraiton, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the committee amendment in the nature of a substitute. 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 with or without instructions.

The SPEAKER. The gentleman from Indiana (Mr. MADDEN) is recognized for 1 hour.

PROVIDING FOR CONSIDERATION OF H.R. 10760, BLACK LUNG BENEFITS REFORM ACT OF 1975

Mr. MADDEN. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 1056 and ask for its immediate consideration.

The Clerk read the resolution as follows:

H. RES. 1056

Resolved, That upon the adoption of this resolution it shall be in order to 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. 10760) to amend the Federal Coal Mine Health and Safety Act to revise the black lung benefits program established under such Act in order to transfer the residual liability for the payment of benefits under such program from the Federal Government to the coal industry, and for other

By surveys and studies carried on throughout the United States, it has been established that black lung has been the scourge of the mining industry and the mortality rates among coal miners has been phenominal. In the past the risk of death among coal miners has been nearly twice of the general population and higher than any other occupational group in the United States.

Contributing greatly to this condition has been the deaths from accidents and respiratory diseases. The excess of this disease's deaths increased sharply with the age of a miner which suggests the importance of the environmental factors. Mortality rates of coal miners for other reasons are also high.

The latest study available is from the year mortality rates of the U.S. coal miners contrasts sharply with mortality rates in Great Britain. In that country, mortality rates for coal miners for all causes is only about 15 percent above the general population but in certain areas of Great Britain they do show fatality excesses as much as 50 percent.

In determining the validity of black lung 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 the deceased miner, other appropriate affidavits of persons with knowledge of the miner's physical condition, and other supportive materials.

H.R. 10760 is designed to liberalize black lung benefits and create an industry-financed trust fund to pay black lung benefits. Mr. Speaker, I urge the adoption of House Resolution 1056 so that we may proceed to the consideration of this important legislation.

Mr. LATTA. Mr. Speaker, I yield myself such time as I may consume.

(Mr. LATTA asked and was given permission to revise and extend his remarks.)

Mr. LATTA. Mr. Speaker, at the outset let me say that I certainly have compassion for individuals who are afflicted with black lung disease. Under the present law these individuals are eligible to draw benefits, and for these individuals to draw those benefits, we do not need a change in the present law.

Let us lay to rest immediately what this bill is all about. Under this bill one does not have to have black lung disease to draw benefits; all one has to have, if he works in an anthracite coal mine, is 25 years of service, and in all other types of mines he has to have 30 years of service. In such cases, he does not have to prove that he has black lung disease. All he has to do is to prove his length of service and he is automatically entitled to benefits.

So let us not try to kid ourselves or kid the American people into believing that we are doing something to extend black lung disease benefits by passing this bill. We are just extending coverage under the black lung program to anyone working or who has worked in a coal mine—whether they have black lung disease or not—if they had worked 25 years in anthracite mines or 30 years in any other types of mines.

Mr. Speaker, I know it is going to be argued here today that this is not going to cost the taxpayers much because this is going to be put on the coal producers. But let us ask, where are the coal producers going to get this money? From the consumers. Somebody is going to pay the bill, and it will be the consumers who are going to pay most of this bill.

I am amazed at the lack of attention to this bill from all these consumer groups across the country who are constantly writing your office and my office about inflation and about the high cost of this, that, and the other thing. We have heard nothing from them about the effect this bill will have on inflation and the price of coal. They are going to carry the load or the bulk of the load, along with taxpayers who do not use coal.

There are many people who are saying, "I do not use coal, I do not burn coal, so, therefore, I am not going to have to pay the bill." Yet these same people turn on their electric lights. They use those electric lights, they pay utility bills, and those utility bills in most States, including mine, are now going up automatically on the basis of the cost of the fuel. The utility companies usually do not even have to go to the public utilities commissions to prove these increased costs when raising their rates. They are more or less automatic.

Let us not try to hoodwink the American consumers into believing that they are not going to pay the cost of this bill.

Mr. Speaker, let me say one other thing about this bill. It violates the spirt, if not the letter, of the new Budget Act. I know that most of us want to see this Budget Act work.

Under the new Budget Act, we pledged that we were going to get rid of backdoor spending.

There is backdoor spending in this bill.

I might say that this bill was reported on the last day of last year, and that is why we have it here today.

Had it been reported on the first day of this year, it would not have been here today. In my humble opinion, this bill violates the spirit, if not the letter, of the Budget Act and I would like to confirm this with the chairman of our committee, the gentleman from Washington, (Mr. ADAMS).

Mr. Speaker, I would like to yield to him and get his thinking on this matter as to whether it does not violate the spirit of the Budget Act as far as back door spending is concerned.

Mr. Speaker, I yield such time as he may consume to the gentleman from Washington (Mr. ADAMS) for that purpose.

(Mr. ADAMS asked and was given permission to revise and extend his remarks and to include extraneous matter.)

Mr. ADAMS. Mr. Speaker, I rise to comment on the pending rule for H.R. 10760. From the viewpoint of the Budget Act not on the merits of the bill. The report of his bill was filed in calendar year 1975 to be effective in fiscal year 1976. Thus, under section 401 of the Budget Act, there is no statutory bar to House

---

BLACK LUNG BENEFITS REFORM ACT OF 1975

The SPEAKER. The Chair recognizes the gentleman from Indiana (Mr. MADDEN).

Mr. MADDEN. Mr. Speaker, I yield 30 minutes to the gentleman from Ohio (Mr. LATTA), pending which I yield myself such time as I may consume.

(Mr. MADDEN asked and was given permission to revise and extend his remarks.)

Mr. MADDEN. Mr. Speaker, House Resolution 1056 provides for an open rule with 2 hours of general debate on H.R. 10760, a bill to amend the Federal Coal Mine Health and Safety Act to revise the black lung benefits program established under such act in order to transfer the residual liability for the payment of benefits under such program from the Federal Government to the coal industry, and for other purposes.

House Resolution 1056 provides that it shall be in order to consider the amendment in the nature of a substitute recommended by the Committee on Education and Labor now printed in the bill as an original bill for the purpose of amendment, and all points of order against the substitute for failure to comply with the provisions of clause 5, rule XXI—prohibiting appropriations in a legislative bill—are waived. This waiver is necessary because section 9 of the committee substitute establishes a fund in the Treasury and permits payments from that fund without a prior appropriation and because some of the funds now available for payment of black lung benefits under existing law may possibly become available for payment of benefits under the program established by this bill.

consideration of the measure at this time. As I point out in my attached letter to Chairman PERKINS it may have to wait until after May is in the Senate.

From the point of view of the congressional budget process, it would be more appropriate to consider this bill after Congress establishes budget targets for fiscal year 1977 in the first budget resolution this spring, but there is no legal bar to considering it.

The Congressional Budget Office estimates that the outlay impact of this measure in the current fiscal year would be $37 million budget authority and $8 million in outlays. This comparatively low estimate reflects the fact that the new entitlement is assumed to be effective only 2 months before the end of this fiscal year. No funds were specifically included in the budget resolutions this year for this bill.

In future years, the costs will be more substantial. Fiscal year 1977 costs are estimated by CBO to be $284 million in budget authority and $217 million in outlays. It should be noted that both budget authority and outlays are in part offset by the $133 million in revenue which is estimated to result from assessments on coal operators. Thus, the net costs of this bill in fiscal year 1977 would be $151 million in budget authority and $84 million in outlays. The CBO estimates are that a conversion to the trust fund concept contained in this bill will result in total savings of $237 million in outlays compared to present law in the next 5 years.

I would also like to comment on the committee amendment, which I understand will be offered, to insure that this bill will be treated as an onbudget activity. This amendment has no impact on the real costs of this bill. What it does is to insure that the program will receive legislative and budgetary oversight like any other Federal program. I commend the committee for offering this amendment, which is consistent with the intent of the Budget Act, and hope that it will be approved.

Under section 606 of the Budget Act, the Budget Committee is given the responsibility to study provisions of law which exempt agencies, or their activities or outlays, from inclusion in the budget. This provision was included in the Budget Act to curb the trend evident over the past few years of excluding Federal programs from the unified budget in order to make their costs less visible. In fiscal year 1977, the administration estimates that outlays from off-budget Federal agencies will be $11.1 billion and that outlays from Government-sponsored enterprises, which are not included in the budget totals, will be an additional $14.6 billion.

COMMITTEE ON THE BUDGET,
Washington, D.C., February 9, 1976.

Hon. JOHN H. DENT,
Chairman, Subcommittee on Labor Standards, Committee on Education and Labor, U.S. House of Representatives, Washington, D.C.

DEAR JOHN: This is in response to your letter of January 29th concerning the Black Lung Benefits Reform Act of 1975. We have just received revised cost estimates from the Congressional Budget Office and have forwarded a reply to Chairman Perkins. I am attaching a copy of that reply for your information.

Very truly yours,

BROCK ADAMS,
Chairman.

COMMITTEE ON EDUCATION AND LABOR,
Washington, D.C., January 29, 1976.

Hon. BROCK ADAMS,
Chairman, Committee on the Budget, Rayburn House Office Building, Washington, D.C.

DEAR BROCK: I am writing in respect of Chairman Perkins' letter to you of January 28, 1976, regarding our desire to bring to the floor at the earliest opportunity the Black Lung Benefits Reform Act of 1975 (H.R. 10760).

We, of course, do not believe the bill would offend the ceilings set by the FY 76 budget resolution, and look forward to soon having the benefit of your advice on that question.

With every kind regard, I remain

Sincerely yours,

JOHN H. DENT,
Chairman.

COMMITTEE ON THE BUDGET,
Washington, D.C., February 9, 1976.

Hon. CARL D. PERKINS,
Chairman, Committee on Education and Labor, U.S. House of Representatives, Washington, D.C.

DEAR CARL: This is in response to your letter of January 28, regarding H.R. 10760, the Black Lung Benefits Reform Act of 1975. We have now received a new cost analysis from the Congressional Budget Office and can respond more specifically to the questions you raised.

As your letter indicates, H.R. 10760 contains new spending authority as defined in section 401(c)(2)(C) of the Congressional Budget Act. Since the bill was reported in the House in calendar year 1976, there is no statutory bar to House consideration of the measure at this time. However, I hope you are aware that if no companion bill was reported in the Senate last year, Senate floor action would most likely have to await May 15, absent a Budget Act waiver.

We do not dispute the Congressional Budget Office estimate that the outlay impact of this measure in the current fiscal year would be $8.47 million. This low estimate reflects the fact that the new entitlement is assumed to be effective only two months before the end of this fiscal year. The costs in future years are necessarily far more substantial. Budget authority for fiscal year 1977, for example, is estimated at $284 million, if the program is treated as a federal trust fund. Thus, it would be more appropriate from the point of view of the Congressional budget process, to consider this matter after Congress establishes budget targets for fiscal year 1977 in the first budget resolution this spring.

I want to advise you that there is another aspect of this bill which must be of concern to the Budget Committee. That is the apparent intent to treat the black lung trust fund as an off-budget item. As you may know, section 606 of the Budget Act gives the Budget Committee the responsibility to study provisions of law which exempt agencies, or their activities or outlays, from inclusion in the budget. We have reviewed the implications of treating the black lung trust fund as an off-budget agency.

Since the trust fund which would be created by H.R. 10760 clearly fulfills a public function similar to that of the railroad retirement and unemployment compensation trust funds, I can see no reason why the proposed fund should receive different treatment and be excluded from the budget. As a result, I would hope that the Education and Labor Committee will introduce a floor amendment to clarify the intent of Congress to include the trust fund in the budget.

With warmest regards,

BROCK ADAMS,
Chairman.

COMMITTEE ON EDUCATION AND LABOR,
Washington, D.C., January 28, 1976.

Hon. BROCK ADAMS,
Chairman, House Committee on the Budget, Cannon House Office Building, Washington, D.C.

DEAR BROCK: The Black Lung Benefits Reform Act of 1975 (H.R. 10760) was reported on December 31, 1975. It would provide new spending authority as described in Section 401(c)(2)(C) of the Congressional Budget Act of 1974.

H.R. 10760 would become effective for spending purposes on the date of its enactment. I intend to arrange for its consideration in the House during the last week of February, 1976. It is contemplated that the Congress will complete action on H.R. 10760 so that it will take effect in FY 1976.

Consideration in the House in February or March 1976 would not be out of order under Section 401(b)(1) of the Budget Act because the bill was reported to the House in calendar year 1975 to be effective in the fiscal year which began in such calendar year. The effect of the bill on budget authority and outlays, however, needs to be related to the ceilings set by the budget resolution for FY 1976. The Congressional Budget Office is preparing an estimate of the costs of the Black Lung Benefits Reform Act of 1975 on the basis of its becoming effective on May 1, 1976. When that estimate is available, may I have your advice whether the budget ceilings for 1976 would embrace the expenditures authorized by the new bill. A rough estimate for budget authority and outlays for FY 1976 is approximately $25 million each.

Sincerely,

CARL D. PERKINS,
Chairman.

I thank the gentleman for yielding to me. I thank the chairman of the Committee on Rules, the gentleman from Indiana (Mr. MADDEN) for having asked that I comment on this. I have tried to be as fair as possible in indicating the effects of this bill.

Mr. LATTA. Mr. Speaker, I thank the gentleman from Washington for his comments.

I would just like to add further that since this is a precedent shattering piece of legislation in that you do not have to prove black lung disease in order to draw benefits after 25 years in the anthracite mines and after 30 years in other mines we are opening up a Pandora's box as far as other hazardous occupations are concerned. Are we not going to be flooded with requests to set up other special funds for example, the asbestos workers, after 25 years. Perhaps they should be regarded as totally disabled, even though the medical records do not so indicate, after this period of service and they also should have some special pension awarded to them. Or the farmers should be awarded some special pension for their many years of faithful service?

I question whether or not it is the proper thing to set such a precedent? I just wonder how soon it is going to be before we are going to have requests from other occupations from around the country for similar benefits.

I hope the Members will keep this in mind when they prepare to vote on this

rule. I do not believe we should be venturing into this type of legislation.

Mr. MADDEN. Mr. Speaker, I yield 3 minutes 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. Speaker, there are more coal miners, more miners' widows and more retired coal miners in my congressional district than in any congressional district in the Nation.

In 1969 when the Congress enacted the Federal Coal Mine Health and Safety Act, there were numerous attempts here on the floor to defeat the black lung compensation provisions of the bill.

I recall that some of those attempts were led by the then Republican leader of the House who is now the President of the United States.

President Nixon waited until the very last and 10th day before signing the bill on the 30th of December 1969. In his statement signing the bill, President Nixon raised some serious questions about both the costs and the validity of the black lung compensation provisions.

It seemed pretty clear from the start that the Nixon and Ford administrations both had a negative attitude toward black lung compensation. It is for this reason, I believe, that despite the fact that we have had a professed law and order administration under Attorney General Mitchell, the intent of the Congress was not followed out in administering the 1969 law.

Many, many people have raised the question why did we have to come back for amendments to the back lung compensation law in 1972? Why do we have to come back today in order to insure that the law give just compensation? I contend that if the 1969 Coal Mine Health and Safety Act had been enforced in accordance with the intent of the Congress, we would not have to be coming back today.

The 1969 law says in its preamble, and I have a copy of it in front of me:

> . . . 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; . . .

The most precious resource, the coal miner.

It does not say the bureaucrats. It does not say the lawyers. It does not say the doctors. It does not say the person who gets in there as a contract specialist and rereads X-rays and creates additional paperwork. The first priority must be the coal miner, according to law.

Secondly, the dust level in the mines has not indeed been reduced since 1971. On June 30, 1971, the law required the dust level to be reduced to 2.0 milligrams per cubic meter of air. But the excellent December 31, 1975 study by the General Accounting Office eloquently testifies to that fact that the dust levels have not been cut to 2.0. We should not cut off the time of the miners for black lung compensation at June 30th, 1971. This is particularly true if we require 25 or 30 years of work in the mines before automatic entitlement to black lung compensation. Personally, I have worked for a 15-year rule, and believe that 25 or 30 years is too long a time for a coal miner to wait while the terrible disease of black lung gets worse and worse.

The SPEAKER. The time of the gentleman has expired.

Mr. MADDEN. Mr. Speaker, I yield 1 additional minute to the gentleman from West Virginia.

Mr. HECHLER of West Virginia. Mr. Speaker, we have before us a bill that has many good features. I commend the chairman, and I commend the chairman of the subcommittee, the gentleman from Pennsylvania (Mr. DENT) for including such a far-reaching feature as the black lung disability insurance fund because if we do put the burden on those coal operators who maintain high dust levels, there is going to be pressure to bring those dust levels down to protect miners.

In conclusion, Mr. Speaker, I urge support of this bill with amendments which are going to be brought up. Particularly I will bring up an amendment to prevent the rereading of X-rays. I challenge this Congress to meet the energy needs of the Nation to provide the necessary manpower to dig the coal, and we are not going to get that manpower unless we protect the people who mine the coal.

Mr. LATTA. Mr. Speaker, I yield 6 minutes to the gentleman from Illinois (Mr. ANDERSON).

(Mr. ANDERSON of Illinois asked and was given permission to revise and extend his remarks.)

Mr. ANDERSON of Illinois. Mr. Speaker, I strongly oppose this rule which would make in order a bill which flagrantly violates the spirit, if not the letter, of the 1974 Budget Act and thereby threatens to undermine this whole new process.

Section 401 of the Budget Act was our attempt to bring backdoor spending under control. Section 401(a) prohibits the consideration of any new contract or borrowing authority which is not subjected to the annual appropriations process. Section 401(b) was aimed at bringing under control another form of backdoor spending, legislation containing new entitlement authority. This is defined in section 401(c)(2)(C) as follows:

> * * * make payments (including loans and grants), the budget authority for which is not provided for in advance by appropriation Acts, to any person or government if, under the provisions of the law containing such authority, the United States is obligated to make such payments to persons or governments who meet the requirements established by such law.

Section 401 makes quite clear that the term "new spending authority" is not limited to new programs established after the March 1, 1975, effective date for this section. Section 401(c) states, and I quote:

> For purposes of this section, the term "new spending authority" means spending authority not provided by law on the effective date of this section, *including any increase in or addition to spending authority provided by law on such date.*

Mr. Speaker, there can be no question that the part B black lung benefits program is one of the mandated payment programs as defined by section 401(c)(2)(C) of the Budget Act. Moreover, there can be no question that section 2 of H.R. 10760 would greatly increase payments under that program by expanding benefit eligibility to all miners who have worked for 30 years or more in the mines.

The question thus arises, how is it that the Education and Labor Committee can come in here today with this type of backdoor spending bill? The answer is that the Budget Act has still left that backdoor slightly ajar, and you can mark my word that if we adopt this rule today and pass this bill, it would not be long before our other committees will be driving Mac trucks through that door. Let me read for you section 401(b)(1) of the Budget Act:

> It shall not be in order in either the House of Representatives of the Senate to consider any bill or resolution which provides new spending authority described in subsection (c)(2)(C) (or any amendment which provides such new spending authority) which is to become effective before the first day of the fiscal year which begins during the calendar year in which such bill or resolution is reported.

What this means is that this bill would clearly not be in order for consideration today if it had been reported from committee this year, since the law clearly prohibits consideration of such a bill if it is to take effect before the first day of the fiscal year in the calendar year in which it is reported.

But lo and behold, H.R. 10760 was reported on December 31, 1975, the very last day of the last calendar year. Now presumably, section 311 of the Budget Act should take care of situations like this, since it permits a point of order against the consideration of any bill brought up after the adoption of the second concurrent resolution on the budget if its enactment would break the aggregate spending or revenue levels established by that second budget resolution. So why would not a section 311 point of order lie against this bill? The answer is that the new black lung entitlement authority provided by this bill does not become payable until the date of enactment. And since this fiscal year will practically be over by the time this is enacted, the amount of benefits involved in fiscal 1976 will be miniscule. It would therefore be impossible to make a case that the fiscal 1976 impact of this bill will break the fiscal 1976 ceilings set in our second concurrent resolution on the budget. Let me quote from a February 9, 1976, letter, from House Budget Committee Chairman BROCK ADAMS to Chairman PERKINS on this point:

> We do not dispute the Congressional Budget Office estimate that the outlay impact of this measure in the current fiscal year would be $8.47 million. This low estimate reflects the fact that the new entitlement is assumed to be effective only two months before the end of this fiscal year. *The costs in future years are necessarily*

far more substantial. Budget authority for fiscal year 1977, for example, is estimated at $284 million, if the program is treated as a federal trust fund.

Chairman ADAMS goes on to write, and again I quote:

Thus, it would be more appropriate from the point of view of the Congressional budget process, to consider this matter *after Congress establishes budget targets for fiscal year 1977 in the first budget resolution this spring.*

Chairman ADAMS has also conceded in his letter to Chairman PERKINS that since the bill was reported in calendar year 1975, "there is no statutory bar to House consideration of the measure at this time." But he goes on to note the following, and I quote:

However, I hope you are aware that if no companion bill was reported in the Senate last year, Senate floor action would most likely have to await May 15, absent a Budget Act waiver.

Mr. Speaker, the fact is that the appropriate committee in the Senate did not report a companion bill last year, and has not even reported one yet this year. What this means, if we adopt this rule today and pass this bill, is that we will be forcing the Senate into a position of having to waive the Budget Act if this is to take effect in this fiscal year. So, even if consideration of this bill in the House today is technically in compliance with the Budget Act since it was reported on the last day of last year, we are nevertheless inviting the other body—indeed pressuring them—to set aside the Budget Act.

Mr. Speaker, I think Chairman ADAMS has given us very wise advice on this matter. Rather than permit this toe in the backdoor this year so that we will have no control over letting the rest of this giant through in fiscal 1977, let us wait to act on this until after we have adopted our first budget resolution for fiscal 1977 so we can more reasonably determine whether we can indeed afford this monstrous new entitlement. We just will not have that choice in fiscal 1977 if we act on this now and force the Senate to waive the Budget Act in order to pass it as well.

But a more compelling reason for defeating this rule today is the need to uphold the integrity of our new budget process and what we are attempting to do in it—and that is to get a firm grip on this backdoor spending problem. If we flout the spirit of that act today, you can bet your last nickel, and then some, that other committes will soon be rushing through this loophole. The precedent will have been set. Whoopee, we have found a way to circumvent the budget process. All you have to do is come in with a small backdoor program at the end of a fiscal year, and you are home free for the rest of your days.

I would be extremely shocked and dismayed if we today allowed such trickery to subvert the integrity and discipline of our new budget process. I would be especially disappointed if this House, which so prides itself on its special prerogatives for controlling the purse strings under the Constitution—if we were the ones who took the first step to cut those strings and invite the other body to waive the Budget Act right out the window. I think the American people expect a little better of us today when we are attempting to demonstrate to them that the Congress can act responsibly and exercise a coequal role in managing our National's fiscal affairs. I therefore urge defeat of this rule.

Mr. MADDEN. Mr. Speaker, I yield 5 minutes to the gentleman from Pennsylvania (Mr. DENT).

(Mr. DENT asked and was given permission to revise and extend his remarks.)

Mr. DENT. Mr. Speaker, if we intend to vote against the rule, I hope it will not be because of the arguments just made by the gentleman from Illinois (Mr. ANDERSON). When the rules were laid down as to when and what time to have the report in or have a rule, it did not say the 1st of January. It did not say the 22d of December. It said the calendar year.

Now, let us look at the facts. I know that the gentleman from Illinois has an open mind when the facts are given to the gentleman and I would hope the gentleman would exercise that openness of mind in this case.

First of all, the bill passed the committee on December 9. On the same day we asked Social Security to give us the cost estimates. On December 30 we received the cost estimates from Social Security. The cost estimates had to go into the report, so there was no way under the Sun that we could have gone before the Committee on Rules and been equipped to ask for a rule, such as we did on the last day of the year.

That does not in any way coincide with the remarks of the gentleman on the other side of the aisle. If the rule was that we had to have it in by the 4th of July, and we come in with it on the 3d of July, it would not appear to be as bad as it does now, in the view of the gentleman from Illinois, when it came in on the last day of the year.

Let us talk about cost estimates now. The gentleman said that the report from the chairman of the Budget Committee stated it would cost in the first year, 1977, $284 million. That is the outlay, but let us look at the facts. The facts are that the Congressional Budget Office said that in fiscal year 1977 it would be $122 million; HEW, $204 million; but the trust fund savings would be $38 million. This actual cost in money across the board because of the passage of this bill would be $84 million.

Now, let me point out something to this House: When I was on the floor when we first passed this bill, I said that this particular legislation, unlike any other compensation law ever passed, would cost a declining amount every year. While we added hundreds of new cases last year—I think 700 some new cases last year—the amount of outlay—the amount of outlay was $50 million less. Now, if we divide that into the amount of compensation paid to the individual, and we have the total numbers of miners who died last year, or their dependents, so that every year there will be a greater number of them dying because these are not young men in the flower of their youth. These are men who grew old and sick in the coal mining industry.

The intent of this law was never just to pay out black lung benefits; it was to get rid of the cause of black lung disease. Much of the cost to the industry has been because of the fact that the industry is charged with the obligation of getting rid of the cause, the dust.

When this bill is finally passed and signed by the President, the costs will all revert back to the operators for future payments of black lung benefits that was promised to this House. The only reason it came out of the Treasury was because there was not any way that anyone could trace the responsibility to a single, or to more than one, operator for that particular black lung victim. Thousands of operations have gone out of existence. Many of them have been taken over by the major corporations. The identity of the original operators is lost in the long, dim past, but the stricken miner has not been lost in the long, dim past. He is with us today.

When we will talk about a major print in the discussion of the bill, I am saying to the Members that in 1984—in 1984, we will be at a point where there will be a minus $3 million as the real cost of this legislation. In 1977, it is $84 million. In 1978, $34 million. We are talking exactly about the truth as it was given to the Members the day the law passed. That was, that the cost would decline and be nonexistent at some day in the future.

This is the only type of compensation that we can say that about. The reason that will be given later on for the amendments we have made will be based upon the facts, the logic and reasoning that is sound not only because of the history of black lung but because of the facts as they are contained in the operation of the black lung law since its enactment.

I would urge the Members to vote for the rule.

Mr. LATTA. Mr. Speaker, I yield 5 minutes 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 bill, H.R. 10760, to amend the Federal Coal Mine Health and Safety Act to revise the black lung benefits program. The need for revision of the Federal Coal Mine Health and Safety Act of 1969 has been, I believe, apparent to all Members of Congress who represent the coal mining areas of America.

Mr. Speaker, I wish it were possible for each Member of the House of Representatives to spend at least one shift in an underground coal mine of our Nation. If this were to happen, Mr. Speaker, I am convinced that the passage of this legislation would be assured—perhaps without a single dissenting vote.

Coal mining is a dangerous occupation even under ideal conditions. We have come a long way in promoting the health and safety of coal miners in America but much remains to be done.

Mr. Speaker, I was one of the original supporters in the Congress of legislation,

that led to the final enactment of the basic black lung law, the Federal Coal Mine Health and Safety Act of 1969. I also vigorously supported and voted for the 1972 amendments to the act, as well as subsequent black lung legislation. I am a cosponsor of the bill before us today. To me and the coal miners of my congressional district, their widows and dependents, this is most important legislation.

Southwestern Virginia continues to be a major coal producing area. Many of my constituents, their families and the widows of former miners, fortunately, have benefited from the passage of the original act and today are receiving black lung benefits.

Unfortunately, Mr. Speaker, altogether too many of our eligible miners and widows do not receive benefit payments envisioned by the Congress in the passage of this law. The committee's hearings during the past 2 years and the appeals of our constituent miners and their families attest to the urgent need for reform to correct inequities in claim determinations for the widows of former miners and the miners themselves. We have seen the efforts that have been necessary to reconstruct work records or medical records of past or present conditions to prove technical eligibility requirements to obtain these benefits. We know of cases where widows have had to exhume the bodies of their deceased husbands, who spent a lifetime in the mines, to prove their eligibility to a widow's pension. In our congressional offices we have seen our case work on appeal to decisions of Social Security Administration grow and grow, until it has become our biggest single effort. The law as now written and administered has frustrated many of the most deserving of our citizens.

Since the inception of black lung benefits in 1970, through June 1975, a total of 28,900 Virginia residents made claims for benefits. This total represented the claims of 9,250 miners and 19,050 dependents, such as widows and orphans, according to the Social Security Administration. As of June 1975, a total of 16,400 had been approved for benefits. The Social Security Administration also informs me that Virginia claimants have received a total of $200 million in black lung benefits since 1970 for a statewide monthly average in payments of $3,797,700.

It is the inequities in the approximately 12,500 claims that have been denied, plus the untold number of claims that have not been applied for in my State, as well as like amounts in other coal mining States, that this bill seeks to correct.

To correct these inequities in the law, the committee has wisely questioned the practice of the Department of Health, Education, and Welfare to base its decisions on claims for black lung disabilities on the reliability of an X-ray examination. Under the bill, the Department of HEW would be required to take into account the consideration of all relevant evidence, including all X-ray examinations. Moreover, the evidence is overwhelming that the probability of a coal worker contracting pneumoconiosis increases sharply with the age of the miner and the number of years he has been exposed to coal dust in the mines. Nothing that there is already an 80.9-percent approval rate on part B claims involving miners with 30 years or more underground, H.R. 10760, the committee bill, guarantees black lung benefits to all miners—or their survivors—who, as of June 30, 1971, had worked in an underground mine, or surface mine with similar conditions, for 30 years; or an anthracite mine for 25 years. The establishment of a definite period of time to automatically guarantee black lung benefits means that entitlements would be more objectively applied, administration of the program would be simplified, and medical disputes and litigation would be sharply reduced. In this regard it is my intention to support Mr. SIMON's amendment to have the 25-year automatic entitlement apply to all coal miners. An argument in support of automatic entitlement after completion of 25 years in the mines is a recent black lung study concluding that at least 52 percent of those that actively work in the coal mines with 11 or more years in the mines had X-ray evidence of pneumoconiosis.

In this regard, Mr. Speaker, any person who has experience in the coal mine has witnessed the coal-dust-covered miners coming out of the mines or off the job. This lung hazard is being underestimated by the public at large and the opponents of this bill. Unfortunately the efforts to reduce mine dust content, by utilization of test equipment has not materialized as expected. This is still a fruitful area toward eventually reducing dust in the mines and thus reducing the chance that mine workers will be exposed to this dreadful, crippling disease. Efforts to develop dust sampling devices should be expanded by the Federal Government.

Other provisions of the bill which improve the work-environment of coal miners are: precluding the dollar offset from black lung benefits because the miner may be receiving payments under a State workmen's compensation program for unrelated impairments; precluding the denial of a claim simply by reason of a miner's employment status at the time of filing a claim; preventing the Social Security Administration from appealing adverse claim determinations; requiring the Government to affirmatively notify potentially eligible claimants of their right to apply for black lung benefits; and other provisions.

I shall also support two other amendments to the bill, they are: Mr. HAYES' amendment to expand the definition of miner to include any miner involved in a surface mining operation and the amendment to eliminate the 1971 cutoff date for participation in part B of the program.

Mr. Speaker, a total of 159,744 underground and surface miners and related workers produced over 600 million tons of coal in 1975. To supply this Nation with energy during the next 10 years our country is going to ask the bulk of these men to double coal production. These men have always done their job for their country. They want to do it now, but they want some assurances that they will be protected for continuing their extremely hazardous and dirty work.

Mr. Speaker, if any of my colleagues are in doubt or have second thoughts as to whether or not this bill should be enacted—I personally invite them to come to the coal mines of southwestern Virginia and see for themselves. I feel confident that the other Members who also represent coal districts in Pennsylvania, West Virginia, Kentucky, Ohio, and Tennessee, would also join in extending this invitation to the House membership.

Mr. Speaker, I include Senate Joint Resolution No. 47 of the Virginia General Assembly memorializing the Congress of the United States to enact the Black Lung Benefits Reform Act of 1975:

SENATE JOINT RESOLUTION No. 47

Joint resolution memorializing the Congress of the United States to enact the Black Lung Benefits Reform Act of 1975

Whereas, pneumoconiosis, also known as "black lung", is a dreaded disease that afflict many Virginians; and

Whereas, the Congress of the United States is presently considering the Black Lung Benefits Reform Act of 1975, (H.R. 10760), which would reform and simplify the "black lung" benefits procedures, especially for those most seriously affected by the disease; and

Whereas, the prompt passage of the Reform Act will speed the benefits to Virginia coal miners afflicted with "black lung" and to their dependents; now, therefore, be it

Resolved by the Senate of Virginia, the House of Delegates concurring, That the Congress of the United States is hereby requested to enact promptly the Black Lung Benefits Reform Act of 1975, (H.R. 10760); and, be it

Resolved further, That the Clerk of the Senate of Virginia is directed to send copies of this resolution to the Speaker of the House of Representatives of the United States, the President of the Senate of the United States and to the Virginia delegation to Congress.

Mr. HECHLER of West Virginia. Mr. Speaker, will the gentleman yield?

Mr. WAMPLER. I yield to the gentleman from West Virginia (Mr. HECHLER).

Mr. HECHLER of West Virginia. I thank the gentleman for yielding.

Mr. Speaker, I would like to commend the gentleman from Virginia (Mr. WAMPLER), whose district adjoins mine, for his statement.

Is it not true that there would be less expense to the taxpayers if we had the automatic benefits, thereby reducing a lot of bureaucracy?

Mr. WAMPLER. That is my understanding, and I think the distinguished gentleman from Pennsylvania (Mr. DENT), in his earlier remarks, made that eminently clear.

Mr. Speaker, I think one of the most important things before us today is to consider equity. I recognize there are those who have objections to this bill but let us consider it and let the House work its will. I think this course of action is in keeping with the best traditions of the House of Representatives.

Mr. HECHLER of West Virginia. Mr. Speaker, I thank the gentleman for his remarks.

Mr. LATTA. Mr. Speaker, I yield 1 minute to the gentleman from North Dakota (Mr. ANDREWS).

(Mr. ANDREWS of North Dakota asked and was given permission to revise and extend his remarks.)

Mr. ANDREWS of North Dakota. Mr. Speaker, I take this time to ask a question of my colleagues and good friend, the gentleman from Pennsylvania (Mr. DENT).

I understand this bill levies a tax on all coal mines across the country, and that this tax will amount to a uniform rate per ton. Is this true?

Mr. DENT. Mr. Speaker, if the gentleman will yield, that is right.

Mr. ANDREWS of North Dakota. Mr. Speaker, I will ask the gentleman if he has any estimate as to about how much the tax will be. Will it be 50 cents or $1?

Dr. DENT. The estimate is that it will be about 14 cents a ton.

Mr. ANDREWS of North Dakota. And that will be levied, though, across the country on all coal irrespective of the Btu units of the coal or the value of the coal?

Mr. DENT. The gentleman is correct.

Mr. ANDREWS of North Dakota. In other words, if coal sells for $2 a ton, it will be assessed at the same tax rate as coal that sells for $40 a ton?

Mr. DENT. Of course, the coal could be assessed at that rate if the price got down to $2 a ton, but the contributions to the welfare fund itself would amount to $2 in a couple of years, so we know that the coal is not going to sell for $2 a ton.

I assume the gentleman is talking about cheaper grades of coal?

Mr. ANDREWS of North Dakota. That is right. In my own State there is coal which sells for about $2 a ton, and my question is whether the rate will be the same for that coal as for the other types.

Mr. DENT. The cost will be the same across the board. We know of no other way to go about it.

Mr. LATTA. Mr. Speaker, I yield 5 minutes to the gentleman from Illinois (Mr. ERLENBORN).

(Mr. ERLENBORN asked and was given permission to revise and extend his remarks.)

Mr. ERLENBORN. Mr. Speaker, I rise in opposition to the rule. I join with my colleague, the gentleman from Illinois (Mr. ANDERSON), in suggesting there is good reason to vote against this rule based upon procedure and based upon its violation of the spirit of the Congressional Budget Act, and I would also add that there is good reason to vote against this rule on the basis of substance,

This bill is wholly and completely without merit. It has been suggested that those with black lung disease ought to be compensated and that unless we do that, we are not giving equity. We have a Black Lung Compensation Act on the books. There are 508,000 recipients of black lung disease benefits who are receiving approximately $1 billion a year from the Federal Treasury.

The question was raised a minute ago in colloquy as to what the cost of the tax would be. That is the term as it was used in colloquy. In the bill it is called an "assessment" in one case and a "premium" in another case, but I think it is in effect a tax, and in that respect I believe the bill really invades the province of the Committee on Ways and Means.

The question was asked as to how much that tax would be, and the gentleman from Pennsylvania (Mr. DENT) said it would be 14 cents a ton. I recall so well in 1969 when the gentleman from Pennsylvania (Mr. DENT) and I were debating on the floor as to what the basic bill would cost. I said, "Based on the social security estimate, it might be as much as $350 million."

The gentleman from Pennsylvania (Mr. DENT) laughed. He laughed and said:

> Why, if we gave full benefits to every ex-coal miner and a fur coat to every widow, it could not be more than $40 million or $50 million a year.

It now costs $1 billion a year.

So let us bear that in mind when the gentleman assesses 14 cents a ton as the cost of this bill.

Mr. Speaker, there are so many reasons why we should be against this bill that I just do not have time to detail all of them in the few minutes I have at my disposal. There are many good reasons to oppose this bill, and I would like to reiterate some of those that I set forth in a "Dear Colleague" letter to all the Members of the House.

Another concept that has been used to justify this bill is that somehow we are going to shift the burden from the Treasury onto the industry, and the question is asked: Is this not fair?

My goodness, the first bill we passed provided that after the initial claims were approved the burden would go to the industry. Then back in 1972, against the arguments that I made on the floor, the majority which is now sponsoring this bill extended the Federal responsibility and removed the responsibility from industry for a period of years. But that responsibility under the law does now exist. Claims that are approved now are the responsibility of industry.

So there is no shift by this bill to take the responsibility away from the Federal Government and put it on industry. It is the obligation of industry now.

This bill would also say that in drawing black lung benefits one could in addition receive worker's compensation, with no offset, if the worker's compensation was granted for some other disability.

How often can one be totally disabled, more than once?

The law on the books today says a man can draw black-lung compensation with no offset against social security disability. How many times can one be totally disabled, three times?

The law on the books today is overgenerous. This bill would make it a retirement program.

In the future, if this bill passes, a man will not even have to pretend to have black lung. All one has to do is show that he has 25 or 30 years of service and he will have an entitlement. He will not even have to cough and pretend to have black lung.

If this bill passes and an applicant for black lung disease is granted his benfits, nobody can appeal the decision. There is not even due process in the bill. If he is denied it, he can appeal.

Mr. Speaker, for so many good reasons this rule ought to be rejected, because there is no valid reason for us to consider a bill that is so unfair and so inequitable to other coal miners who do not qualify for the black-lung benefits and to other workers who are in equally hazardous occupations.

Mr. Speaker, I ask for the rejection of the rule.

Mr. LATTA. Mr. Speaker, I yield 1 additional minute to the gentleman from Illinois (Mr. ERLENBORN) in order to ask him a question.

Mr. ERLENBORN. Mr. Speaker, I thank the gentleman for yielding.

Mr. LATTA. Mr. Speaker, the gentleman mentioned a retired worker who would be getting workmen's compensation.

Mr. ERLENBORN. Yes; workmen's compensation under State law for another disability.

Mr. LATTA. Is it not true that the United Mine Workers have some sort of pension plan that pays $215 a month?

Mr. ERLENBORN. They do.

Mr. LATTA. And one could also get social security, is this correct? A man could actually end up with four different sources of revenue at age 65; is this not correct?

Mr. ERLENBORN. That is correct.

Mr. PERKINS. Mr. Speaker, will the gentleman yield?

Mr. ERLENBORN. I yield to the gentleman from Kentucky.

Mr. PERKINS. Mr. Speaker, let me say to the gentleman from Illinois (Mr. ERLENBORN) that the figures with respect to black-lung payments, in the case of a man with three dependents, amount to about $393 a month; the mine workers' pension, about $240 or $250 a month. On the other hand, the coal minner is making more than $1,200 a month; and unless he has this dreadful disease, he is not going to sacrifice the amount that he is making for a social security disability pension and black-lung benefits.

Mr. ERLENBORN. Mr. Speaker, I thank the gentleman for his comments.

Mr. PERKINS. He is not going to forego the amount of money that he is making if he can possibly continue to work in the mines.

Mr. MADDEN. Mr. Speaker, I yield such time as he may consume to the gentleman from Michigan (Mr. FORD).

(Mr. FORD of Michigan asked and was given permission to revise and extend his remarks.)

Mr. FORD of Michigan. Mr. Speaker, the gentleman from Illinois (Mr. ERLENBORN) has treated the Members now on the floor to virtually the same speech that he has made in committee on numerous occasions.

It is interesting to note that he, on the one hand, is urging us to reject this rule because the cost of the program is now so extraordinary that we cannot, in this coming year, afford the expense. On the other hand, he is decrying the fact that the bill does not go far enough because he says it discriminates against some coal miners.

Inasmuch as he does not suggest that

we are presently paying black lung benefits to people who do not have the dreaded disease that this legislation is directed toward, it therefore follows that he feels that there are other people with the disease who should be receiving benefits but who are not going to be reached by this legislation.

Mr. Speaker, the gentleman cannot have it both ways, although it is not unusual for him to attempt to have it both ways.

The gentleman repeatedly tells us about the error he made in judgment at the time that he opposed this legislation when it was first passed, in thinking that it was going to cost about $350 million, only to find that he misjudged it by almost 300 percent.

I do not know what the gentleman from Illinois (Mr. ERLENBORN) has said today that would convince me or anyone else either that his judgment has improved any since then because his motivation is still the same, and that is to kill the legislation at any cost and to say whatever is necessary to try to confuse the issue and avoid the real issue, which is whether or not we are going to respond to the social cost that the individual States are unable ot bear for this terrible disease.

Certainly the gentleman does not suggest that the black lung recipients are freeloaders who go out and deliberately tear up their lungs and shorten their lives and live out their last days in agony just so that they can get these generous benefits.

Mr. LATTA. Mr. Speaker, may I inquire how much time I have remaining?

The SPEAKER. The Chair will state that the gentleman from Ohio has 2 minutes remaining.

Mr. LATTA. Mr. Speaker. I yield myself 2 minutes.

(Mr. LATTA asked and was given permission to revise and extend his remarks.)

Mr. LATTA. Mr. Speaker, since the matter of cost has arisen here, I have in my hand the Congressional Quarterly of January 17, 1976, wherein it is estimated that H.R. 10760 could drive up the cost of a ton of coal from $1 to $4. It gives credit to this estimate to the National Coal Association.

I do not know whether the figures are correct, but they are at wide variance from the figures stated by my friend, the gentleman from Pennsylvania (Mr. DENT) of 14 cents a ton.

Let me say further, Mr. Speaker, that the proponents of this legislation have skirted completely my real objections to this piece of legislation, and that is that after 25 years of working in the anthracite mines, and another 30 years in other mines, miners will be entitled to these benefits notwithstanding the fact that they do not have black lung disease.

We can talk about this dreadful disease from now to breakfast, but it is covered under the present law. So if we are concerned about people with the disease, they do not have to have 25 years in anthracite mines and 30 years in other mines to get benefits under the present law. This is the way it should remain.

Mr. MADDEN. Mr. Speaker, I yield 1 minute to the gentleman from Pennsylvania (Mr. DENT).

(Mr. DENT asked and was given permission to revise and extend his remarks.)

Mr. DENT. Mr. Speaker, I would just like to suggest to the gentleman from Ohio that there are somewhere around 600 million annual tons of coal mined. Is the gentleman from Ohio stating to us that it is going to cost from $600 million to $2,400,000,000 for the beneficiaries of this act?

Mr. MADDEN. Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER. The question is on the resolution.

The question was taken; and the Speaker announced that the ayes appear to have it.

Mr. LATTA. 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.

The vote was taken by electronic device, and there were—yeas 275, nays 118, answered "present" 1, not voting 38, as follows:

[Roll No. 75]

YEAS—275

Abzug	Dent	Helstoski
Addabbo	Dickinson	Henderson
Alexander	Diggs	Hillis
Allen	Dingell	Holtzman
Ambro	Downey, N.Y.	Howard
Anderson, Calif.	Downing, Va.	Howe
	Drinan	Hubbard
Andrews, N. Dak.	Duncan, Oreg.	Hughes
	Duncan, Tenn.	Hungate
Annunzio	du Pont	Hyde
Ashley	Early	Jacobs
AuCoin	Eckhardt	Johnson, Calif.
Badillo	Edgar	Johnson, Pa.
Baldus	Edwards, Calif.	Jones, Ala.
Baucus	Ellberg	Jones, N.C.
Beard, R.I.	English	Jones, Tenn.
Bedell	Evans, Colo.	Jordan
Bennett	Evans, Ind.	Karth
Bergland	Evins, Tenn.	Kastenmeier
Bevill	Fary	Kazen
Biaggi	Fascell	Kelly
Biester	Findley	Keys
Bingham	Fisher	Koch
Blanchard	Fithian	Krebs
Blouin	Flood	LaFalce
Boggs	Florio	Lehman
Boland	Flowers	Levitas
Brademas	Flynt	Litton
Breaux	Foley	Lloyd, Calif.
Breckinridge	Ford, Mich.	Lloyd, Tenn.
Brodhead	Ford, Tenn.	Long, La.
Brooks	Fraser	Long, Md.
Brown, Calif.	Frey	Lujan
Buchanan	Fuqua	McClory
Burke, Calif.	Gaydos	McCloskey
Burke, Fla.	Giaimo	McCormack
Burke, Mass.	Gibbons	McDade
Burlison, Mo.	Gilman	McFall
Burton, Phillip	Ginn	McHugh
Butler	Gonzalez	McKay
Byron	Green	Madden
Carney	Gude	Maguire
Carr	Hall	Mahon
Carter	Hamilton	Mann
Chisholm	Hammer-schmidt	Mathis
Clay		Matsunaga
Corman	Hanley	Meeds
Cornell	Hannaford	Melcher
Cotter	Harkin	Meyner
D'Amours	Harrington	Mezvinsky
Daniel, Dan	Harris	Mikva
Daniel, R. W.	Hawkins	Miller, Calif.
Daniels, N.J.	Hayes, Ind.	Miller, Ohio
Danielson	Hays, Ohio	Mills
Davis	Hechler, W. Va.	Mineta
de la Garza	Heckler, Mass.	Minish
Delaney	Hefner	Mink
Dellums	Heinz	Mitchell, Md.
Moakley	Reuss	Stuckey
Moffett	Richmond	Studds
Mollohan	Riegle	Sullivan
Moorhead, Pa.	Rodino	Symington
Morgan	Roe	Taylor, N.C.
Moss	Rogers	Teague
Motti	Roncalio	Thompson
Murphy, Ill.	Rooney	Thone
Murphy, N.Y.	Rose	Thornton
Murtha	Rosenthal	Traxler
Myers, Ind.	Rostenkowski	Tsongas
Myers, Pa.	Roush	Ullman
Natcher	Roybal	Van Deerlin
Neal	Ryan	Vander Jagt
Nedzi	St Germain	Vander Veen
Nichols	Santini	Vanik
Nix	Sarasin	Vigorito
Nolan	Sarbanes	Wampler
Nowak	Scheuer	Waxman
Oberstar	Schroeder	Weaver
Obey	Seiberling	Whalen
O'Hara	Shipley	White
O'Neill	Shuster	Whitehurst
Ottinger	Simon	Whitten
Passman	Skubitz	Wilson, C. H.
Patten, N.J.	Slack	Wirth
Patterson, Calif.	Smith, Iowa	Wolff
	Spellman	Wright
Pattison, N.Y.	Spence	Yates
Perkins	Stanton, James V.	Yatron
Peyser		Young, Fla.
Pike	Stark	Young, Tex.
Price	Steed	Zablocki
Quillen	Stephens	Zeferetti
Randall	Stokes	
Rangel	Stratton	

NAYS—118

Abdnor	Goodling	Mosher
Adams	Gradison	O'Brien
Anderson, Ill.	Grassley	Pettis
Archer	Hagedorn	Pickle
Armstrong	Haley	Poage
Ashbrook	Hansen	Pressler
Bauman	Harsha	Preyer
Beard, Tenn.	Hicks	Pritchard
Bell	Hightower	Quie
Bowen	Holland	Regula
Brinkley	Holt	Rhodes
Broomfield	Horton	Roberts
Brown, Mich.	Hutchinson	Robinson
Brown, Ohio	Ichord	Rousselot
Broyhill	Jarman	Russo
Burgener	Jeffords	Satterfield
Burleson, Tex.	Jenrette	Schneebeli
Clancy	Johnson, Colo.	Schulze
Clausen, Don H.	Jones, Okla.	Sebelius
	Kasten	Sharp
Clawson, Del	Ketchum	Shriver
Cleveland	Kindness	Sikes
Cochran	Krueger	Smith, Nebr.
Cohen	Lagomarsino	Snyder
Collins, Tex.	Latta	Stanton, J. William
Conable	Lent	
Conlan	Lott	Steelman
Conte	McCollister	Steiger, Ariz.
Coughlin	McDonald	Steiger, Wis.
Crane	McEwen	Talcott
Derrick	McKinney	Taylor, Mo.
Derwinski	Madigan	Treen
Devine	Martin	Waggonner
Emery	Mazzoli	Walsh
Erlenborn	Michel	Wiggins
Fenwick	Milford	Winn
Fish	Mitchell, N.Y.	Wydler
Forsythe	Montgomery	Wylie
Fountain	Moore	Young, Alaska
Frenzel	Moorhead, Calif.	
Goldwater		

ANSWERED "PRESENT"—1

Bafalis

NOT VOTING—38

Andrews, N.C.	Eshleman	Rinaldo
Aspin	Guyer	Risenhoover
Barrett	Hébert	Runnels
Bolling	Hinshaw	Ruppe
Bonker	Kemp	Sisk
Burton, John	Landrum	Solarz
Cederberg	Leggett	Staggers
Chappell	Macdonald	Symms
Collins, Ill.	Metcalfe	Udall
Conyers	Patman, Tex.	Wilson, Bob
Dodd	Pepper	Wilson, Tex.
Edwards, Ala.	Railsback	Young, Ga.
Esch	Rees	

The Clerk announced the following pairs:

Mr. Barrett with Mr. Hébert.
Mr. Chappell with Mr. Railsback.
Mr. John L. Burton with Mr. Cederberg.
Mr. Runnels with Mr. Esch.

Mr. Staggers with Mr. Kemp.
Mr. Patman with Mr. Landrum.
Mr. Sisk with Mr. Edwards of Alabama.
Mrs. Collins of Illinois with Mr. Andrews of North Carolina.
Mr. Dodd with Mr. Rinaldo.
Mr. Macdonald of Massachusetts with Mr. Bob Wilson.
Mr. Pepper with Mr. Risenhoover.
Mr. Solarz with Mr. Eshleman.
Mr. Metcalfe with Mr. Guyer.
Mr. Conyers with Mr. Aspin.
Mr. Bonker with Mr. Udall.
Mr. Leggett with Mr. Ruppe.
Mr. Young of Georgia with Mr. Symms.
Mr. Rees with Mr. Charles Wilson of Texas.

Mr. PRESSLER and Mr. MOORE changed their vote from "yea" to "nay."

Mr. GREEN changed his vote from "present" to "yea."

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Mr. DENT. 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. 10760) to amend the Federal Coal Mine Health and Safety Act to revise the black lung benefits established under such act in order to transfer the residual liability for the payment of benefits under such program from the Federal Government to the coal industry, and for other purposes.

The SPEAKER. The question is on the motion offered by the gentleman from Pennsylvania (Mr. DENT).

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. 10760, with Mr. GIBBONS 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 Pennsylvania (Mr. DENT) will be recognized for 1 hour, and the gentleman from Illinois (Mr. ERLENBORN) will be recognized for 1 hour.

The Chair recognizes the gentleman from Pennsylvania (Mr. DENT).

Mr. DENT. Mr. Chairman, I yield 10 minutes to the gentleman from Kentucky (Mr. PERKINS).

(Mr. PERKINS asked and was given permission to revise and extend his remarks.)

Mr. PERKINS. Mr. Chairman, we had hoped with the passage of the black lung provisions of the Coal Mine Health and Safety Act of 1969 that the national neglect for the unredressed suffering of disabled coal miners had at long last been faced up to and met. It was true then and, unfortunately, for many of the claimants for pneumoconiosis benefits it is true now. The risk of death and disability among coal miners is twice that of the general population and higher than that of any other occupational group in the United States.

I came before the House in 1972 because the 1969 black lung benefits provisions, title IV of the act, were bogged down by extremely harsh application of the criteria to determine whether or not a miner had the disease or whether or not a miner had died from the disease. Unfortunately, the state of medical knowledge as to the diagnosis of black lung is such that often it cannot be determined until an autopsy has been performed.

Not all lungs respond in the same fashion to the inhalation of dust particles. Some whose lung X-rays clearly evidence the disease to a disabling extent do not appear to be disabled. The lungs of others with a long history of service in an underground coal mine produce only inconclusive X-ray findings yet manifest obvious respiratory difficulties and render such miners unemployable.

Thus, the 1976 amendments to title IV become necessary first of all because justice needs to be done to disabled miners. Second, the 1976 amendments are necessary in order that a sound, long-range plan may be established, payable from the proceeds derived from the extraction of coal, thus relieving the general taxpayer from this burden.

Coal is important to our Nation's economy. Coal is an essential source of energy for this Nation confronted with a long-range energy need. The Nation needs the production of coal, more abundant in its energy-producing potential than the massive Middle East oil reserves, so as to be energy independent of foreign sources.

Just as the Nation needs a sound energy policy recognizing our coal reserves, it needs a sound compensation policy not only for protecting the lives of miners who extract it but of compensating those and their dependents who become exposed to the disease-producing effects of the inhalation of coal dust.

H.R. 10760 seeks simply to accomplish these objectives. It does so by the following changes in the law.

First of all, it creates an entitlement for black lung compensation for the anthracite miner who has been employed in an underground mine for 25 years or more, and for bituminous miners who have been so employed for 30 years or more. Recent data show that 81 percent of the claims involving miners involved in the mining of coal for 30 years or more have been allowed. Investigation by the Labor Standards Subcommittee shows that many more miners obviously disabled because of respiratory ailments who have had similar periods of underground employment are disabled from employment by any objective standards even though their claims for black lung compensation have been denied. Because of a strict and rigorous determination process established by both the Social Security Administration and the Department of Labor in the processing of black lung claims, claimants who are disabled by any objective criteria are put to lengthy examination, trial, rehearing, administrative review and other processes in their claims determinations. These procedures involve expense to the taxpayer, time of the administration, expense to the claimant, all of which can be readily eliminated by recognition of the fact that service in a coal mine prior to the date when the Federal la mandated safe dust levels, if such ser ice period was at least 30 years in t case of a bituminous miner, 25 years the case of an anthracite miner, pr duced a respiratory disease which at th point was disabling and irreversibl Hence, the first major change made title IV by the bill H.R. 10760.

Under the existing law, State work men's compensation benefits paid to miner as well as unemployment compen sation may be offset against Federal blac lung benefits. H.R. 10760 would mak these offsets applicable only with respec to a disability payment to the miner o account of pneumoconiosis. This provi sion makes part B of title IV compar able to the provisions of part C so tha only State benefits received due to pneu moconiosis and not those received due t an unrelated condition may act to re duce Federal benefits.

Often a miner who would under an other circumstances be considered totall disabled because of his pneumoconiosis i forced to continue to work in a mine i order to support his family because o the administrative time in processing black lung claim and the doubt with re spect to the disposition of the claim b the administrative agency. We sough in the 1972 amendments not to have miner's continued employment operate as evidence of his possible employabil ity to work against his claim for dis ability because of black lung. Despite the efforts to eradicate this situation ir 1972, claims have continuously been de nied solely on the basis that the miner is or was working in a mine, and with no consideration given to that fact as to the type of work the miner was perform ing. In this regard, section 4 of the bill provides that claim for benefits may not be denied solely on the basis of employ ment as a miner if: First, the location of such employment has recently been changed to a mine area having a lower concentration of dust; second, the nature of such employment has been changed so as to involve less rigorous work; or third, the nature of such employment has been changed to employment which re ceives substantially less pay. The act is further amended by this section to pro vide that a miner may file a claim for benefits whether or not he is employed at a coal mine at the time he files.

No administrative action demonstrates more clearly the administration's reluc tance to carry out the intent of Con gress with respect to the compensation of disabled miners than the practice of the administration of forcing an appeal of every administrative law judge's de cision approving the claim of a miner but not requiring the review of denials. Section 5 of the bill amends section 413 (b) of the act. Any decision by an admin istrative law judge in favor of a claim ant may not be appealed or reviewed except on motion of the claimant him self.

Section 6 of the bill adds new pro visions to the act requiring the Secretary of Health, Education, and Welfare to disseminate information to individuals who are likely to be eligible for benefits and who have not applied for a claim.

Individuals thus informed, if a claim is filed no later than 6 months after receiving such information, shall be entitled to have his claim considered on the same basis as if it had been filed on June 30, 1973.

Section 7 of the bill amends section 402(f) of the act to provide that the regulations of the Secretary of Health, Education, and Welfare relating to total disability shall not provide more restrictive criteria for claims filed after June 30, 1973, than those applied before that date.

In many instances, despite affidavits on the part of a widow or a miner as to the miner's physical condition prior to his death, in the case of a miner with a long history of service in the mine, claims have been denied even though there is no medical evidence to contradict this evidence of the diseased condition of the miner.

Section 8 of the bill would provide that such affidavits shall be considered to be sufficient to establish that the miner was totally disabled because of pneumoconiosis or that his death was due to pneumoconiosis.

The final major feature of the bill, Mr. Chairman, involves the creation within the Treasury of a trust fund into which assessments on the mining of coal will be paid and out of which compensation to miners disabled from pneumoconiosis will be paid. This represents a change from the existing law which anticipates that for those States whose workman's compensation laws do not meet the standards prescribed by the law for recognition of the compensatory nature of the disease nor the level of benefits, coal producers would be covered by the Longshoremen and Harbor Workers Compensation Act. Where no responsible employer could be found at the time the claim was filed this could be the burden of the Federal taxpayer. The new provisions provided by H.R. 10760 by creating the trust fund for the payment of claims places the burden upon assessments levied upon each ton of coal mined in all instances in which a claim may arise due to disability because of pneumoconiosis. In the light of the fact that no State workman's compensation law meets the Federal standards at this time and 7 years has elapsed since this requirement was written, this further change in meeting future liabilities is essential.

Mr. Chairman, in conclusion, let me say that legislation that I introduced early in this Congress would have liberalized claim determinations in a much broader sense than the legislation that I present to this Committee today. This legislation does not go as far in that respect as I would like to go myself. However, I am persuaded at this time that they may well alleviate the problems now facing the processing of claims. My colleagues on the Committee believe that they will. If they for some reason do not, I will most certainly introduce legislation with the hope that it might be acted upon in the future.

Mr. ERLENBORN. Mr. Chairman, I yield 5 minutes to the gentleman from Connecticut (Mr. SARASIN).

(Mr SARASIN asked and was given permission to revise and extend his remarks.)

Mr. SARASIN. Mr. Chairman, the Congress of the United States has as its chief responsibility the needs and interests of the American public. We have consistently sought to isolate problems, resolve them, and provide help to those who have been harmed or are in need. To assist citizens in their retirement years, we enacted the social security program and have consistently attempted to improve it; the lack of nutritious meals for our Nation's children was met with the School Lunch Act and child nutrition program. Indeed, there is almost an endless list of programs designed to help people in our country.

Sometimes we have been overzealous in our efforts given our financial capabilities, but we have always had justification for our actions—real needs, legitimate needs. Unfortunately, H.R. 10760, the Black Lung Benefits Reform Act of 1975, cannot even meet the test of fiscal responsibility let alone that of necessity. I fully support the black lung benefits program, and I sincerely believe that we must help those who suffer the tragedy of pneumoconiosis as a result of their work in providing America with coal, an essential source of energy.

However, I must question whether or not we are being wise in diverting our money into a program such as that proposed in H.R. 10760. Absolutely no proof of an occupationally-incurred disease is necessary; an individual need only have worked a certain number of years to be eligible to receive so-called black lung benefits. Does medical data indicate that an overwhelming percentage of coal mine workers succumb to pneumoconiosis after 25 to 30 years? The answer is simply "No." According to Department of Labor estimates, fewer than 25 percent of miners who work with either bituminous or anthracite coal incur black lung disease. The committee, fully aware of this medical documentation, studiously avoided the idea of a presumption of black lung in order to receive the benefits.

However, if this is not a presumption, then what is it? A pension? An annuity? Simply compensation? But compensation for what? The answer cannot be because coal miners are involved in an occupation with a serious health risk, for if that were the case, we would have to open the doors for Federal payments to those who work with asbestos, vinyl chloride, berillium, and a host of other highly dangerous elements.

There would be a great deal of logic in increasing benefits for those who have been diagnosed as having black lung, for directing greater amounts of funding into research for a cure or for the design of better protective equipment. There would be logic in directing Federal funds into improved diagnostic techniques for pneumoconiosis. There is, however, simply no logic behind this particular approach.

If a lack of rationale does not serve as sufficient reason for defeating this measure in its present form, there are several other arguments that are almost as pressing. H.R. 10760 would establish a trust fund, this despite the fact that the Interagency Workers Compensation Task Force is engaged in a major program of research and is expected to report in 1976. Included in that research is the entire spectrum of occupational disease. It makes little sense to establish a trust fund for one occupational disease at this time. Coupled with this is the fact that adequate studies have not been conducted into the best methods for financing benefits for occupationally incurred diseases.

The Committee further added a provision providing lifelong benefits to survivors of miners who die in mine accidents. There is no correlation between this provision and black lung and raises the spectre of a precedent of compensating those who die in any number of dangerous, yet vitally necessary industries.

Finally, we must come to the inescapable question of money. This measure will cost the Federal Treasury $696.75 million during the next 5 years at a time when almost all of us are addressing the issue of fiscal responsibility, when the vast majority of our constituents are demanding that we keep our spending of their money at the lowest possible level. We place enough pressure on inflation by funding programs that are necessary; we certainly do not need to compound this problem by funding those where no justification whatsoever exists.

H.R. 10760 must be defeated and sent back to the Education and Labor Committee with the mandate that a sensible approach for meeting the problems of black lung disease be developed.

Mr. ERLENBORN. Mr. Chairman, I yield 5 minutes to the distinguished minority leader, the gentleman from Arizona (Mr. RHODES).

(Mr. RHODES asked and was given permission to revise and extend his remarks.)

Mr. RHODES. Mr. Chairman, the bill we are considering today, H.R. 10760, the Black Lung Benefits Reform Act of 1975 is a case of good intentions gone astray.

As the Members of this body well know, the aim of the black lung program is to provide assistance to miners who have been disabled by pneumoconiosis. This legislation goes beyond that premise, and in effect establishes an automatic pension program for anyone who has worked 25 years in anthracite mines, or 30 years in other coal mines.

It establishes a new, permanent Federal liability to compensate coal miners through a black lung disability insurance fund financed by a production tax on coal.

When the Federal Coal Mine Health and Safety Act of 1969 was before the House, I supported it, with the understanding that it was to be a one-shot Federal program to help those who suffered disability from working in the mines. It was expected that the States would work with coal mine operators to assure compensation for subsequent incidence of black lung.

During the debate that preceded its passage, the sponsors assured us that Federal responsibility would be temporary. One of our colleagues said at that

time: "This is a one-shot effort. This is not a continuing compensation arrangement to establish Federal-based compensation for this or any other industry."

Of course, the 1972 amendments liberalized and continued the act, to the extent that in 1973, payments to miners were one-fifth of all workers' compensation nationwide. Today, the Social Security Administration handles claims. Benefits are being paid to those not totally disabled, and there is no offset for social security payments.

Now we are being asked to extend Federal responsibility forever. The bill is in truth a pension program since it provides automatic benefits with no regard to employability, with tenure as the sole qualification for Federal payments. No medical evidence of occupational disease would be required. It also establishes new survivor benefits relating to mine accidents.

The question here is not whether miners who are disabled should receive benefits. Few would question the rightness of that concept. There are currently over half a million coal miners receiving nearly $1 billion a year in benefits under our present black lung program. The real question is whether we are going to further expand the Federal involvement in this ongoing program.

I believe it would be patently unfair to ask other working men and women to put up $200 million more for alleged black lung benefits, without requiring any proof that black lung has affected the recipients.

Thirty years in the mines is a long time, but to assume that after a mining career the worker is automatically disabled is not fair to taxpayers who may have worked as hard or as long in other occupations, with no such presumption of disability or automatic compensation.

What it boils down to is the fact that this bill is misnamed. It is not really a black lung bill. It is a miner's supplemental pension program, being tacked on to a disability benefits program. During this time when Federal revenues are being stretched to the limit to cover our Nation's governmental needs, I do not believe we should saddle the taxpayers of this Nation with this new Federal obligation.

Disability payments should go to help the disabled. Under H.R. 10760 this is not the case. The public will have to pay the $2.50 per ton assessment for the trust fund in the form of higher electric power bills or higher prices for manufactured goods.

Mr. Chairman, this bill would establish a poor precedent. If we are going to offer automatic Federal compensation to the able simply because they have worked in the coal industry, how long will it be before other workers demand equal treatment? How far can the Government go in expanding benefits unrelated to disability?

This is not sound legislation, and I urge my colleagues to reject this attempt to federalize pensions for coal miners.

Mr. DENT. Mr. Chairman, I yield 3 minutes 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, all too often coal miners who apply for black lung compensation are put into the position of an adversary proceeding. All too often it feels like the giant bureaucracy against the individual—the United States of America versus the coal miner—is that fair or just?

All too often, lawyers have enriched themselves because of the very complexities of this process and procedure. Do the Members know that it takes an average of $700 per claim to adjudicate a black lung claim now? What a terrible waste of taxpayers' money.

Mr. Chairman, the provisions of this bill take long steps in the right direction toward correcting some inequities. I certainly hope that we can provide equal treatment for bituminous and anthracite miners. I say to my good friends from Pennsylvania that I certainly hope we can get that amendment through.

There are several other improvements that should be made in this legislation. One of the best features of this bill is the Black Lung Disability Insurance Fund. There is no reason why people in States that do not mine coal should be paying for the tremendous burden of black lung compensation. I will offer and hope will be accepted an amendment that will stop this indiscriminate re-reading of X-rays by people who have no knowledge of local conditions in the coal fields.

Mr. Chairman, the coal fields are a tinderbox today. This very day, there may be as many as 6,000 or 7,000 miners out on wildcat strikes. The United Mine Workers of America does not condone any of those strikes. But I say to the Members that unless this Congress brings justice to the miners by passing legislation which not only compensates those who deserve compensation, but also genuinely reduces the dust level, as designed in the 1969 act, there will be strikes and violence in the coal fields.

Mr. ERLENBORN. Mr. Chairman, I yield such time as he may consume to the gentleman from New York (Mr. McEWEN).

(Mr. McEWEN asked and was given permission to revise and extend his remarks.)

Mr. McEWEN. Mr. Chairman, I appreciate this opportunity to comment on this legislation.

No one denies the terrible, physical suffering endured by a coal miner with black lung disease. In addition, of course, he and his family suffer economically.

Nor can anyone deny that other miners and their families suffer in the same way. In my district many talc miners, who are not covered by the benefits provided by the bill before us today, suffer from silicosis which is also a crippling disease.

When the talc mine near Gouverneur, N.Y., in which most of them had worked all their lives, closed in May 1974, they were faced with a dilemma. The alternatives were to file for unemployment benefits, workmen's compensation, or social security disability benefits. However, in some cases, the State employment services office took the position that the miners were medically unable to work, thus disqualifying them for unemployment benefits since to be eligible one must be able to accept employment. Then, again in some cases, the State workmen's compensation board denied their claims for these benefits on the grounds that the miners could perform in other types of nonmining jobs. Fortunately, after the long procedures involved and the many months without income, most of these men have been able to obtain social security disability benefits, although there are still some miners who have no income from any of these programs.

Although I have serious reservations about the cost of this bill to the American taxpayer, it seems to me that from the standpoint of equity and law talc miners are as deserving of assistance of the type envisaged by this bill as are those unfortunate coal miners stricken with black lung disease. In addition, it seems there is little difference medically speaking since the talc miners and coal miners suffer from various types of pneumoconiosis.

I have sent to the chairman of the Education and Labor Committee and the ranking minority member copies of stories which have appeared in the Watertown, N.Y., Daily Times over the last 2 years which very well illustrate the problems and frustrations faced by these talc miners and their families. I am grateful to the chairman, the gentleman from Kentucky (Mr. PERKINS), and the ranking minority member, the gentleman from Minnesota, (Mr. QUIE), for the interest they have shown in the plight of the talc miners in my district. I am hopeful hearings will be held to give these men an opportunity to make their case for equal treatment under the law.

Mr. ERLENBORN. Mr. Chairman, I yield 5 minutes to the gentleman from Pennsylvania (Mr. GOODLING).

(Mr. GOODLING asked and was given permission to revise and extend his remarks.)

Mr. GOODLING. Mr. Chairman, I would imagine that 10 years from now I will be able to say, "I told you so," but what good is that? It is a little like saying, when a fellow goes down the third time, "If I had only dived into the water when he went down the second time. I may have saved him from drowning."

Mr. Chairman, whenever we mix emotionalism, whenever we add emotionalism and politics, that usually equals bad legislation. Certainly, in this legislation that is what we have added, emotionalism and politics, and the end result has to be bad legislation.

I would like to read a few sentences from a study by the National Academy of Sciences, and I quote:

From this and other evidence discussed earlier, it is evident that the current black lung benefits program rests on an unsupportable presumption, namely, that all of the respiratory diseases that may befall a coal miner are due to his occupational exposure.

I continue to read:

If this legislation is approved, it would be reasonable to suggest that similar benefits be extended to workers in other occupations which may be equally or even more hazardous—

Equally or even more hazardous——

to the lungs than coal mining. A partial list of beneficiaries might include workers in cotton mills, asbestos workers, hard rock miners, coke oven workers and steel workers, to mention a few.

And I continue:

If the benefits were extended to workers in other industries, the costs might range from $20 billion to $100 billion annually. Undoubtedly, they would force new and fundamental decisions on society regarding pension and benefit programs.

Mr. Chairman, I do not think there is any question that the program in 1969 was a good program. It was the humanitarian thing for the U.S. Congress to do, because there was not available to coal miners workmen's compensation for fourth stage disabling pneumoconiosis, which is exactly what the 1969 legislation was to take care of, fourth stage disabling pneumoconiosis.

But I think when we talk about a prototype for all future type legislation—and that has been mentioned—that we should ask ourselves a few questions. No. 1, will we as the Federal Government now set up all retirement and pension programs, or should labor and management negotiate these? And in our type of society, I think it should be the responsibility of management and labor to negotiate retirement programs, not the Federal Government setting them up and demanding them.

The second question we should ask is, will we as the Federal Government tell industries that they will set up a trust fund as we determine it should be, or again should labor and management make those decisions and determinations?

The thing that worries me in all of these legislative matters that we get involved in emotionally and politically is this: We only have so much money to spread around. We only have so much money available to try to help people and develop programs that will help people truly in need. And then my question would have to be: Will this legislation so diluted the effectiveness of all of our efforts to help those in need that none will be helped?

Mr. Chairman, my answer to that would be: I believe it will do just that.

Mr. DENT. Mr. Chairman, I yield myself such time as I may consume.

(Mr. DENT asked and was given permission to revise and extend his remarks.)

Mr. DENT. Mr. Chairman, I take the floor to discuss some of the remarks that have been made about this bill before they get too cold. First of all, let me say that this legislation was not designed without the input of all affected parties.

On March 17, 1975, the industry trade association said:

We recommend that legislation be enacted to establish an industry-financed, industry-administered trust fund to pay for claims arising under part C, title IV of the Coal Mine Health and Safety Act of 1969.

To attack this bill on the grounds that it may set a precedent and other industries will look toward the Government for occupational disease obligations, that we are thus establishing some kind of a benchmark in the treatment of injured workmen, is the converse of what we are doing today. We established that when we first passed the bill that recognized on a Federal basis that a miner could be incapacitated from working in the mines. For many years States had laws that did not allow mention in the medical report or death certificate that a miner was sick or that he had died from the effects of coal mining.

They knew many years ago that the culprit was dust, and so we tied it to this legislation. When we put in the dust standards, we tied in compensation for injury. We did not go the route of Great Britain where they provided for partial disability payments. We went the route of getting the man out of the working place when he was affected by the first stages. We went the route of trying to save the man from total pneumoconiosis.

The British established a system that provided they would get a couple more dollars a week after they had the first stages of the disease, a couple more dollars after the second stage, and a couple more after the third. Then it was too late for them, and they stayed in the mines and got a few more dollars and worked until they were totally disabled. Sure, a man can work with crippling total pneumoconiosis. Thousands of them did work until they died. That is why this Congress passed the first bill that recognized the obligation of the Nation itself to those miners and their families who had worked in the mines during the years when there was no protection whatsoever for them.

Why did we put in safety legislation for the mines? Why did we outlaw open-claim lands? Why did we get away from shooting in the face? Why did we do these things? Because explosions were killing miners.

When we put workmen's compensation on coal miners, we then made the operators understand that if they did not have safe places to work, they were going to pay the bill. That is why we put the dust standards into this legislation, and that is why we put this on the backs of the operators. We do this now after we, the citizens and the taxpayers, have taken the great bulk and great numbers of coal miners affected by this disease and paid for this out of the Treasury because we could not trace the responsible operators.

Sure, in 1969 and again in 1972 we decided in our legislation that the responsibility would go back to the States and the States or responsible coal operators would have to pay the claims. But the States refused to pass enabling legislation, and the Treasury was stuck with the bulk of these claims as well.

Mr. Chairman, I had the distinct pleasure and privilege of being the floor leader in the Senate of the State of Pennsylvania when we passed the first black-lung bill under my sponsorship. We were told it was going to break the coal industry and it was going to do everything else that was bad. It did not, and it will not. To suggest that it will cost $1 billion or $2 billion by adding these particular items to the legislation is simply misleading.

Mr. PERKINS. Mr. Chairman, will the gentleman yield?

Mr. DENT. I yield to the distinguished chairman of the committee.

Mr. PERKINS. Mr. Chairman, let me say to my distingiushed colleague, the gentleman from Pennsylvania, that he has made an outstanding statement.

I would like to ask the distinguished gentleman from Pennsylvania if it is not correct that the death and disability rate for coal miners is twice that of the general population of this country and much higher than in any other occupation.

Mr. DENT. Mr. Chairman, the gentleman is absolutely correct. It is something we cannot see. One can see a physical injury because it is exposed.

The idea that this concept may flow to other industries that have occupational problems should not prevent us from voting for this legislation. We should remember that the first workmen's compensation law was passed in the State of Pennsylvania in 1916. In 1936, when I went over to the Senate in that State, I reviewed the arguments, and the arguments that were made then were the same arguments that are being made now.

We passed the first amendments to that act. We did not say that if one got a broken leg or a broken arm or a broken back or a crushed skull in the rubber industry, another worker should not get paid for the same injury because it happened in a steel mill.

We separated coal from all the other industries in Pennsylvania because the loss ratio was so great in coal that at one time they were paying 55 percent of payroll for the compensation payments.

Mr. Chairman, there have been 358,000 miners awarded black lung payments under the legislation for total disability. Yet, workmen's compensation costs many times the cost of black lung legislation.

What have we done in this act? We took from the relief rolls. We took beneficiaries, 508,000 of them, in the main, who were getting paid out of relief, a degrading way of paying a person who, through no fault of his own, worked in a mine.

Mr. Chairman, let me tell the Members what working in the mines means. This is my father's paycheck. It is all withered and torn, but it is still legible. Let me cite my father's paycheck and then let someone tell me what he should have done to prepare himself for black lung in later years so that he and those like him would not have to come to Washington with cap in hand, to this body.

Forty-five wagons were loaded at 65 cents a wagon. Let me give the Members a little bit of history. In those days coal was loaded with a fork with 2-inch tines, a 2-inch space between the fork prongs. Anything that fell down through the tines the miner picked up and loaded the car with it, or a car and a half. Sometimes the miner loaded more coal than he got paid for—for nothing.

Mr. Chairman, 45 wagons, during a month's work, at 65 cents each gave my father a total payroll of $29.25. Then he had to pay the company store $22. If he did not buy at the company store, he

would not be loading any wagons. Then he had to pay 30 cents to the blacksmith to sharpen his tools, his augers; and he had to pay $1.40 for the explosive, causing the dust that would give him black lung. He had a total take-home pay for 1 month of $1.55, for my mother, my father, and 12 kids.

Mr. Chairman, I defy anybody to say that I have one thing in this legislation that is not beneficial to the coal miner. That is what the bill is all about.

There are those who would want to go further, and there were those who wanted to go further in 1900.

In 1961, when I first started to introduce the legislation, I had not learned the lesson that I was taught by John L. Lewis. He said:

> You get your foot in the door and then slowly bring the other one up. Keep moving, and the door opens for you.

Yes, we got our foot in the door. Is this entitlement of 30 years in the bill logical?

This legislation establishes the entitlement on the basis of 81-percent approval of all miners who worked 30 years or more in the coal mines. Of the 19 percent that were not approved, you can rest assured there is a substantial likelihood of error in those denials.

I know some of the Members feel they have to try to reduce it. Yes, we have the 25-year test for the anthracite mines, but why? Because the incidence of black lung both in time and in the period of work and the incidence of total disability from black lung is as much as seven times that of those miners in the bituminous mines because it is a different structured coal.

Everything we have done has been done after all of the research has been in our hands. Everything we have done we have done after receiving all of the facts we could get together. Also do not forget this, it is going to be a declining obligation. I have said it, and I cannot say it often enough, these miners are dying every day.

We have in the anthracite mines about 3,500 workers who are working in the mines and about 13,000 to 14,000 workers that are not working in the mines. I would venture to say that in a proper examination there are few in that area that have been turned down by improper examination for black lung. So we have established a 25-year entitlement in light of their special circumstances. I know they say this is different, this is something that does not belong. I heard the Republican floor leader say it does not belong in conversation. When you have a situation like this, you must find some other criterion to bolster the claim of the crippled man. I cannot defend this under part C for years worked after 1971 because that would have knocked my whole argument down the drain, because I can only argue that those miners before the dust standards were properly set could possibly come under such an entitlement. But no miner is denied the right of examination and application even if he only worked a few days in the mines. We do not close the door on the 15-year miner, the 10-year miner, or the 20-year miner.

We say in this instance if we are going to keep it a compensation bill, and I can defend it as such, then we have got to make it so that you can defend the entitlement provisions. Do the Members think we have not tried exceedingly hard? Do they think that the son of a coal miner would not, if he could, have found some ground of safety to stand on, some ground that he could at least defend if it has to go before the courts? And I assure the Members that it will, and that the courts will find that we acted reasonably and rationally and within our power.

But I do not want any mistaken idea around here that anybody that is voting against this is voting because of the entitlement provision, because they are voting against it, in plain English language, as they have voted since the first compensation bill was ever introduced into any legislative body.

I hate to say this but it is true, and the testimony is right on my desk, because the business climate is against it. The National Coal Association is making noises against it. The Chamber of Commerce is against it.

We can go back through the years, in my 43 years as a legislator and you can take every instance, and we cannot find any single amendment to any compensation act, and you will find this is so, all you have to do is to take the testimony, know where it comes from, just take that testimony and strike out the date it was given and put in the date that it is given on that amendment, and strike the name of the person, because those people change about every 3 or 4 years, and you will find exactly the same testimony for the last 43 years of my life as a legislator in compensation law.

Mr. Chairman, may I inquire how much time I have remaining?

The CHAIRMAN. The gentleman has 24 minutes remaining.

Mr. DENT. Mr. Chairman, I would suggest that the other side, if they have additional requests for time, yield time now.

Mr. HYDE. Mr. Chairman, I make the point of order that a quorum is not present.

The CHAIRMAN. Evidently a quorum is not present.

The Chair announces that pursuant to clause 2, rule XXIII, he will vacate proceedings under the call when a quorum of the Committe appears.

Members will record their presence by electronic device.

The call was taken by electronic device.

QUORUM CALL VACATED

The CHAIRMAN. One hundred and one Members have appeared. A quorum of the Committee of the Whole is present. Pursuant to rule XXIII, clause 2, further proceedings under the call will be considered as vacated.

The Committee will resume its business.

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, I rise in opposition to H.R. 10760, the s called Black Lung Benefits Reform A of 1975.

Mr. Chairman, I think the only wa one could call this bill a reform wou be if one were willing to say that black white, that falsehood is truth, and oth things that are so contrary to huma understanding.

I think a little bit of historical back ground would be helpful in assessing ho we got to where we are today and wha the meaning of this bill for the futur might be.

In 1968 there was a coal mine disas ter in Farmington, W. Va. Many miner lost their lives in that disaster. That wa just one of the more outstanding disas ters. Many more lives were included tha the kind of roof falls, explosions, an other disasters that occur in mines on fairly regular basis.

Understandably, the Congress reacted And in 1969 legislation was considered o the floor of the House to help preven accidents like that from occurring in the future. It was controversial in some o its safety aspects, but not all that controversial. Some things were done to require permissible equipment in nongaseous mines that I think were questionable and I would still question them today But generally speaking, there was widespread and understandable support for improving the safety standards in coal mines to prohibit disasters like that from occurring again.

As a part of that effort, it was suggested that we compensate those who had pneumoconiosis or so-called black lung. The argument was made that up until recent years at that time black lung or pneumoconiosis was not identified as an industrial disease.

It has been called by other names such as silicosis and sometimes it had been diagnosed as heart attack, but in very rare cases had it ever been identified as an industrial disease; therefore, it had not been compensable under State workmen's compensation laws.

The argument was made that now that we have identified this as a disease, it should be made compensable in the future. that claims should be processed just as other workmen's compensation claims were processed, and that the same sort of benefits should be paid to coal miners who had this disease as were paid to other workers who had industrial diseases.

This was a logical argument. We should prior to that time have recognized this as an industrial disease and made it compensable just as other industrial diseases are compensable.

So the argument was made that in the future these coal miners should be treated like other workers and they should receive the same sort of benefits. But it was impossible to look back over the course of years and determine who would have been the responsible employer during the years when this was not recognized as an industrial disease. and, therefore, it was determined it would have to be a Federal responsibility to do equity and to give compensation to all those who were rightfully entitled to it even though the law did not recognize it.

So it was said time after time in the hearings, in our committee, before the Committee on Rules, on the floor of the House, and in the conference committee that this was a one-shot deal to bring equity and we would take on this responsibility through the Federal Treasury to take care of all those old claims and then in the future equity would be done and coal miners would be treated as other industrial workers were treated.

I, among others, felt that this could have provided a very bad precedent for changing the nature of workmen's compensation from that which it is today and was at that time and altering the program as it was operated in each of the 50 States. I felt it would be a precedent for making workmen's compensation or, as it is called today, worker's compensation a total Federal responsibility.

We were assured that, no, this is not the intent, that there is no precedent. The law was enacted.

Then a strange thing happened on its way to enactment. Both the House and the Senate bills provided, as was only logical and as was sustained by the medical evidence, that only progressive fibrosis, the last and only progressive stage of pneumoconiosis, would be compensated. This was consonant with the medical testimony; it was consonant with the determination of the international Labor Organization that set the standards for determining the various stages of pneumoconiosis based upon X-ray evidence. But even though each House in passing its bill determined that only disabling, last-stage pneumoconiosis would be compensated, in the conference the word, "complicated" was taken out, and it was left so that even simple first-stage pneumoconiosis, which by nobody's standard under any medical evidence is disabling, could also be compensable.

As a result of that and some other shenanigans in the conference, I switched from one Member who supported the bill to one who voted against the conference report. The conference report, however, was adopted, and the President did, after much soul-searching, sign the bill on the last day.

In 1972 we amended the pneumoconiosis compensation law. At that time under the 1969 act it was to become the industry's responsibility for future claims through the State workmen's compensation system. In those days those Members who are the sponsors of the bill here today said, "Well, let us extend this as a Federal responsibility a little bit longer. Let us take the burden off the back of the industry."

I did not agree. How often have we heard it said that Republicans are the friends of big industries and that Democrats are the friends of the workingmen?

It seemed to me that the Democratic sponsors of this bill were bailing out the coal industry in those days and extending the Federal responsibility, with the result that the Federal Treasury and therefore all the taxpayers would pay additional hundreds of millions or perhaps billions of dollars.

Yet, that bill did pass. Some other nice little sweeteners were put in that bill. One was the assumption that once a man had worked 15 years in the coal mines, if he had any sort of lung problem, it was pneumoconiosis and therefore, compensable, and another, contrary to the usual practice, one could draw full social security disability payments and black lung compensation at the same time, without the one offsetting the other. Therefore, we began to treat those getting black lung compensation more generously than the one who was physically disabled by the result of a mine disaster.

Mr. Chairman, that is true today under the present law and would be exacerbated if this law today were passed.

Not satisfied with that, the same people are back here today with an additional amendment.

If this bill is enacted, no longer would one have to even claim to be disabled. No longer would he have to pretend that there is something that makes it difficult or impossible for him to earn a living. All he would have to have is a certain number of years in the coal mines and then he will be able to draw compensation. If this bill passes, one can draw that compensation and he will not even have to quit working. He can continue to work to draw the compensation.

Mr. Chairman, if this bill passes, a man will be able to draw, if he is not working, disability compensation for one disability; black lung compensation for black lung, even though he does not have it; social security disability; and the United Mine Workers pension as well.

There are cases where people are drawing combined benefits exceeding what they made when they were employed.

I have two examples which were given to me of actual cases, given to me by HEW, where 103 percent in one case and 106 percent in another of pre-disability earnings are being drawn in compensation, various forms of compensation. If this bill is passed, those figures will increase to over 150 percent of pre-disability compensation in those two cases.

Mr. Chairman, in the name of simple equity, we are treating coal miners in this bill in a way that is altogether different from the way we treat all other employees in hazardous occupations.

As the gentleman from Pennsylvania (Mr. GOODLING) pointed out, without any encouragement on the part of anyone that I am aware of, the National Science Foundation has taken a look at this bill and has said that if we were to extend this concept of compensation to all other workers in hazardous professions, the cost would be as much as $100 billion annually to our economy.

As I said when we were debating the rule, when we were talking about cost, the gentleman from Pennsylvania (Mr. DENT) assured us that this could not be more than $40 million or $50 million annually. It is now running to $1 billion out of the Treasury. If this bill is passed, that would increase to $1.2 billion or $1.250 billion over the next 5 years annually, as well as creating this new industry-supported trust fund, out of which additional payments will be made.

Mr. Chairman, the true total cost of this bill is really not known. It is difficult to contemplate.

Mr. HECHLER of West Virginia. Mr. Chairman, will the gentleman yield briefly.

Mr. ERLENBORN. I yield briefly to the gentleman from West Virginia.

Mr. HECHLER of West Virginia. Does the gentleman in the well really know of anybody who is getting rich because of black lung compensation? The gentleman mentioned a number of cases of what he called double compensation, but I have yet to find in the coalfields any individual who is really getting rich on black lung compensation other than the lawyers.

Mr. ERLENBORN. Mr. Chairman, in answer to the gentleman, I certainly would not say that anybody drawing compensation was getting rich. That is not the point I was trying to make. If the gentleman was listening, I said these workers are getting more than others who are actually disabled. I think equal disability deserves equal compensation.

Mr. Chairman, I am not talking about people getting rich. Do not let the gentleman twist my words because I did not say that. However, if we are talking about equity, equal disability deserves equal compensation.

Why should not the coal miner who is hurt in a roof fall get as much compensation as one who is supposedly a victim of black lung disease? Why should one coal miner who is hurt in a roof fall in a coal mine and in consequence is a quadriplegic, draw less compensation than another coal miner who does not have black lung disease but who has had 30 years in the coal mines? That is not equity. Those who support this bill and call it simple equity cannot sustain their case when those are the facts and they know those are the facts.

Mr. ROUSSELOT. Mr. Chairman, will the gentleman yield?

Mr. ERLENBORN. I am happy to yield to the gentleman from California.

Mr. ROUSSELOT. Mr. Chairman, I would ask the gentleman from Illinois if there is any other disease that we fund from the Federal level that pays benefits to those who can be shown are not afflicted with that disease?

Mr. ERLENBORN. Mr. Chairman, in answer to the inquiry of the gentleman from California (Mr. ROUSSELOT) I would say no.

This is totally new ground being plowed, as it was in 1969—and we were afraid then it might be a precedent.

Mr. ROUSSELOT. So that the gentleman's point about equity clearly is true, we do it for no other diseases imposed by industrial conditions, and we do it in no other Federal case. I think that the gentleman's point about equity is well taken.

Mr. ERLENBORN. I thank the gentleman. I am happy the gentleman from California sees my point and agrees with the principle.

Mrs. SMITH of Nebraska. Mr. Chairman, will the gentleman yield?

Mr. ERLENBORN. I am happy to yield to the gentlewoman from Nebraska (Mrs. SMITH).

(Mrs. SMITH of Nebraska asked and was given permission to revise and extend her remarks.)

Mrs. SMITH of Nebraska. Mr. Chair-

man, I rise in opposition to H.R. 10760, the Black Lung Benefits Reform Act.

No one can deny the seriousness of pneumoconiosis, or black lung, nor the need to recognize this seriousness by assisting those afflicted with black lung. The legislation before us today, however, is anything but a solution to the problem. It is, in fact, yet another example of the Federal Government turning its back on the causes of a serious and complex problem by throwing money at it over its shoulder.

While present law provides compensation to those who suffer from black lung, H.R. 10760 goes even further in authorizing Federal payments. But consider for a moment what it ignores:

No medical evidence of black lung is required before benefits are paid.

Limits the right of appeal to those claiming benefits.

Does not recognize other compensation—State or Federal—that a claimant may be receiving. In some cases, it is possible that an individual could receive more by not working.

By-passes the collective bargaining process by imposing a settlement by Federal fiat.

Discriminates against workers in other hazardous occupations by unfairly singling out miners for compensation.

Disregards the hearings now underway on legislation to improve compensation for all workers.

Violates the spirit of the Budget Control Act by obligating the "back door" expenditure of massive amounts without prior consideration.

Mr. Chairman, any Member who is honest with himself will recognize this bill for what it is: A special interest handout worse, even, than the Lockheed loan bill of several years ago.

I urge my colleagues to defeat this proposal so that we on the Education and Labor Committee can go back and develop a responsible solution to the problems caused by pneumoconiosis. The Congress should take the lead in developing a model workmans' compensation program—one that adequately and fairly compensates those no longer able to work, while at the same time attacking those conditions, such as excessive coal dust, which cause disability.

A "no" vote today will give us the opportunity to exercise our responsibility to legislate for the good of all.

Mr. ERLENBORN. Mr. Chairman, I thank the gentlewoman from Nebraska for her contribution.

Mr. Chairman, there are additional reasons why the Members should be against this bill. As a matter of fact, I find nothing redeeming in the provisions of the bill at all.

At the present time we have presumptions in favor of those who are claimants for black-lung compensation. We have medical testimony before our committee that has been ignored—that only 14 percent of the long-term coal miners are disabled by complicated pneumoconiosis and yet 64 percent of those claims that have been filed have been approved.

We have in this bill such unconstitutional provisions as when a claim is allowed no one may appeal from the administrative law judge but if the claim is disallowed, the claimant may appeal.

The gentleman from West Virginia (Mr. HECHLER) has informed me that he is going to offer an amendment that would do something similar with the reviewing of X-rays. If the claim is allowed, then the X-rays may not be reviewed but if the claim is denied, of course, they could be reviewed.

We are going even further, given every presumption that this is a program that is overly generous, we are going to entitlements. Entitlements have nothing to do with disability. Those who draw entitlements because of their years of service are getting a pension. There is no justification for that in this legislatiton.

It would also require the Social Security Administration under this bill, to open up and review 180,000 claims already denied, most of which have already been reviewed as a result of the 1972 amendments, claims filed under the 1969 act, reviewed under the 1972 amendments, would be reviewed again under more liberal criteria.

Already, the General Accounting Office, in looking over the criteria used under part B, said that the Social Security Administration is using criteria more generous and more liberal than the law allows, and this bill would take those criteria and establish them as the criteria for part C, so that the discredited criteria would now be applied to the industry's responsibility.

Mr. Chairman, as I pointed out during the debate on the rule, the arguments that we ought to compensate disability are answered by saying that we do. We are compensating even those who are not disabled today because they do not have to prove disability.

The arguments that we ought to shift responsibility to the industry are false because that responsibility is there today under part C.

There are no arguments that justify this bill.

It even becomes sort of an insurance bill that would give benefits to the widows of miners who are killed in a coal mine accident if those miners had worked in that coal mine for 17 years or more, and no proof would be required that he ever had any expectation of pneumoconiosis is necessary.

It passes on the cost of these liberalized benefits through a tonnage tax on coal, and an obligation against the coal mine operator that will appear on that part of your utility bill called fuel adjustment costs.

Somebody supporting the bill said he did not feel for those who do not live in coal mining States ought to have to pay the cost of pneumoconiosis compensation.

Our fuel-adjustment costs will appear on our utility bills in no matter what State we might live.

Mr. Chairman, there is no validity to this bill.

Mr. DENT. Mr. Chairman, will the gentleman yield?

Mr. ERLENBORN. I will be happy to yield to the gentleman from Pennsylvania.

Mr. DENT. I thank the gentleman for yielding.

For many years I voted for farm subsidies of all kinds—peanuts, tobacco, and others. I did so because I thought it was right. But many a city fellow could never understand why he had to pay farm subsidies when they did not pay anybody within the cities.

Mr. ERLENBORN. I think the gentleman raises an interesting point. Farm subsidies were meant to keep up farm prices, and we paid as taxpayers to keep up farm prices, so we had the privilege of paying higher prices as consumers. That never made much sense to me, I might say.

I do not think we ought to make the same kind of mistake here by giving a pension to one segment of industry in the guise of disability compensation and pass the cost on to the utility consumer throughout the country.

Mr. Chairman, I hope this bill will be defeated.

Mr. DENT. Mr. Chairman, I yield 3 minutes to the gentleman from Kentucky (Mr. HUBBARD).

(Mr. HUBBARD asked and was given permission to revise and extend his remarks.)

Mr. HUBBARD. Mr. Chairman, I rise to speak briefly in behalf of H.R. 10760, a bill I am proud to be a cosponsor of, and a bill which I strongly endorse.

During these 14 months that I have had the privilege of serving as a Congressman in the 94th Congress, I have heard much about the energy needs of our country. In fact, some who have spoken in opposition to this bill today have our energy needs the No. 1 issue of the 94th Congress. I have heard Congresmen urge that the United States should be independent as to our energy resources. I have heard so much about the importance of coal, and that coal is the best answer to our energy needs. I have seen important environmental legislation vetoed by the President and then sustained by the House because of the arguments as to the need for more coal production in the United States.

However, I think it is high time, Mr. Chairman, that we rise and come to the help of the coal miners, those forgotten persons who actually mine this important product within our United States. In the name of simple equity, I would urge my colleagues to consider the plight of the coal miners and would remind the Members of Congress that they enacted the original black lung benefits legislation as recognition of the national debt we owe the men and women who for years have gone, and continue to go, into the mines of our Nation to produce this precious and valuable resource.

I hope the time has passed when any question remains about the pluses of this benefits program. Coal miners deserve financial security and health benefits for their contribution to the energy needs of this Nation. Despite advanced technology, we again recognize our need for coal, and just as the miner must still go underground to mine it, the coal dust is still there to greet him. Mining remains the most dangerous profession in our Nation.

I have been in the Chamber today and have heard opposition to this bill as expressed by a distinguished colleague from Connecticut, and yet I have heard that same colleague emphasize the need for

more money by the Federal Government for the Penn Central Railroad, and the need for more Corps of Engineers projects in Connecticut.

I am here as a Congressman from western Kentucky to say it is about time to recognize some of the people who produce the coal in these United States. The gentleman who spoke before me, my distinguished colleague from Illinois, and of course the entire delegation from Illinois, were all in favor of a coal gasification plant going to Illinois. Yet when it comes time to reimburse and take care of the coal miners of this country, we find opposition from parts of Illinois.

I close these remarks by simply urging my colleagues to realize that as we talk about coal production, energy needs and equity, that we should remember the coal miners.

Mr. ERLENBORN. Mr. Chairman, I yield 5 minutes to the gentleman from Kentucky (Mr. CARTER).

(Mr. CARTER asked and was given permission to revise and extend his remarks.)

Mr. CARTER. Mr. Chairman, on December 3, 1970. I received an urgent call from Harlan, Ky. There had been a mine disaster. That night I was there. I saw them as they brought 38 blackened and burned bodies out of that coal mine. I heard the distressed cries of the widows and orphans. I want to say that it is the most hazardous profession that we have in the United States today.

In Lynch, Ky., the United States Steel Co. has a mine which goes back under the mountains from 6 to 9 miles. These people go back there each day and stay 8 hours under that mountain back in that black hole. Any man in this country who has served 25 years back in a mine, back in a hole, deserves something for having done that. I think any miner who goes back under the mountains of Kentucky and digs coal to keep us warm in the winter, a man who stays there for 30 years, does deserve something.

I feel that, without a doubt, each one of these men in Kentucky or Pennsylvania, or wherever it may be, will show an X-ray with stippling and fibrosis in the lungs, which shows he has pneumoconiosis.

Over the years I have visited throughout the mining area of my State and it is just a very common thing when I see hands on those men with a missing finger or two fingers. I see them often with only one leg. I see them walking on crutches as the result of slate falls.

Just last week I saw a miner in Whittey leity, Ky., which is in McCreary County. The man was disabled. I noticed his heaving respiration. His wife was with him and they thanked me for assisting them in getting their benefits.

His wife told me:

My father was killed in a mine. My two brothers were killed in the mines.

This is what happens to so many of our people. They are killed. This is the most hazardous occupation that we have, from the viewpoint of accidents, accidental death, terrible death, fire, gas, cave-ins, slate falls; there is nothing to compare with it.

Now, I would hope that this House in its good judgment would not be so cold and calculating as to deny these people who go down into the bowels of the Earth to get the energy by which we keep warm in the winter, I hope that they will not be so cold as to forget these men who each day work that we may be warm or that we have the energy that we consume every day. As we know, the future of the energy supply of this country depends upon coal. As one of my good friends from Pennsylvania said, "C-O-A-L, coal."

We have not gone to the gasification, to the liquefaction of coal, but we must do so immediately so that this country can be eternally independent of the OPEC nations. Coal is the source of our future supply of energy. Why this House has delayed passing the gasification and liquefaction bill is beyond me. We must protect those men who supply our source of energy at the risk every day of their lives.

Mr. ALLEN. Mr. Chairman, will the distinguished gentleman from Kentucky yield?

Mr. CARTER. I am happy to yield to my good friend from Nashville.

Mr. ALLEN. Mr. Chairman, I would like to associate myself with the remarks of a man who not only is a distinguished Member of this body, but who is a distinguished member of the medical profession and a man who knows whereof he speaks. I concur 100 percent in the sentiments and remarks he has expressed before this Committee.

Mr. CARTER. I want to thank the distinguished gentleman for his very kind remarks.

Mr. BUCHANAN. Mr. Chairman, will the gentleman yield?

Mr. CARTER. I am happy to yield to the gentleman from Alabama.

Mr. BUCHANAN. Mr. Chairman, I too would like to associate myself with the remarks made by the distinguished gentleman from Kentucky. He has spoken with wisdom and with compassion. I fully support his case, and associate myself with him.

Every one of us who has had the privilege of representing a coal mining district has had the experience of witnessing the human tragedy of miners who were old and who were ill, for whom there was no help prior to the passage of this basic legislation. There are still people in need whose needs will be met by the strengthening of this legislation, which we can do this day.

I believe the gentleman to be speaking the truth medically. I have never known a person who has worked for 25 or 30 years in a coal mine who did not have a health problem or a breathing problem. Perhaps it can be so, but I have never met that man.

Mr. CARTER. I must agree with the distinguished gentleman from Alabama. I do not believe it is possible for a man to work 25 years in an anthracite mine or 30 years in a bituminous mine without severe pneumoconiosis.

Mr. BUCHANAN. I thank the gentleman for his remarks.

Mr. DENT. Mr. Chairman, I yield 3 minutes to the gentleman from Illinois (Mr. SIMON).

(Mr. SIMON asked and was given permission to revise and extend his remarks.)

Mr. SIMON. Mr. Chairman and my colleagues of the House, I join my distinguished predecessor from Kentucky (Mr. CARTER), who hit it right on the head, along with the gentleman from Alabama. I heard my colleague from Pennsylvania (Mr. GOODLING)—I do not see him right now—say that this is an issue where there should be no emotionalism. It is pretty hard for me not to get a little emotional when I talk to coal miners who worked 20, 25 years, and they have health problems. There is just no question about it.

My friends who do not represent coal mining areas can talk in theory; I am talking facts.

But, let us talk statistics then if we want to avoid emotionalism. One is the reality mentoned by the gentleman from Kentucky (Mr. CARTER), Mr. Chairman, that coal mining is dangerous. There are 160,000 coal miners, roughly, in this country. Last year, 155 coal miners died. That means that one out of every thousand died in a coal mine accident. Further, 16,000—1 out of every 10—were injured in one way or another. Nine thousand—1 out of every 17—suffered a disabling injury. This is aside from pneumoconiosis, black lung, and this is January through October 1975 on injuries.

We are talking about a serious problem aside from black lung. Now, my good friend from Connecticut has said that this is unsound financially. The reality is, we are proposing a program that is eminently sound financially. The black lung recipient receives $2,800 a year against an average of $14,000 if he is mining. No one who is in good health is going to choose $2,800 in income when in fact he could otherwise get $14,000 in income. This bill does it in a sound way, putting it on a ton of coal mined, 14 cents a ton. Let us just assume that we are 100 percent wrong in that assessment of what the cost would be.

Let us assume that it is 28 cents a ton. So it is 28 cents a ton. Is that a reason to deny justice to people who eminently deserve that justice?

The CHAIRMAN pro tempore. (Mr. LLOYD of California). The time of the gentleman from Illinois has expired.

Mr. DENT. Mr. Chairman. I yield 1 additional minute to the gentleman from Illinois (Mr. SIMON).

Mr. SIMON. Mr. Chairman, I will close in 1 minute.

The national coal workers autopsy study—and that is the real way to find out whether there is a problem—shows that 90 to 95 percent of the coal miners, where an autopsy has been performed, who had worked at least 20 years, had pneumoconiosis. I have some other facts here, but I would finally close with just an appeal that was sent to me by a Federal judge, who said:

Somehow, something has to be done. I have to rule against these coal miners and their widows, when I know that simple justice requires just the contrary.

Mr. GOODLING. Mr. Chairman, will the gentleman yield?

Mr. SIMON. I yield to the gentleman from Pennsylvania (Mr. GOODLING).

Mr. GOODLING. I thank the gentleman for yielding.

Mr. Chairman, I want to correct the RECORD. I said that emotionalism plus politics equals bad legislation. That was my statement.

Mr. SIMON. I stand corrected. I am pleased to have that corrected. I think emotionalism plus good sound facts will dictate that we adopt this legislation.

ANNOUNCEMENT BY THE CHAIRMAN PRO TEMPORE

The CHAIRMAN pro tempore. The Chair would remind all persons in the gallery that they are here as guests of the House and that any manifestation of approval or disapproval of the proceedings is a violation of the rules of the House.

Mr. DENT. Mr. Chairman, I yield 3 minutes to the gentleman from Indiana (Mr. HAYES).

(Mr. HAYES of Indiana asked and was given permission to revise and extend his remarks.)

Mr. HAYES of Indiana. Mr. Chairman and members of the committee, I thank the chairman of the subcommittee for yielding to me this time. In view of the objections which have been voiced to this legislation, I think it is very necessary to point out what the real purpose of the bill is and then simply to decide whether we support or oppose that basic, bottom line purpose.

Mr. Chairman, in 1969, when the Coal Mine Health and Safety Act was reported by our Committee on Education and Labor, the report said that the health standards were hoped to accomplish the elimination of conditions in mines which caused pneumoconiosis. So, the elimination of harmful conditions is and should be the root of this compensatory legislation, and in fact we know that is the root of all compensatory legislation, whether it has been here or whether it has been on the European continent or in England. That is the background of compensatory legislation. It is absolutely obscene to suggest that the cost of disease to the labor portion of mining should not be added to the cost of the coal. It is economic brutality to infer that the human suffering which is a byproduct of our industrial society should not be computed as part of the overhead of mining and left out of that overhead cost. To make the argument that our insensitivity to disease in asbestos workers, our insensitivity to disease in steelworkers, our insensitivity to disease in cotton mill workers should justify willful and wanton neglect of disease in coal miners is an attitude that I think I have only recognized before in the literature of Dickens when he discussed the economic conditions in the 19th century in England.

This, I say to the Members of the House, is the 20th century in America. As a matter of fact, it is 25 years just previous to the 21st century.

This legislation is very simple. Its basic premise is that the disability of proved disease which is incurred by the human beings who are extracting the coal from the ground is going to be computed as one part of the overhead of taking it out, if one needs to put it in cold, calculated, economic terms. We would calculate that if we were dealing with a draft animal. And, consequently, we must calculate that if we are going to deal with a human being.

So if the Members are opting to do anything less on this bill, then what we are failing to understand is that it is only compensation for this disease that will provide the incentive to eliminate the conditions which caused the disease in the mines in the first instance.

Mr. Chairman, I will have an amendment which will insure even further that some thousands more of workers in surface mines will be covered. I urge the Members to pay attention to that debate, and I would like to request that Members support that amendment.

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, I sat here in just absolute amazement listening to the gentleman who preceded me and who spoke from the well.

Either the gentleman was displaced in time back to 1969 and is a victim of a time warp or else the gentleman is just terribly misled and undereducated and is not aware that we already do compensate this disease, that the cost of it is now upon the coal-mine operators, and that if they bear the cost, they must pass that cost on to the consumers. I do not see how the gentleman who spoke in the well can say that we are going back to Dickens' time if we deny compensation.

Anybody who has the disease is allowed compensation under the current law.

The gentleman says the simple thesis of this legislation is to compensate proven disability. I suggest that the gentleman has not then read the bill, because the bill says that one would only have to work a certain number of years in order to get this compensation. They do not even have to claim to be disabled; they can continue to work and yet draw the benefits.

Mr. HAYES of Indiana. Mr. Chairman, will the gentleman yield?

Mr. ERLENBORN. I yield to the gentleman from Indiana.

Mr. HAYES of Indiana. Mr. Chairman, what the gentleman from Illinois fails to understand and what the coal operators of this country fail to understand is that a matter of proof is also a presumption. Evidence is a presumption.

Therefore, I urge the gentleman to take a look at every one of the harpooning amendments he has and take a look at his own minority report and then tell we whether he wants full and open compensation in this area. The fact is that he wants procedural safeguards in order to make sure that nobody collects when it becomes necessary for them to collect. He wants them to be burdened down with every possible lawyer's gimmick; he wants them to be burdened down with every administrative logjamming conceivable.

Mr. ERLENBORN. Mr. Chairman, I refuse to yield any further.

Mr. HAYES of Indiana. I suggest that that is what the gentleman wants.

Mr. ERLENBORN. I refuse to yield any further, and I ask for regular order, Mr. Chairman.

The gentleman from Indiana again is just terribly, terribly misled. He talks of my amendments. I propose no amendments.

The gentleman says that proof is a presumption. I do not understand what the gentleman means. His English is apparently not like mine.

Mr. Chairman, I yield such time as he may consume to the gentleman from Ohio (Mr. ASHBROOK).

Mr. CARTER. Mr. Chairman, will the gentleman yield?

Mr. ASHBROOK. I yield to the gentleman from Kentucky.

Mr. CARTER. Mr. Chairman, I would like to ask my distinguished friend, the gentleman from Illinois (Mr. ERLENBORN), how many able-bodied miners he knows, miners of either anthracite or bituminous coal, who have worked in the mines 25 or 30 years and who are still able to go about their business and to work at anything, let alone work in the depths of a mine.

Mr. ERLENBORN. Mr. Chairman, will the gentleman yield so I may reply?

Mr. ASHBROOK. I yield to my colleague, the gentleman from Illinois.

Mr. ERLENBORN. Mr. Chairman, I think the question the gentleman from Kentucky should more properly be zeroing in on is the question of whether or not these people are entitled to a pension after working for long periods of time, and I think, yes, perhaps they should be. The simple justice of the situation would indicate that a pension should be made available to those who have spent long years in the coal mines, and many of the arguments that have been made on the floor have been made on that basis.

If we were talking about a coal mine pension bill and it were a bill that gave equal justice to all who worked in hazardous occupations, we might have some reason to be conducting this debate. But the fact is, Mr. Chairman, that all the medical evidence before our committee indicates that periods of service in the coal mines bear no relation to disability based on complicated pneumoconiosis.

Mr. CARTER. Mr. Chairman, the gentleman has not yet answered my question as to how many able-bodied men he knows of who have worked for 25 years in an anthracite mine or for 30 years in a bituminous mine. If he can show me one, I would like to see him, and I would like to see one who is not disabled. I would like to locate that one man. It is my feeling that 25 years as an anthracite miner or 30 years as a bituminous miner will cause pneumoconiosis.

(Mr. ASHBROOK asked and was given permission to revise and extend his remarks.)

Mr. ASHBROOK. Mr. Chairman, I will vote against H.R. 10760, the Black Lung Benefits Reform Act of 1975. This bill

inappropriately expands the Federal responsibility for black lung compensation.

I certainly believe that coal miners suffering from pneumoconiosis should be compensated. Miners who have this disabling disease deserve adequate compensation for their disability.

The bill before us today, however, goes far beyond that. It would establish as a matter of law that a miner has black lung because of time of service whether or not he has the disease.

Coal miners in bituminous mines for 30 years or anthracite mines for 25 years would be entitled to black lung benefits without having to show disability caused by the disease. Widows of miners killed after 17 years of service would also receive these benefits.

No longer would benefits be linked to disability, as was intended when the program was first enacted. In fact, no showing of disability would be necessary at all. Instead, benefits would flow based solely on time of service.

Such action is unprecedented and wrong. What we are being asked to approve is little more than a federally financed retirement program for coal miners. I cannot support this concept.

I cannot justify forcing the taxpayers of our Nation to compensate people who do not have black lung. Yet H.R. 10760 would do exactly that at a cost of hundreds of millions of dollars per year. It has been estimated that this bill could run $1 billion or more during the next 5 years. Considering that our budget deficit is in the $70 to $80 billion range for fiscal year 1976 alone, any further increases in Federal spending would be extremely unwise.

Neither can I justify establishing a retirement program for coal miners when similar benefits are denied to workers in other hazardous occupations. Why should coal miners be accorded preferential treatment by the Federal Government over these other workers?

I firmly believe that compensation under the black lung program should continue to be based on disability. Benefits should be limited to the truly deserving rather than being open to everyone whether he has the disease or not.

Frankly, I do not believe that the majority has been honest with us on this issue. When the Coal Mine Health and Safety Act of 1969 was debated on the floor of the House, proponents of the legislation stressed that Federal involvement was a limited, one-time-only affair. In no way was it intended to federalize the workman's compensation program.

According to Congressman DENT:

> 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 its fourth stage—complicated pneumoconiosis.

Congressman BURTON referred to it as a "* * * temporary one-shot black lung pay provision * * *" that would not run "* * * the risk of federalizing in some way the workman's compensation program."

Well, now we are being urged to do exactly what we were promised would not happen in 1969. The limited, one-shot program would become expanded and permanent. A further step would be taken toward federalization of workman's compensation. In fact, according to the majority, this legislation could become the prototype of future federalization of occupational disease programs.

This is exactly what I warned against in my 1969 minority views. As I stated at that time:

> The second provision (Federal benefits for coal miners with black lung), 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 or 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.

Mr. Chairman, H.R. 10760 has been termed "special interest legislation," and we have been exhorted to appeal to reason and not emotion. However, I believe the legislation is more than "special interest"—it is nothing less than outrageous and nothing more than a ripoff. And, I feel that I have been more than reasonable in signing, thereby endorsing, the minority views, a study of reason and not emotion. Despite that logic and despite our calm reason, this piece of outrageously liberal legislation to benefit only the constituents of a few Members is allowed to be brought to the floor under the guise of rational purpose. If reason and logic fail to thwart this discriminatory action, will emotion prevail? Surely, if we allow this Black Lung Benefits Reform Act to pass this House, it is obvious that emotion and demagoguery will prevail over reason and logic.

The black lung benefits began at the end of 1969 with enactment of title IV of the Federal Coal Mine Health and Safety Act. At that time, it was pointed out that the program established a system of Federal workmens' compensation for a special and relatively small category of occupational damage to workers. The argument was made then, and is as true today, that the program is not only discriminatory as to all other injured or ailing workers' compensation, which had traditionally been the exclusive jurisdiction of the several States. The argument made then that the program was a foot in the door, a possible first step toward the ultimate federalization of the entire system of workmen's compensation was prophetic in view of the report of H.R. 10760 that the trust fund concept is a "prototype for future legislative treatment of other occupational diseases."

I urge the Members of this body to vote against expanding Federal responsibility for black lung compensation. It is, after all, the States and the coal industry that should bear primary responsibility in this area.

Mr. DENT. Mr. Chairman, I yield 3 minutes to the gentleman from Alabama (Mr. BEVILL).

(Mr. BEVILL asked and was given permission to revise and extend his remarks.)

Mr. BEVILL. Mr. Chairman, I rise to urge my colleagues to give their support to a bill that is of paramount importance to thousands of families in our Nation.

I am speaking of the legislation currently before the House, the Black Lung Benefits Reform Act of 1975, H.R. 10760, of which I am a cosponsor.

Having been born the son of a coal miner in northwest Alabama, I know firsthand of the pain many coal miners have endured as the result of various black lung diseases. In that respect, I also know that for many years the miners had no alternative but to accept the risk of black lung that goes along with working in underground mines.

Hopefully, that deplorable situation is gone forever. The black lung benefits program, begun in 1970, has meant new hope for thousands of miners and their families, who for many years were doomed to poverty when the heads of households became unable to work as a result of black lung.

But while the black lung program has meant so much to so many people, there is still a long way to go. That is where the legislation that confronts us today comes into the picture.

As you know, this bill seeks to transfer the residual liability for black lung benefits from the Federal Government to coal operators.

The legislation would establish a coal industry trust fund for the payment of benefits to coal miners disabled by pneumoconiosis and their widows and expand the eligibility for benefits.

This trust fund would be supported by coal operator contributions. I am particularly supportive of this part of the legislation because it takes the responsibility for black lung benefits out of the Federal Government and places it in the hands of the coal industry, which is where I believe they belong.

All coal operators would pay a premium into the trust fund based on the number of tons of coal mined to cover benefit payments which cannot reasonably be assessed to an individual coal operator. The trust fund will be administered by trustees elected by the coal operators who will have the power to invest the funds, enforce its obligations, and contest various claims.

I believe this legislation is much needed to help get the black lung program out of the bureaucratic bounds it has been the victim of in recent years. Literally thousands of deserving coal miners have found themselves disabled with little means of financial support as a result of the tremendous amount of redtape which has been associated with this program in recent years. I am of the opinion this legislation can play a significant role in insuring that all entitled miners are rewarded with the black lung benefits they deserve.

Several amendments which are designed to strengthen this legislation will be offered here in the House.

One amendment which I strongly recommend will be offered by my distinguished colleague from Illinois, Congressman TIM L. HALL. This amendment

would eliminate the proposed 1971 cutoff date for entrance into the program.

I am of the opinion that the 1971 cutoff date is both arbitrary and discriminatory. It discriminates against miners who began their careers after July 1, 1941, and against miners who interrupted their mining careers to serve our Nation during World War II and the Korean war. This provision is arbitrary because July 1, 1971, holds no significant relationship with the possible contraction of black lung disease.

There has been much medical evidence that points out that miners who did not have any sign of pneumoconiosis prior to July 1, 1971, or who began work since July 1, 1971, have since contracted black lung.

The argument that mines are less dirty now that 30 years ago is often heard regarding the 1971 cutoff date. This is simply not true. With all the technical advances that have taken place in the mining industry over the last few decades, many mines today actually produce more dust that those of 30 years ago.

It has been estimated that a disabled miner who qualifies for black lung benefits can, at best, expect only about 50 percent of what he would probably be able to earn in his regular mining job, were he able to work. This percentage is also taking into account various union pensions. I believe this argument successfully rebuts the theory that the black lung program is merely a pension plan.

The Black Lung Benefits Reform Act seeks to provide relief for miners and their families who have seen their purchasing power literally destroyed as a result of black lung.

I have seen what black lung diseases can do to a miner and his family. It is with this grim reminder that I urge you to support this legislation aimed at reforming the black lung benefits program.

Mr. ERLENBORN. Mr. Chairman, I have no further requests for time, and I reserve the balance of my time.

Mr. DENT. Mr. Chairman, I yield such time as he may consume to the distinguished gentleman from Pennsylvania (Mr. MORGAN).

(Mr. MORGAN asked and was given permission to revise and extend his remarks.)

Mr. MORGAN. Mr. Chairman, I am in complete support of the objectives of H.R. 10760, which is designed to assure that the Federal black lung benefits program is administered in an equitable manner. There is no justification for denying benefits to men who have toiled many years in one of the most polluted atmospheres imaginable. There is no excuse for refusing benefits to widows who cannot supply medical records of their husbands' disabilities. It has become patently evident that unless we enact this legislation, persons will continue to be denied benefits which were earned through backbreaking labor and debilitating respiratory and pulmonary impairment.

I am in complete agreement with the committee's desire to create a trust fund which will be financed totally by contributions from coal operators. It is time the industry accepted responsibility for the ravages of black lung which has been precipitated by unhealthy working conditions. Compared to the millions of taxpayers' dollars paid to black lung claimants, the industry's financial obligation for residual claims will be insubstantial.

There are other features of the bill which will enable claimants to establish eligibility without being subjected to restrictive regulations and arbitrary determinations. Heretofore miners' claims have been rejected merely because the miner was employed at the time of filing.

No consideration is given to the fact that the miner may be involved in less rigorous work because of the disability he suffers from black lung or the fact that he is forcing himself to work to support his dependents. The bill would prohibit these threshold denials and give the claimant the opportunity to establish disability.

Under the bill widows will no longer be denied because, through no fault of their own, they are unable to produce medical evidence of their husbands' suffering. The legislation also will cease the unconscionable practice whereby claimants are given a favorable decision by an administrative law judge then their expectations are shattered by an appeals council reversal of that favorable decision.

I hope my colleagues will consider the plight of the miners who have labored in the most hazardous and physically debilitating occupation so that the Nation could depend upon a continuous supply of an inexpensive yet vital energy resource. It is my sincere hope that we not reduce this debate to an equation of lives and dollars. I for one do not think I have the divine power to place a monetary value on physical suffering or untimely death due to an insidious disease.

Mr. Chairman, I want to pay tribute to my good friend the gentleman from Pennsylvania, JOHN DENT. He has spent a lifetime working for the people who labor in the mines, mills, and all forms of labor in this Nation. This is a good bill and should be supported to help the people who risk their lives to produce our greatest source of energy.

Mr. DENT. Mr. Chairman, I yield 1 minute to the gentleman from Pennsylvania (Mr. FLOOD).

(Mr. FLOOD asked and was given permission to revise and extend his remarks.)

Mr. FLOOD. Mr. Chairman, it so happened that when the bill in 1969 was being presented here on the floor of the House that I had the honor of sitting in that chair and presiding as Chairman of the Committee of the Whole and, as such, could not speak on the bill, although I come from Pennsylvania.

As my friend, the gentleman from Kentucky who is a great Congressman and a great doctor has said, "Come with me," he said, and I say to you now, come with me, if you worry about black lung disease in the hard coal fields, come with me to a company town in the summer—and it will be on the first floor because the miner cannot walk to the second floor—and the window will be up and you do not need a doctor and you do not need X-rays because you can hear black lung disease just by listening, you will hear the terribly desperate deep breathing, uh-huh—uh-huh—uh-huh.

Mr. DENT. Mr. Chairman, I yield 1 minute to the gentleman from West Virginia (Mr. STAGGERS).

(Mr. STAGGERS asked and was given permission to revise and extend his remarks.)

Mr. STAGGERS. Mr. Chairman. I would like to congratulate the gentleman from Pennsylvania (Mr. DENT) and the gentleman from Kentucky (Mr. PERKINS) the chairman of the full committee, for presenting this bill to the floor of the House today.

I was the cosponsor of another bill along with the gentleman from Kentucky which is a little more lenient than this bill. It was presumed that 15 years was a sufficient time of working in the mines to assume that you had pneumoconiosis.

In addition, I think, since it has been mentioned that the money has been accounted for in our Budget Committee, and also that the money will be appropriated by the Committee on Appropriations, that it is only a humanitarian gesture that we should pass this bill to attend to those who work in our mines and help supply the energy needs of this Nation.

I would like to say to the Members of the House that those who have not been down in a mine ought to go down. I think it would be an education just to go down and go through the mine and see what a miner has to go through. I know there are many Members of this House who have not had that opportunity, and I think they should have. I think they would be more lenient then and be more humanitarian in their vote on this bill.

Mr. ERLENBORN. Mr. Chairman, I reserve the balance of my time.

Mr. DENT. Mr. Chairman, I yield 3 minutes to the gentleman from California (Mr. PHILLIP BURTON).

(Mr. PHILLIP BURTON asked and was given permission to revise and extend his remarks.)

Mr. GAYDOS. Mr. Chairman, will the gentleman yield?

Mr. PHILLIP BURTON. I yield to the gentleman from Pennsylvania.

Mr. GAYDOS. I thank the gentleman for yielding.

I wish to commend the gentleman from Pennsylvania (Mr. DENT), whom I worked with for many years, particularly for this bill for western Pennsylvania. In my district we do not have many working coal mines; however, we do have the aftermath; that is, the people who have worked these mines for years, many suffering from black lung. I commend the gentleman for doing the right thing at the right time in sponsoring this legislation.

Mr. PHILLIP BURTON. I thank the gentleman.

Mr. Chairman, my remarks are going to be more informal than substantive, perhaps, and a reminder of the time 7 years ago when the gentleman from Pennsylvania (Mr. DENT), the gentleman from Kentucky (Mr. PERKINS), the gentleman from Pennsylvania (Mr. FLOOD), the gentleman from Pennsyl-

vania (Mr. MORGAN), and others gave so much time and effort to this, along with our friends, the gentlemen from West Virginia (Mr. STAGGERS, Mr. SLACK, Mr. MOLLOHAN, and Mr. HECHLER); as well as Congressman JOE GAYDOS and the gentleman from Pennsylvania (Mr. JACK MURTHA)—the original author of the 15-year rule.)

We were told then that it could not be done, but the Congress did enact a black lung benefit bill. As the author, I knew then it was inadequate, but it was a good start.

We strengthened the bill here a few years ago. Once again today we are correcting some long overdue inequities.

I think if we are going to look at the history of the bill, we must acknowledge the help that we received from the outside, from Jock Yablonski and Arnold Miller, who at that time were not in the official top position of leadership of the UMW, but who played a decisive role in eliminating the confusion that existed when we first tried to enact this provision. I think it also fair to note, without leaving out any of my colleagues, that the addition of two new members of the Committee on Education and Labor, the gentlemen from Illinois (Mr. HALL, and Mr. SIMON), have also given this added thrust in the development of this legislation.

The black lung benefit program has done more to correct injustices for those who worked in the coal fields of this country, for their widows and orphans, than any other comparable piece of legislation applied to workers anywhere in this country.

I agree with an earlier speaker who said perhaps we should take a look at byssinosis and asbestosis. Some day we will do that and some day the brown lung and white lung workers will also get their just due.

But the fact of the matter is today we have a reasonable bill. It is a bill carefully designed to improve the benefits justifiably. I hope the bill will be supported by my colleagues so that we can then have the Senate act on it and go to conference.

There will be some amendments offered today that I am going to find with a heavy heart that I may have to oppose—oppose not because I think they do not have some merit, but oppose mainly out of concern that if we sweeten the legislation a little too much, we may ultimately imperil the likelihood that it may become law.

Mr. HECHLER of West Virginia. Mr. Chairman, will the gentleman yield?

Mr. PHILLIP BURTON. I yield to the gentleman from West Virginia.

Mr. HECHLER of West Virginia. I thank the gentleman for yielding.

I think that the gentleman from California now in the well should be added to the long list of heroes that he has just enumerated.

The CHAIRMAN pro tempore. The time of the gentleman has expired.

Mr. MATHIAS. Mr. Chairman, as many people know I was the first Member of Congress to introduce legislation calling for automatic payment of benefits for men who had worked a certain number of years in the mines.

It was August 21, 1974, when I first introduced that bill. It has taken a lot of hard work by a lot of dedicated people to bring this issue to the House floor. Even though many changes have been made from that bill I initially introduced. I am proud to be a cosponsor of the bill before the House today, because I believe it takes major steps in helping our Nation's miners and their families.

There were seven key points in the bill I originally introduced. The legislation before us today deals effectively with six of those points. The bill before us would:

For the first time establish a principle to pay miners benefits after having worked a set number of years in the mines, and make these payments automatic without the redtape that has characterized the present system;

Improve the situation for widows;

Allow lay evidence and affidavits rather than only medical evidence to be the basis for a claim;

Make the black lung program permanent;

Extend funding for black lung medical clinics; and

Eliminate present employment or employment at the time of death as a cause for denying benefits.

In June 1975, when I testified before the House Labor Standards Subcommittee and its extremely talented and dedicated Chairman JOHN DENT in support of black lung reform legislation, I listed two additional areas that I felt needed changed. I am glad to note that one of those—taking steps to speed the hearings of appeals—is included in the legislation before us.

But the key to this legislation is in what it means to our citizens, to the brave, proud mining families of our Nation that have often provided generation after generation of men who have gone into the mines.

As I said in my testimony in June:

These men and their families deserve better treatment than they have received. There are entirely too many widows collecting black lung benefits because their husbands have died. There are even more widows not collecting anything, although their husbands couldn't breathe after working for as many as 30 years in the mines. And there are simply too many hard-working men who have died because of the shortness of breath that is an occupational hazard.

Mr. Chairman, this bill does not accomplish everything I want or everything the mining community in my area would like to see. It is a positive step forward. It is a major step in the right direction. It is an important step toward properly recognizing the contribution of these men.

One final word to my colleagues. If we are to become energy independent we will have to rely on coal. Coal production has not increased significantly in the last 2 years. The Project Independence energy report called for increasing coal production to 663 million tons last year and jumping to 1,247 billion by 1990. We can improve coal mining methods, we can use more machinery, but if we are to open all the new mines and increase production as projected by these figures, the inescapable fact is that we will have to attract more men to mining. There are many things we need to do to reach this goal, but one is that we have to let the miner know we will take care of him and his family for his efforts in breathing the dust day after day that will ruin his health and shorten his life. Improvements in the black lung system are essential to our national energy commitment.

Mr. Chairman, I urge a "yes" vote on this bill for black lung reform.

Mr. WIRTH. Mr. Chairman, although coal no longer plays the role in the economy of Colorado's Second District that it once did, many miners still reside in the area, chiefly in the Boulder County towns of Longmont, Louisville, Superior, and Lafayette. In talking with them, I have found a reservoir of frustration and confusion because of the administration of the black lung benefits program. The rules, tests, and standards of proof used by the administrators are so complicated, and take so long to process, that some miners' wives have to wait for autopsy results before getting confirmation that their husbands suffered from black lung.

When I asked the General Accounting Office to look into the situation in Colorado, many of the complaints were verified. Surely Colorado is not alone in this regard. Surely elsewhere there are miners who have trouble threading their way through the tunnels of the bureacracy.

This bill, the black lung benefits reform bill, would streamline the process by setting a strict timetable for processing claims as well as eliminating the requirements of medical proof for miners who can show that they have worked 30 years in the mines at the time when dust standards were not in effect. This approach is not only sensible and humane, but also represents a step away from the overregulation that has been a feature of Government activity in recent years.

The second major provision of the bill is the creation of an industry-financed trust fund to meet payments for claims. This removes much of the financial burden from the Government, and means that the cost of the program will actually decline over the years as industry and coal consumers assume this burden. That industry will pass on the increased costs, is of course entirely appropriate. The price of coal—the so-called cheap fuel—should reflect its hidden human costs.

Mr. McDADE. Mr. Chairman, I rise in support of H.R. 10760, the Black Lung Reform Act of 1975. I commend the Committee of Education and Labor especially the chairman of the subcommittee, my good friend from Pennsylvania, Mr. DENT, for his diligence in producing this bill. I was pleased to cosponsor with him and several other colleagues a bill, H.R. 8, which embodies many of the necessary reforms contained in the legislation we are considering today.

Mr. Chairman, those of us who represent coal mining States have spent many hours attempting to refine and improve

the black lung benefits provision of the Coal Mine Health and Safety Act. But we have spent many more hours in casework attempting to help our black lung miners, their widows, and families to attempt to receive greater justice in the way their claims are handled. I believe this bill will go a long way toward providing that justice.

One of the most pressing problems facing the widows of black lung miners in Pennsylvania is the great difficulty in obtaining medical records. Some coal companies who kept them have gone out of business and the records have been destroyed. Other coal companies never kept records in the first place. These widows and their families watched their husbands die of respiratory ailments and now they cannot meet the act's strict criteria for eligibility. Section 8 of H.R. 10670 gives these families some relief by clarifying the law to provide that where there is no medical evidence relating to a miner's condition, reliable lay evidence alone will be enough to establish the widow's claim. In most instances in the anthracite area, this is the only evidence that a widow can produce with no records.

Another insurmountable problem has been the widow whose husband was killed in a mine accident, yet suffered from black lung at the time of his death. There is simply no way under present law that she can obtain the benefits to which she may be entitled, because her husband had the double misfortune of having contracted black lung and having been killed in a mine accident. I suggest that we have an obligation to provide fair treatment for such a case. Section 14 of this bill would grant entitlement to such a widow after proof that her husband had worked in a mine for 17 years. I commend the committee for its foresight in recognizing this problem.

Mr. Chairman, there are numerous other desirable provisions that will clarify the law and improve the lot of our black lung miners and their families: No reinterpretation of positive or favorable decisions by administrative law judges, making the black lung program a permanent Federal responsibility, allowing a coal miner to apply for benefits while working, a 25-year presumption for anthracite miners, placing the burden for black lung benefits on the coal industry, and more black lung clinics, all of these are positive reforms and they are deserving of our support.

Mr. Chairman, today we will hear much debate over the idea of a presumption schedule. It may be difficult for a Member who does not represent a coal mining State and who has not seen the debilitating effects of black lung, or who has not heard the coughing or gasping for breath, or who has not seen the effects on a simple act like walking a flight of stairs upon a deep miner, to accept the notion of an irrebuttable presumption of black lung. As a Member who has seen such tragedies, I have no difficulty accepting the validity of the miners' claims. I have seen firsthand the equally devastating effects upon men who worked as boilermen, in strip pits, and in the breakers and whose lungs suffered the ravages of pneumoconiosis. This legislation will assist in expediting their legitimate claims for benefits.

To its eternal credit, the Congress has acted to clean up the intolerable safety conditions and to reduce the hazards of dust in the Nation's coal mines. But for the men and the families we are attempting to help today, there is nothing but a lifetime of suffering and the promise of a small financial benefit from the Government. I believe we owe these people that debt, because they sacrificed much so that this Nation could have the fuel it needed.

With this bill, we have an opportunity to give them a greater measure of justice and I hope the Members of this body will take that step by voting for H.R.10760.

Mr. DOMINICK V. DANIELS. Mr. Chairman, I rise in support of H.R. 10760, the Black Lung Benefits Reform Act of 1975.

The amendments proposed by this legislation rest upon a comprehensive analysis of the black lung compensation program since its inception. They are remedial in nature—and anyone who has studied the misapplication of the original legislative intent can testify to the need for such remedies.

I have read the hearing record on H.R. 10760, and the legislation which proceeded, it and I commend the work of the distinguished chairman of the committee, Mr. PERKINS, and my esteemed colleague, Mr. DENT, chairman of the Subcommittee on Labor Standards. They have listened to widely varying views on how the program should be modified, and I am happy to report that despite resistance from some quarters, they have listened with special care and compassion to hundreds of coal miners and miners' widows whose black lung compensation claims have been denied for technical reasons.

Anyone who has sat in a room with a coal miner who has been down in the mines for 20 or 30 years should believe the testimony of his own ears. You do not need a medical degree to know that the man is sick. There is no mistaking the sound of that tortured breathing.

Well, the actuaries and the scientists can quibble about whether that slow, choking wheeze is emphysema, industrial bronchitis, or complicated pneumoconiosis. The simple fact of the matter is, that the lungs of a human being have been ravaged by years of working in choking, coal dust.

Some would argue about the danger of setting up precedents with regard to irrebuttable presumptions of occupational disease after 25 years of exposure of an anthracite miner or 30 years of exposure of a bituminous coal miner.

I suggest to those who hold this view that the horrid working conditions of American coal miners prior to the passage of the Coal Mine Health and Safety Act, were unique—if that polite term may be used.

We sent men down into those mines during World War II—and the conditions down there were hardly better than the most bloody battlefield of Europe or the Pacific theater.

The miners were heroes then—cutting the coal that helped us win the war.

Well, like most heroes, their glory was short lived—but their agony goes on and on.

Congress recognized the special nature of the debt this country owed to coal miners when it first passed the legislation creating the black lung compensation program. That debt continues and it must be paid—in full.

I believe the full payment of that debt was what Congress intended.

But there is often a big gap between the ideal and the actual. And there is such a gap in the black lung compensation program. And the great and continuing tragedy is that hundreds of coal miners' widows have fallen into it.

Mr. Chairman, I would like to quote briefly from the committee report on H.R. 10760, citing some of the experience of the subcommittee during the extensive hearings that were conducted on the black lung compensation program:

> The subcommittee conducted an oversight hearing in Eastern Kentucky, a major coal-producing area, and received testimony from more than 100 miners and widows who generally alleged wrongful denials of their benefit claims. Virtually all who appeared testified with regard to claims involving coal mining work exposures well in excess of 30 years. It was immediately apparent to the subcommittee that the greater number of the miner-witnesses were severely and dramatically handicapped by respiratory difficulties. And it was equally apparent that the widows were testifying about the disabilities of husbands arising out of work experiences identical to those of the miners who appeared before the subcommittee. Subsequent investigation revealed that the eastern, Kentucky universe was not unique in that respect; indeed, that many seemingly allowable claims involving miners with extended coal mining work experiences were curiously being denied. The justifications given in individual cases more often turned on disputed or unavailable medical evidence; and proved ultimately unsatisfactory to the subcommittee and thereafter, to the full committee as well.
>
> In recognition of the historically demonstrated and exceedingly high probability of total disability (80.89%), and out of concern for an equally probable risk of error in the remaining cases, an objective test was established to simply provide part B benefit payments to all claimants whose claims had been denied and who could demonstrate 30 or more years of underground mining experience.

Mr. Chairman, I commend both the subcommittee and the full committee for this rational and reasonable approach to this tragic human problem. I commend the legislation to my colleagues. and urge them to vote with me in support of H.R. 10760.

Mr. Chairman, I would like to add one note of qualification. I view the black lung compensation program to be singularly unique and I wish to stress that the program that has been created to recognize the enormous debt owed by this Nation to its coal miners and their surviving widows, should not be construed as setting up precedents or influencing the direction of any future workmens compensation legislation.

The black lung problem is a unique problem, and the problem that has been designed to compensates its victims is also unique. I would just like to insure that the special characteristics of this program are perceived to be separate and apart from any future legislative

initiatives undertaken by the Congress in the area of workmen's compensation.

Mr. Chairman, again, I wish to express my full support for the legislation before us, H.R. 10760, and hope that my colleagues will agree that the time has come to inject rationality and compassion into a program that was designed to fulfill an obligation to a special class of American workers who performed greatly needed services during the time of great national need.

Mr. MINISH. Mr. Chairman, I rise in strong support for H.R. 10760, a bill to revise and to reform the Coal Mine Health and Safety Act.

As one who has had personal and tragic experiences relating to coal mining, I want to commend the committee, and particularly by good friend, the subcommittee chairman (Mr. DENT) for reporting such a meritorious and much-needed piece of legislation to the full House.

The legislation before us today would liberalize black lung disease benefits and create an industry-financed trust fund to pay benefits for disabled and deceased miners. These provisions are absolutely necessary in order to redress years of exploitation of our Nation's miners by greedy and unscrupulous mineowners.

The bill would provide black lung benefits automatically for miners—and their widows and dependents—who worked 30 years or more in an underground mine—25 years in an anthracite mine—or in a surface mine where HEW determines conditions were substantially similar to conditions in an underground mine. The Federal Government would be responsible for all claims filed prior to December 31, 1973, if the date of the miner's last exposed employment occurred before December 30, 1969. To be eligible for the industry-financed benefits, the last employment must have been prior to June 30, 1971. The bill also repeals the 1981 termination date for industry-provided benefits.

If there is no medical evidence available to support the case that a deceased miner with less than 30 years employment was disabled, affidavits submitted by either the miner's widow or by other individuals with knowledge of the miner's physical condition would be sufficient to establish disability.

The provision calling for automatic payment of black lung benefits after 30 years is especially significant because by establishing objective criteria for determining entitlement, the bill eliminates the current bureaucratic and often medically unreliable testing procedure that results in inequitable denials of claims.

The preponderance of medical evidence demonstrates that long-term exposure to dust irreparably damages the lungs; statistically, 81 percent of claims filed involving miners who have worked for 30 years or more have been approved. The adoption of this simple, straightforward "30-year rule" would take the doctors and lawyers out of the black lung business and would constitute a humane social policy that declares that human lives have at least as much value as profit.

H.R. 10760 also requires that in those instances in which a State's workmen's compensation law does not meet the standards established by the Department of Labor, black lung benefits would be provided for those claims filed after December 31, 1973, by the Black Lung Disability Insurance Fund. This fund would consist of assessments paid by individual coal mine operators in those instances where it can be determined which coal operator is responsible for a claim, premiums which would be paid by all operators based on tons of coal mined, and any penalties recovered as a result of violations of this bill. The fund would be controlled by seven trustees—two selected by small mine operators having an annual payroll less than $1.5 million and five elected by all mine operators. The trustees could invest the income of the fund in accordance with corresponding provisions of the Employer Retirement Income Security Act of 1974. Neither the fund trustees nor the individual operators could participate or intervene in any proceeding held for the purpose of determining the validity of a claim.

This provision, Mr. Chairman, will finally end the Federal Government's lingering liability for the costs of an occupational disease that should properly be borne by the industry that is responsible for it. In addition, the coal industry is more likely to take the necessary steps to reduce coal dust levels if it is forced to pay black lung benefits.

Mr. Chairman, I urge all my colleagues to support the Black Lung Benefits Reform Act of 1975 and to oppose any weakening amendments to the legislation.

Mr. DENT. Mr. Chairman, does the gentleman from Illinois have any further requests for time?

Mr. ERLENBORN. Mr. Chairman, I have no further requests for time and reserve the balance of my time.

Mr. DENT. Mr. Chairman, I yield myself the balance of the time remaining, which is around 3 minutes, I think.

The CHAIRMAN pro tempore (Mr. LLOYD of California). The gentleman from Pennsylvania is recognized for 4 minutes.

The Chair will ask now whether the gentleman from Illinois (Mr. ERLENBORN) yields back the balance of his time?

Mr. ERLENBORN. Is that required, Mr. Chairman? I said I would reserve the balance of my time.

The CHAIRMAN pro tempore. The gentleman from Pennsylvania is entitled to close the debate.

Mr. ERLENBORN. Well, I do not intend to upstage the gentleman. I do not intend to use my time. If the gentleman is finished and has no further time, then I will yield back the balance of my time.

The CHAIRMAN pro tempore. The gentleman from Pennsylvania has 4 minutes.

Mr. DENT. Mr. Chairman, I just want to take these few minutes to thank all those who started with me some many years ago. We believe this legislation now shifts the full burden to the operators. It puts them in a position where problems in this industry will be handled as they have been handled in other areas of labor relations between the operators and the miners.

I want to thank those who joined the fight after we got into the position of offering legislation. Particularly I want to first apologize because the time does not allow us to have all those who requested time to be able to present their views.

I would be remiss if I did not thank the chairman of the full committee whose unselfish, untiring support, all along the line has been very great. If at any time I started to slack up in my enthusiasm or my efforts in this legislation, the gentleman from Kentucky (Mr. PERKINS) would call me back into line.

To all of those who worked so hard, I want to thank them personally because I know the pressure they were under; but I would say this is not an unlimited compensation act. If a miner receives compensation for black lung and if he takes an outside job, that amount will be deducted from his compensation payments. We have tried to follow the rule of fairness and the rule of sound legislative doctrine. If we are opening this up to field of other occupational disease legislation, we are doing no more than was done starting back in 1916 in the field of seeable, visible injuries in occupations. It is no less crippling and no less painful to a worker who had kidney poisoning from working in some heavy chemical industry. Would any man or woman in this room deny to a Kepone industry worker who has a fatal illness that was also brought home to his wife and family this kind of remedy? We saw 8- and 9-year-old children shaking in their eyes and quivering already on their downward path to the grave. Would we not say that is an obligation of society?

What we have done in the cutoff dates we have established and in the years of service we have established, we are on sound ground, because we have the record before us. We have the record of the passage of legislation for the first time in history that established standards, the same as the safety standards were established to stop the physical, seeable injuries, on miners. When we stopped the open-flame lamps, when we got away from the carbide lamps that my father worked with and hundreds of thousands of miners, when we realize with the strictest kind of examination a few slipped through; but when 507,000 miners and their dependents have been judged by both the social security and the Labor Department as being eligible for these payments, it is a small, small price. Remember, this is a price that has been paid after 100 years of neglect.

As I said before, it will die because the miners will die.

The CHAIRMAN pro tempore (Mr. LLOYD of California). Pursuant to the rule, the Clerk will now read the substitute committee amendment printed in the reported bill as an original bill for the purpose of amendment.

The Clerk read as follows:

H.R. 10760

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Black Lung Benefits Reform Act of 1975".

ENTITLEMENTS

SEC. 2. (a) Section 411(c) of the Federal Coal Mine Health and Safety Act of 1969 (30 U.S.C. 921(c)), hereinafter in this Act referred to as the "Act", is amended—

(1) in paragraph (3) thereof, by striking out "and" at the end thereof;

(2) in paragraph (4) thereof, by striking out the next to the last sentence thereof, and by striking out the period at the end thereof and inserting in lieu thereof a semicolon; and

(3) by adding at the end thereof the following:

"(5) if a miner was employed for thirty years or more in one or more underground coal mines such miner (or, in the case of a deceased miner, the eligible survivors of such miner) shall be entitled to the payment of benefits; and

"(6) if a miner was employed for twenty-five years or more in one or more anthracite coal mines such miner (or, in the case of a deceased miner, the eligible survivors of such miner) shall be entitled to the payment of benefits.

The Secretary shall not apply all or a portion of any requirement of this subsection that a miner shall have worked in an underground mine if the Secretary determines that conditions of such miner's employment in a coal mine other than an underground mine were substantially similar to conditions in an underground mine.".

(b) Section 412(a)(1) of the Act (30 U.S.C. 922(a)(1)) is amended—

(1) by inserting immediately after "pneumoconiosis," the following: "or in the case of a miner entitled to benefits under paragraph (5) or paragraph (6) of section 411(c) of this title,";

(2) by striking out "disabled" the first place it appears therein; and

(3) by inserting immediately after "disability" the second place it appears therein the following: ", or during the period of such entitlement,".

(c) Section 414(a) of the Act (30 U.S.C. 924(a)) is amended by adding at the end thereof the following new paragraph:

"(4) A claim for benefits under this part may be filed at any time on or after the date of the enactment of the Black Lung Benefits Reform Act of 1975 by a miner (or, in the case of a deceased miner, the eligible survivors of such miner) if the date of the last exposed employment of such miner occurred before December 30, 1969.".

(d) Section 414(e) of the Act (30 U.S.C. 924(e)) is amended by inserting immediately after "pneumoconiosis" the following: ", or with respect to an entitlement under paragraph (5) or paragraph (6) of section 411(c) of this title,".

(e)(1) Section 421(a) of the Act (30 U.S.C. 931(a)) is amended by inserting immediately after "pneumoconiosis" the second place it appears therein the following: ", and in any case in which benefits based upon eligibility under paragraph (5) or paragraph (6) of section 411(c) are involved,".

(2) Section 421(b)(2)(C) of the Act (30 U.S.C. 931(b)(2)(C)) is amended by inserting immediately before the semicolon at the end thereof the following: ", except that such standards shall not be required to include provisions for the payment of benefits based upon conditions substantially equivalent to conditions described in paragraphs (5) and (6) of section 411(c)".

(f) Section 430 of the Act (30 U.S.C. 938) is amended by inserting "and by the Black Lung Benefits Reform Act of 1975" immediately after "1972", by inserting immediately after "section 411(c)(4)" the following: "and the applicability of entitlements based upon conditions described in paragraphs (5) and (6) of section 411(c),", and by striking out "whether a miner was employed at least fifteen years" and inserting in lieu thereof the following: "the period during which the miner was employed".

OFFSET AGAINST WORKMEN'S COMPENSATION BENEFITS

SEC. 3. The first sentence of section 412(b) of the Act (30 U.S.C. 922(b)) is amended by inserting immediately after "disability of such miner" the following: "due to pneumoconiosis",

CURRENT EMPLOYMENT AS A BAR TO BENEFITS

SEC. 4. (a) The first sentence of section 413(b) of the Act (30 U.S.C. 923(b)) is amended by inserting immediately before the period at the end thereof the following: "or solely on the basis of employment as a miner if (1) the location of such employment has recently been changed to a mine area having a lower concentration of dust particles; (2) the nature of such employment has been changed so as to involve less vigorous work; or (3) the nature of such employment has been changed so as to result in the receipt of substantially less pay".

(b) Section 413 of the Act (30 U.S.C. 923) is amended by adding at the end thereof the following new subsection:

"(d)(1) A miner may file a claim for benefits whether or not such miner is employed by an operator of a coal mine at the time such miner files such claim.

"(2) The Secretary shall notify a miner, as soon as practicable after the Secretary receives a claim for benefits from such miner, whether, in the opinion of the Secretary, such miner—

"(A) is eligible for benefits on the basis of the provisions of paragraph (1), (2), or (3) of subsection (b); or

"(B) would be eligible for benefits, except for the circumstances of the employment of such miner at the time such miner filed a claim for benefits.".

APPEALS

SEC. 5. The last sentence of section 413(b) of the Act (30 U.S.C. 923(b)) is amended by inserting immediately before the period at the end thereof the following: ", except that a decision by an administrative law judge in favor of a claimant may not be appealed or reviewed, except upon motion of the claimant".

INDIVIDUAL NOTIFICATIONS

SEC. 6. Part B of title IV of the Act (30 U.S.C. 911 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 416. (a) For purposes of assuring that all individuals who may be eligible for benefits under this part are afforded an opportunity to apply for and, if entitled thereto, to receive such benefits, the Secretary shall undertake a program to locate individuals who are likely to be eligible for such benefits and have not filed a claim for such benefits.

"(b) The Secretary shall seek to determine, in cooperation with operators and with the Secretary of the Interior, the names and current addresses of individuals having long periods of employment in coal mining and, if such individuals are deceased, the names and addresses of their widows, children, parents, brothers, and sisters. The Secretary shall then directly, by mail, by personal visit by a delegate of the Secretary, or by other appropriate means, inform any such individuals (other than those who have filed a claim for benefits under this title) of the possibility of their eligibility for benefits, and offer them individualized assistance in preparing their claims where it is appropriate that a claim be filed.

"(c) Notwithstanding any other provision of this part, a claim for benefits under this part, in the case of an individual who has been informed by the Secretary under subsection (b) of the possibility of his eligibility for benefits, shall, if filed no later than six months after the date he was so informed, be considered on the same basis as if it had been filed on June 30, 1973.".

DEFINITIONS

SEC. 7. (a) Section 402(f) of the Act (30 U.S.C. 902(f)) is amended by adding at the end thereof the following new undesignated paragraph:

"With respect to a claim filed after June 30, 1973, such regulations shall not provide more restrictive criteria than those applicable to a claim filed on June 30, 1973.".

(b) Section 402 of the Act (30 U.S.C. 902) is amended by inserting immediately after paragraph (g) the following new paragraph:

"(h) The term 'fund' means the Black Lung Disability Insurance Fund established by section 423(a).".

EVIDENCE REQUIRED TO ESTABLISH CLAIM

SEC. 8. (a) Section 413(b) of the Act (30 U.S.C. 923(b)) is amended by inserting immediately after the second sentence thereof the following new sentence: "Where there is no relevant medical evidence in the case of a deceased miner, such affidavits shall be considered to be sufficient to establish that the miner was totally disabled due to pneumoconiosis or that his death was due to pneumoconiosis.".

(b) The last sentence of section 413(b) of the Act (30 U.S.C. 923(b)) is amended by striking out "and (l)," and inserting in lieu thereof "(l), and (n),".

CLAIMS FILED AFTER DECEMBER 31, 1973

SEC. 9. (a)(1) The first sentence of section 422(a) of the Act (30 U.S.C. 932(a)) is amended—

(A) by inserting immediately before the period at the end thereof the following: ", or with respect to entitlements established in paragraph (5) or paragraph (6) of section 411(c) of this title"; and

(B) by inserting immediately after "except as otherwise provided in this subsection" the following: "and to the extent consistent with the provisions of this part,".

(2) The last sentence of section 422(a) of the Act (30 U.S.C. 932(a)) is amended—

(A) by striking out "benefits" and inserting in lieu thereof "premiums and assessments"; and

(B) by striking out "to persons entitled thereto".

(3) Section 422(b) of the Act (30 U.S.C. 932(b)) is amended by inserting "(1)" immediately after "(b)", and by adding at the end thereof the following new paragraph:

"(2)(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) of this part each operator of a coal mine in such State shall secure the payment of assessments against such operator under section 424(g) of this part by (i) qualifying as a self-insurer in accordance with regulations prescribed by the Secretary; or (ii) insuring and keeping insured the payment of such assessments 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 (ii) of subparagraph (A) of this paragraph, every policy or contract of insurance shall contain—

"(1) a provision to pay assessments required under section 424(g) of this part, notwithstanding the provisions of the State workmen's compensation law which may provide for payments which are less than the amount of such assessments;

"(2) a provision that insolvency or bankruptcy of the operator or discharge therein (or both) shall not relieve the carrier from liability for the payment of such assessments; 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 (ii) of subparagraph (A) of this paragraph 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.".

(4) Section 422(b)(1) of the Act, as so designated by paragraph (3), is amended—

(A) by striking out "benefits" and inserting in lieu thereof "premiums and assessments"; and

(B) by striking out "section 423" and inserting in lieu thereof "section 424".

(5) Section 422(c) of the Act (30 U.S.C. 932(c)) is amended to read as follows:

"(c) Benefits shall be paid during such period under this section by the fund, subject to reimbursement to the fund by operators in accordance with the provisions of section 424(g) of this title, 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, except that (1) the Secretary may modify any such regulation promulgated by the Secretary of Health, Education, and Welfare; and (2) no operator shall be liable for the payment of any benefit (except as provided in section 424(f) of this title) on account of death or total disability due to pneumoconiosis, or on account of any entitlement based upon conditions described in paragraphs (5) and (6) of section 411(c), which did not arise, at least in part, out of employment in a mine during the period when it was operated by such operator.".

(6) Section 422(e) of the Act (30 U.S.C. 932(e)) is amended—

(A) by striking out "required" and inserting in lieu thereof "made"; and

(B) by adding "or" immediately after the semicolon in paragraph (1) thereof, by striking out ", or" at the end paragraph (2) thereof and inserting in lieu thereof a period, and by striking out paragraph (3) thereof.

(7) Section 422(f)(2) of the Act (30 U.S.C. 932(f)(2)) is amended—

(A) by inserting "paragraph (4), (5), or (6) of" immediately after "eligibility under";

(B) by striking out "section 411(c)(4)" the first place it appears therein and inserting in lieu thereof "section 411(c)";

(C) by striking out "from a respiratory or pulmonary impairment"; and

(D) by striking out "section 411(c)(4) of this title, incurred as a result of employment in a coal mine" and inserting in lieu thereof "any of such paragraphs".

(8) Section 422(h) of the Act (30 U.S.C. 932(h)) is amended by striking out the first sentence thereof.

(9) Section 422(i) of the Act (30 U.S.C. 932(i)) is amended to read as follows:

"(i)(1) The Secretary shall promulgate regulations providing for the prompt and expeditious consideration of claims under this section.

"(2)(A) The Secretary shall promulgate regulations providing for the prompt and equitable hearing of appeals by claimants who are aggrieved by any decision of the Secretary.

"(B) Any such hearing shall be held no later than forty-five days after the date upon which the claimant involved requests such hearing. A hearing may be postponed at the request of the claimant involved for good cause.

"(C) Any such hearing shall be held at a time and a place convenient to the claimant requesting such hearing.

"(D) Any such hearing shall be of record and shall be subject to the provisions of sections 554, 555, 556, and 557 of title 5, United States Code.

"(3)(A) Any individual, after any final decision of the Secretary made after a hearing to which he was a party, may obtain a review of such decision by a civil action commenced no later than ninety days after the mailing to him of notice of such decision, or no later than such further time as the Secretary may allow.

"(B) Such action shall be brought in a district court of the United States in the State in which the claimant resides.

"(C) The Secretary shall file, as part of his answer, a certified copy of the transcript of the record, including the evidence upon which the findings and decision complained of are based.

"(D) The court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Secretary, with or without remanding the case for a rehearing. The findings of the Secretary as to any fact, if supported by the weight of the evidence, shall be conclusive.

"(E) The court shall, on motion of the Secretary made before he files his answer, remand the case to the Secretary for further action by the Secretary, and may, at any time, on good cause shown, order additional evidence to be taken before the Secretary, and the Secretary shall, after the case is remanded, and after hearing such additional evidence if so ordered, modify or affirm his findings of fact or his decision, or both, and shall file with the court any such additional and modified findings of fact and decision, and a transcript of the additional record and testimony upon which his action in modifying or affirming was based. Such additional or modified findings of fact and decision shall be reviewable only to the extent provided for review of the original findings of fact and decision.

"(F) The judgment of the court shall be final, except that it shall be subject to review in the same manner as a judgment in other civil actions. Any action instituted in accordance with this paragraph shall survive notwithstanding any change in the person occupying the office of Secretary or any vacancy in such office.".

(10) In the case of any miner or any survivor of a miner who is eligible for benefits under section 422 of the Act (30 U.S.C. 932) as a result of any amendment made by any provision of this Act, such miner or survivor may file a claim for benefits under such section no later than three years after the date of the enactment of this Act, or no later than the close of the applicable period for filing claims under section 422(f) of the Act (30 U.S.C. 932(f)), whichever is later.

(b) Section 423 of the Act (30 U.S.C. 933) is amended to read as follows:

"SEC. 423. (a)(1) There is hereby established in the Treasury of the United States a trust fund to be known as the Black Lung Disability Insurance Fund. The fund shall consist of such sums as may be appropriated as advances to the fund under section 424(e)(1) of this part, the assessments paid into the fund as required by section 424(g), the premiums paid into the fund as required by section 424(a), the interest on, and proceeds from, the sale or redemption of any investment held by the fund, and any penalties recovered under section 424(c), including such earnings, income, and gains as may accrue from time to time which shall be held, managed, and administered by the trustees in trust in accordance with the provisions of this part and the fund.

"(2) Fund assets, other than such assets as may be required for necessary expenses, shall be used solely and exclusively for the purpose of discharging obligations of operators under this part. Operators shall have no right, title, or interest in fund assets, and none of the earnings of the fund shall inure to the benefit of any person, other than through the payment of benefits under this part, together with appropriate costs.

"(b)(1)(A) The fund shall have seven trustees. Except as provided in subparagraph (B), trustees shall serve for terms of four years.

"(B) Of the trustees first elected under this subsection—

"(i) four shall be elected for terms of two years; and

"(ii) three shall be elected for terms of one year.

The Secretary shall determine, before the date of the first election under this subsection, whether each trustee office involved in such election shall be for a term of one year or two years. Such determination shall be made through the use of an appropriate method of random selection, except that at least one trustee nominated under paragraph (2)(A) shall serve for a term of two years.

"(C) Any trustee may be a full-time employee of an operator, except that no more than one trustee may be employed by any one operator or any affiliate of such operator.

"(2)(A) Two trustees shall be nominated and elected by operators having an annual payroll not in excess of $1,500,000 (hereinafter referred to as 'small operators').

"(B) Five trustees shall be nominated and elected by all operators.

"(3) No later than 60 days after the date of the enactment of the Black Lung Benefits Reform Act of 1975, all operators shall certify to the Secretary their payrolls for the 12-month period ending December 31, 1974. The Secretary shall then publish a list setting forth the number of votes to which each small operator and each operator is entitled, computed on the basis of one vote for each $500,000 or fraction thereof of payroll. Trustees shall be elected no later than 180 days after the date of the enactment of such Act.

"(4) Candidates seeking nomination for election to the office of trustee under paragraph (2)(A) shall submit to the Secretary petitions of nomination reflecting the approval of small operators representing not less than 2 per centum of the aggregate annual payroll of all small operators. Candidates seeking such nomination under paragraph (2)(B) shall submit petitions reflecting the approval of operators representing not less than 2 per centum of the aggregate annual payroll of all operators.

"(5) The Secretary shall promulgate regulations for the nomination and election of trustees. Such regulations shall include provisions for the nomination and election of trustees, including the nomination and election of trustees to fill any vacancy caused by the death, disability, resignation, or removal of any trustee. The Secretary shall certify the results of all nominations and elections. Two or more trustees may at any time file a petition, in the United States district court where the fund has its principal office, for removal of a trustee for malfeasance, misfeasance, or nonfeasance. The cost of any such action shall be paid from the fund, and the Secretary may intervene in any such action as an interested party.

"(6) The trustees shall organize by electing a Chairman and Secretary and shall adopt such rules governing the conduct of their business as they consider necessary or appropriate. Five trustees shall constitute a quorum and a simple majority of those trustees present and voting may conduct the business of the fund.

"(c)(1) The trustees shall act on behalf of all operators with respect to claims filed under this part.

"(2)(A) Except as provided by subparagraph (B), the fund may not participate or intervene as a party to any proceeding held for the purpose of determining claims for benefits under this part.

"(B)(i) If the fund is dissatisfied with any

determination of the Secretary with respect to a claim for benefits under this part, the fund may, no later than thirty days after the date of such determination, file with the United States court of appeals for the circuit in which such determination was made a petition for review of such determination. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which he based his determination, as provided in section 2112 of title 28, United States Code.

"(ii) The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive, except that the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary thereupon may make new or modified findings of fact and may modify his previous determination, and shall certify to the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

"(iii) The court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject 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.

"(iv) Any finding of fact of the Secretary relating to the interpretation of any chest roentgenogram or any other medical evidence which demonstrates the existence of pneumoconiosis or any other disability respiratory or pulmonary impairment, shall not be subject to review under the provisions of this subparagraph.

"(3) No operator may bring any proceeding, or intervene in any proceeding, held for the purpose of determining claims for benefits under this part.

"(4) It shall be the duty of the trustees to report to the Secretary and to the operators no later than January 1 of each year on the financial condition and the results of the operations of the fund during the preceding fiscal year and on its expected condition during the current and ensuing fiscal year. Such report shall be included in a report to the Congress by the Secretary not later than March 1 of each year on the financial condition and the results of the operations of the fund during the preceding fiscal year and on its expected condition and operations during the current and next ensuing fiscal year. The report of the Secretary shall be printed as a House document of the session of the Congress to which the report is made.

"(5)(A) The trustees shall take control and management of the fund and shall have the authority to hold, sell, buy, exchange, invest, and reinvest the corpus and income of the fund. All premiums paid to the fund under section 424(a)(1) shall be held and administered by the trustees as a single fund, and the trustees shall not be required to segregate and invest separately any part of the fund assets which may be claimed to represent accruals or interests of any individuals. It shall be the duty of the trustees to invest such portion of the assets of the fund as is not required to meet obligations under this part, except that the trustees may not invest any advances made to the fund under section 424(e). The trustees shall make investments under this paragraph in accordance with the provisions of section 404(a)(1)(C) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104 (a)(1)(C)).

"(B) Any profit or return on any investment or reinvestment made by the trustees under subparagraph (A) shall not be considered as income for purposes of Federal or State income taxation.

"(6)(A) Amounts in the fund shall be available for making expenditures to meet obligations of the fund which are incurred under this part, including the expenses of providing medical benefits as required by section 432 of this title, and the operation, maintenance, and staffing of the office of the fund. The trustees may enter into agreements with any self-insured person or any insurance carrier who has incurred obligations with respect to claims under this part before the effective date of this paragraph, under which the fund will assume the obligations of such self-insured person or insurance carrier in return for a payment or payments to the fund in such amounts, and on such terms and conditions, as will fully protect the financial interests of the fund.

"(B) Beginning on the effective date of this paragraph, payments shall be made from the fund to meet any obligation incurred by the Secretary with respect to claims under this part before such effective date. The Secretary shall cease to be subject to such obligations on such effective date.

"(7) The trustees shall keep accounts and records of their administration of the fund, which shall include a detailed account of all investments, receipts, and disbursements.

"(8) At no time during the administration of the fund shall the trustees be required to obtain any approval by any court of the United States or by any other court of any act required of them in connection with the performance of their duties or in the performance of any act required of them in the administration of their duties as trustees. The trustees shall have the full authority to exercise their judgment in all matters and at all times without any such approval of such decisions. The trustees may file an application in the United States district court where the fund has its principal office for a judicial declaration concerning their power, authority, or responsibility under this Act (other than the processing and payment of claims). In any such proceeding, only the trustees and the Secretary shall be necessary or indispensable parties, and no other person, whether or not such person has any interest in the fund, shall be entitled to participate in any such proceeding. Any final judgment entered in such proceeding shall be conclusive upon any person or other entity claiming an interest in the fund.

"(9) The trustees may employ such counsel, accountants, agents, and employees as they consider advisable. The trustees may charge the compensation of such persons and any other expenses, including the cost of fidelity bonds and indemnification and fiduciary insurance for trustees and other fund employees, necessary in the administration of the fund, against the fund.

"(10) The trustees shall have the power to execute any instrument which they consider proper in order to carry out the provisions of the fund.

"(11) The trustees may, through any duly authorized person, vote any share of stock which the fund may hold.

"(12) The trustees may employ actuaries to such extent as they consider advisable. No actuary may be employed by the trustees under this paragraph unless such actuary is enrolled under section 3042(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1242(a))."

(c) Section 424 of the Act (30 U.S.C. 934) is amended to read as follows:

"SEC. 424. (a)(1) During any period in which a State workmen's compensation law is not intended on the list published by the Secretary under section 421(b), each operator of a coal mine in such State shall pay premiums into the fund in amounts sufficient to ensure the payment of benefits under this part.

"(2) The initial premium rate of each operator shall be established by the Secretary as a rate per ton of coal mined by such operator. Beginning one year after the date upon which the Secretary establishes initial premium rates, the trustees may modify or adjust the premium rate per ton of coal mined to reflect the experience and expenses of the fund to the extent necessary to permit the trustees to discharge their responsibilities under this Act, except that the Secretary may further modify or adjust the premium rate to ensure that all obligations of the fund will be met. Any premium rate established under this subsection shall be uniform for all mines, mine operators, and amounts of coal mined.

"(3) For purposes of section 162(a) of the Internal Revenue Code of 1954 (relating to trade or business expenses), any premium paid by an operator of a coal mine under paragraph (1) shall be considered to be an ordinary and necessary expense in carrying on the trade or business of such operator.

"(4) For purposes of this subsection—

"(A) the term 'coal' means any material composed predominantly of hydrocarbons in a solid state;

"(B) the term 'ton' means a short ton of two thousand pounds; and

"(C) the amount of coal mined shall be determined at the first point at which such coal is weighed.

"(b) The Secretary shall advise the Secretary of the Treasury or his delegate of premium rates established under subsection (a)(1). The Secretary of the Treasury or his delegate shall collect all premiums due and payable by operators under subsection (a)(1), and transmit such premiums to the fund. Collections shall be effected by the Secretary of the Treasury or his delegate in the same manner as, and together with, quarterly payroll reports of employers. In order to ensure the payment of premiums by all operators, the Secretary, after consultation with the Secretary of the Interior, shall certify, not less than annually, the names of all operators subject to this Act.

"(c)(1) In any case in which an operator fails or refuses to pay any premium required to be paid under subsection (a)(1), the trustees of the fund shall bring a civil action in the appropriate United States district court to require the payment of such premium. In any such action, the court may issue an order requiring the payment of such premiums in the future as well as past due premiums, together with 9 per centum annual interest on all past due premiums.

"(2) An operator who fails or refuses to pay any premium required to be paid under subsection (a)(1) may be assessed a civil penalty by the Secretary of the Treasury or his delegate in such amount as such Secretary or his delegate may prescribe, but not in excess of an amount equal to the premium the operator failed or refused to pay. Such penalty shall be in addition to any other liability of the operator under this Act. Penalties assessed under this paragraph may be recovered in a civil action brought by such Secretary or his delegate, and penalties so recovered shall be deposited in the fund.

"(d) The Secretary shall be required to make expenditures under this part only for the purpose of carrying out his obligation to administer this part. All other expenses incurred under this part shall be borne by the fund, and if borne by the Secretary, shall be reimbursed by the fund to the Secretary.

"(e)(1) There are hereby authorized to be appropriated to the fund such sums as may be necessary to provide the fund with amounts equal to 50 per centum of the amount which the Secretary estimates is necessary for the payment of benefits under this part during the first twelve-month period after the effective date of this section. Any amounts appropriated under this paragraph may be used only for the payment of benefits under this part,

"(2)(A) Sums authorized to be appropriated by paragraph (1) shall be repayable advances to the fund.

"(B) Such advances shall be repaid with interest into the general fund of the Treasury no later than five years after the first appropriation made under paragraph (1).

"(3) Interest on such advances shall be at a rate determined by the Secretary of the Treasury, taking into consideration the current average yield during the month preceding the date of the advance involved, on marketable interest-bearing obligations of the United States of comparable maturities then forming a part of the public debt rounded to the nearest one-eighth of 1 per centum.

"(f)(1) During any period in which section 422 of this title is applicable with respect to a coal mine an operator of such mine who, after the date of the enactment of this title, acquired such mine or substantially all the assets thereof from a person (hereinafter in this paragraph referred to 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 this section and section 423 of this title, secure the payment of all benefits for which the prior operator would have been liable under section 422 of this title with respect to miners previously employed in such mine if the acquisition had not occurred and the previous operator had continued to operate such mine.

"(2) Nothing in this subsection shall relieve any prior operator of any liability under section 422 of this title.

"(g)(1) The fund shall make an annual assessment against any operator who is liable for the payment of benefits under section 422 of this title. Such assessment against any operator of a coal mine shall be in an amount equal to the amount of benefits for which such operator is liable under section 422 of this title with respect to death or total disability due to pneumoconiosis arising out of employment in such mine, or with respect to entitlements established in paragraph (5) or paragraph (6) of section 411(c) of this title.

"(2) Any operator against whom an assessment is made under paragraph (1) shall pay the amount involved in such assessment into the fund no later than thirty days after receiving notice of such assessment.

"(3) The provisions of subsection (c) of this section shall apply in the case of any operator who fails or refuses to pay any assessment required to be paid under this subsection.".

(d) Section 421(b)(2)(E) of the Act (30 U.S.C. 931(b)(2)(E)) is amended by striking out "section 422(i)" and inserting in lieu thereof "section 424(f)".

CLINICAL FACILITIES

SEC. 10. The first sentence of section 427(c) of the Act (30 U.S.C. 937(c)) is amended by striking out "of the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975" and inserting in lieu thereof "fiscal year, and $2,500,000 for the period beginning July 1, 1976, and ending September 30, 1976".

MEDICAL CARE

SEC. 11. (a) Part C of title IV of the Act (30 U.S.C. 931 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 432. The provisions of subsections (a), (b), (c), (d), and (g) of section 7 of the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 907 (a), (b), (c), (d), and (g)) shall be applicable to persons entitled to benefits under this part on account of total disability or on account of eligibility under paragraph (5) or paragraph (6) of section 411(c), except that references in such section to the employer shall be considered to refer to the trustees of the fund.".

(b) The Secretary of Health, Education, and Welfare shall notify each miner receiving benefits under part B of the Black Lung Benefits Act on account of his total disability who the Secretary has reason to believe became eligible for medical services and supplies on January 1, 1974, of his possible eligibility for such benefits. Where the Secretary so notifies a miner, the period during which he may file a claim for medical services and supplies under part C of such Act shall not terminate before six months after such notification was made.

TRANSITIONAL PROVISIONS

SEC. 12. (a) The Secretary of Health, Education, and Welfare, and the Secretary of Labor shall disseminate to interested persons and groups the changes in the Black Lung Benefits Act made by this Act. Each such Secretary shall undertake a program to give individual notice to individuals who they believe are likely to have become eligible for benefits by reason of such changes.

(b)(1) The Secretary of Health, Education, and Welfare (with respect to part B of the Black Lung Benefits Act) and the Secretary of Labor (with respect to part C of such Act) shall review each claim which has been denied, and each claim which is pending, under each such part taking into account the amendments made to each such part by this Act. Each such Secretary shall approve any such claim if the provisions of either such part, as so amended, require such approval.

(2) Each such Secretary, in undertaking the review required by paragraph (1), shall not require the resubmission of any claim which is the subject of any such review.

SHORT TITLE FOR ACT

SEC. 13. Section 401 of the Act (30 U.S.C. 901) is amended by inserting "(a)" immediately after "SEC. 401." and by adding at the end thereof the following new subsection:

"(b) This title may be cited as the 'Black Lung Benefits Act'.".

MINE ACCIDENT WIDOWS

SEC. 14. (a) If a miner was employed for seventeen years or more in one or more underground coal mines, and died as a result of an accident in any such coal mine which occurred on or before June 30, 1971, any eligible survivor of such miner shall be entitled to the payment of benefits under part B of the Black Lung Benefits Act.

(b) For purposes of this section, benefit payments to a widow, child, parent, brother, or sister of any miner to whom subsection (a) applies shall be reduced, on a monthly or other appropriate basis, by an amount equal to any payment received by such widow, child, parent, brother, or sister under the workmen's compensation, unemployment compensation, or disability laws of the miner's State.

EFFECTIVE DATES

SEC. 15. (a) This Act shall take effect on the date of its enactment, except that—

(1) the amendments made by section 2 shall be effective on and after December 30, 1969, except that claims approved solely because of the amendments made by section 2, which were filed before the date of the enactment of this Act, shall be awarded benefits only for the period beginning on such date of enactment;

(2) the amendments made by sections 4, 5, and 8 shall be effective on and after December 30, 1969;

(3) the amendments made by section 6 shall not require the payment of benefits for any period before the date of the enactment of this Act; and

(4) the amendments made by section 9 shall take effect on January 1, 1976, except that (A) the Secretary of Labor shall establish initial premium rates for operators under section 424(a)(1) of the Black Lung Benefits Act, as added by section 9(c) of this Act, no later than January 1, 1976; and (B) such Secretary shall make the estimate required by section 424(e)(1) of such Act, as added by section 9(c) of this Act, as soon as practicable after the date of the enactment of this Act.

(b) In the event that the payment of benefits to miners and to eligible survivors of miners cannot be made from the Black Lung Disability Insurance Fund established by section 423(a) of the Act, as added by section 9(b) of this Act, the provisions of the Act relating to the payment of benefits to miners and to eligible survivors of miners, as in effect immediately before January 1, 1976, shall remain in force as rules and regulations of the Secretary of Labor, until such provisions are revoked, amended, or revised by law. Such Secretary shall make benefit payments to miners and to eligible survivors of miners in accordance with such provisions.

Mr. DENT (during the reading). Mr. Chairman, I ask unanimous consent that the committee amendment be considered as read, printed in the RECORD and open to amendment at any point.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

AMENDMENTS OFFERED BY MR. DENT

Mr. DENT. Mr. Chairman, I offer a series of amendments.

The Clerk read the amendments as follows:

Amendments offered by Mr. DENT: Page 34, line 22, insert "(1)" immediately before "Section".

Page 35, immediately after line 5, insert the following new paragraph:

"(2) The Secretary of Labor shall be responsible for the administration of the provisions of section 414(a)(4) of the Act (30 U.S.C. 924(a)(4)), as added by paragraph (1)."

Page 55, strike out the quotation mark and final period in line 12, and insert after line 12 the following:,

"(d) Nothing in this Act or in the Black Lung Benefits Reform Act of 1976 shall be construed as exempting the fund, or any of its activities or outlays, from inclusion in the Budget of the United States Government or from any limitations imposed thereon.".

Page 62, line 3, strike out "Health, Education, and Wel-".

Page 62, strike out line 4.

Page 62, line 5, strike out "and the Secretary of".

Page 62, line 5, insert "part B and" immediately after "with respect to".

Page 62, line 5, strike out "such" and insert in lieu thereof "the Black Lung Benefits".

Page 62, line 9, strike out "Each such" and insert in lieu therefo "Such".

Page 62, line 12, strike out "Each such" and insert in lieu thereof "Such".

Page 62, immediately after line 14, insert the following new paragraph:

"(3) Such Secretary shall establish such procedures as he considers necessary or appropriate to determine whether a claimant whose claim is reviewed under this subsection has met the requireemnts of section 411(c) of the Act (30 U.S.C. 921(c)) relating to years of employment, as amended by section 2(a) of this Act, except that such Secretary shall seek to make any such determination, to the extent practicable, without seeking to obtain access to any record or other information maintained by the Secretary of Health, Education, and Welfare."

Page 63, immediately after line 10, insert the following new subsection:

"(c) The Secretary of Labor shall be re-

sponsible for the administration of the provisions of this section."

Page 63, immediately after line 10, insert the following new section:

ADMINISTRATION OF BLACK LUNG BENEFITS ACT

SEC. 15. (a)(1) The Division of Coal Mine Workers' Compensation is hereby transferred to the Office of the Secretary of Labor.

(2) The Secretary shall act through the Division in carrying out the provisions of the Black Lung Benefits Act.

(b)(1) The Secretary, in carrying out the Black Lung Benefits Act, shall establish and operate such field offices as may be necessary to assist miners and other persons with respect to the filing of claims under such Act. Such field offices shall be established and operated in a manner which makes them reasonably accessible to such miners and other persons.

(2) The Secretary, in connection with the establishment and operation of field offices under paragraph (1), may enter into arrangements with other Federal departments and agencies, and with State agencies, for the use of existing facilities operated by such departments and agencies.

(c) For purposes of this section—

(1) the term "Division" means the Division of Coal Mine Workers' Compensation established in the Office of Workers' Compensation Programs by the Assistant Secretary of Labor for Employment Standards under the Secretary's Order No. 13-71 (36 Federal Register 8755); and

(2) the term "Secretary" means the Secretary of Labor.

And redesignate the following section accordingly.

Mr. DENT (during the reading). Mr. Chairman, I ask unanimous consent that the amendments be considered as read, printed in the RECORD, and considered en bloc.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

Mr. DENT. Mr. Chairman, I will just say that the amendment first read is the amendment to be construed as not exempting the fund, or any of its activities or outlays, from inclusion in the budget of the U.S. Government or from any limitations imposed thereon. This is recommended by the Budget Committee as a desirable amendment.

The rest of the amendments are generally at the request of the Ways and Means Committee for taking the overburden off of Social Security and putting it into the Labor Department.

It has been very difficult for Social Security to carry on their normal functions under the Social Security Act and other programs by being burdened with the additional responsibilities of these amendments.

Mr. ERLENBORN. Mr. Chairman, will the gentleman yield?

Mr. DENT. I yield to the gentleman from Illinois (Mr. ERLENBORN).

Mr. ERLENBORN. I thank the gentleman for yielding.

Mr. Chairman, I understand that one of the amendments being considered en bloc transfers certain functions that the bill would place in the Secretary of Health, Education, and Welfare, and transfers them to the Secretary of Labor. But I am advised, if the gentleman will look at page 61 of the bill, line 21, section 12(a), the provision for dissemination of information about the changes in the act and the program to give notice to individuals who they believe have become eligible for benefits is not being transferred to the Secretary of Labor.

I would like to know why the gentleman would not transfer those functions, as well, because they would constitute a very great burden on the Social Security Administration that already suffers under the burden of the supplementary security income program.

Mr. DENT. It was done because of the fact that the Secretary had in the earlier days of this law performed these very functions for certain coal companies. And he is best qualified to know which ones have already been done and which ones have not been performed. That is all. It is because that Department is better equipped to handle that particular function.

Mr. ERLENBORN. If the gentleman will yield further, I think that what is left, even after the amendment of the gentleman is adopted, still is going to impose a great burden on the Social Security Administration. I am sorry the gentleman did not transfer all of these functions.

Mr. DENT. We may be able to do that before we get through over in the Senate, because they are talking to each other, the two Departments, to see whether or not they can ease more of the burden of Social Security, and we are both agreed that that should be done.

Mr. Chairman, I urge adoption of the amendments.

The CHAIRMAN. The question is on the amendments offered by the gentleman from Pennsylvania (Mr. DENT).

The amendments were 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 39, after line 23 insert the following new subsection:

"(c) The second sentence of section 413 (b) of the Act (30 U.S.C. 923(b)) is amended by striking the period at the end thereof and inserting a colon and the following: '*Provided*, That unless the Secretary has good cause to believe (1) that an X-ray is not of sufficient quality or an autopsy report is not accurate, to demonstrate the presence of pneumoconiosis, or (2) that the condition of the miner is being fraudulently misrepresented, the Secretary shall accept such report, or in the case of the X-ray, accept the opinion of the claimant's physician, concerning the presence of pneumoconiosis and the stage of advancement of pneumoconiosis.'"

Mr. HECHLER of West Virginia. Mr. Chairman, I shall not take the full 5 minutes, because this amendment is very clear on its face. It corrects an evil which occurs in the rereading of X-rays, primarily by contract specialists who frequently have no acquaintance whatsoever with the condition of the miner.

Mr. Chairman, the condition of the miner afflicted by pneumoconiosis is such that a local doctor, a local radiologist, and those who examine the miner, have a much clearer idea of the total picture by the use of X-rays, breathing tests, blood gas tests, physical examination, as well as the physical profile and history of the miner. These are the kinds of evidence that are vital determining factors in deciding whether or not a man has black lung.

Mr. WAMPLER. Mr. Chairman, will the gentleman yield?

Mr. HECHLER of West Virginia. I yield to my friend, the gentleman from Virginia.

Mr. WAMPLER. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I hold a copy of the United Mine Workers Journal No. 2 of the 87th year, dated January 1976. On page 12 there is an article entitled, "X-Ray Re-Reading Used To Deny Black Lung Claims." I include the article at this point, as follows:

X-RAY RE-READING USED TO DENY BLACK LUNG CLAIMS

When a coal miner applies for black lung benefits, he is routinely sent for a chest X-ray. If the coalfield doctor who examines the miner reports that his X-ray shows pneumoconiosis, the Social Security Administration then sends the X-ray film to a doctor of their own choosing, who is usually what is known as a "B" reader. When there is disagreement between the coalfield doctor and the "B" reader, Social Security either accepts the opinion of the "B" reader or sends the film to another "B" reader.

This practice of re-reading X-rays in black lung cases has been criticized for months by the UMWA and the Black Lung Associations. Social Security has defended its practice, saying that the "B" reader program assured that X-rays from all over the country will be read uniformly by a highly trained group of experts.

However, a recent article in the Whitesburg, Ky. Mountain Eagle revealed that the Department of Health, Education and Welfare has systematically excluded doctors from the "B" reader program if they are too liberal in reading coal miners' X-rays.

Doctors qualify to be "B" readers by passing a test in which they interpret a set of 100 sample X-rays. According to the Mountain Eagle, documents from the National Institute for Occupational Health and Safety (NIOSH), which was involved in development of the test for "B" readers, show that the test is biased against doctors who diagnose black lung often.

A study performed in NIOSH in May, 1974, showed that the doctors who passed the test to the "B" readers saw far less black lung on the sample X-rays than the doctors who failed the test. The study, made by the Department of Radiology at the Johns Hopkins School of Medicine, indicated that "an excessive overreading tendency" was "characteristic" of the 29 candidates who failed the test during the period covered by the study.

The Mountain Eagle article quoted one coalfield doctor who passed the test on the second try by adjusting his interpretations downward to the scores he learned were acceptable to the test graders.

Most "B" readers do not live or work in the coalfields. The April, 1975, roster of "B" readers listed 54 doctors who live outside the coal fields, including 10 in Los Angeles, Cal., 2 in Saranac Lake, N.Y., and 1 in West Auburn, Me. Only 26 doctors on the list practiced anywhere in the coalfields.

H.R. 3333 as introduced by Rep. Carl Perkins (D-Ky.) contained a provision that would have barred Social Security and the Department of Labor from having X-rays re-read in most cases. This provision was taken out of the black lung amendments which were approved last month by the House Committee on Education and Labor. BLA and UMWA lobbyists plan to ask the

Senate to put this provision, or one like it, back into the black lung bill.

"There is an obvious bias against coalfield doctors in the X-ray re-reading program," said Gail Falk, UMWA staff attorney. "You would think that the coalfield doctors should be given the greatest credibility since they constantly have an opportunity to re-check their interpretations by comparing notes with the internist or family physican, by following the miner over a period of many years, and finally checking their X-ray interpretations against autopsy results after a miner dies.

"Instead," she said, "Social Security acts as if the coalfield doctor is suspect just for knowing the miner's symptoms or how long he worked in the mines. Coal miners know all to well that most coalfield doctors aren't going to go out of their way to be too favorable when it comes to diagnosing black lung."

Even the government's own studies indicate that the "B" readers may seriously under-read for pneumoconiosis. At a UMWA-sponsored training session for black lung counselors last July in Washington, Pa., Dr. Jerold Abraham, then chief pathologist at the federal government's Appalachian Laboratory for Occupational Respiratory Disease (ALFORD), presented some findings of the "National Autopsy Study." When autopsy results were compared with X-ray interpretations by government-certified doctors of the same miner's lungs, the autopsies showed that the miners had more black lung than was diagnosed by X-rays.

Why then has Social Security adopted a system which so many people feel is biased against coal miners and coalfield doctors and which even its proponents cannot fully defend? (The Department of Labor, which administers miner's claims filed after July 1, 1973, also uses the "B" reader as the final authority.)

The 1972 amendments to the Federal Coal Mine Health and Safety Act of 1969 provided that no miner could be denied benefits solely on the basis of a negative chest X-ray. However, under the Social Security program, the easiest way to qualify is still on the basis of a chest X-ray. Also, miners with less than 10 years' coal mine work usually have trouble proving coal mining caused their lung disease without X-ray proof of pneumoconiosis. Also the X-ray can be decisive if the minner applies while still working, or in the case of a widow whose husband died while employed by a mine.

More than $3 billion has been paid out in federal black lung benefits since the program began in 1970, but during the past 18 months the rate of new black lung claims approved has slowed to a trickle. The X-ray re-reading system looks fair at first, but in practice it is a way for the government to deny claims they would otherwise have to pay.

Social Security has never made public any figures on the result of the re-reading program. Labor Department officials estimate that their "B" readers read down (see less pneumoconiosis than the coalfield doctor saw) twice as many X-rays as they read up. Virtually all observers agree that, in the Social Security program, "B" readers read down an ever higher proportion.

The "B" reader system is not only important to miners claiming black lung benefits. The "B" reader system is also used to evaluate whether a miner has a right to transfer to a less dusty job. A miner who has worked more than 10 years in the mines can transfer only if his X-ray shows pneumoconiosis category 2 or more. Regulations of the Public Health Service provide that all X-rays of working miners are to be read by a "B" reader, and that the "B" reader's opinion is final.

Mr. Chairman, I want to commend my colleague, the gentleman from West Virginia (Mr. HECHLER), for offering this amendment. The universal complaint I hear among my constituents who have been denied their black lung claims concerns the practice followed by the Department of Health, Education, and Welfare in rereading X-rays and failing to consider all competent medical evidence in considering their claims.

I think this is one of the most frustrating aspects of the implementation of title IV of the Federal Coal Mine Health and Safety Act which does grant Federal payments to those suffering from complicated coal workers pneumoconiosis. It would seem to me that the gentleman's amendment addresses itself to one of the areas where there is too much bureaucratic denial of rightful and legal claims, thus adding to the frustration of disabled workers.

Mr. Chairman, I hope the gentleman's amendment will be adopted. Who knows better the condition of any disabled person than his own physician who sees him on a regular basis and is able to see him as a human being rather than on the sole basis of data or evidence that is submitted?

I think the gentleman's amendment addresses itself to a real need, and I hope it will be adopted. I commend the gentleman for offering it.

Mr. HECHLER of West Virginia. Mr. Chairman, I thank my colleague, the gentleman from Virginia, for his contribution.

There have been many outstanding pulmonary authorities, such as Dr. Donald Rasmussen of the Appalachian Pulmonary Clinic, and Dr. Charles Nelson, who have indicated very clearly to the committee that this is one of the worst features of the present administration of the bill. Those contract specialists who are rereading the X-rays frequently have never visited the coalfields, nor do they have any concept of what a local doctor or radiologist knows about the condition of a miner. It is also a fact that the rereading of X-rays is being assigned to those who will come up with outrageously high rates of disapproval.

Mr. Chairman, I urge adoption of my amendment.

Mr. ERLENBORN. Mr. Chairman, I rise in opposition to the amendment.

(Mr. ERLENBORN asked and was given permission to revise and extend his remarks.)

Mr. ERLENBORN. Mr. Chairman, this amendment is offered, I am sure, in the spirit of the entire bill, and that is to add one presumption on top of another presumption in order to prevent evidence that could disqualify a claim from getting into the record. Specifically, the sponsors of the bill and the gentleman from West Virginia have done this sort of thing before, so I guess I am not surprised.

What this would say is that if one's own physician is willing to certify that one has pneumoconiosis, nobody else can look at the X-rays to disprove that finding. It is amazing how far some people will go to make certain that everyone who applies for a claim gets his claim allowed without the interference of other medical evidence.

As a matter of fact, in the coal mine areas much pressure has been put on these readers of X-rays. I am acquainted with one gentleman, a physician of repute who is an expert in this area, who was the subject of direct interference from the United Mine Workers and some of its officials in an effort to have him fired from his job from a West Virginia university because he read these X-rays according to the criteria of the International Labor Organization and sometimes suggested that the coal miners were not entitled to compensation. Not being satisfied with trying to get this man's job taken from him, they were then later successful in getting NIOSH to withdraw a contract from the University of West Virginia where the gentleman was employed.

The tactics that have been used to make certain that every claimant gets his claim allowed are numerous, and this is just another one of them.

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. Mr. Chairman, I think the doctor to whom the gentleman is referring is a doctor who once said that cigarette smoking was was the principal cause of lung disease and pneumoconiosis and not the coal dust from the mines, and so I think there may be good reason back of that action.

Mr. ERLENBORN. Mr. Chairman, I do not know if the gentleman is accurate or not in his statement, but I can say that many doctors have said that much of the difficulty experienced by those who have claimed to have pneumoconiosis is the result of cigarette smoking. There is no question about the fact that people who work in coal mines are subject to the same diseases that others are subject to such as chronic bronchitis, emphysema, and cancer of the lung from the smoking of cigarettes.

Yet, this compensation program is being used to provide compensation for people who are the subjects of those diseases and not necessarily disabled by pneumoconiosis.

Mr. DENT. Mr. Chairman. I move to strike the requisite number of words.

(Mr. DENT asked and was given permission to revise and extend his remarks.)

Mr. DENT. Mr. Chairman, I will not take the usual 5 minutes.

There have been two statements made, one by the offeror of the amendment and the other by the opposition.

I want to find out how this really fits into the legislation.

Of course, I am very interested in the statement made by the gentleman from Illinois (Mr. ERLENBORN) because we have predetermined that the X-rays shall not be the sole examination or the determining factor in granting or not granting that there is pneumoconiosis.

Therefore, Mr. Chairman, I will not ask for the defeat of the amendment at this time, but I will reserve the right to study it in the contest of the rest of the bill.

The CHAIRMAN. The question is on the amendment offered by the gentleman from West Virginia (Mr. HECHLER).

The question was taken; and on a divi-

sion (demanded by Mr. HECHLER of West Virginia), there were—ayes 30, noes 10.

So the amendment was agreed to.

AMENDMENTS OFFERED BY MR. SIMON

Mr. SIMON. Mr. Chairman, I offer amendments.

The Clerk read as follows:

Amendment offered by Mr. SIMON: Page 33, beginning on line 17, strike out "a semicolon" and insert in lieu thereof "; and".

Page 33, line 20, strike out "thirty" and insert in lieu thereof "twenty-five".

Page 33, line 24, strike out "; and" and insert in lieu thereof a period.

Page 34, strike out line 1 through line 4.

(Mr. SIMON asked and was given permission to revise and extend his remarks.)

Mr. SIMON. Mr. Chairman and members of the committee, this amendment does a very simple thing in the interest of justice and equity, and that is that it takes away the differentiation that is in the bill right now between anthracite and bituminous miners and makes it uniform as to the 25 years.

I have great respect for the gentleman from Pennsylvania (Mr. FLOOD), who fought for his anthracite miners. I commend him for doing that. It has been a noble fight.

Mr. Chairman, I think that anthracite miners should get benefits in 25 years, but I also believe that bituminous miners are and should be eligible for that in 25 years.

The medical evidence shows that there is some variation from region to region and also from job to job in the coal mines, depending on the kind of work that is done; but the medical evidence also is very clear in this respect—and I mentioned this before—the National Coal Workers autopsy study shows that of 400 miners examined who worked more than 20 years underground, between 90 and 95 percent had pneumoconiosis.

Therefore, Mr. Chairman, what we are saying is that in 25 years—and I frankly think it ought to be 20—but in 25 years anyone who has worked in the mines for 25 years would be eligible. That, it seems to me, is simple justice, and I ask the Members to listen to our two colleagues in this body who are physicians, the gentleman from Pennsylvania (Mr. MORGAN) and the gentleman from Kentucky (Mr. CARTER), both of whom have spoken this afternoon.

Mr. Chairman, I think simple justice demands that this ought to be 25 years across the board. When we do that, we will be doing a favor not only to the miners but to all Americans. We want coal, we want energy; but we do not want to suck out the breath and destroy the health of the miners in doing it.

Mr. BUCHANAN. Mr. Chairman, will the gentleman yield?

Mr. SIMON. I will be happy to yield to my colleague, the gentleman from Alabama (Mr BUCHANAN).

(Mr. BUCHANAN asked and was given permission to revise and extend his remarks.)

Mr. BUCHANAN. Mr. Chairman, I rise in strong support of this amendment and commend the gentleman from Illinois (Mr. SIMON) on both the gentleman's amendment and upon his statement that I believe to be the simple truth of the matter. I urge the adoption of his amendment.

Mr. SIMON. I thank the gentleman.

Mr. EVANS of Colorado. Mr. Chairman, will the gentleman yield?

Mr. SIMON. I yield to the gentleman from Colorado.

(Mr. EVANS of Colorado asked and was given permission to revise and extend his remarks.)

Mr. EVANS of Colorado. Mr. Chairman, I rise in support of the amendment offered by the gentleman from Illinois (Mr. SIMON) and would add one further comment, and that is in relation to who the miners are and who submit applications for black lung benefits. In my district we have miners who work in coal mines at very high altitudes and who have to submit themselves to the tests which were developed for miners who have worked in coal mines at lower altitudes. There is a great deal of controversy that has arisen as to whether or not the same test should be applied to miners who work at high altitudes as is applied to miners who work at lower altitudes, and whether the results of the same test given at both high altitudes and low altitudes would reflect the correct truth of the matter concerning the possibility of having developed pneumoconiosis if they have both worked in the mines for the same length of time.

Also, this amendment provides for a means of eliminating a large number of cases that are pending from controversy. Both the Social Security offices and the Department of Labor have huge backlogs of cases pending determination. This huge backlog of claims is almost impossible for the people handling them to do so within a reasonable time. The gentleman's amendment would help eliminate these backlogs. Many of these 25-year claimants have had to wait to have their claims passed on for 2 or 3 years. Since so many of them have black lung the gentleman's amendment is fair to them and as they are removed from the list of pending cases it will expedite the disposition of the remaining cases.

So I rise in support of the gentleman's amendment and hope that the other Members of the House will accept the amendment.

Mr. SIMON. Mr. Chairman, if I may just add one further comment and that is that I am holding in my hands a mask, worn by a coal miner, and it happens to be a mask that was worn for 4 hours on February 11. Most miners cannot wear a mask because of the nature of their work, so if you have to breath in that dust for 25 years, then you ought to be entitled to the option of retirement at $2,800 a year instead of $14,000.

I hope my colleagues will support my amendment.

AMENDMENTS OFFERED BY MR. MYERS OF PENNSYLVANIA AS A SUBSTITUTE FOR THE AMENDMENTS OFFERED BY MR. SIMON

Mr. MYERS of Pennsylvania. Mr. Chairman, I offer amendments as a substitute for the amendments.

The Clerk read as follows:

Amendment offered by Mr. MYERS of Pennsylvania as a substitute for the amendment offered by the gentleman from Illinois, Mr. SIMON: Page 33, line 24, strike out "; and" and all that follows through page 34, line 4, and insert in lieu thereof a period.

Page 34, line 15, strike out "or paragraph (6)".

Page 35, line 9, strike out "or paragraph (6)".

Page 35, line 15, strike out "or paragraph (6)".

Page 35, line 22, strike out "paragraphs (5) and (6)" and insert in lieu thereof: "paragraph (5)".

Page 36, line 4, strike out "paragraphs (5) and (6)" and insert in lieu thereof: "paragraph (5)".

Page 40, line 6, strike out "or paragraph (6)".

Page 43, line 1, strike out "paragraphs (5) and (6)" and insert in lieu thereof: "paragraph (5)".

Page 43, line 16, strike out "paragraph (4), (5), or (6)" and insert in lieu thereof: "paragraph (4) or (5)".

Page 60, line 3, strike out "or paragraph (6)".

Page 61, line 6, strike out "or paragraph (6)".

Mr. MYERS of Pennsylvania (during the reading). Mr. Chairman, I ask unanimous consent that the amendments be considered as read, printed in the RECORD and considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

(Mr. MYERS of Pennsylvania asked and was given permission to revise and extend his remarks.)

Mr. MYERS of Pennsylvania. Mr. Chairman, these amendments go a little more into detail than did the Simon amendment and essentially reverse that amendment. I believe they take care of all the technical correcting amendments that the Simon amendment did not do, in the succeeding paragraphs.

This amendment eliminates the differences between the anthracite and the bituminous coal miners and places them both in the 30-year category instead of going in the opposite direction which the Simon amendment did by placing both under the 25-year category.

I think that this is one of the big difficulties with the bill, the fact that the anthracite coal miners have been given special treatment.

I am looking for a black lung bill which I can support.

I have discussed this problem with the coal miners in my district. I think we all must recognize the fact that we are dealing with a bill here that could run the same risks of a veto that the public works bill did that passed here a couple of weeks ago. In that case we had too successful a lobbying activity with the result that too much was placed on the bill, it lost its buoyancy and it sunk and nobody received anything.

As I say, we have talked to the coal miners in my district, and I believe that if this is geared at 30 years that it has a much higher chance of passing than the one which would be geared at 25 years. In regard to the problems of those who served 30 years as coal miners, I think we owe it to them to bring to the floor of the House the bill which has the possibility of passing.

I think that equalizing these factors

of the coal producing miners for 30-years service is going to make a stronger bill for them or for their widows. I think what we are talking about here is not what the gentleman from Illinois (Mr. SIMON) mentioned—sucking out the breath of the miners as we increase production of coal in the future. What we are talking about here is the work that has been done prior to 1971, not after 1971.

As the bill stands right now, a cutoff date of 1971 is established. What we are working for is a bill that will compensate those persons who have spent their 30 years in the mines, and I think the commitment that we should make is one of providing benefits for them. Certainly anyone can see that the more that this bill is laden with costs, the less chance we are going to have of getting any black lung improvements this year.

Mr. Chairman, I yield back the remainder of my time.

Mr. DENT. Mr. Chairman, I move to strike the necessary number of words.

(Mr. DENT asked and was given permission to revise and extend his remarks.)

Mr. DENT. Mr. Chairman, the easiest thing for me to do would be to oppose the substitute and support the amendment. But I assure this House—and I think those of us who have suffered with me for many years in this House know—that I never have made a statement where I did not have the full facts at my command.

I am telling the Members now that we are treading on dangerous ground by taking either one of these amendments, because we have behind our position the facts of record, and the facts of record are very plain and easily understood. We can stand on the history of those cases that have been already approved involving 30 years of mining—over 80 percent.

Second, medical evidence before the committee was not ignored as has been said on the floor. It was given thorough and serious consideration by the committee. What does it say?

A study of the National Institute of Occupational Safety and Health of the United States Public Health Service said this:

> Complicated pneumoconiosis is nearly 7 times more prevalent among anthracite miners in Appalachia, than Appalachian bituminous miners, and infinitely more prevalent compared to Midwestern and Western bituminous coal miners.

So we have a base for a 5-year differential. We have a sound base that we can argue in court, if necessary, or before the President of the United States.

Let me take the history of the anthracite region. My friends from the anthracite region know better than I do, but I did have the privilege of sponsoring anthraconiosis, black lung legislation, years ago. I know something about the industry. Seven times to one is the incidence of black lung in anthracite. It is 3.5:1 in the crippling stages of simple pneumoconiosis. The facts are ours.

The CHAIRMAN. The time of the gentleman from Pennsylvania has expired.

(By unanimous consent, Mr. DENT was allowed to proceed for an additional 2 minutes.)

Mr. MYERS of Pennsylvania. Mr. Chairman, will the gentleman yield?

Mr. DENT. I yield to the gentleman from Pennsylvania.

Mr. MYERS of Pennsylvania. Mr. Chairman, I would like to ask the gentleman if just upon the number of cases that have come up in anthracite if that is actually a fair comparison? Is it not a feature of this bill when we have the problem that perhaps in the Appalachian region, where there is mostly soft coal, what we should be doing is communicating with people that do not know about the benefits, and because anthracite is more centrally located it is more easily communicated and, therefore, far more of them are apprised of it.

What I would like to ask the gentleman is if the percentage of black lung benefits, as opposed to the number of applicants, is higher for anthracite as opposed to soft coal?

Mr. DENT. Yes, very much so; and that is relevant. The point also is that not only, as I said earlier in my debate on the floor, not only the incidence numerically of many more anthracite miners, but the incidence of elapsed time and it is carried right here in the report as I read a few minutes ago:

> In the potentially crippling stages of simple pneumoconiosis, the relevant comparisons are approximately 3.5:1 and 8:1, respectively. When years of employment are related to the prevalence of CWP according to region, it is observed that a similar pattern of increased prevalence among anthracite miners occurs over their bituminous counterparts in all other regions. The study report also contains the following relevant excerpts:
>
> * * * it is [also] evident that anthracite miners are not only at an increased risk of contracting the disease, but ence they have developed category 1 (simple pneumoconiosis), they may also be more likely to progress to the more advanced stages more often than are their bituminous counterparts. * * * [I]t is difficult not to conclude that there is something in the environment of the anthracite miners that puts them in special jeopardy. However, it is doubtful that the quantity of respirable dust alone is responsible.

So we did not pick this out of the air and the gentleman from Illinois knows that.

The CHAIRMAN. The time of the gentleman from Pennsylvania has again expired.

(By unanimous consent. Mr. DENT was allowed to proceed for an additional 2 minutes.)

Mr. DENT. Mr. Chairman. I believe the bill is going to go to court. I know that and I am ready with all the facts to defend the bill as it is; but if we go into court and we can say that a miner who has worked 15, 20, or 25 years, automatically gets benefits, I am concerned that we may not be on quite the same legal footing as we are with our carefully reasoned and rational 30-year provision.

I also want to get rid of the disease. I want there to remain an adequate incentive to maintain legal and effective dust standards.

Mr. MYERS of Pennsylvania. Mr. Chairman, will the gentleman yield?

Mr. DENT. I yield to my colleague from Pennsylvania.

Mr. MYERS of Pennsylvania. I thank the gentleman for yielding. It seems like rather weak documentation. From the report here, Dr. Lapp says:

> We are not certain (what would cause that).... It could be something different about anthracite dust.

That is on page 8 of the report, at the top of the page. It does not sound like a strong documentation. Miners who work in bituminous—soft coal—facilities are rarely at that much of a disadvantage. according to Dr. Lapp.

It is my concern that we might end up with a bill that cannot be supported, that will go down, because we are trying to do more than the general Congress is willing to fund. That is the intention of my amendment. I think I should not ignore the fact that I believe that bituminous workers should be held equal with anthracite workers, the same as I believed, when the strip mining bill came through, the bituminous and anthracite miners should have to address that problem equally also.

Mr. SIMON. Mr. Chairman, I move to strike the last word, and I rise in opposition to the substitute amendment.

Mr. Chairman, members of the Committee, I rise in opposition, with all due respect, to the substitute amendment. It seems to me that the substitute amendment is going in the wrong direction. and I wish at the same time to respond to my good colleague from Pennsylvania who has spoken on the bill as it is right now.

I think 25 years on the basis of the autopsy reports we have certainly does not work an injustice on the public. It is a bill that the President, when he measures the matter, I hope and believe must sign.

As far as any difference here. I support the views of the gentleman from Pennsylvania who offers the substitute amendment, although I do not support his amendment. In fact, the difference is nowhere near what has been suggested by the gentleman who is the chairman of my subcommittee. What is true is that X-rays pick up anthracite particles much more clearly than bituminous.

Second, it is true that the average anthracite miner is older than the average bituminous miner, so that the incidence of black lung is higher. I would refer the Members to an article in Environmental Health of October 1973. an article by a whole series of doctors. which has a graph which shows that the prevalence of coal workers' pneumoconiosis in U.S. coal mines contain little difference between bituminous and anthracite. What does make a difference is the years of service. I think the 25 years of service I have suggested in my amendment is a reasonable time period, so I would urge rejection of the substitute amendment.

Mr. DENT. Mr Chairman, will the gentleman yield?

Mr SIMON. I yield to the gentleman from Pennsylvania.

Mr. DENT. Virtually every miner that has been examined in the anthracite

fields with 25 years of service in the mines has been awarded. The miners in the bituminous, 81 percent of those with 30 years or more have been awarded. Each year down under that, there are more and more and more rejections. We are not trying to pass legislation in a spirit of trying to do more than what we can support and defend. It would do no good for us to make it 20 years or 15 years, as I have said so many times before, and to have the whole ball of wax thrown out by the courts.

How can the gentleman say that he has established standards that eliminate in time? I want to make those dust standards work. I want to charge the operators with the cost. I want them to put in the cost of eliminating equipment. That is what it is, because we suffered with the disease in our homes, some of us. We are not interested in receiving the compensation.

We are interested in sweeping it out.

Mr. SIMON. I concur in that, I say to my good friend from Pennsylvania. Whatever figure we pick is a somewhat arbitrary figure.

Somewhat arbitrary, in that it will work an injustice. If we pick 25 years, there will be a coal miner who will have 24 years and 10 months in. We have to draw the line somewhere. I suggest that drawing the line at 25 years is much more equitable than drawing it at 30 years.

Mr. MYERS of Pennsylvania. If the gentleman will yield further, we have to get back to the basic point. If any miner approaches the 25 years who has black lung, he will get his benefits. What we are trying to do is get a cutoff date where we can assume eevryone who is over that has a significant amount of it, so that neither the miners are unfairly put upon nor the Federal Government nor the coal industry. But if a miner or his family can prove that prior to 1971 the conditions were such that he got it, certainly he could get it after 25 years, and I do not think we should lose sight of that.

Mr. SIMON. I do not know if the gentleman was here when I mentioned the autopsy reports. They show that 90 to 95 percent of the miners who have had 20 years in the mines have pneumoconiosis.

Mr. MYERS of Pennsylvania. And the diability rate?

Mr. SIMON. I do not know the disability rate, but the autopsy rate shows that that disability is there after 20 years.

Mr. MYERS of Pennsylvania. If the gentleman will yield further, I have worked 19 years in the steel mill, and I imagine if they did an autopsy on me, perhaps they might say something was wrong with my lungs which was directly associated with breathing in steel dust.

The CHAIRMAN. The time of the gentleman from Illinois (Mr. SIMON) has expired.

(On request of Mr. MYERS of Pennsylvania, and by unanimous consent, Mr. SIMON was allowed to proceed for 2 additional minutes.)

Mr. MYERS of Pennsylvania. Mr. Chairman, will the gentleman yield further?

Mr. SIMON. I yield to the gentleman from Pennsylvania (Mr. MYERS).

Mr. MYERS of Pennsylvania. I thank the gentleman for yielding.

Mr. Chairman, clearly we are going to have this problem. Just on my own experience, I could have blown my nose at five different times in 5 minutes, and I could have filled up a handkerchief with the same black dust that the gentleman has there. Some has chromium in it, some has molybdenum in it, a number of different compounds in it. We are just going to look at the same situation. I think we want to be fair with everybody, and I think 25 years, and pinning that against no promise for steelworkers, chemical workers, or one thing and another. is somewhat relatively unfair

Mr. SIMON. I say this with all due respent, that I have represented both steelworkers and coal miners, and it is like comparing apples and oranges. There are some breathing impairments for steelworkers. I represented the Granite City Steel and the General Steel and the LaClede Steel areas, thousands and thousands of steelworkers, and there is just no comparison.

I think we have to recognize that the breathing impairment in a coal miner is much more severe.

Mr. MYERS of Pennsylvania. If the gentleman will yield further, would the gentleman say the potential for lung damage is higher for a man who works in the coal industry on the surface or for an individual who works in a hot mill that is creating a significant amount of dust, where he is really up against the equipment?

Mr. SIMON. I think it depends upon where he is working at the surface.

Mr. MYERS of Pennsylvania. Would the gentleman also concede that some people do not experience the rate of exposure or hazard that many people in other industries are experiencing?

Mr. SIMON. I do concur in that, but how can we get justice for 90 percent of the people?

Mr. FLOOD. Mr. Chairman, I move to strike the requisite number of words.

(Mr. FLOOD asked and was given permission to revise and extend his remarks.)

Mr. FLOOD. Mr. Chairman, I rise to speak about black lung. Black lung, you see. is native to my district. It is indigenous. Like oranges in Florida. Or redwood trees in California. Or corn in Iowa. But we have black lung. In Pennsylvania we have coal and where you have coal you have black lung. And we have plenty of both. It is a simple fact.

And after 1969 the Congress passed legislation to make the mines safe and to compensate the miners—the so-called black lung law. Before then the mining of coal was a death-defying dead-end job. No one wanted to be a miner and you could not blame them.

But in 1969 the distinguished chairman. Mr. DENT, and I started all this and we were among the very few who could even pronounce the name of the disease—coal workers pneumoconiosis—so-called black lung. We have all come a long way since then.

In the anthracite fields we always called it miner's asthma or anthrasilicosis. but today it is black lung.

Here in Washington and in the coalfields it is called black lung. But in the coalfields I represent there is a basic, fundamental, and critical difference from the coal workings elsewhere. In my district we have anthracite coal—not bituminous. We have hard coal.

There is a difference. In Washington, many times, they cannot even spell anthracite.

Anthracite is mined in eight counties in northeastern Pennsylvania—accounts for under 6 million tons annually in production, and is found very rarely anywhere else in the world. It is very special coal. And it is very unique coal. For our purposes it is unique in a more important way. Anthracite is more deadly than bituminous to the miner. It is a more deadly form of coal. This is an undisputed medical fact. Anthracite—with its harder nature and higher silica or glass content—produces higher incidence of disease over a shorter period of time than bituminous. In an anthracite mine—simply stated—you get black lung disease faster and more severely than in a bituminous mine.

And now my proof. I have relied on the experts. On February 27, 1975, Dr. Leroy Lapp of the West Virginia Medical Center testified before the House Labor Standards Committee. He was asked:

Is there a heavier incidence in the anthracite miners than in bituminous miners of pneumoconiosis.

Dr. Lapp answered:

Yes, there is a higher prevalence of abnormal respiratory function in anthracite miners than bituminous miners.

On that same day, Dr. Keith Morgan testified in response to a question from the gentleman from Illinois (Mr. ERLENBORN) that—

. . . In the anthracite area of Pennsylvania 14 percent of working coal miners had complicated pneumoconiosis. In Utah and Colorado it was around one tenth of one percent. . . .

Complicated pneumoconiosis is PMF—pulmonary massive fibrosis—black lung disease in its most severe form.

PMF occurs most severely, at a higher rate, and much sooner after exposure in the anthracite mines as contrasted to bituminous. Dr. Murray B. Hunter, medical director of the Fairmont Clinic, Fairmont, W. Va., testified before the committee on March 12, 1975. He posed his own question as follows:

Do coal miners have an increased prevalence of potentially disabling respiratory disease as compared to general population. The answer is unequivocally yes. The issue is one of the magnitudes of difference. This difference is highest for anthracite miners least for miners in the Western States.

Mr. Chairman, if I may repeat, "highest for anthracite miners."

And there is more proof. A study was conducted under the direction of the National Institute of Occupational Safety and Health of the U.S. Public Health Service. The study is entitled, "The Prevalence of Coal Workers' Pneumoconiosis—CWP—in U.S. Coal Miners" and was published in the Archives of Environmental Health. a publication of the American Medical Association, in October 1973. It is the definitive work on the

subject. The study clearly, and unequivocally concluded that anthracite coal miners consistently risk a greater chance of contracting a more severe form of black lung disease than do bituminous miners.

Mr. Chairman, as bad as black lung disease is in the soft-coal or bituminous areas, we in the anthracite region have it much worse. The medical evidence is overwhelming. The human toll from black lung disease is overwhelming—be it in the soft-coal or hard-coal regions. This Congress has done much to alleviate the suffering of the stricken miners and I, for one, will not turn my back on them in the hour when their needs are greatest and when we as a Nation need them the most as well.

Mr. Chairman, the problem, as a matter of law, is in picking an arbitrary figure. This we cannot do, because we know, as plain as the nose on our face, if we do that we are doing a patently unconstitutional act. That we cannot do. Any first year law student would tell us that. That cannot be done.

Mr. DENT. Mr. Chairman, will the gentleman yield?

Mr. FLOOD. I yield to the gentleman from Pennsylvania (Mr. DENT).

Mr. DENT. I thank the gentleman for yielding.

Mr. Chairman, I am glad the gentleman made that statement, because it has been said that any figure we pick is arbitrary. That is not so. We did pick an arbitrary figure. We picked figures that we can defend. For instance, in the Niosh study referred to, relationship of prevalence of pneumoconiosis by region to years of underground exposure. Between the years of 20 to 29 years of service in the anthracite, 64 percent of the miners had total pneumoconiosis.

In the Appalachian bituminous, which is our coal, it is 42 percent in that age group. In the Midwest bituminous it is 31 percent; that is the area served by the gentleman from Illinois (Mr. SIMON). In the Western bituminous, it is 16 percent.

Now, this is between 30 and 39 years. Between 30 and 39 years, this is 75 percent of all the anthracite workers with total pneumoconiosis. In the Appalachian bituminous, 54 percent of all miners who worked and who were between 30 and 39 years had fatal pneumoconiosis. In the Midwest bituminous, it is 42 percent. There is a decline in Western bituminous, and that is between 16 and 25 percent.

So the years and the anthracite area do have something to do with the disease in this respect, and that is why we are establishing another basis of determining the amount of disability from an injury that cannot be seen. That is what we must keep in mind, that this is something we cannot see.

Mr. FLOOD. And, Mr. Chairman, the main thing is, for heaven's sake, let us not do anything to jeopardize this law. We have before us a sound piece of legislation. I have been hearing this kind of thing a good bit. We could jeopardize what is best being done.

In all the years I have been here on coal legislation I have never before in any manner, here or anyplace else, heard the suggestion made that there is no distinction between anthracite and bituminous coal. Anthracite is hard coal—h-a-r-d. That is hard coal. Bituminous is soft coal, and I assume we can all spell "soft." That is soft coal.

So there we are. There is no doubt about the distinction, there is no doubt shown in the X-rays, and there should be no doubt in anybody's mind here today that there is such a difference. Historically, medically, and in every other way this difference exists. It is a special kind of coal. This is a hard coal.

A few minutes ago we talked about Dr. Lapp. Before this committee Dr. Lapp was asked the question: Is there a heavier incidence of pneumoconiosis in the anthracite miner than in the bituminous miner? Dr. Lapp answered, "Yes." He said, y-e-s, yes, there is a higher prevalence of abnormal respiratory dysfunction in anthracite miners than in bituminous miners.

Then on the same day Dr. Keith Morgan, a very famous doctor, testified in response to a question asked by the gentleman from Illinois (Mr. ERLENBORN) that in the anthracite area of Pennsylvania 14 percent of the working coal miners have complicated pneumoconiosis. In Utah, in Colorado, and around the rest of that area, it is one-tenth of 1 percent. That is 14 percent compared to one-tenth of 1 percent.

Now, those are the figures. This is medical history; this is medical testimony. This is not just pulling figures out of a hat; this comes out all through the history and through the medical evidence.

In the coal workers' presentation, the CWP, in the workers' pneumoconiosis, for U.S. coal miners, in all their own archives they establish this beyond the peradventure of doubt. Let us just remember that when we look at this here today at a quarter of 5.

Let us not do anything unconstitutional that would endanger this. This is the law. If we do, we are asking for a lawsuit, and we will lose just as sure as God made little apples. Let us not pick out an arbitrary figure. The figure given by the chairman of the committee here is justified by law and by medical evidence, so let us not disturb that.

Mr. ERLENBORN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I was interested when the gentleman from Pennsylvania (Mr. DENT) was referring to a chart, a copy of which I also have. It is contained in book published by the National Academy of Science, entitled "Mineral Resources and the Environment."

The chart the gentleman was referring to shows that after 30 years in the coal mines in the anthracite region any stage of pneumoconiosis, not complicated or disabling pneumoconiosis but only some stage of it, reached 60 percent in the anthracite region.

That is after 30 years. Yet, this bill would say that everybody, 100 percent, would get compensation even though not more than 60 percent have even the first stage.

In the Appalachian region the comparable figure is about 45 percent for even the simplest first stage. Yet, this bill would say that after 30 years, 100 percent would get compensation.

What is even more interesting is the preceding page. It refers to prevalence of coal workers' pneumoconiosis in major geographic regions. They break it down to anthracite in Appalachia, in the Midwest, and in the West. They also break it down as to the categories.

Remember again that only progressive massive fibrosis under all of the medical testimony before our committee is disabling. In the anthracite region, the gentleman from Pennsylvania (Mr. FLOOD) would be, I think, encouraged by these figures in the position that he takes. The incidence of coal workers' pneumoconiosis is the greatest there. The incidence there is as high as 60 percent, but even there, only 14.3 percent have progressive massive fibrosis, the disabling disease.

In Appalachia the prevalence is approximatley 30 percent, but only 2.1 percent have progressive massive fibrosis, the medically disabling disease.

As to the Midwest and the West, 25 percent or less in the Midwest have the least evidence of the disease and the figure is 10 percent in the Far West for any stage of the disease; and there is no statistically significant number who have progressive massive fibrosis in either area.

Mr. Chairman, here we are talking about the region where the incidence is the highest and where the greatest number get the disabling stage of the disease, the highest number in the anthracite region, 14 percent. Yet, this bill would extend compensation after a period of years to 100 percent of the workers.

The current law is giving compensation across the board, across the country, to 65 percent of the workers, while in the Midwest and in the West they do not even have a statistically significant incidence of the compensable disease.

Mr. DENT. Mr. Chairman, will the gentleman yield?

Mr. ERLENBORN. I yield to the gentleman from Pennsylvania.

Mr. DENT. Would the gentleman from Illinois please give me the date of the report?

Mr. ERLENBORN. It is 1973.

Mr. DENT. The gentleman from Illinois (Mr. ERLENBORN) was in the committee, I believe, when the NIOSH report was given to us, and that was only recently. It has a completely different set of figures. The records of the Department itself coincide more with the NIOSH report. If it were only 14 percent, we would not have to pay 360,000 miners because 360,000 miners comes pretty close to being 65 or 75 percent of all of the miner claimants.

Mr. ERLENBORN. If the gentleman will permit me, this was published in 1976. I think it is the same report that the gentleman is talking about. The chart is from 1973.

What the gentleman is confusing is the question of how many people are being compensated for the disease and how many are being truly disabled by the disease. There is a vast difference between those figures.

Mr. DENT. If the gentleman will yield further, is he saying that the Depart-

ments have been liberal and that they are paying miners who do not have pneumoconiosis?

Mr. ERLENBORN. The Comptroller General and I agree on that, yes; many are being compensated who do not have it.

Mr. DENT. I am not sure that anyone else has made that claim.

Mr. FLOOD. Mr. Chairman, will the gentleman yield?

Mr. ERLENBORN. I yield to the gentleman from Pennsylvania.

Mr. FLOOD. Mr. Chairman, the best argument I have heard so far to establish the line of distinction between hard coal and soft coal, between anthracite and bituminous, is the very eloquent statement that the gentleman from Illinois (Mr. ERLENBORN) just made. It is the best that has been made today.

Mr. ERLENBORN. Mr. Chairman, I am sure that the gentleman from Pennsylvania (Mr. FLOOD) would be heartened by those figures. I think that if we would follow them closely, we would see that 14.3 percent of those who have worked in the anthracite region for 25 years or more should be given compensation.

Mr. FLOOD. However, the gentleman has made the distinction very clear and very well.

Mr. FLOWERS. Mr. Chairman, I move to strike the requisite number of words.

(Mr. FLOWERS asked and was given permission to revise and extend his remarks.)

Mr. FLOWERS. Mr. Chairman, if I may engage in a discussion with the subcommittee chairman, the gentleman from Pennsylvania (Mr. DENT), let me say that I come from a region that is blessed with natural resources. We have massive amounts of reserves of bituminous coal, of which we are proud, and many of our coal miners have been aided by the black lung legislation, which I fully supported, and I intend to support ths bill today. However, I have a problem. We are also blessed with another natural resource in our region, as the gentleman from Alabama (Mr. BUCHANAN) knows fully as well as I do, and that is iron ore.

We have fellow Alabamians, some of whom suffer from black lung disease and others who suffer from red lung disease. The black lung disease man. or his surviving family, is taken care of in some respects by the legislation this Congress Congress has passed, but the family of a man who might be just as severely afflicted by the disease contracted from his many years of mining underground in an iron mine, where he has developed pneumoconiosis, or silicosis, occasioned from the particles of the red iron ore, has no such benefits.

I have a hard time, Mr. Chairman, explaining this to my constituents, as I am sure my colleague, the gentleman from Alabama (Mr. BUCHANAN) has, and as do many of our other colleagues from Alabama, and also there are a few other regions in our Nation who historically have had the iron ore problem as well as the coal dust problem.

I have introduced legislation in two succeeding Congresses to include iron ore miners under benefits given under the program for the black lung disease.

I am wondering, since we have been talking about arbitrariness of years and arbitrariness of this, that, and the other thing, it seems to me there is a certain amount of arbitrariness here, Mr. Chairman, in that when this legislation was being first considered that we chose the coal mining industry. And I can understand that because it is an industry that is national in scope, where the situation I speak about in my area is more regional in scope. But to those people who are afflicted by a disease such as this, it is just as serious in scope as that of the coal miner, and it is hard for them to understand why they are not covered.

I wonder if the gentleman from Pennsylvania has considered this and has any comments to make?

Mr. DENT. Mr. Chairman, if the gentleman has introduced such legislation—and I know that the gentleman has done so because the gentleman has said that he has—it was not referred to my subcommittee.

Mr. FLOWERS. The number of the bill is H.R. 1285.

Mr. DENT. It did not come before my subcommiteee. I do not have that matter. We have been dealing only on the basis of coal. The jurisdiction on that may be in the subcommittee headed by the gentleman from New Jersey (Mr. DOMINICK V. DANIELS). I will discuss this with the gentleman tomorrow and find out what has happened to it.

As far as I am concerned, we have to take up these diseases one by one because each is historically different and we have got to work with them one at a time rather than trying to make one black lung bill.

My honest opinion would be it would have to be separated because its characteristics are so different in the type of disease when they are inflicted upon a person but, nevertheless, it is of course serious enough.

As I say, I will be happy to discuss this with the chairman of the proper subcommittee.

Mr. PHILLIP BURTON. Mr. Chairman, if the gentleman will yield, I would like to commend our colleague, the gentleman from Alabama (Mr. FLOWERS) for noting that there are a number of occupational diseases, more particularly involving lung function diseases in other job occupations than just in coal that we have not looked at and that we should look at. Because we do find ourselves with an inequity in the sense that though we have done some minimal level assistance in terms of those who work in the coal fields, there are others who work in other industries who have lung and respiratory problems. It is an area that needs searching and obvious attention.

Again I commend the gentleman in the well for the leadership he has given in this matter.

Mr. FLOWERS. I will say to my distinguished friends, the gentlemen from Pennsylvania and Alabama, and my other friend here, that the only difference really is in terms of severity to the individual. There are sufferers of the red lung disease and white lung disease who suffer as individuals.

The CHAIRMAN. The time of the gentleman has expired.

(By unanimous consent, Mr. FLOWERS was allowed to proceed for 3 additional minutes.)

Mr. FLOWERS. In fact, many suffer more that those who have the black lung disease.

Mr. BUCHANAN. Mr. Chairman, will the gentleman yield?

Mr. FLOWERS. I yield to the gentleman from Alabama.

Mr. BUCHANAN. I thank the gentleman for yielding.

As a cosponsor of the gentleman's legislation, I, too, want to commend him for his leadership in this matter. I associate myself with the case he is making. As the gentleman knows, this is my first year on the Committee on Education and Labor, but since that is the case, I want to assure the gentleman that I will join with the distinguished gentleman who has pledged to pursue this matter with the appropriate subcommittee chairman and the gentleman from California, and I hope that we can get some action on this issue because it deserves the attention of our committee and of the Congress.

Mr. GAYDOS. Mr. Chairman, will the gentleman yield?

Mr. FLOWERS. I yield to the gentleman from Pennsylvania.

Mr. GAYDOS. I thank the gentleman for yielding.

I think he has made salient points. I do want to inform him of certain committee action by the gentleman from New Jersey (Mr. DOMINICK V. DANIELS) and his committee. I am serving on his Subcommittee on Education and Labor.

We in this committee are now considering the National Federal Standards for Workmen's Compensation in this country. I think this is the area where the gentleman's district problem, and mine in my district, will be solved. I am speaking of coke oven emissions. We are talking about this type of problem along with chemical companies throughout the 50 States and territories. I believe the gentleman raises a good point. I think this is the wrong place to raise the question because we do not want to do anything to impair the passage of this legislation. I would welcome his help in supporting this legislation when it comes to the floor.

Mr. FLOWERS. Do I have at least a warm ear from my friends here that this is a matter that merits consideration of the Committee on Education and Labor?

Mr. GAYDOS. If the gentleman will yield further. we do have a report from a national commission setting forth the need for this type of legislation to be considered.

Mr. DENT. Mr. Chairman, will the gentleman yield?

Mr. FLOWERS. I yield to the gentleman from Pennsylvania.

Mr. DENT. I just want to state, if the gentleman will note, what the progress has been. I think we have worked on this

legislation, and we now have a body of knowledge. We now have a course that can be pursued, and it can be pursued upon facts. It can be pursued expeditiously, and I assure the gentleman that everything we have in our subcommittee will be made available to the gentleman from New Jersey (Mr. DOMINICK V. DANIELS) and his ranking member, and I assure the gentleman it will be considered.

Mr. FLOWERS. We have one other problem. We no longer mine red ore in the United States. These people are mostly old people. The ore mines have been long since closed up and the owners have gone away. Unless we help these people soon, there will be no one left to help other than their widows and children. So, the need for early attention in this area is urgent.

Mr. DENT. I will assure the gentleman that we will do the best we can.

The CHAIRMAN. The time of the gentleman has expired.

The question is on the amendment offered by the gentleman from Pennsylvania (Mr. MYERS) as a substitute for the amendment offered by the gentleman from Illinois (Mr. SIMON).

The question was taken; and the Chairman announced that the noes appeared to have it.

Mr. MYERS of Pennsylvania. Mr. Chairman, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

The CHAIRMAN. Evidently a quorum is not present.

The Chair announces that pursuant to clause 2, rule XXIII, he will vacate proceedings under the call when a quorum of the Committee appears.

Members will record their presence by electronic device.

The call was taken by electronic device.

QUORUM CALL VACATED

The CHAIRMAN. One hundred one Members have appeared. A quorum of the Committee of the Whole is present. Pursuant to rule XXIII, clause 2, further proceedings under the call shall be considered as vacated.

The Committee will resume its sitting.

RECORDED VOTE

The CHAIRMAN. The pending business is the demand by the gentleman from Pennsylvania (Mr. MYERS) for a recorded vote.

A recorded vote was refused.

So the amendment offered as a substitute for the amendment was rejected.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Illinois (Mr. SIMON).

The question was taken; and on a division (demanded by Mr. SIMON) there were—ayes 22, noes 27.

So the amendment was rejected.

AMENDMENT OFFERED BY MR. PEYSER

Mr. PEYSER. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. PEYSER: H.R. 10760, as reported, is amended by adding at the end thereof a new section to read as follows:

"WHITE LUNG STUDY

"SEC. 16. (a) The Committee on Education and Labor of the House of Representatives is authorized and directed to conduct a study of white lung disease, also known as silicosis or talcosis, including, but not limited to, the extent and severity of the disease in the United States; the relationship, if any, between white lung disease and black lung disease; the adequacy of current workman compensation programs in compensating victims of white lung disease; a review of current mine safety and Occupational Safety and Health regulations relating to talc mining to determine whether such regulations are adequate to protect the safety and health of talc miners; and the need, if any, for Federal legislation to protect the safety and health of talc miners or to provide additional compensation for the victims of white lung.

"(b) The Committee shall report their findings and any legislative recommendations to the Congress not later than one year after enactment of this Act."

Mr. PEYSER (during the reading). Mr. Chairman, I ask unanimous consent that the amendmeint be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

(Mr. PEYSER asked and was given permission to revise and extend his remarks.)

Mr. PEYSER. Mr. Chairman, this is a very simple amendment, but it is one of great concern to many people in this country and particularly to people in upstate New York. This question of white lung has been one of great concern to me.

Mr. DENT. Mr. Chairman, will the gentleman yield?

Mr. PEYSER. I yield to the gentleman from Pennsylvania.

Mr. DENT. Mr. Chairman, I do not know whether the minority Members have looked at this amendment, but I have. I see absolutely nothing wrong with it. The committee will be happy to give consideration to a study of the white lung situation.

Mr. ERLENBORN. Mr. Chairman, will the gentleman yield?

Mr. PEYSER. I yield to the gentleman from Illinois.

Mr. ERLENBORN. Mr. Chairman, the gentleman from New York has an amendment pending that refers to something called white lung. What in the gentleman's opinion is the technical name of that disease?

Mr. PEYSER. Mr. Chairman, the technical name is silicosis or talcosis. Those are the names given in the medical terminology, and then there are several others. I suggest the gentleman refer to the copy of the amendment he has in front of him.

Mr. ERLENBORN. Mr. Chairman, if the gentleman will yield further, the textile industry has something called byssinosis, which is also referred to as white lung. I understand there is also red lung, and I do not know how many other colored diseases there might be.

Would the gentleman not want to provide for studying all lung diseases rather than just one designated by a nontechnical name?

Mr. PEYSER. Mr. Chairman, I thank the gentleman for his comment. Before answering, I wish to yield to the gentleman from Alabama (Mr. BUCHANAN) for a moment because I think what he has to tell us may make sense, and I think the gentleman from Pennsylvania (Mr. DENT) will be interested as well.

Mr. BUCHANAN. Mr. Chairman. I thank the gentleman for yielding.

I wonder if the gentleman from New York would be willing to modify his amendment to include red lung disease. I think the gentleman from Illinois (Mr. ERLENBORN) has spoken sensibly in indicating this might be in order. The chairman of the subcommittee had indicated something along this line earlier in the colloquy.

Mr. PEYSER. Mr. Chairman, I would like to ask the gentleman from Pennsylvania (Mr. DENT) if that would present a problem to him, if I would modify the amendment to include a study of the total picture?

Mr. DENT. Mr. Chairman, if the gentleman will yield, there is legislation already introduced on that subject, and as I have said several times on the floor, we will have to isolate each one of these and take them up separately so we can get the facts. Otherwise we will overload any bill.

We ought to be studying the entire picture, yes, but let us not try to study the whole universe at one time. If we have the talc industry and the iron ore industry on our hands right now in addition to this, I think the committee will have more than it can handle at this stage. We are willing to do it, but let us do it in an orderly fashion.

Mr. Chairman, I am willing to accept the amendment as it is.

Mr. PEYSER. Then, Mr. Chairman, I understand the red lung disease is going to be handled in a separate committee, in the Committee on Education and Labor. If I understand the gentleman, apparently that would suffice, and in that case I thank the gentleman for his support and look forward to speedy action on this program. I yield back the balance of my time.

Mr. FLOWERS. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I am not sure about this. First I saw it, and then I did not. I thought we had the red lung disease included and that we had the attention of the committee, and then the white lung disease slipped in in front of us somehow.

I wonder if that is the case or not. Let us get back to No. 1 and see where we are at this point.

Mr. DENT. Mr. Chairman, if the gentleman will yield, I wish to state that the gentleman's bill is in committee. This amendment provides for a request that this committee study the talc industry, that is all, and the gentleman's bill is already being considered by the proper committee. I assure the gentleman we will include red, white, and black before we are through.

Mr. FLOWERS. But, Mr. Chairman, the fact is that the red lung started it off.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York (Mr. PEYSER).

The amendment was agreed to.

Mr. DENT. Mr. Chairman, I would like to know whether we can arrive at some agreement on time.

I understand that there are five

amendments at the desk and only one has been printed in the Journal.

Mr. Chairman, I would ask unanimous consent that we end all debate in 1 hour or, rather, at 20 minutes after 6. This will allow more than 10 minutes for each one of the amendments to be placed before the House. Some of them will not take that long. They are very simple.

Mr. ERLENBORN. Mr. Chairman, will the gentleman yield?

Mr. DENT. I yield to the gentleman from Illinois.

Mr. ERLENBORN. Mr. Chairman, I am generally not in favor of time limitations because I think that anyone who has an amendment ought to have an opportunity to have the amendment considered.

As the gentleman from Pennsylvania said, only one has been printed in the RECORD. It would be possible, under some limitation of time, that one of the amendments may not have any opportunity for debate at all.

Mr. Chairman, I personally will not object, but if any of those who intend to offer any amendments would object, I would support them.

The CHAIRMAN. Is there objection to the request of the gentleman from Pennsylvania?

Mr. MYERS of Pennsylvania. Mr. Chairman, reserving the right to object, I would like to ask the chairman if he would be willing to make his request on the basis of 1 hour rather than to state a specific time, so that we will not be penalized by quorum calls.

Mr. DENT. If the gentleman will yield, I would be happy to do that. I will not ask for any quorum calls if the gentleman will not.

Mr. MYERS of Pennsylvania. I may.

Mr. DENT. The gentleman makes it very difficult to comply with his very simple, reasonable request; but I will comply with it and ask unanimous consent to end all debate on amendments in 1 hour's time.

Mr. MYERS of Pennsylvania. Mr. Chairman, I would like to say to the gentleman from Pennsylvania that this is an important bill. I believe there is going to be a series of amendments here that are important, and I would like to give everybody an opportunity, in the interest of fairness.

Mr. Chairman, I will agree to an hour in total time.

Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentleman from Pennsylvania?

Mr. SKUBITZ. Mr. Chairman, reserving the right to object, may I ask the gentleman from Pennsylvania a question.

Mr. DENT. Yes.

Mr. SKUBITZ. Is the gentleman limiting the time just to the amendments that are at the desk at this moment?

Mr. DENT. All of them.

Mr. SKUBITZ. The gentleman is limiting it to all amendments?

Mr. DENT. Yes.

Mr. SKUBITZ. In other words, Mr. Chairman, I have an amendment that is not at the desk. I have been tossing it around in my own mind as to whether I really want to present it.

Mr. DENT. The gentleman has an amendment?

Mr. SKUBITZ. I have an amendment, yes.

Mr. DENT. In an hour's time it will be after 6 o'clock, and I would have no complaint if the gentleman would send his amendment to the desk at this point.

Mr. SKUBITZ. Mr. Chairman, I thank the gentleman, and I withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentleman from Pennsylvania that all debate cease in 1 hour on the committee amendment and all amendments thereto?

There was no objection.

PARLIAMENTARY INQUIRY

Mr. DENT. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN. The gentleman will state his parliamentary inquiry.

Mr. DENT. As a point of information, Mr. Chairman, would the Chair establish the time basis.

The CHAIRMAN. The Chair will state to the gentleman that it is 1 hour of time on the committee amendment and all amendments thereto.

Mr. DENT. And each one will be allocated 10 minutes; is that correct?

The CHAIRMAN. That leaves each speaker 5 minutes.

Mr. DENT. Mr. Chairman, 10 minutes for each amendment was the request I made.

The CHAIRMAN. No. The gentleman requested 1 hour on all amendments.

The Chair will state, for the gentleman's information, that there are 12 speakers who were standing at the time the request was made, and there is only 1 hour allotted, each speaker will have 5 minutes, and that is all.

Mr. DENT. That is all right, I say to the Chair; but does that include all amendments being given an opportunity to be heard or only one amendment? I do not want to deny anybody the right to offer an amendment.

The CHAIRMAN. The Chair will state that Members who have amendments may offer them, if they are on the Chair's list they will be heard.

PARLIAMENTARY INQUIRY

Mr. HAYES of Indiana. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN. The gentleman will state his parliamentary inquiry.

Mr. HAYES of Indiana. Mr. Chairman, it is my understanding that the time limitation, while generally applying, will not exclude any amendment that was printed; is that correct?

The CHAIRMAN. The Chair will state that debate on any amendment that has been printed in the Record will be in order, yes.

Mr. HAYES of Indiana. I thank the Chair.

PARLIAMENTARY INQUIRY

Mr. MYERS of Pennsylvania. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN. The gentleman will state his parliamentary inquiry.

Mr. MYERS of Pennsylvania. Mr. Chairman, in utilization of the 5-minute allotment, will the speakers be allowed to divide it up into different periods and reserve time back and forth?

The CHAIRMAN. The Chair will state that by unanimous consent, Members may do that, yes.

Mr. MYERS of Pennsylvania. But it would take unanimous consent?

The CHAIRMAN. That is correct, it would take unanimous consent.

Mr. MYERS of Pennsylvania. The Chairman is then saying it takes unanimous consent to reserve time for later usage?

The CHAIRMAN. The Chair will state that the Members will be recognized for 5 minutes each. If the gentleman from Pennsylvania wishes to reserve a portion of his five minutes, then it requires unanimous consent to do so.

Mr. MYERS of Pennsylvania. I thank the Chairman.

AMENDMENT OFFERED BY MR. HALL

Mr. HALL. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. HALL: Page 36, beginning on line 1, strike out "by inserting immediately" and all that follows through line 7, and insert in lieu thereof the following: "and by striking out ': *Provided*, That" and all that follows through 'one or more underground mines'.:"

(Mr. HALL asked and was given permission to revise and extend his remarks.)

Mr. HALL. Mr. Chairman, at the outset I want to thank the distinguished chairman of the subcommittee for his excellent and diligent work in bringing this bill to the floor. No other Member of this House has done more for coal mine health and safety than the distinguished gentleman from Pennsylvania (Mr. DENT) and I would also add the name of the distinguished chairman of the full committee, the gentleman from Kentucky (Mr. PERKINS).

Mr. Chairman, the amendment I offer will strengthen H.R. 10760. It will eliminate the arbitrary and unjustified cutoff date of July 1, 1971, in making the presumption a miner suffers from black lung disease. It will affect only a few hundred miners a year and its cost will be minimal with no additional cost to the Federal Government. Although its impact will not be great, equity for those affected miners calls for passage of the amendment.

Under part B of the 1969 act, a miner with 15 years of underground service and who is totally disabled by a respiratory disease is presumed to have black lung. Under part C, that part funded by the coal industry, a miner in order to qualify for that presumption must have completed 15 years of service prior to July 1, 1971. July 1 was the date when Federal standarads for regulating respirable dust levels in the mines were to become totally effective.

The legislation now before us would extend this 71 cutoff to the application of the 25- and 30-year presumptions in part C claims. Mr. Chairman, I submit the expectations prompting the 1971 cutoff have not been realized and it is now time to revise our thinking.

I have here a recent GAO report which tells us the hopes and good intentions

that the 1969 Coal Mine Health and Safety Act would eliminate black lung after the effective date of July 1, 1971, have not been realized. The title of the report, "Improvements Still Needed in Coal Mine Dust-Sampling Program" reveals one of the conclusions of the study.

Mr. Chairman, I quote from the GAO report which was issued December 31, 1975: The Department of the Interior reported that 94 percent of the active underground coal mine sections were meeting the 2 milligram standard established by Congress as the acceptable dust level. GAO found many weaknesses in the dust-sampling program affecting the accuracy and validity of the results and making it virtually impossible to determine how many mine sections were in compliance.

If we needed move evidence that there is no justification to believe that July 1, 1971, should be maintained as a cutoff, we have it in a statement of the research supervisor of the dust control and life support group made to the Director of the Bureau of Mines in late 1974. He stated:

Coal mine personnel are being permitted to be exposed to grossly excessive amounts of respirable dust.

He added:

It is evident that a grave health hazard still exists in our coal mine environments.

Mr. Chairman, we must of course continue to work for an effective program of dust control but until we have solid evidence—and we have none today—that dust control is effective throughout the industry, we should not penalize those miners with service after July 1, 1971. I urge the adoption of the amendment.

The CHAIRMAN. Are there any Members who wish to speak on the pending amendment?

Mr. DENT. Mr. Chairman, I ask unanimous consent that I may reserve 3 of my 5 minutes and only consume 2 of the minutes in speaking on this amendment.

The CHAIRMAN. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

Mr. DENT. Mr. Chairman. I rise in opposition, of course, for the simple reason that the gentleman says that the 1971 date is picked at random and is arbitrary. That is the date that we instituted effective dust limits. Let us see what has happened to the end of December 1974, based on mine samples. Less than 260 of the 3,200 underground mines examined failed to meet the dust requirement of 2 milligrams. In the same test that was given, of 55 percent of the sections reported, less than 1 milligram of dust was given. How are we going to go to court and have a mine operator pay for a disease that is alleged to have occurred under such circumstances?

The gentleman is saying that for a miner who started to work last week and works 30 years in a bituminous mine and 25 years in an anthracite mine, when the dust standards have been down to below 2 milligrams, that operator has to pay for black lung whether the miner has black lung or not.

Mr. HALL. Mr. Chairman, will the gentleman yield?

Mr. DENT. I yield to the gentleman from Illinois.

Mr. HALL. I thank the gentleman for yielding.

The whole basis of my argument, and the rationale behind this whole argument, has been that the 1971 cutoff date meant that the standards had been complied with, and there would be no more black lung after that. The GAO is an agency all of us depend on, regardless of party, we all depend upon their research. I think this study leaves a great question about the standards having been met.

Mr. DENT. Mr. Chairman, I have only 2 minutes. I did not test the gentleman from Illinois on the matter. That is the second time I have gotten stuck today.

The CHAIRMAN. The time of the gentleman has expired.

Mr. PERKINS. Mr. Chairman, I yield the remainder of my time to the gentleman from Pennsylvania.

Mr. DENT. Mr. Chairman, I yield myself 1 more minute of my increased time.

Of course, that is not the point. The 1971 date has two bases in history in the legislation. We already have a 15-year presumption for over 15 years of working in the mines prior to 1971, by placing the responsibility on the mine operator to prove that the miner does not have black lung. That is already in the law, so the date has been set. It has not been contested. It has been in operation, and we know it is constitutional, in our opinion, as is this provision in the bill, which has the same basis in fact.

To say that we open it up from now on into eternity, and a miner can start working 10 years from now, and ultimately claim benefits notwithstanding the circumstances of his employment is, we believe, a very shaky foundation. As the bill stands, the only years counted are those during which we know that no mine exercised or was required to exercise effective dust control.

The CHAIRMAN. The time of the gentleman has expired.

The question is on the amendment offered by the gentleman from Illinois (Mr. HALL).

The amendment was rejected.

AMENDMENT OFFERED BY MR. BUCHANAN

Mr. BUCHANAN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. BUCHANAN: Page 36, lines 2 to 4, strike all the language on lines 2 and up to and including the comma on line 4, and substitute therefore the following: "after 'June 30, 1971,' the following: 'and for the purpose of determining the applicability of entitlements based upon conditions described in paragraphs (5) and (6) of section 411(c) to claims filed under part C of this title, no period of employment after the effective date of the Black Lung Benefits Reform Act of 1975,' ".

Mr. BUCHANAN. Mr. Chairman, my amendment is much more modest in what it seeks to accomplish; but it goes in the same direction as the gentleman who preceded me in the well. I supported the gentleman's amendment and I would have welcomed a record vote on that amendment.

Mr. Chairman, this simply extends the cutoff date for employment in the entitlement sections of this bill from June 30, 1971, to the effective date of this bill. It is a modest extension. The gentleman who offered the previous amendment has pointed out this is a matter of question and of debate as to whether or not the cleanup that the Department of the Interior said is taking place is taking place. The Interior Department said yes. The UMW has challenged this. The GAO has most recently challenged it.

This gives the benefit of the doubt to miners who still have been exposed in many places. It is an improvement on the present bill in that it simply extends to the date of enactment of this bill. the effective cutoff date.

I think this is a modest request and the chairman of the committee and the chairman of the full committee have rendered great service to the miners across the land in the benefits they have already secured under this basic legislation.

I would hope they would support this modest increase in the bill as a small step that, nevertheless, would bring equity and benefit to at least a small additional group of miners. I urge the adoption of my amendment.

Mr. HEINZ. Mr. Chairman, will the gentleman yield?

Mr. BUCHANAN. I yield to the gentleman from Pennsylvania.

(Mr. HEINZ asked and was given permission to revise and extend his remarks.)

Mr. HEINZ. Mr. Chairman, I rise to express my full support for the Black Lung Benefits Reform Act, H.R. 10760, which we are considering here today.

This long awaited legislation. which provides automatic eligibility for black lung benefits to individuals who have served for 30 years or more in the mines. will hopefully put an end to the seemingly endless bureaucratic delays and legal hassles which now face thousands of afflicted miners, and which deny them the benefits to which they are entitled.

Since the inception of the black lung program, it has failed miserably to respond to the needs of black lung victims and their families. The countless black lung appeals which have been handled by my congressional office attest to the fact that the administration of the program is both capricious and arbitrary and an outrage to those of use who are deeply committed to assisting black lung victims.

Mr. Chairman. through the passage of the Black Lung Benefits Reform Act. we can come to the aid of the countless miners who are wracked by black lung, but whose claims for benefits have never emerged from the bureaucratic muddle. We can assist those miners who can barely breathe, but who must continue in the mines because their black lung claims have been repeatedly denied. And we can help the miner's widow, who has been without any income since the death of her husband, who has been denied black lung benefits, and who is still waiting for the outcome of her appeal years after it was initiated.

Through the adoption of the Black Lung Benefits Reform Act, I am hopeful

that we can finally eliminate the frustration, the unfairness and the uncertainty characteristic of the curent black lung program, and quickly provide black lung victims and their families the benefits to which they have long been entitled.

Mr. DENT. Mr. Chairman, I oppose this amendment on exactly the same grounds as the other. It is not a question of 75, 74, 72. It is a question of a date that was rationally arrived at. Whether we move 1 or 2 years, we might as well move it 15 or 20, because the same legal problem presents itself. We are trying to present legislation that will become law. The bill does not bar any miner, regardless of service, from filing a potentially valid claim. We cannot ask anything more than that if we want the legislation declared constitutional and to benefit thousands of persons in the mining industry.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Alabama (Mr. BUCHANAN).

The amendment was rejected.

AMENDMENT OFFERED BY MR. HAYES OF INDIANA

Mr. HAYES of Indiana. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. HAYES of Indiana: Page 39, immediately after line 12, insert the following new subsection:

"(c) Section 402(d) of the Act (30 U.S.C. 902(d)) is amended by inserting immediately before the period at the end thereof the following: ', including any individual who is or was employed in any aboveground mining operation'."

Mr. HAYES of Indiana. Mr. Chairman, this amendment will expand the definition of miner to include any individual who is or was employed in any aboveground mining operation. This bill as it is presently written extends automatic eligibility for black lung benefits under the 30-year rule, which has been well explained, to any miner who did not work in an underground mine, if the Secretary of Health, Eduction, and Welfare and/or Labor determines that the conditions or his employment in a coal mine, other than an underground mine, are substantially or were substantially similar to conditions found in an underground mine. Thus, surface miners can be eligible, but they are not assured of that eligibility.

The legal language is subject to drastically variable interpretations which depend on many different factors, and it seems that the language is broad enough, in case the Secretary desires to include nearly all surface workers or nearly none on the other hand if he so desires, or he can reach something moderately in between in terms of numbers.

It is this delegation of authority to the Secretary that my language is trying to tighten up. What we are talking about are some thousands of workers in the surface operations or above-ground mining operations such as cleaning plants, shops, yards, all of which may be a little over 35 percent of the total manpower we are involved with.

What is the cost? We are talking about, under part B of the bill, the Federal responsibility of the bill, about an additional 1,200 families that qualify for benefits at a cost of about $3.5 million for the next 10 years. Under part C, the industry portion, there would probably be an additional 2,300 miners immediately eligible at an estimated cost of $6 million to $8 million for the industry on an annual basis.

There are cast into doubt a third of all the workers we are talking about, and that they risk their health and their lives on a daily basis as other do. I ask that we include them, because we really are discussing de minimus in terms of this bill. I would ask the Members to support me on this amendment.

Mr. RAILSBACK. Mr. Chairman, will the gentleman yield?

Mr. HAYES of Indiana. I yield to the gentleman from Illinois.

Mr. RAILSBACK. Mr. Chairman, I want to commend the gentleman and join with him and offer my support for his amendment. I think that this act generally has been administered as poorly as any act I have ever seen the Congress pass. I think that strip miners, many of whom have worked in deep shaft mines, if they do not get some automatic help, I think they are going to be left out.

Mr. HAYES of Indiana. The gentleman raises a very excellent point because I think we also must recognize that many of these aboveground workers have mixed underground and surface experience, and so we cloud the issue with that category of miner when we do make this delegation of authority without proper guidelines.

Mr. RAILSBACK. In my district I think that every single claimant we have had has had dual experience, some deep shaft and then some strip mining. I feel very badly that we have had a great deal of difficulty in getting any success under the present administration of those claims.

Mr. HAYES of Indiana. I thank the gentleman for his remarks.

Mr. PERKINS. Mr. Chairman, will the gentleman yield?

Mr. HAYES of Indiana. I yield to the distinguished chairman of the committee.

Mr. PERKINS. Mr. Chairman, I am sure the distinguished gentleman from Indiana realizes that the present law covers strip mining operations in the event that the dust is as bad as exists in an underground mine.

Mr. HAYES of Indiana. Yes, Mr. Chairman.

Mr. PERKINS. The present act clearly spells that out. How does the gentleman's amendment differ? Is he making less stringent standards for strip mines than he is underground mines?

Mr. HAYES of Indiana. No, what my amendment would do would be to tighten up that delegation of authority which this bill gives to the Secretary of Health, Education, and Welfare and Labor. What we are saying is that he may determine when conditions are the same on the surface as underground. The Comptroller General's report of December 31, 1975, indicates that problems of measuring dust levels are enormous. They have contradictions inside the Mine Enforcement Safety Administration, and they have come to all different conclusions.

We know from experience in our surface mine areas in Kentucky, Illinois, and Indiana that dust measurement procedures there are extremely difficult to harden down into evidence.

MR. DENT. Mr. Chairman, I yield myself 2 minutes.

I would say to the gentleman that if he had discussed this matter with the committee, we would have pointed out to him that the entitlements do apply to a miner's condition of employment in a coal mine other than underground, which is substantially similar to that of an underground mine. A similar situation exists in current law.

In this respect, the committee was considering surface mining where exposure to coal dust was no less intense than that in an underground mine.

There is only one question that the Secretary must determine, and that is whether or not the intensity of the dust is such that it is conducive to black lung.

So the 30-year test applies to every line, upper and lower.

I would not suggest we dilute the Secretary's right to make a judgment on the matter, because we are now operating strip mines in a completely different character of work than they did in the early days, and that is that we have 18-, 20-, 27-yard shovels. We have a man sitting up there 150 feet in the air. He has a less chance of getting dust than the gentleman has right here on the floor.

Mr. HAYES of Indiana. I think it is a problem of measurement, and it is that less degree of chance that drives me to put them solely under the 30-year discretion.

Mr. DENT. The gentleman is covering every surface mine worker and the exposure conditions are simply not comparable. We cannot automatically put them under the 30 years.

Mr. Chairman, I would suggest that the Members vote against the amendment.

PARLIAMENTARY INQUIRIES

Mr. ERLENBORN. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. ERLENBORN. Mr. Chairman, since this amendment was one of the published amendments, 5 minutes in opposition to the amendment is available not counting against the limit?

The CHAIRMAN. The gentleman would be correct if debate on the amendment were outside of the limitation.

Mr. ERLENBORN. Mr. Chairman, may I claim that 5 minutes?

Mr. DENT. If the gentleman will yield how about giving me back my 3 minutes?

Mr. ERLENBORN. Mr. Chairman, I understood the gentleman to yield himself 2 minutes of his own time.

Mr. DENT. Because he did not tell me what to do.

Mr. ERLENBORN. I understood there were 5 minutes in opposition available.

The CHAIRMAN. The gentleman from Pennsylvania had 3 minutes.

Mr. ERLENBORN. Mr. Chairman, may I have the 5 minutes, under the rule?

The CHAIRMAN. It will be counted against the gentleman's time if the gentleman takes it at this time.

Mr. ERLENBORN. Mr. Chairman, I understand there are 5 minutes in opposition that are available, under the rule; and I claim those 5 minutes.

The CHAIRMAN. It is the Chair's understanding that at this point debate on the amendment is under the limitation. The gentleman could claim his 5 minutes under the rule if the amendment were offered, notwithstanding the limitation, but not at this time.

Mr. ERLENBORN. Mr. Chairman, I have a further parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. ERLENBORN. Mr. Chairman, I have 5 minutes, under the time limitation?

The CHAIRMAN. That is correct.

Mr. ERLENBORN. Without using that, am I not entitled to 5 minutes to oppose a published or printed amendment?

The CHAIRMAN. No, because the proponent of the amendment did not take his time under the rule. The gentleman from Indiana (Mr. HAYES) had 5 minutes reserved under the limitation of time. The Chair understands the gentleman from Indiana took his time under the limitation and not under the rule.

Mr. ERLENBORN. I thank the Chairman.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Indiana (Mr. HAYES).

The question was taken; and on a division (demanded by Mr. HAYES of Indiana) there were ayes 9, noes 29.

So the amendment was rejected.

AMENDMENT OFFERED BY MR. MYERS OF PENNSYLVANIA

Mr. MYERS of Pennsylvania. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. MYERS of Pennsylvania: Page 62, strike out line 22 and all that follows through line 10 on page 63.

Renumber succeeding sections.

Mr. MYERS of Pennsylvania. Mr. Chairman, I ask unanimous consent to reserve 2 minutes of my time.

The CHAIRMAN. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The CHAIRMAN. Is the gentleman seeking 2 or 3 minutes?

Mr. MYERS of Pennsylvania. Three minutes, Mr. Chairman.

The CHAIRMAN. The gentleman is recognized for 3 minutes.

(Mr. MYERS of Pennsylvania asked and was given permission to revise and extend his remarks.)

Mr. MYERS of Pennsylvania. Mr. Chairman, what this amendment does is it wipes out what we have in this bill as an accident indemnity clause, which has nothing to do with black lung benefits. The bill provides that if a miner prior to 1971 was killed in a mine accident—and it does not even have to be below ground and it does not even have to have been in an anthracite mine—his benefactors can participate in black lung benefits.

I think we ought to reflect back on some of the great statements that were placed in the RECORD today about the difference between black lung benefits because they involve soft coal or hard coal and how that makes a big difference in how that should be evaluated.

What we are trying to provide is a bill that is fair, fair to the taxpayers as well as fair to the benefactors. There is no provision that says if a steelworker gets killed after 17 years because a piece of metal fell off a hook, his wife or his benefactors should get a pension.

That is essentially what we are dealing with here. I think if we want to be honest about it, there is no justification for including in this bill an accident death indemnity. I think it weakens the bill, and I think it detracts from the intent of the bill.

Mr. Chairman, I would question whether the proponents of the original bill can justify why an accident benefit should be included in this bill, and I ask that the Members support my amendment and withdraw this provision from the bill.

Mr. PERKINS. Mr. Chairman, I rise in opposition to the amendment.

(By unanimous consent, Mr. DENT yielded 2 minutes to Mr. PERKINS.)

The CHAIRMAN. The gentleman from Kentucky (Mr. PERKINS) is recognized for 2 minutes.

Mr. PERKINS. Mr. Chairman, I was yielded 2 minutes. I had 5 minutes.

Mr. DENT. Mr. Chairman, I ask unanimous consent that I be permitted to yield my remaining total time of 3 minutes to the gentleman from Kentucky (Mr PERKINS).

The CHAIRMAN. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The CHAIRMAN. The Chair recognizes the gentleman from Kentucky (Mr. PERKINS) for 3 minutes.

Mr. PERKINS. Mr. Chairman, let me state that the amendment offered by the gentleman from Pennsylvania (Mr. MYERS) is without merit in my judgment.

Section 14 of the bill provides that widows and surviving dependents of miners who had been employed for 17 or more years in the mines, and who were killed in mine accidents on or before June 30, 1971, would be eligible for benefits. Such benefits would be reduced by the amount received through workmen's compensation, unemployment compensation, or disability laws in the miner's State.

The amendment of the gentleman from Pennsylvania strikes this provision from the bill. He suggests that this provision is unrelated to the general purposes of this act. The fact is, as several expert witnesses testified, a great many miners who have worked in the mines for 10, 12, 15, or 17 years have pneumoconiosis. A substantial number of these miners, however, continue working even though their pneumoconiosis has reached the state where it is irreversible. They have reached the state where even regardless of medical treatment and regardless of whether they stay in the mines they will be disabled and die of this dreaded disease.

It is typical of the miner, however, that he remains on the job even when he could be collecting benefits from Social Security under the black lung law or workmen's compensation. Many of the miners who died in accidents prior to 1971 most assuredly were afflicted very severely with this disease. In all fairness their widows and surviving dependents should now be collecting benefits.

We may be reasonably sure that a substantial number of the 78 miners who were buried under the hill at Farmington, W. Va., at the time they died had severe cases of pneumoconiosis. Many others who had this disease lay buried forever, their widows will never be able to prove that they suffered from this disease at the time of their death. There were many others who have been removed from the mines but who, at the time of their death, suffered severe symptoms of chronic lung disease which we can now recognize as black lung.

Cases such as these are relatively few in number, but they represent very substantial hardship to the widows and dependent survivors involved. There may be as many as 1,650 eligible survivors. The best estimate is that this particular provision would cost approximately $4.25 million in fiscal year 1977. The cost, as laid out on page 29 of the committee report, would rise slightly. By 1984 the 8-year cost of this provision would be only $40 million—an average of $5 million a year.

This relatively small amount of money would be a small price to pay to compensate the widows and surviving dependents of those who have been killed by accidents in the mines. Some of these widows have received workmen's compensation—the amounts of such compensation are relatively small. Such widows may receive only $75 to $150 a month or so, and inevitably they reach the statutory maximum provided by the State workmen's compensation system and even those pitiful amounts are cut off. They are cut off long before the widow becomes eligible for social security benefits and frequently leave her and her dependent children destitute and on welfare if welfare is available. I hope my colleagues will join me in soundly rejecting the amendment.

Mr. ERLENBORN. Mr. Chairman. I ask unanimous consent to reserve 4 minutes of my time.

The CHAIRMAN. Is there objection to the request of the gentleman from Illinois?

There was no objection.

The CHAIRMAN. The Chair recognizes the gentleman from Illinois (Mr. ERLENBORN) for 1 minute.

(Mr. ERLENBORN asked and was given permission to revise and extend his remarks.)

Mr. ERLENBORN. Mr. Chairman. I rise in support of this amendment.

The provision now in the bill was added in the full committee. In the markup session it was opposed initially by the gentleman from Pennsylvania (Mr. DENT), I think for good reason.

However, Mr. Chairman, I think the gentleman from Pennsylvania (Mr. MYERS), in offering the amendment, has made an eloquent and obviously well-

merited plea to remove this death benefit from the bill.

As a matter of fact, under the terms of the present legislation, if someone was dependent at the time of the death of the coal miner, he gets a lifetime benefit. This looks back without limitation. We may find coal miners who died many, many years ago with, at that time, minor children who are today parents or grandparents themselves and yet may qualify for lifetime benefits under this provision.

Mr. Chairman, it just makes no sense at all. It is even more ridiculous than the other provisions in the bill.

Mr. Chairman, I hope and urge that the amendment will be adopted to take this language out.

The CHAIRMAN. Are there any other Members who wish to be recognized for or against this amendment?

If not, the question is on the amendment offered by the gentleman from Pennsylvania (Mr. MYERS).

The question was taken; and the Chairman announced that the noes appeared to have it.

Mr. MYERS of Pennsylvania. Mr. Chairman, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

The CHAIRMAN. Evidently a quorum is not present.

The Chair announces that pursuant to clause 2, rule XXIII, he will vacate proceedings under the call when a quorum of the Committee appears.

Members will record their presence by electronic device.

The call was taken by electronic device.

The CHAIRMAN. A quorum of the Committee of the Whole has not appeared.

The Chair announces that a regular quorum call will now commence.

Members who have not already responded under the noticed quorum call will have a minimum of 15 minutes to report their presence. The call will be taken by electronic device.

The call was taken by electronic device, and the following Members failed to respond:

[Roll No. 76]

Ashley	Gude	Quillen
Aspin	Guyer	Railsback
Badillo	Harsha	Rangel
Bafalis	Hébert	Rinaldo
Barrett	Hinshaw	Robinson
Bergland	Jarman	Rosenthal
Blanchard	Jones, Ala.	Runnels.
Boland	Jones, N.C.	Ruppe
Bolling	Kelly	Scheuer
Burke, Calif.	Landrum	Seiberling
Cederberg	Leggett	Sikes
Chappell	Lehman	Simon
Collins, Ill.	McKay	Sisk
Conyers	McKinney	Solarz
Coughlin	Macdonald	Steed
Dickinson	Mathis	Stephens
Diggs	Metcalfe	Symms
Dingell	Mineta	Taylor, N.C.
Dodd	Mitchell, N.Y.	Teague
Drinan	Moorhead, Pa.	Udall
Esch	O'Hara	Vigorito
Eshleman	Obey	Whitehurst
Evans, Colo.	Patman, Tex.	Wilson, Tex.
Fish	Pepper	Young, Fla.
Ford, Mich.	Pike	Young, Ga.

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. GIBBONS, 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. 10760, and finding itself without a quorum, he had directed the Members to record their presence by electronic device, whereupon 357 Members recorded their presence, a quorum, and he submitted herewith the names of the absentees to be spread upon the Journal.

The Committee resumed its sitting.

RECORDED VOTE

The CHAIRMAN. The pending business is the demand of the gentleman from Pennsylvania (Mr. MYERS) for a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 141, noes 253, answered "present" 1, not voting 37, as follows:

[Roll No. 77]

AYES—141

Abdnor	Forsythe	Moore
Andrews, N. Dak.	Fountain	Moorhead, Calif.
Archer	Frenzel	Myers, Pa.
Armstrong	Goldwater	Nedzi
Ashbrook	Goodling	Nichols
Ashley	Gradison	O'Hara
Bauman	Grassley	Pettis
Bell	Hagedorn	Poage
Bennett	Hansen	Pressler
Bowen	Henderson	Pritchard
Breaux	Hicks	Quie
Brinkley	Hightower	Roberts
Brooks	Hillis	Robinson
Brown, Mich.	Holt	Rogers
Brown, Ohio	Hughes	Rousselot
Broyhill	Hutchinson	Sarasin
Burgener	Hyde	Satterfield
Burke, Fla.	Ichord	Schneebeli
Burleson, Tex.	Jarman	Schulze
Burlison, Mo.	Johnson, Pa.	Sebelius
Cederberg	Jones, N.C.	Shriver
Clancy	Jones, Okla.	Shuster
Clausen, Don H.	Kasten	Smith, Nebr.
Clawson, Del	Kelly	Spence
Cleveland	Kemp	Stanton, J. William
Cochran	Ketchum	Steelman
Cohen	Kindness	Steiger, Ariz.
Collins, Tex.	Krueger	Steiger, Wis.
Conable	Lagomarsino	Stephens
Conlan	Landrum	Stratton
Cotter	Latta	Sullivan
Coughlin	Lehman	Talcott
Crane	Lent	Taylor, Mo.
Daniel, Dan	Levitas	Taylor, N.C.
Daniel, R. W.	Lott	Thone
Derwinski	Lujan	Treen
Devine	McClory	Waggonner
Dickinson	McCloskey	Whitehurst
Downing, Va.	McCollister	Wiggins
du Pont	McDonald	Wilson, Bob
Edwards, Ala.	McEwen	Winn
Emery	McKinney	Wydler
English	Madigan	Wylie
Erlenborn	Mahon	Young, Alaska
Fenwick	Mann	Young, Fla.
Fish	Martin	
Flynt	Michel	
	Milford	
	Montgomery	

NOES—253

Abzug	Brademas	Delaney
Adams	Breckinridge	Dellums
Addabbo	Brodhead	Dent
Allen	Broomfield	Derrick
Ambro	Brown, Calif.	Diggs
Anderson, Calif.	Buchanan	Dingell
Anderson, Ill.	Burke, Calif.	Downey, N.Y.
Andrews, N.C.	Burke, Mass.	Drinan
Annunzio	Burton, John	Duncan, Oreg.
AuCoin	Burton, Phillip	Duncan, Tenn.
Badillo	Butler	Early
Baldus	Byron	Eckhardt
Baucus	Carney	Edgar
Beard, R.I.	Carr	Edwards, Calif.
Beard, Tenn.	Carter	Ellberg
Bedell	Chisholm	Evans, Colo.
Bergland	Clay	Evans, Ind.
Bevill	Conte	Fary
Biaggi	Corman	Fascell
Biester	Cornell	Findley
Bingham	D'Amours	Fisher
Blouin	Daniels, N.J.	Fithian
Boggs	Danielson	Flood
Bonker	Davis	Florio
	de la Garza	Flowers
Foley	McDade	Rodino
Ford, Mich.	McFall	Roe
Ford, Tenn.	McHugh	Roncalio
Fraser	McKay	Rooney
Frey	Madden	Rose
Fuqua	Maguire	Rosenthal
Gaydos	Mathis	Rostenkowski
Giaimo	Matsunaga	Roush
Gibbons	Mazzoli	Roybal
Gilman	Meeds	Russo
Ginn	Melcher	Ryan
Gonzalez	Meyner	St Germain
Green	Mezvinsky	Santini
Gude	Mikva	Sarbanes
Haley	Miller, Calif.	Scheuer
Hall	Miller, Ohio	Schroeder
Hamilton	Mineta	Seiberling
Hammer-schmidt	Minish	Sharp
Hanley	Mink	Shipley
Hannaford	Mitchell, Md.	Simon
Harkin	Mitchell, N.Y.	Skubitz
Harrington	Moakley	Slack
Harris	Moffett	Smith, Iowa
Harsha	Mollohan	Snyder
Hawkins	Moorhead, Pa.	Spellman
Hayes, Ind.	Morgan	Staggers
Hays, Ohio	Mosher	Stanton, James V.
Hechler, W. Va.	Moss	Stark
Heckler, Mass.	Mottl	Steed
Hefner	Murphy, Ill.	Stokes
Heinz	Murphy, N.Y.	Stuckey
Helstoski	Murtha	Studds
Holland	Myers, Ind.	Symington
Holtzman	Natcher	Thompson
Horton	Neal	Thornton
Howard	Nix	Traxler
Howe	Nolan	Tsongas
Hubbard	Nowak	Ullman
Hungate	Oberstar	Van Deerlin
Jacobs	O'Brien	Vander Jagt
Jeffords	O'Neill	Vander Veen
Jenrette	Ottinger	Vanik
Johnson, Calif.	Passman	Vigorito
Johnson, Colo.	Patten, N.J.	Walsh
Jones, Tenn.	Patterson, Calif.	Wampler
Jordan	Pattison, N.Y.	Waxman
Karth	Perkins	Weaver
Kastenmeier	Peyser	Whalen
Kazen	Pickle	White
Keys	Pike	Whitten
Koch	Preyer	Wilson, C. H.
Krebs	Price	Wirth
LaFalce	Quillen	Wolff
Leggett	Railsback	Wright
Litton	Randall	Yates
Lloyd, Calif.	Regula	Yatron
Lloyd, Tenn.	Reuss	Young, Tex.
Long, La.	Richmond	Zablocki
Long, Md.	Riegle	Zeferetti
McCormack	Risenhoover	

ANSWERED "PRESENT"—1

Bafalis

NOT VOTING—37

Alexander	Guyer	Rinaldo
Aspin	Hébert	Runnels
Barrett	Hinshaw	Ruppe
Blanchard	Jones, Ala.	Sikes
Boland	Macdonald	Sisk
Bolling	Metcalfe	Solarz
Chappell	Mills	Symms
Collins, Ill.	Obey	Teague
Conyers	Patman, Tex.	Udall
Dodd	Pepper	Wilson, Tex.
Esch	Rangel	Young, Ga.
Eshleman	Rees	
Evins, Tenn.	Rhodes	

Mrs. HOLT, Mrs. SULLIVAN, and Messrs. LEHMAN, DICKINSON, ROBERTS, and NICHOLS, changed their vote from "no" to "aye."

Mr. REGULA and Mr. VANDER JAGT changed their vote from "aye" to "no."

So the amendment was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN. The Chair recognizes the gentleman from Iowa (Mr. SMITH).

Mr. SMITH of Iowa. Mr. Chairman, I ask unanimous consent to yield my time to the gentleman from Pennsylvania (Mr. DENT).

The CHAIRMAN. Is there objection to the request of the gentleman from Iowa?

Mr. ASHBROOK. Mr. Chairman, I object.

The CHAIRMAN. Objection is heard.

The Chair recognizes the gentleman from Iowa (Mr. SMITH) for 5 minutes.

Mr. SMITH of Iowa. Mr. Chairman, I yield back the balance of my time.

Mr. WAMPLER. Mr. Chairman, I move to strike the requisite number of words.

(Mr. WAMPLER asked and was given permission to revise and extend his remarks.)

Mr. WAMPLER. Mr. Chairman, section 8 of the bill entitled "Evidence Required to Establish Claim" includes the following language:

Where there is no relevant medical evidence in the case of a deceased miner, such affidavit shall be considered to be sufficient to establish that the miner was totally disabled due to pneumoconiosis or that his death was due to pneumoconiosis.

For the purpose of establishing legislative history, I would like to inquire of the distinguished chairman of the subcommittee, the gentleman from Pennsylvania (Mr. DENT) as to the legislative intent of the committee pertaining to section 8 of the bill, that portion of the bill which permits, where there is no relevant medical evidence, the use of affidavits in order to establish disability claim for pneumoconiosis.

Mr. DENT. Mr. Chairman, the purpose of it was that the Secretary has not used affidavits as required by law in our opinion. Therefore, section 8 establishes affidavits of living miners shall be effective evidence in the case of a deceased miner for whom no relevant medical evidence exists.

This was caused by the fact that up until recent years, in some States there was a prohibition against a recognition of pneumoconiosis as a crippling disease or a disease that could cause death, so that no medical records were made by any doctors containing any reference to black lung in any fashion, and no death certificates were allowed to recognize black lung as the cause of death. So, affidavits have been resorted to when such affidavits are from persons who worked in the mines, where affidavits taken by other miners or families in a coal mining town whose families also had black lung payments coming to them, who worked in the same mine.

Mr. WAMPLER. Would it be a reasonable interpretation of section 8, that an affidavit which indicated that the deceased miner had the usual symptoms of pneumoconiosis such as shortness of breath, lack of stamina, chronic coughing, may be considered pertinent evidence as a part of the affidavit to support the claim?

Mr. DENT. Yes.

Mr. WAMPLER. Would it be the opinion of the gentleman from Pennsylvania that a death certificate could be used as relevant medical evidence as it pertained to the cause of death?

Mr. DENT. What it really does, the provision just permits the application of knowledge of the miner's physical condition where it supplies the only information.

Mr. SKUBITZ. Mr. Chairman, will the gentleman yield?

Mr. WAMPLER. I yield to the gentleman from Kansas.

Mr. SKUBITZ. Mr. Chairman, I asked the gentleman to yield so that I might direct a question to the gentleman from Pennsylvania.

Is it not true that although under existing law, when the widow of a deceased miner, one who died prior to the passage of this law, the law provides that affidavits could be signed by those who were familiar with the case? No matter how many affidavits were filed by a widow, it seems as though the Social Security Board and those who ruled on these specific cases would come in with a death certificate that might say the deceased died of natural causes or heart failure, and therefore there was no proof or evidence of black lung. Is this correct?

Mr. DENT. This is absolutely correct.

Mr. SKUBITZ. Is this one of the reasons that the bill here is before us today?

Mr. DENT. Exactly.

Mr. WAMPLER. I might say to the distinguished gentleman from Pennsylvania that I have examined many death certificates of deceased disabled coal miners who were constituents of mine. Even though many of the death certificates state the immediate cause of death was cardiac failure, I think it is fair to say that there is ample medical evidence to support the theory that while cardiac failure was the immediate cause of death, black lung or serious breathing impairment was the proximate cause of death.

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. SKUBITZ

Mr. SKUBITZ. Mr. Chairman, I offer an amendment in the nature of a substitute.

The Clerk read as follows:

Amendment in the nature of a substitute offered by Mr. SKUBITZ: Strike out all after the enacting clause, and insert the following:

That section 411(c) of the Federal Coal Mine Health and Safety Act of 1969 is amended by striking out "and" after paragraph (3), by striking out the period at the end of paragraph (4) and inserting in lieu thereof "; and", and by adding at the end thereof the following new paragraph:

"(5) if a miner was employed for twenty-five years or more in one or more underground coal mines, and if such miner died prior to the effective date of this Act, there shall be an irrebuttable presumption that his death was due to pneumoconiosis or that at the time of his death he was totally disabled by pneumoconiosis. 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."

SEC. 2. The amendment made by the first section of this Act shall be effective as of the date of enactment of the Federal Coal Mine Health and Safety Act of 1969.

(Mr. SKUBITZ asked and was given permission to revise and extend his remarks.)

Mr. SKUBITZ. Mr. Chairman, my grandfather was a coal miner.

Every uncle worked in the mines. Each entered the mine the day he reached 15—not so much for the coal he could mine—but because of the extra turn grandad received by bringing a new apprentice into the mines.

My father was a coal miner who lied about his age so that he could get a job shooting shots, which paid a few cents more than a coal miner received.

When he was 19 years of age—I was less than 8 months of age and my mother had just turned 16—he was the victim of a mine explosion, a shot backfired.

The ignited gas ignited the fine coal dust in the air, and the air circulating through the mine carried the flame through every entry and room in the mine till it became a blazing inferno.

The force of the explosion thrust him into a sump hole filled with water. That is all that saved his life. But his face and head were burned beyond recognition—the hot flame seared his bronchial tubes.

Thank God, he lived. He always had a severe cough and doctors told him it would never be cured because of the damage to his bronchial tubes and lungs from the explosion. Well, dad died at 54, a young man, but old for his years, and the death certificate read "cause of death" cancer of the bronchial tubes.

I worked in the mines. Mining is hard work—it is dangerous work. If you do not believe it is hard work, crawl under this table and stay there 8 hours. Just use an empty shovel and pretend you are shoveling coal for 4 hours. Act like you are swinging a pick and making a cutting into the solid face for an hour so that the shot you are going to prepare does not backfire.

Pretend for 1 hour you are drilling a hole in order to prepare a shot. But once or twice a month be prepared to go home. Your entry or room is so full of coal dust that you cannot breathe because of poor air. That is what happened at the turn of the century in Kansas in the coal mines where the vein was 2 feet, 6 inches to 3 feet, 2 inchs in thickness. How well I remind miners—all chewing tobacco in order that coal dust be caught in the saliva. Men spitting out gobs of mucous black with coal dust. Handkerchief filled with coal dust, not on the days they worked, but on weekends, the day of rest, no one used them during weekdays.

I supported the Coal Mine Safety Act in 1969.

I supported the amendments in 1972 which liberalized the act and created the rebuttable presumption that any man who worked in the mine 15 years was presumed to have black lung.

But what has happened? Thousands of cases are being held up by the Department of Labor. They have been there for months, ignored. When you call about them you get the same old story, "We have such a backlog."

And when an answer is sent out, it invariably asks for more information, when the claimant has already submitted all the evidence he has to support his claim.

Mr. Chairman, the bill before you is one born out of desperation. I think it goes too far. I question that with the new air standards it is correct to provide that 25 years or 30 years create an irrebuttable presumption that one has black lung. If a man can undergo a medical examination, the tests will show whether black lung exists.

And yet, I have not at this moment decided how I shall vote.

All my amendment proposes to do is place a proviso in the existing law for the widow of the deceased miner who labored in the mines for 25 years prior to the enactment of the law in 1969.

This would create an irrebuttable presumption that the miner died of black lung and the widow would be entitled to benefits.

I am sick at heart for these widows whose husbands worked for starvation wages and now find their claims denied by the Government on the grounds that it was not established that the deceased miner died of black lung, or payment or benefits is denied because the death certificate showed death due to heart failure. Everyone dies of heart failure. The relevant question is, What brought that condition on?

For these reasons I ask for your support in the vote to adopt this amendment.

Mr. MURTHA. Mr. Chairman, I ask unanimous consent that I may be permitted to yield my time to the gentleman from Pennsylvania (Mr. DENT).

The CHAIRMAN. Is there objection to the request of the gentleman from Pennsylvania?

Mr. ASHBROOK. Mr. Chairman, I object.

The CHAIRMAN. Objection is heard.

The Chair recognizes the gentleman from Pennsylvania (Mr. MURTHA).

Mr. DENT. Mr. Chairman, will the gentleman yield?

Mr. MURTHA. I yield to the gentleman from Pennsylvania.

Mr. DENT. Mr. Chairman, if we adopt the amendment of the gentleman from Kansas (Mr. SKUBITZ), what we will be doing is striking out the entire act after the enacting clause and making only in order the payment of compensation to the widows of any miner who had worked in a mine 25 years before the passage of the 1968 act.

The gentleman's amendment provides for absolutely no transfer of responsibility to the operators. It strikes out the entire legislation before us.

Mr. Chairman, after the very warming speech made by the gentleman from Kansas, I thought he intended to come out and try to do something to help the present day miners, too.

Mr. SKUBITZ. Mr. Chairman, will the gentleman yield?

Mr. DENT. I yield to the gentleman from Kansas.

Mr. SKUBITZ. Mr. Chairman. I say to my friend, the gentleman from Pennsylvania (Mr. DENT) that after 30 years, when a miner has black lung, as 60 percent of them do, they ought to be able to establish their case, and they are entitle to it, but the 40 percent that cannot should not be able to do it.

My amendment simply takes care of the people who had black lung after having worked in the coal mines before this act, where there was no medical testimony or evidence available, where the affidavits that are on file were ignored.

Mr. Chairman, these widows will have the opportunity now to have the benefits of this act. That is all my amendment does.

Mr. DENT. Mr. Chairman, I thank the gentleman for his information.

I do not want to hold this up any longer. Exactly what I said is exactly what he is doing. He is condemning a presumption of 30 years, but he establishes a 25-year presumption for accident-killed miners for when we would make compensation for the accident. They died in the mine from known causes, and under this amendment of his, they would then pay the widows, who are the only ones who could collect the compensation.

Mr. Chairman, I suggest that this is not the intent of the act, and I hope that it is not the intent of this Committee.

The CHAIRMAN. Are there other Members who wish to be recognized?

Mr. ERLENBORN. Mr. Chairman, I move to strike the requisite number of words.

(Mr. ERLENBORN asked and was given permission to revise and extend his remarks.)

The CHAIRMAN. The gentleman from Illinois (Mr. ERLENBORN) is recognized for 4 minutes.

Mr. ERLENBORN. Mr. Chairman, I sat here a few minutes ago and observed the silence in this Chamber as the distinguished gentleman from Kansas (Mr. SKUBITZ), the author of the amendment, told us the story of his father and his experience in the coal mines. Here is a man who, along with his family, has experienced the difficulties that coal miners and their families do experience. He is a man of compassion, who realizes that medical evidence may not be available for the families, the widows, and survivors of miners who became deceased years ago but were long-term coal miners.

Mr. Chairman, the amendment that the gentleman from Kansas (Mr. SKUBITZ) has offered is, I think, a reasonable amendment, one that could be supported by all the House, and I hope that the amendment will be adopted.

The CHAIRMAN. The question is on the amendment in the nature of a substitute offered by the gentleman from Kansas (Mr. SKUBITZ).

The question was taken; and on a division (demanded by Mr. SKUBITZ) there were—ayes 43, noes 86.

So the amendment in the nature of a substitute was rejected.

The CHAIRMAN. The question is on the committee amendment in the nature of a substitute, as amended.

The question was taken; and on a division (demanded by Mr. DENT) there were ayes 106, noes 38.

So the committee amendment in the nature of a substitute, as amended, was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly, the Committee rose; and the Speaker having resumed the chair, Mr. GIBBONS, 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. 10760) to amend the Federal Coal Mine Health and Safety Act to revise the black lung benefits program established under such act in order to transfer the residual liability for the payment of benefits under such program from the Federal Government to the coal industry, and for other purposes, pursuant to House Resolution 1056, he reported the bill back to the House with an amendment 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 to the committee amendment in the nature of a substitute adopted in the Committee of the Whole. If not, the question is on the amendment.

The amendment was 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. ERLENBORN

Mr. ERLENBORN. Mr. Speaker, I offer a motion to recommit.

The SPEAKER. Is the gentleman opposed to the bill.

Mr. ERLENBORN. I am, Mr. Speaker.

The SPEAKER. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. ERLENBORN moves to recommit the bill H.R. 10760 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. ERLENBORN. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 210, nays 183, answered "present" 2, not voting 37, as follows:

[Roll No. 78]

YEAS—210

Abzug	Byron	Fithian
Addabbo	Carney	Flood
Alexander	Carr	Florio
Allen	Carter	Flowers
Ambro	Chisholm	Foley
Anderson, Calif.	Clay	Ford, Mich.
	Corman	Ford, Tenn.
Annunzio	Cornell	Fraser
Badillo	D'Amours	Gaydos
Baldus	Daniels, N.J.	Giaimo
Baucus	Danielson	Gibbons
Beard, R.I.	de la Garza	Gilman
Bedell	Delaney	Gonzalez
Bergland	Dellums	Green
Bevill	Dent	Gude
Biaggi	Diggs	Hall
Biester	Dingell	Hammer-schmidt
Bingham	Downey, N.Y.	
Blouin	Drinan	Hanley
Boggs	Duncan, Oreg.	Hannaford
Bonker	Duncan, Tenn.	Harkin
Brademas	Early	Harrington
Brodhead	Eckhardt	Harris
Brown, Calif.	Edgar	Hawkins
Buchanan	Edwards, Calif.	Hayes, Ind.
Burke, Calif.	Eilberg	Hays, Ohio
Burke, Mass.	Evans, Colo.	Hechler, W. Va.
Burton, John	Fary	Heinz
Burton, Phillip	Findley	Helstoski

Hightower	Morgan	St Germain
Holtzman	Moss	Sarbanes
Howard	Mottl	Scheuer
Howe	Murphy, Ill.	Schroeder
Hubbard	Murphy, N.Y.	Seiberling
Johnson, Calif.	Murtha	Shipley
Johnson, Colo.	Myers, Ind.	Shuster
Johnson, Pa.	Natcher	Simon
Jones, Tenn.	Nedzi	Slack
Jordan	Nix	Smith, Iowa
Karth	Nolan	Staggers
Kastenmeier	Nowak	Stanton,
Koch	Oberstar	James V.
Krebs	Obey	Stark
LaFalce	O'Hara	Steed
Leggett	O'Neill	Stokes
Lehman	Ottinger	Studds
Litton	Passman	Symington
Lloyd, Tenn.	Patten, N.J.	Thompson
Long, Md.	Patterson,	Thornton
Lujan	Calif.	Traxler
McCormack	Pattison, N.Y.	Tsongas
McDade	Perkins	Ullman
McFall	Peyser	Van Deerlin
McHugh	Pike	Vander Veen
McKay	Price	Vanik
Madden	Quillen	Vigorito
Maguire	Railsback	Wampler
Matsunaga	Randall	Waxman
Meeds	Reuss	Weaver
Melcher	Richmond	Whalen
Meyner	Riegle	White
Mezvinsky	Risenhoover	Whitten
Miller, Calif.	Rodino	Wilson, C. H.
Miller, Ohio	Roe	Wirth
Mineta	Roncalio	Wolff
Minish	Rooney	Yates
Mink	Rose	Yatron
Mitchell, Md.	Rosenthal	Young, Tex.
Moakley	Rostenkowski	Zablocki
Moffett	Roybal	Zeferetti
Mollohan	Russo	
Moorhead, Pa.	Ryan	

NAYS—183

Abdnor	Flynt	Mathis
Adams	Forsythe	Mazzoli
Anderson, Ill.	Fountain	Michel
Andrews,	Frenzel	Mikva
N. Dak.	Frey	Milford
Archer	Fuqua	Mills
Armstrong	Ginn	Mitchell, N.Y.
Ashbrook	Goodling	Montgomery
Ashley	Gradison	Moore
AuCoin	Grassley	Moorhead,
Bauman	Hagedorn	Calif.
Beard, Tenn.	Haley	Myers, Pa.
Bell	Hamilton	Neal
Bennett	Hansen	Nichols
Bowen	Harsha	O'Brien
Breaux	Heckler, Mass.	Pettis
Breckinridge	Hefner	Pickle
Brinkley	Henderson	Poage
Brooks	Hicks	Pressler
Broomfield	Hillis	Preyer
Brown, Mich.	Holland	Pritchard
Brown, Ohio	Holt	Quie
Broyhill	Horton	Regula
Burgener	Hughes	Rhodes
Burleson, Tex.	Hungate	Robinson
Burlison, Mo.	Hutchinson	Rogers
Butler	Hyde	Roush
Cederberg	Ichord	Rousselot
Clancy	Jacobs	Santini
Clausen,	Jarman	Sarasin
Don H.	Jeffords	Satterfield
Clawson, Del	Jenrette	Schneebeli
Cleveland	Jones, N.C.	Schulze
Cochran	Jones, Okla.	Sebelius
Cohen	Kasten	Sharp
Collins, Tex.	Kazen	Shriver
Conable	Kelly	Skubitz
Conlan	Kemp	Smith, Nebr.
Conte	Ketchum	Snyder
Cotter	Keys	Spellman
Coughlin	Kindness	Spence
Crane	Krueger	Stanton,
Daniel, Dan	Lagomarsino	J. William
Daniel, R. W.	Landrum	Steelman
Davis	Latta	Steiger, Ariz.
Derrick	Lent	Steiger, Wis.
Derwinski	Levitas	Stephens
Devine	Lloyd, Calif.	Stratton
Dickinson	Long, La.	Stuckey
Downing, Va.	Lott	Sullivan
du Pont	McClory	Talcott
Edwards, Ala.	McCloskey	Taylor, Mo.
Emery	McCollister	Taylor, N.C.
English	McDonald	Thone
Erlenborn	McEwen	Treen
Evans, Ind.	McKinney	Vander Jagt
Fascell	Madigan	Waggonner
Fenwick	Mahon	Walsh
Fish	Mann	Whitehurst
Fisher	Martin	Wiggins
Wilson, Bob	Wydler	Young, Fla.
Winn	Wylie	
Wright	Young, Alaska	

ANSWERED "PRESENT"—2

Andrews, N.C. Bafalis

NOT VOTING—37

Aspin	Goldwater	Roberts
Barrett	Guyer	Runnels
Blanchard	Hébert	Ruppe
Boland	Hinshaw	Sikes
Bolling	Jones, Ala.	Sisk
Burke, Fla.	Macdonald	Solarz
Chappell	Metcalfe	Symms
Collins, Ill.	Mosher	Teague
Conyers	Patman, Tex.	Udall
Dodd	Pepper	Wilson, Tex.
Esch	Rangel	Young, Ga.
Eshleman	Rees	
Evins, Tenn.	Rinaldo	

The Clerk announced the following pairs:

On this vote:

Mr. Hébert for, with Mr. Roberts against.
Mr. Teague for, with Mr. Sikes against.
Mr. Blanchard for, with Mr. Rees against.
Mr. Rangel for, with Mr. Esch against.
Mr. Barrett for, with Mr. Guyer against.
Mr. Macdonald of Massachusetts for, with Mr. Goldwater against.
Mr. Runnels for, with Mr. Eshleman against.
Mr. Conyers for, with Mr. Symms against.
Mr. Boland for, with Mr. Burke of Florida against.

Until further notice:

Mr. Solarz with Mr. Aspin.
Mr. Chappell with Mr. Udall.
Mr. Young of Georgia with Mr. Dodd.
Mr. Evins of Tennessee with Mr. Jones of Alabama.
Mr. Metcalfe with Mr. Charles Wilson of Texas.
Mr. Pepper with Mr. Patman.

Mr. WOLFF changed his vote from "nay" to "yea."

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

AUTHORIZING CLERK TO MAKE CORRECTIONS IN ENGROSSMENT OF H.R. 10760

Mr. DENT. Mr. Speaker, I ask unanimous consent that the Clerk may be authorized to correct section and subsection designations and punctuation in the engrossment of the bill H.R. 10760.

The SPEAKER. Is there objection to the the request of the gentleman from Pennsylvania?

There was no objection.

94TH CONGRESS
2D SESSION

H. R. 10760

IN THE SENATE OF THE UNITED STATES

MARCH 3, 1976

Read twice and referred to the Committee on Labor and Public Welfare

AN ACT

To amend the Federal Coal Mine Health and Safety Act to revise the black lung benefits program established under such Act in order to transfer the residual liability for the payment of benefits under such program from the Federal Government to the coal industry, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Black Lung Benefits Reform Act of 1975".

ENTITLEMENTS

SEC. 2. (a) Section 411 (c) of the Federal Coal Mine Health and Safety Act of 1969 (30 U.S.C. 921 (c)), here-

inafter in this Act referred to as the "Act", is amended—

(1) in paragraph (3) thereof, by striking out "and" at the end thereof;

(2) in paragraph (4) thereof, by striking out the next to the last sentence thereof, and by striking out the period at the end thereof and inserting in lieu thereof a semicolon; and

(3) by adding at the end thereof the following:

"(5) if a miner was employed for thirty years or more in one or more underground coal mines such miner (or, in the case of a deceased miner, the eligible survivors of such miner) shall be entitled to the payment of benefits; and

"(6) if a miner was employed for twenty-five years or more in one or more anthracite coal mines such miner (or, in the case of a deceased miner, the eligible survivors of such miner) shall be entitled to the payment of benefits.

The Secretary shall not apply all or a portion of any requirement of this subsection that a miner shall have worked in an underground mine if the Secretary determines that conditions of such miner's employment in a coal mine other than an underground mine were substantially similar to conditions in an underground mine.".

(b) Section 412(a)(1) of the Act (30 U.S.C. 922 (a)(1)) is amended—

(1) by inserting immediately after "pneumoconiosis," the following: "or in the case of a miner entitled to benefits under paragraph (5) or paragraph (6) of section 411(c) of this title,";

(2) by striking out "disabled" the first place it appears therein; and

(3) by inserting immediately after "disability" the second place it appears therein the following: ", or during the period of such entitlement,".

(c)(1) Section 414(a) of the Act (30 U.S.C. 924 (a)) is amended by adding at the end thereof the following new paragraph:

"(4) A claim for benefits under this part may be filed at any time on or after the date of the enactment of the Black Lung Benefits Reform Act of 1975 by a miner (or, in the case of a deceased miner, the eligible survivors of such miner) if the date of the last exposed employment of such miner occurred before December 30, 1969.".

(2) The Secretary of Labor shall be responsible for the administration of the provisions of section 414(a)(4) of the Act (30 U.S.C. 924(a)(4)), as added by paragraph (1).

(d) Section 414(e) of the Act (30 U.S.C. 924(e)) is

amended by inserting immediately after "pneumoconiosis" the following: ", or with respect to an entitlement under paragraph (5) or paragraph (6) of section 411(c) of this title,".

(e) (1) Section 421(a) of the Act (30 U.S.C. 931(a)) is amended by inserting immediately after "pneumoconiosis" the second place it appears therein the following: ", and in any case in which benefits based upon eligibility under paragraph (5) or paragraph (6) of section 411(c) are involved,".

(2) Section 421(b)(2)(C) of the Act (30 U.S.C. 931(b)(2)(C)) is amended by inserting immediately before the semicolon at the end thereof the following: ", except that such standards shall not be required to include provisions for the payment of benefits based upon conditions substantially equivalent to conditions described in paragraphs (5) and (6) of section 411(c)".

(f) Section 430 of the Act (30 U.S.C. 938) is amended by inserting "and by the Black Lung Benefits Reform Act of 1975" immediately after "1972", by inserting immediately after "section 411(c)(4)" the following: "and the applicability of entitlements based upon conditions described in paragraphs (5) and (6) of section 411(c),", and by striking out "whether a miner was employed at least fifteen

years" and inserting in lieu thereof the following: "the period during which the miner was employed".

OFFSET AGAINST WORKMEN'S COMPENSATION BENEFITS

SEC. 3. The first sentence of section 412 (b) of the Act (30 U.S.C. 922 (b)) is amended by inserting immediately after "disability of such miner" the following: "due to pneumoconiosis".

CURRENT EMPLOYMENT AS A BAR TO BENEFITS

SEC. 4. (a) The first sentence of section 413 (b) of the Act (30 U.S.C. 923 (b)) is amended by inserting immediately before the period at the end thereof the following: "or solely on the basis of employment as a miner if (1) the location of such employment has recently been changed to a mine area having a lower concentration of dust particles; (2) the nature of such employment has been changed so as to involve less rigorous work; or (3) the nature of such employment has been changed so as to result in the receipt of substantially less pay".

(b) Section 413 of the Act (30 U.S.C. 923) is amended by adding at the end thereof the following new subsection:

"(d) (1) A miner may file a claim for benefits whether or not such miner is employed by an operator of a coal mine at the time such miner files such claim.

"(2) The Secretary shall notify a miner, as soon as practicable after the Secretary receives a claim for benefits from such miner, whether, in the opinion of the Secretary, such miner—

"(A) is eligible for benefits on the basis of the provisions of paragraph (1), (2), or (3) of subsection (b); or

"(B) would be eligible for benefits, except for the circumstances of the employment of such miner at the time such miner filed a claim for benefits.".

APPEALS

SEC. 5. The last sentence of section 413 (b) of the Act (30 U.S.C. 923 (b)) is amended by inserting immediately before the period at the end thereof the following: ", except that a decision by an administrative law judge in favor of a claimant may not be appealed or reviewed, except upon motion of the claimant".

INDIVIDUAL NOTIFICATIONS

SEC. 6. Part B of title IV of the Act (30 U.S.C. 911 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 416. (a) For purposes of assuring that all individuals who may be eligible for benefits under this part are afforded an opportunity to apply for and, if entitled thereto, to receive such benefits, the Secretary shall undertake

a program to locate individuals who are likely to be eligible for such benefits and have not filed a claim for such benefits.

"(b) The Secretary shall seek to determine, in cooperation with operators and with the Secretary of the Interior, the names and current addresses of individuals having long periods of employment in coal mining and, if such individuals are deceased, the names and addresses of their widows, children, parents, brothers, and sisters. The Secretary shall then directly, by mail, by personal visit by a delegate of the Secretary, or by other appropriate means, inform any such individuals (other than those who have filed a claim for benefits under this title) of the possibility of their eligibility for benefits, and offer them individualized assistance in preparing their claims where it is appropriate that a claim be filed.

"(c) Notwithstanding any other provision of this part, a claim for benefits under this part, in the case of an individual who has been informed by the Secretary under subsection (b) of the possibility of his eligibility for benefits, shall, if filed no later than six months after the date he was so informed, be considered on the same basis as if it had been filed on June 30, 1973.".

DEFINITIONS

SEC. 7. (a) Section 402(f) of the Act (30 U.S.C. 902(f)) is amended by adding at the end thereof the following new undesignated paragraph:

"With respect to a claim filed after June 30, 1973, such regulations shall not provide more restrictive criteria than those applicable to a claim filed on June 30, 1973.".

(b) Section 402 of the Act (30 U.S.C. 902) is amended by inserting immediately after paragraph (g) the following new paragraph:

"(h) The term 'fund' means the Black Lung Disability Insurance Fund established by section 423(a).".

EVIDENCE REQUIRED TO ESTABLISH CLAIM

SEC. 8. (a) Section 413(b) of the Act (30 U.S.C. 923(b)) is amended by inserting immediately after the second sentence thereof the following new sentence: "Where there is no relevant medical evidence in the case of a deceased miner, such affidavits shall be considered to be sufficient to establish that the miner was totally disabled due to pneumoconiosis or that his death was due to pneumoconiosis.".

(b) The last sentence of section 413(b) of the Act (30 U.S.C. 923(b)) is amended by striking out "and (l)," and inserting in lieu thereof "(l), and (n),".

(c) The second sentence of section 413(b) of the Act (30 U.S.C. 923(b)) is amended by striking out the period at the end thereof and inserting a colon and the following: "*Provided*, That unless the Secretary has good cause to believe (1) that an X-ray is not of sufficient quality or an autopsy report is not accurate, to demonstrate the

presence of pneumoconiosis, or (2) that the condition of the miner is being fraudulently misrepresented, the Secretary shall accept such report, or in the case of the X-ray, accept the opinion of the claimant's physician, concerning the presence of pneumoconiosis and the stage of advancement of pneumoconiosis.".

CLAIMS FILED AFTER DECEMBER 31, 1973

SEC. 9. (a) (1) The first sentence of section 422 (a) of the Act (30 U.S.C. 932 (a)) is amended—

(A) by inserting immediately before the period at the end thereof the following: ", or with respect to entitlements established in paragraph (5) or paragraph (6) of section 411 (c) of this title"; and

(B) by inserting immediately after "except as otherwise provided in this subsection" the following: "and to the extent consistent with the provisions of this part,".

(2) The last sentence of section 422 (a) of the Act (30 U.S.C. 932 (a)) is amended—

(A) by striking out "benefits" and inserting in lieu thereof "premiums and assessments"; and

(B) by striking out "to persons entitled thereto".

(3) Section 422 (b) of the Act (30 U.S.C. 932 (b)) is amended by inserting "(1)" immediately after "(b)", and by adding at the end thereof the following new paragraph:

"(2) (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) of this part each operator of a coal mine in such State shall secure the payment of assessments against such operator under section 424 (g) of this part by (i) qualifying as a self-insurer in accordance with regulations prescribed by the Secretary; or (ii) insuring and keeping insured the payment of such assessments 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 (ii) of subparagraph (A) of this paragraph, every policy or contract of insurance shall contain—

"(1) a provision to pay assessments required under section 424 (g) of this part, notwithstanding the provisions of the State workmen's compensation law which may provide for payments which are less than the amount of such assessments;

"(2) a provision that insolvency or bankruptcy of the operator or discharge therein (or both) shall not relieve the carrier from liability for the payment of such assessments; 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 (ii) of subparagraph (A) of this paragraph 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.".

(4) Section 422(b)(1) of the Act, as so redesignated by paragraph (3), is amended—

(A) by striking out "benefits" and inserting in lieu thereof "premiums and assessments"; and

(B) by striking out "section 423" and inserting in lieu thereof "section 424".

(5) Section 422(c) of the Act (30 U.S.C. 932(c)) is amended to read as follows:

"(c) Benefits shall be paid during such period under this section by the fund, subject to reimbursement to the fund by operators in accordance with the provisions of section 424(g) of this title, 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 sec-

tion, except that (1) the Secretary may modify any such regulation promulgated by the Secretary of Health, Education, and Welfare; and (2) no operator shall be liable for the payment of any benefit (except as provided in section 424 (f) of this title) on account of death or total disability due to pneumoconiosis, or on account of any entitlement based upon conditions described in paragraphs (5) and (6) of section 411 (c), which did not arise, at least in part, out of employment in a mine during the period when it was operated by such operator.".

(6) Section 422 (e) of the Act (30 U.S.C. 932 (e)) is amended—

(A) by striking out "required" and inserting in lieu thereof "made"; and

(B) by adding "or" immediately after the semicolon in paragraph (1) thereof, by striking out ", or" at the end paragraph (2) thereof and inserting in lieu thereof a period, and by striking out paragraph (3) thereof.

(7) Section 422 (f) (2) of the Act (30 U.S.C. 932 (f) (2)) is amended—

(A) by inserting "paragraph (4), (5), or (6) of" immediately after "eligibility under";

(B) by striking out "section 411 (c) (4)" the first

place it appears therein and inserting in lieu thereof "section 411 (c)";

(C) by striking out "from a respiratory or pulmonary impairment"; and

(D) by striking out "section 411 (c) (4) of this title, incurred as a result of employment in a coal mine" and inserting in lieu thereof "any of such paragraphs".

(8) Section 422 (h) of the Act (30 U.S.C. 932 (h)) is amended by striking out the first sentence thereof.

(9) Section 422 (i) of the Act (30 U.S.C. 932 (i)) is amended to read as follows:

"(i) (1) The Secretary shall promulgate regulations providing for the prompt and expeditious consideration of claims under this section.

"(2) (A) The Secretary shall promulgate regulations providing for the prompt and equitable hearing of appeals by claimants who are aggrieved by any decision of the Secretary.

"(B) Any such hearing shall be held no later than forty-five days after the date upon which the claimant involved requests such hearing. A hearing may be postponed at the request of the claimant involved for good cause.

"(C) Any such hearing shall be held at a time and a place convenient to the claimant requesting such hearing.

"(D) Any such hearing shall be of record and shall be subject to the provisions of sections 554, 555, 556, and 557 of title 5, United States Code.

"(3) (A) Any individual, after any final decision of the Secretary made after a hearing to which he was a party, may obtain a review of such decision by a civil action commenced no later than ninety days after the mailing to him of notice of such decision, or no later than such further time as the Secretary may allow.

"(B) Such action shall be brought in a district court of the United States in the State in which the claimant resides.

"(C) The Secretary shall file, as part of his answer, a certified copy of the transcript of the record, including the evidence upon which the findings and decision complained of are based.

"(D) The court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Secretary, with or without remanding the case for a rehearing. The findings of the Secretary as to any fact, if supported by the weight of the evidence, shall be conclusive.

"(E) The court shall, on motion of the Secretary made before he files his answer, remand the case to the Secretary for further action by the Secretary, and may, at any time,

on good cause shown, order additional evidence to be taken before the Secretary, and the Secretary shall, after the case is remanded, and after hearing such additional evidence if so ordered, modify or affirm his findings of fact or his decision, or both, and shall file with the court any such additional and modified findings of fact and decision, and a transcript of the additional record and testimony upon which his action in modifying or affirming was based. Such additional or modified findings of fact and decision shall be reviewable only to the extent provided for review of the original findings of fact and decision.

"(F) The judgment of the court shall be final, except that it shall be subject to review in the same manner as a judgment in other civil actions. Any action instituted in accordance with this paragraph shall survive notwithstanding any change in the person occupying the office of Secretary or any vacancy in such office.".

(10) In the case of any miner or any survivor of a miner who is eligible for benefits under section 422 of the Act (30 U.S.C. 932) as a result of any amendment made by any provision of this Act, such miner or survivor may file a claim for benefits under such section no later than three years after the date of the enactment of this Act, or no later than the close of the applicable period for filing claims under

section 422 (f) of the Act (30 U.S.C. 932 (f)), whichever is later.

(b) Section 423 of the Act (30 U.S.C. 933) is amended to read as follows:

"SEC. 423. (a) (1) There is hereby established in the Treasury of the United States a trust fund to be known as the Black Lung Disability Insurance Fund. The fund shall consist of such sums as may be appropriated as advances to the fund under section 424 (e) (1) of this part, the assessments paid into the fund as required by section 424 (g), the premiums paid into the fund as required by section 424 (a), the interest on, and proceeds from, the sale or redemption of any investment held by the fund, and any penalties recovered under section 424 (e), including such earnings, income, and gains as may accrue from time to time which shall be held, managed, and administered by the trustees in trust in accordance with the provisions of this part and the fund.

"(2) Fund assets, other than such assets as may be required for necessary expenses, shall be used solely and exclusively for the purpose of discharging obligations of operators under this part. Operators shall have no right, title, or interest in fund assets, and none of the earnings of the fund shall inure to the benefit of any person, other than through

the payment of benefits under this part, together with appropriate costs.

"(b) (1) (A) The fund shall have seven trustees. Except as provided in subparagraph (B), trustees shall serve for terms of four years.

"(B) Of the trustees first elected under this subsection—

"(i) four shall be elected for terms of two years; and

"(ii) three shall be elected for terms of one year. The Secretary shall determine, before the date of the first election under this subsection, whether each trustee office involved in such election shall be for a term of one year or two years. Such determination shall be made through the use of an appropriate method of random selection, except that at least one trustee nominated under paragraph (2) (A) shall serve for a term of two years.

"(C) Any trustee may be a full-time employee of an operator, except that no more than one trustee may be employed by any one operator or any affiliate of such operator.

"(2) (A) Two trustees shall be nominated and elected by operators having an annual payroll not in excess of $1,500,000 (hereinafter referred to as 'small operators').

"(B) Five trustees shall be nominated and elected by all operators.

"(3) No later than 60 days after the date of the enactment of the Black Lung Benefits Reform Act of 1975, all operators shall certify to the Secretary their payrolls for the 12-month period ending December 31, 1974. The Secretary shall then publish a list setting forth the number of votes to which each small operator and each operator is entitled, computed on the basis of one vote for each $500,000 or fraction thereof of payroll. Trustees shall be elected no later than 180 days after the date of the enactment of such Act.

"(4) Candidates seeking nomination for election to the office of trustee under paragraph (2) (A) shall submit to the Secretary petitions of nomination reflecting the approval of small operators representing not less than 2 per centum of the aggregate annual payroll of all small operators. Candidates seeking such nomination under paragraph (2) (B) shall submit petitions reflecting the approval of operators representing not less than 2 per centum of the aggregate annual payroll of all operators.

"(5) The Secretary shall promulgate regulations for the nomination and election of trustees. Such regulations shall include provisions for the nomination and election of trustees, including the nomination and election of trustees to fill any vacancy caused by the death, disability, resignation, or removal of any trustee. The Secretary shall certify the results of all nominations and elections. Two or more trustees

may at any time file a petition, in the United States district court where the fund has its principal office, for removal of a trustee for malfeasance, misfeasance, or nonfeasance. The cost of any such action shall be paid from the fund, and the Secretary may intervene in any such action as an interested party.

"(6) The trustees shall organize by electing a Chairman and Secretary and shall adopt such rules governing the conduct of their business as they consider necessary or appropriate. Five trustees shall constitute a quorum and a simple majority of those trustees present and voting may conduct the business of the fund.

"(c) (1) The trustees shall act on behalf of all operators with respect to claims filed under this part.

"(2) (A) Except as provided by subparagraph (B), the fund may not participate or intervene as a party to any proceeding held for the purpose of determining claims for benefits under this part.

"(B) (i) If the fund is dissatisfied with any determination of the Secretary with respect to a claim for benefits under this part, the fund may, no later than thirty days after the date of such determination, file with the United States court of appeals for the circuit in which such determination was made a petition for review of such determination. A copy of such petition shall be forthwith transmitted by the clerk of the

court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which he based his determination, as provided in section 2112 of title 28, United States Code.

"(ii) The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive, except that the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary thereupon may make new or modified findings of fact and may modify his previous determination, and shall certify to the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

"(iii) The court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject 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.

"(iv) Any finding of fact of the Secretary relating to the interpretation of any chest roentgenogram or any other medical evidence which demonstrates the existence of pneumoconiosis or any other disabling respiratory or pulmonary impairment, shall not be subject to review under the provisions of this subparagraph.

"(3) No operator may bring any proceeding, or intervene in any proceeding, held for the purpose of determining claims for benefits under this part.

"(4) It shall be the duty of the trustees to report to the Secretary and to the operators no later than January 1 of each year on the financial condition and the results of the operations of the fund during the preceding fiscal year and on its expected condition during the current and ensuing fiscal year. Such report shall be included in a report to the Congress by the Secretary not later than March 1 of each year on the financial condition and the results of the operations of the fund during the preceding fiscal year and on its expected condition and operations during the current and next ensuing fiscal year. The report of the Secretary shall be printed as a House document of the session of the Congress to which the report is made.

"(5) (A) The trustees shall take control and management of the fund and shall have the authority to hold, sell, buy, exchange, invest, and reinvest the corpus and income of the fund. All premiums paid to the fund under section 424(a) (1) shall be held and administered by the trustees as a single fund, and the trustees shall not be required to segregate and invest separately any part of the fund assets which may be claimed to represent accruals or interests of any individuals. It shall be the duty of the trustees to invest

such portion of the assets of the fund as is not required to meet obligations under this part, except that the trustees may not invest any advances made to the fund under section 424(e). The trustees shall make investments under this paragraph in accordance with the provisions of section 404(a)(1)(C) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104(a)(1)(C)).

"(B) Any profit or return on any investment or reinvestment made by the trustees under subparagraph (A) shall not be considered as income for purposes of Federal or State income taxation.

"(6)(A) Amounts in the fund shall be available for making expenditures to meet obligations of the fund which are incurred under this part, including the expenses of providing medical benefits as required by section 432 of this title, and the operation, maintenance, and staffing of the office of the fund. The trustees may enter into agreements with any self-insured person or any insurance carrier who has incurred obligations with respect to claims under this part before the effective date of this paragraph, under which the fund will assume the obligations of such self-insured person or insurance carrier in return for a payment or payments to the fund in such amounts, and on such terms and conditions, as will fully protect the financial interests of the fund.

"(B) Beginning on the effective date of this paragraph,

payments shall be made from the fund to meet any obligation incurred by the Secretary with respect to claims under this part before such effective date. The Secretary shall cease to be subject to such obligations on such effective date.

"(7) The trustees shall keep accounts and records of their administration of the fund, which shall include a detailed account of all investments, receipts, and disbursements.

"(8) At no time during the administration of the fund shall the trustees be required to obtain any approval by any court of the United States or by any other court of any act required of them in connection with the performance of their duties or in the performance of any act required of them in the administration of their duties as trustees. The trustees shall have the full authority to exercise their judgment in all matters and at all times without any such approval of such decisions. The trustees may file an application in the United States district court where the fund has its principal office for a judicial declaration concerning their power, authority, or responsibility under this Act (other than the processing and payment of claims). In any such proceeding, only the trustees and the Secretary shall be necessary or indispensable parties, and no other person, whether or not such person has any interest in the fund, shall be entitled to participate in any such proceeding. Any final judgment entered in such

proceeding shall be conclusive upon any person or other entity claiming an interest in the fund.

"(9) The trustees may employ such counsel, accountants, agents, and employees as they consider advisable. The trustees may charge the compensation of such persons and any other expenses, including the cost of fidelity bonds and indemnification and fiduciary insurance for trustees and other fund employees, necessary in the administration of the fund, against the fund.

"(10) The trustees shall have the power to execute any instrument which they consider proper in order to carry out the provisions of the fund.

"(11) The trustees may, through any duly authorized person, vote any share of stock which the fund may hold.

"(12) The trustees may employ actuaries to such extent as they consider advisable. No actuary may be employed by the trustees under this paragraph unless such actuary is enrolled under section 3042 (a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1242 (a)).

"(d) Nothing in this Act or in the Black Lung Benefits Reform Act of 1976 shall be construed as exempting the fund, or any of its activities or outlays, from inclusion in the Budget of the United States Government or from any limitations imposed thereon.".

(c) Section 424 of the Act (30 U.S.C. 934) is amended to read as follows:

"SEC. 424. (a) (1) 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 a coal mine in such State shall pay premiums into the fund in amounts sufficient to ensure the payment of benefits under this part.

"(2) The initial premium rate of each operator shall be established by the Secretary as a rate per ton of coal mined by such operator. Beginning one year after the date upon which the Secretary establishes initial premium rates, the trustees may modify or adjust the premium rate per ton of coal mined to reflect the experience and expenses of the fund to the extent necessary to permit the trustees to discharge their responsibilities under this Act, except that the Secretary may further modify or adjust the premium rate to ensure that all obligations of the fund will be met. Any premium rate established under this subsection shall be uniform for all mines, mine operators, and amounts of coal mined.

"(3) For purposes of section 162 (a) of the Internal Revenue Code of 1954 (relating to trade or business expenses), any premium paid by an operator of a coal mine under paragraph (1) shall be considered to be an ordinary

and necessary expense in carrying on the trade or business of such operator.

"(4) For purposes of this subsection—

"(A) the term 'coal' means any material composed predominantly of hydrocarbons in a solid state;

"(B) the term 'ton' means a short ton of two thousand pounds; and

"(C) the amount of coal mined shall be determined at the first point at which such coal is weighed.

"(b) The Secretary shall advise the Secretary of the Treasury or his delegate of premium rates established under subsection (a) (1). The Secretary of the Treasury or his delegate shall collect all premiums due and payable by operators under subsection (a) (1), and transmit such premiums to the fund. Collections shall be effected by the Secretary of the Treasury or his delegate in the same manner as, and together with, quarterly payroll reports of employers. In order to ensure the payment of premiums by all operators, the Secretary, after consultation with the Secretary of the Interior, shall certify, not less than annually, the names of all operators subject to this Act.

"(c) (1) In any case in which an operator fails or refuses to pay any premium required to be paid under subsection (a) (1), the trustees of the fund shall bring a civil action in the appropriate United States district court to

require the payment of such premium. In any such action, the court may issue an order requiring the payment of such premiums in the future as well as past due premiums, together with 9 per centum annual interest on all past due premiums.

"(2) An operator who fails or refuses to pay any premium required to be paid under subsection (a) (1) may be assessed a civil penalty by the Secretary of the Treasury or his delegate in such amount as such Secretary or his delegate may prescribe, but not in excess of an amount equal to the premium the operator failed or refused to pay. Such penalty shall be in addition to any other liability of the operator under this Act. Penalties assessed under this paragraph may be recovered in a civil action brought by such Secretary or his delegate, and penalties so recovered shall be deposited in the fund.

"(d) The Secretary shall be required to make expenditures under this part only for the purpose of carrying out his obligation to administer this part. All other expenses incurred under this part shall be borne by the fund, and if borne by the Secretary, shall be reimbursed by the fund to the Secretary.

"(e) (1) There are hereby authorized to be appropriated to the fund such sums as may be necessary to provide the fund with amounts equal to 50 per centum of the amount

which the Secretary estimates is necessary for the payment of benefits under this part during the first twelve-month period after the effective date of this section. Any amounts appropriated under this paragraph may be used only for the payment of benefits under this part.

"(2) (A) Sums authorized to be appropriated by paragraph (1) shall be repayable advances to the fund.

"(B) Such advances shall be repaid with interest into the general fund of the Treasury no later than five years after the first appropriation made under paragraph (1).

"(3) Interest on such advances shall be at a rate determined by the Secretary of the Treasury, taking into consideration the current average yield during the month preceding the date of the advance involved, on marketable interest-bearing obligations of the United States of comparable maturities then forming a part of the public debt rounded to the nearest one-eighth of 1 per centum.

"(f) (1) During any period in which section 422 of this title is applicable with respect to a coal mine an operator of such mine who, after the date of the enactment of this title, acquired such mine or substantially all the assets thereof from a person (hereinafter in this paragraph referred to 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 this section and

section 423 of this title, secure the payment of all benefits for which the prior operator would have been liable under section 422 of this title with respect to miners previously employed in such mine if the acquisition had not occurred and the previous operator had continued to operate such mine.

"(2) Nothing in this subsection shall relieve any prior operator of any liability under section 422 of this title.

"(g) (1) The fund shall make an annual assessment against any operator who is liable for the payment of benefits under section 422 of this title. Such assessment against any operator of a coal mine shall be in an amount equal to the amount of benefits for which such operator is liable under section 422 of this title with respect to death or total disability due to pneumoconiosis arising out of employment in such mine, or with respect to entitlements established in paragraph (5) or paragraph (6) of section 411(c) of this title.

"(2) Any operator against whom an assessment is made under paragraph (1) shall pay the amount involved in such assessment into the fund no later than thirty days after receiving notice of such assessment.

"(3) The provisions of subsection (c) of this section shall apply in the case of any operator who fails or refuses

to pay any assessment required to be paid under this subsection.".

(d) Section 421 (b) (2) (E) of the Act (30 U.S.C. 931 (b) (2) (E)) is amended by striking out "section 422 (i)" and inserting in lieu thereof "section 424 (f)".

CLINICAL FACILITIES

SEC. 10. The first sentence of section 427 (c) of the Act (30 U.S.C. 937 (c)) is amended by striking out "of the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975" and inserting in lieu thereof "fiscal year, and $2,500,000 for the period beginning July 1, 1976, and ending September 30, 1976".

MEDICAL CARE

SEC. 11. (a) Part C of title IV of the Act (30 U.S.C. 931 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 432. The provisions of subsections (a), (b), (c), (d), and (g) of section 7 of the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 907 (a), (b), (c), (d), and (g)) shall be applicable to persons entitled to benefits under this part on account of total disability or on account of eligibility under paragraph (5) or paragraph (6) of section 411 (c), except that references in such section to the employer shall be considered to refer to the trustees of the fund.".

(b) The Secretary of Health, Education, and Welfare shall notify each miner receiving benefits under part B of the Black Lung Benefits Act on account of his total disability who the Secretary has reason to believe became eligible for medical services and supplies on January 1, 1974, of his possible eligibility for such benefits. Where the Secretary so notifies a miner, the period during which he may file a claim for medical services and supplies under part C of such Act shall not terminate before six months after such notification was made.

TRANSITIONAL PROVISIONS

SEC. 12. (a) The Secretary of Health, Education, and Welfare, and the Secretary of Labor shall disseminate to interested persons and groups the changes in the Black Lung Benefits Act made by this Act. Each such Secretary shall undertake a program to give individual notice to individuals who they believe are likely to have become eligible for benefits by reason of such changes.

(b) (1) The Secretary of Labor (with respect to part B and part C of the Black Lung Benefits Act) shall review each claim which has been denied, and each claim which is pending, under each such part, taking into account the amendments made to each such part by this Act. Such Secretary shall approve any such claim if the provisions of either such part, as so amended, require such approval.

(2) Such Secretary, in undertaking the review required by paragraph (1), shall not require the resubmission of any claim which is the subject of any such review.

(3) Such Secretary shall establish such procedures as he considers necessary or appropriate to determine whether a claimant whose claim is reviewed under this subsection has met the requirements of section 411(c) of the Act (30 U.S.C. 921(c)) relating to years of employment, as amended by section 2(a) of this Act, except that such Secretary shall seek to make any such determination, to the extent practicable, without seeking to obtain access to any record or other information maintained by the Secretary of Health, Education, and Welfare.

SHORT TITLE FOR ACT

SEC. 13. Section 401 of the Act (30 U.S.C. 901) is amended by inserting "(a)" immediately after "SEC. 401." and by adding at the end thereof the following new subsection:

"(b) This title may be cited as the 'Black Lung Benefits Act'.".

MINE ACCIDENT WIDOWS

SEC. 14. (a) If a miner was employed for seventeen years or more in one or more underground coal mines, and died as a result of an accident in any such coal mine which occurred on or before June 30, 1971, any eligible survivor of

such miner shall be entitled to the payment of benefits under part B of the Black Lung Benefits Act.

(b) For purposes of this section, benefit payments to a widow, child, parent, brother, or sister of any miner to whom subsection (a) applies shall be reduced, on a monthly or other appropriate basis, by an amount equal to any payment received by such widow, child, parent, brother, or sister under the workmen's compensation, unemployment compensation, or disability laws of the miner's State.

(c) The Secretary of Labor shall be responsible for the administration of the provisions of this section.

ADMINISTRATION OF BLACK LUNG BENEFITS ACT

SEC. 15. (a) (1) The Division of Coal Mine Workers' Compensation is hereby transferred to the Office of the Secretary of Labor.

(2) The Secretary shall act through the Division in carrying out the provisions of the Black Lung Benefits Act.

(b) (1) The Secretary, in carrying out the Black Lung Benefits Act, shall establish and operate such field offices as may be necessary to assist miners and other persons with respect to the filing of claims under such Act. Such field offices shall be established and operated in a manner which makes them reasonably accessible to such miners and other persons.

(2) The Secretary, in connection with the establish-

ment and operation of field offices under paragraph (1), may enter into arrangements with other Federal departments and agencies, and with State agencies, for the use of existing facilities operated by such departments and agencies.

(c) For purposes of this section—

(1) the term "Division" means the Division of Coal Mine Workers' Compensation established in the Office of Workers' Compensation Programs by the Assistant Secretary of Labor for Employment Standards under the Secretary's Order No. 13-71 (36 Federal Register 8755); and

(2) the term "Secretary" means the Secretary of Labor.

EFFECTIVE DATES

SEC. 16. (a) This Act shall take effect on the date of its enactment, except that—

(1) the amendments made by section 2 shall be effective on and after December 30, 1969, except that claims approved solely because of the amendments made by section 2, which were filed before the date of the enactment of this Act, shall be awarded benefits only for the period beginning on such date of enactment;

(2) the amendments made by sections 4, 5, and 8 shall be effective on and after December 30, 1969;

(3) the amendments made by section 6 shall not require the payment of benefits for any period before the date of the enactment of this Act; and

(4) the amendments made by section 9 shall take effect on January 1, 1976, except that (A) the Secretary of Labor shall establish initial premium rates for operators under section 424 (a) (1) of the Black Lung Benefits Act, as added by section 9 (c) of this Act, no later than January 1, 1976; and (B) such Secretary shall make the estimate required by section 424 (e) (1) of such Act, as added by section 9 (c) of this Act, as soon as practicable after the date of the enactment of this Act.

(b) In the event that the payment of benefits to miners and to eligible survivors of miners cannot be made from the Black Lung Disability Insurance Fund established by section 423 (a) of the Act, as added by section 9 (b) of this Act, the provisions of the Act relating to the payment of benefits to miners and to eligible survivors of miners, as in effect immediately before January 1, 1976, shall remain in force as rules and regulations of the Secretary of Labor, until such provisions are revoked, amended, or revised by law. Such Secretary shall make benefit payments to miners and to eligible survivors of miners in accordance with such provisions.

WHITE LUNG STUDY

SEC. 17. (a) The Committee on Education and Labor of the House of Representatives is authorized and directed to conduct a study of white lung disease, also known as silicosis or talcosis, including, but not limited to, the extent and severity of the disease in the United States; the relationship, if any, between white lung disease and black lung disease; the adequacy of current workman compensation programs in compensating victims of white lung disease; a review of current mine safety and Occupational Safety and Health regulations relating to talc mining to determine whether such regulations are adequate to protect the safety and health of talc miners; and the need, if any, for Federal legislation to protect the safety and health of talc miners or to provide additional compensation for the victims of white lung.

(b) The Committee shall report their findings and any legislative recommendations to the Congress not later than one year after enactment of this Act.

Passed the House of Representatives March 2, 1976.

Attest: EDMUND L. HENSHAW, JR.,

Clerk.

94TH CONGRESS
2D SESSION

H. R. 10760

AN ACT

To amend the Federal Coal Mine Health and Safety Act to revise the black lung benefits program established under such Act in order to transfer the residual liability for the payment of benefits under such program from the Federal Government to the coal industry, and for other purposes.

MARCH 3, 1976

Read twice and referred to the Committee on Labor and Public Welfare

94TH CONGRESS } SENATE { REPORT
2d Session } { No. 94-1254

BLACK LUNG BENEFITS REFORM ACT OF 1976

SEPTEMBER 20, 1976.—Ordered to be printed

Mr. RANDOLPH, from the Committee on Labor and Public Welfare, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 10760]

The Committee on Labor and Public Welfare, to which was referred the bill (H.R. 10760) to amend the Federal Coal Mine Health and Safety Act to revise the black lung benefits program established under such Act in order to transfer the residual liability for the payment of benefits under such program from the Federal Government to the coal industry, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

SUMMARY

The broad purposes of H.R. 10760 as reported by the Committee on Labor and Public Welfare are to remove certain eligibility restrictions for the victims of Black Lung disease and their survivors who should be entitled to benefits; to reaffirm the legislative intent with respect to certain provisions which have been administratively misinterpreted; and to assure that coal mine operators assume full financial responsibility for the Black Lung Benefits program.

The program has been far-reaching—over 500,000 beneficiaries are receiving benefits. Some $4.1 billion in benefits have been disbursed since the program's inception in 1970. The fact that the program has benefited many is no consolation to those whose benefits have been denied, however. Based on evidence presented to the Committee, it is apparent that there are many denied claims which should have been allowed under the 1972 amendments to Title IV of the Federal Coal Mine Health and Safety Act of 1969.

The provisions of the Committee amendments will do much to eliminate from the Black Lung Benefits program the very real difficulties encountered by thousands of old and sick miners and their widows in their efforts to obtain what they believe are their well-deserved benefits.

The Committee amendments to H.R. 10760, in brief outline, are as follows:

The term "pneumoconiosis" is modified to include sequelae of chronic lung disease and respiratory and pulmonary impairments, arising out of coal mine employment.

The term "miner" is expanded to include workers around a coal mine, processors and transporters of coal, and coal mine construction workers.

The term "total disability" is amended to provide that a miner's employment at the time of death is not to be used as conclusive evidence that the miner was not totally disabled. The provision also requires the establishment of medical test criteria appropriate to disability in coal miners.

A survivor is entitled to benefits if the miner worked 25 years in mine employment prior to date of enactment, unless it is established that the miner was not partially or totally disabled due to pneumoconiosis, and a miner with 25 years in the mines is entitled to benefits if he or she is partially or totally disabled due to pneumoconiosis.

A working miner may file claims for benefits if eligible to transfer to less dusty mine conditions, or if there is X-ray evidence of pneumoconiosis, or if he or she has 10 or more years in the mines.

Chest X-rays must be accepted as evidence under the Act if they are of acceptable quality, if they are interpreted by a qualified radiologist and were taken by a qualified person, and if there is no fraud involved.

Affidavits of survivors may be sufficient to establish eligibility where there is no medical evidence, or where such evidence is insufficient.

Each miner claimant is to be provided an opportunity to substantiate a claim through a complete pulmonary evaluation.

A government trust fund is established, to be supported by a periodic assessment against coal operators, to finance the cost of claims for which no responsible operator has been identified, and for administration expenses. Operators of current coal mining operations who have acquired coal mining operations subsequent to January 1, 1959 will be responsible for black lung claims which arise with respect to the acquired predecessor operator.

Part C of the program is made permanent, except that no new claims may be filed after December 31, 1981.

A widow or other survivor may file a claim at any time after the death of the miner, without the current three-year limitation.

A permanent $10 million per year authorization is provided for black lung clinical facilities.

The date of employment limitation (June 30, 1971) relating to the 15 year rebuttable presumption under part C for miners with a totally disabling lung impairment is eliminated.

Labor Department field offices to assist claimants are authorized, and HEW and Labor are required to provide information and assistance to potential beneficiaries.

Part B claimants who have been finally denied may have their claims reviewed and upon refiling under Part C.

The Labor Department is to conduct an 18 month study of all occupationally related respiratory and pulmonary diseases.

Background

Title IV of the Federal Coal Mine Health and Safety Act of 1969, the "Black Lung Benefits" title, represented the first Federal legislative expression that existing compensation for disability in coal miners due to an occupationally related lung disease was inadequate. In 1969 it was estimated that as many as 100,000 active and inactive coal miners had been afflicted with coal workers' pneumoconiosis.

We now know that the number of disabled miners far exceeds that earlier estimate. Although it is not a specific indicium of the incidence of black lung, the number of claims filed does suggest the magnitude of the problem. At the time the 1972 amendments were enacted, some 360,000 claims had been filed under part B (part C had not yet become operational). Currently, there are about 562,000 claims on file under part B, and about 90,000 under part C. By comparison, there are approximately 180,000 active coal miners in the United States today.

The 1972 amendments attempted to redress the unforeseen inadequacies of the 1969 Act. For example, denial of a claim based solely on a negative chest X-ray (one that did not exhibit pneumoconiosis) was prohibited. Respiratory and pulmonary impairments in coal miners other than coal workers' pneumoconiosis per se, were for the first time brought into the program as compensable under certain conditions. Widows were aided in several ways: Affidavits could be used to substantiate a claim; a widow could collect benefits if her miner husband was totally disabled by pneumoconiosis when he died, and not only when his death was due to pneumoconiosis. The definition of total disability was modified to reflect the reality of the coal fields—a coal miner is totally disabled when he is unable to work as a miner, not when he is unable to work at all. The offset of black lung benefits against Social Security Disability benefits was eliminated. Surface miners were allocated benefits under certain conditions.

The above recitation indicates the thoroughness with which this Committee and the House Education and Labor Committee reviewed the operation of the Black Lung Benefits program, and the extent to which they went to correct the inequities in the 1969 Act and its administration.

As early as one year following the enactment of the 1972 amendments there were strong indications that there were many disabled miners and their widows whose claims continued to be delayed or denied. The House Committee held several days of hearings. Hearings continued through 1974 and 1975, and a corrective bill was brought through Committee. H.R. 10760 was passed by the House of Representatives on March 2, 1976, by a vote of 210 yeas, 183 nays, and 2 voting present.

Following this thorough, extensive study by the House, the Senate Subcommittee on Labor held hearings on March 23, March 26, and April 2 1976. Two measures were pending before the Subcommittee: H.R. 10760, and S. 3183, introduced by Senator Haskell and others.

A number of Senators and Representatives presented testimony or written statements to the Subcommittee, including Senator Floyd K. Haskell, Senator Wendell H. Ford, Senator Gary Hart, Senator Walter D. Huddleston, Representative John Erlenborn, Representative Paul Simon, Representative Philip H. Hayes, and Representative Tom Railsback. Senator Quentin N. Burdick addressed a letter to the Committee.

Representatives of several organizations, disabled miners, and widows presented testimony in support of strong amendatory legislation. These included Arnold Miller, president of the United Mine Workers of America; Donald Bryant, president of the West Virginia Black Lung Association; William Worthington, president, Regional Black Lung Association; James Kidd, president, Ohio Black Lung Association; Paul Bichko, president, Pennsylvania Black Lung Association; Anise Floyd, president, West Virginia Miners' Wives and Widows Organization; Jimmy C. Cooper; Theodore Scislowicz; B. P. Lewallan; Woodrow Browning; and Earl D. Richardson. Fred Carter, a former miner and black lung claim representative, submitted a written statement. Harvy Phelps, M.D., director, Pulmonary Research Laboratories, also submitted a statement.

The following witnesses presented testimony or statements in opposition to the pending bills: Andre Maisonpierre, vice president, American Mutual Insurance Alliance; Carl E. Bagge, president, National Coal Association; Paul Patton, secretary, National Independent Coal Operators' Association; Andrew Kalmykow, assistant general counsel, American Insurance Association; and William Miller, Jr., general manager, labor relations, United States Steel Corporation. Statements were also submitted for the record by Kenneth V. Simper, chief safety engineer, Utah International, Inc., and Eugene J. Hardy, senior vice president, National Association of Manufacturers.

Administration witnesses testifying in opposition to the pending bills included Stephen Kurzman, Assistant Secretary, Department of Health, Education, and Welfare; Robert P. Bynum, Associate Commissioner for Program Operation, Social Security Administration, HEW; Bernard E. DeLury, Assistant Secretary for Employment Standards, Department of Labor; and Nancy Snyder, Associate Director, Division of Coal Mine Workers' Compensation, Department of Labor. Donald C. Alexander, Commissioner of Internal Revenue, Department of the Treasury, presented testimony relating to the operation of the trust fund contained in the pending legislation.

The Subcommittee on Labor met in executive session for the purpose of considering H.R. 10760 and S. 3183 on June 25, 1976 and favorably reported an amended H.R. 10760 to the full committee on August 31, 1976.

The Committee on Labor and Public Welfare met on September 14, 1976 and agreed to report the Black Lung Benefits Reform Act of 1976 to the Senate. Several amendments to the measure reported by the Subcommittee on Labor were considered: (1) Amendment by Senator

Javits to define "partially disabled" for purposes of new section 411 (c)(5), adopted by voice vote; (2) Amendment by Senator Javits to strike section 3, entitlements provisions, defeated by voice vote after the committee adopted by voice vote a substitute offered by Senator Randolph to couch the conditions on entitlements (X-ray evidence of pneumoconiosis and partially or totally disabling pulmonary or respiratory impairment) in the alternative, and after a modification of paragraph (5)(A) narrowing the conditions on entitlements to partial or total disability due to pneumoconiosis: (3) Amendment by Senator Javits to allow the entitlement to eligible survivors under paragraph (5)(B) except where there is evidence that the miner was not disabled; modified and agreed to by voice vote: (4) Amendment by Senator Javits to modify the affidavit evidence provision of section 5(a) of the bill to permit affidavits to be sufficient evidence of total disability rather than mandating them, modified by an amendment of Senator Eagleton to strike out "inappropriate, invalid, or irrelevant" (relating to medical evidence), and substituting therefor "insufficient", agreed to by a vote of 4 yeas, 3 nays; (5) technical amendment by Senator Javits relating to trust fund assessments, agreed to by unanimous consent; and (6) Amendment by Senator Schweiker to strike out the years worked limitation on entitlements to living miners to years prior to date of enactment of the bill, agreed to by voice vote.

Summary of Current Law

The Farmington Disaster—an explosion on November 20, 1968, at Consolidation Coal Company's No. 9 mine near Farmington, West Virginia, which took the lives of 78 miners—was the tragic catalyst that brought into being the 1969 Federal Coal Mine Health and Safety Act. In addition to the creation of an instrument to protect the lives of coal miners, the 1969 Act in light of the failure of State Workers' compensation programs to provide adequate coverage of black lung disease, established a Federal system of benefits for miners who had been totally disabled by coal workers' pneumoconiosis, and for the widows of such miners.

The Surgeon General identified this dread disease as—

> 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.
>
> * * * * *
>
> 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 ventilation 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.

In general, title IV provides benefits for miners totally disabled by pneumoconiosis, and for their eligible survivors, including widows, children, and dependent parents and siblings. A miner with pneumoconiosis who worked ten or more years in the mines is presumed to have contracted the pneumoconiosis in his coal mine employment. A miner with complicated pneumoconiosis is irrebuttably presumed to be totally disabled. A deceased miner who worked ten or more years in the mines and died from a respiratory disease is presumed to have died due to pneumoconiosis. A miner with 15 or more years in an underground coal mine (or in a surface mine with comparable dust conditions) whose chest X-ray is negative for complicated pneumoconiosis, and who has or had a totally disabling respiratory or pulmonary impairment, is presumed to be totally disabled due to pneumoconiosis.

Title IV consists of two separate benefits programs: part B and part C. Part B, administered by the Secretary of Health, Education, and Welfare, is a Federal program under which successful claimants who filed on or before June 30, 1973 are entitled to the payment of benefits by the Federal government for life, or for as long as they remain eligible.

Part C is administered by a State workers' compensation agency meeting minimum standards, or by the Secretary of Labor where such standards are not met. No States have as yet met the minimum requirements. The responsible coal operator pays benefits as in traditional workers' compensation programs. Under the law, the coal industry is liable for claims filed after June 30, 1973, for payment on and after January 1, 1974. The Department of Labor is responsible for paying benefits when the responsible operator cannot be determined, which is the case currently in about 75 percent of approved claims. The law as amended in 1972 terminates employer liability for claims after December 30, 1981.

The 1972 amendments resulted from the inadequacy and inequities of the law and its administration. A greater percentage of claims was allowed under part B as a consequence of the 1972 amendments, and certain injustices were rectified; yet many problems continue to plague the program. More importantly, these problems translate into frustrating delay and perpetual hardship for thousands of disabled coal miners and the widows of those who died producing this vital energy resource for the Nation. These continuing problems are reviewed in the discussion portion of this Report entitled "Summary of Major Provisions," infra.

Summary of Major Provisions

ENTITLEMENTS

The entitlement provisions of H.R. 10760 as it passed the House of Representatives, and of S. 3183, the two bills pending before the Committee, generated considerable controversy within and without the Committee. A number of Senators were either unalterably opposed to, or had grave misgivings about, the concept inherent in these provisions: that is, that benefits should be awarded on the basis of years coal mine employment without the requirement of demonstrating disability.

In formulating a workable approach, the Committee has adopted a dual concept of entitlement to benefits for miners and survivors of miners. In the case of living miners, entitlement is established by evidence of coal mine employment for 25 years or more and the existence of partially or totally disabling pneumoconiosis. In the case of a deceased miner, the survivors need only provide evidence that the miner engaged in coal mine employment for 25 or more years prior to the date of enactment of the bill, unless it is established that the miner was not partially or totally disabled due to pneumoconiosis. Upon request survivors are to provide available evidence respecting the miner's health at the time of his death.

The House of Representatives was persuaded that there is a link of causality between time employed in the mines and the incidence of pneumoconiosis. The report of the House Committee on Education and Labor states that "80.89 percent of the claims involving miners with a known coal mining employment experience of 30 or more years have been allowed under part B of the program", and that "In recognition of the historically demonstrated and exceedingly high probability of total disability . . . and out of concern for an equally probable risk of error in the remaining cases, an objective test was established to simply provide part B benefits payments to all claimants whose claims had been denied and who could demonstrate 30 or more years of underground mining experience." Dr. Murray B. Hunter, director of the Fairmont Clinic in Fairmont, West Virginia, testified that "It is exposure over time that produces coal workers' pneumoconiosis and the enactment of a reasonable presumption that thus and so many years of exposure to coal mine dust . . . represents sound social policy."

Although no extant medical study demonstrates conclusively the prevalence of pneumoconiosis and job-related respiratory and pulmonary impairments, and although the estimates of such prevalence vary widely from study to study, it is interesting to note that partial data from the National Coal Workers' Autopsy Study conducted by the Appalachian Laboratory for Occupationally Related Diseases (ALFORD) of the National Institute for Occupational Safety and Health indicate that of 1,299 cases, coal workers' pneumoconiosis was mentioned in 1,175, or more than 90 percent of these. On the other hand, other evidence available to the Committee indicates that there is no clear causal relationship between duration of employment and the incidence of total disability due to pneumoconiosis.

Nevertheless, it is clear to the Committee, just as it was in 1972, when those remedial amendments were enacted, that many disabled miners' claims have been denied, partly because the state of the medical art is not sufficiently advanced to unequivocally identify occupationally related disability in coal miners. This problem is markedly exacerbated in the case of deceased miners, particularly those who had the misfortune of dying at a time when medical knowledge of coal workers' pneumoconiosis was far scantier.

It is clear that complicated pneumoconiosis is a progressive and irreversible disease, and that the incidence of simple pneumoconiosis, along with other serious respiratory impairments—which some believe also to be progressive—increases in relation to duration of coal mine employment. However, these indicators are not so clear and compelling as to be persuasive that miners be entitled to benefits solely on the basis of years of service without a showing of disability.

Accordingly, the Committee has developed an entitlement provision which recognizes the relationship of long term coal mine employment and the development of disabling lung disease, but which at the same time maintains a casual link between such long term employment and other objective evidence of mine-related disease. The term "pneumoconiosis" used in section 411(c)(5) and elsewhere, includes respiratory and pulmonary impairments arising out of coal mine employment.

The Committee believes that this approach is a reasonable extension of the presumptions established in the 1969 Act and in the 1972 amendments. Section 411(c) provides that pneumoconiosis in a miner with ten or more years of coal mine employment is presumed to have arisen out of such employment; that a miner with complicated pneumoconiosis is irrebuttably presumed to be totally disabled; that a deceased miner with ten or more years in the mines who died from a respiratory disease is presumed to have died due to pneumoconiosis; and that a miner with 15 or more years of mining who has a negative X-ray with respect to complicated pneumoconiosis but who has a totally disabling respiratory or pulmonary impairment is presumed to be totally disabled due to pneumoconiosis.

The Committee's entitlement provision recognizes that with 25 years in a coal mine, a miner with a partially or totally disabling respiratory or pulmonary impairment is a very sick miner, one whose illness is directly attributable to his occupation, and is one who should be the recipient of compensatory benefits.

Widows have perhaps been even more adversely and wrongfully affected by black lung claim denials than living miners, for in all too many instances the probative value of the widow's evidence submitted in support of a claim is not good. It is not her fault. Medical records may have been lost or destroyed. The miner may have been lost forever in an underground mine explosion. He may have died so long ago that clinical knowledge of the day did not include pneumoconiosis—the cause of death was simplistically attributed to "heart failure." For these and other reasons the Committee believes that concern for the welfare of these widows, whose husbands gave their physical strength, their bodies and their lives to this most difficult occupation, should override any professed need to demonstrate a

clinically precise association between years worked and totally disabling lung disease. This provision, and others contained in the bill, give the benefit of any doubt to the miner's widow. Any burden is on the Secretary to show that the miner was not partially or totally disabled.

AFFIDAVIT EVIDENCE

The Committee has restated its intent that affidavits are acceptable as evidence in the case of a deceased miner. The Committee bill provides that where there is no medical evidence, or where such evidence is insufficient, affidavits may be sufficient to substantiate a claim for benefits.

As indicated in the preceding discussion, evidence available to a miner's widow is often incomplete, inadequate, or nonexistent. The miner may have been ill, but refused to see a doctor for fear that the doctor's diagnosis could result in the termination of his employment, and with it, his ability to support his family. As previously suggested, diagnoses were in years gone by far less sophisticated or knowledgeable than is presently the case. Even in more recent times, a coal field doctor in 1968 had no particular reason for identifying his miner-patient's illness as coal workers' pneumoconiosis. Prior to the enactment of the Federal Coal Mine Health and Safety Act, such a doctor may not have searched beyond a finding of chronic bronchitis, emphysema, tuberculosis, or right ventricular heart disease. A death certificate might not give any hint of the presence of occupationally related lung disease; again, "heart attack," myocardial infarction," and "heart failure" may describe the immediate cause of death, but the underlying etiology too often remained undiscovered or unmentioned.

Existing law provides that affidavits may be used, along with other evidence, to substantiate a claim for benefits. Section 411(c)(4) further states that—

> In the case of a *living miner*, a wife's affidavit may not be used by itself to establish the [15 year rebuttable] presumption. (Emphasis supplied.)

Conversely then, in the case of a *deceased* miner, a widow's affidavit may be used by itself to establish the presumption. Further, it is implicit that since affidavits are "revelant evidence" under section 413(b), and all relevant evidence shall be considered in determining a claim's validity, where affidavits are the *only* evidence, that evidence may be sufficient to establish a claim.

It has been asserted that the existing law in this matter on occasion has been ignored. This assertion has been disputed by those agencies which administer the Act. In either case, the Committee clearly restates its intention in this legislation with respect to affidavit evidence, so that no misapprehension by the administering agencies will be possible.

X-RAY REREADING

The Committee bill requires the Secretary to accept a board certified or board eligible radiologist's interpretation of a miner's chest X-ray if the X-ray is of acceptable quality and if it was taken by a qualified

technician except where the Secretary has reason to believe that a claim has been fraudulently represented.

Both the Department of Health, Education, and Welfare and the Department of Labor have (without legislative direction) established X-ray quality control procedures under which government contract radiologists provide their own interpretations of X-rays submitted in connection with black lung claims. This procedure has elicited deep resentment among claimants, who believe strongly that the government readers are utilized solely for the purpose of denying claims.

While the Committee does not concur in this belief, it is concerned that this procedure alone has done more to destroy the credibility of the Federal government's administration of this program among miners and widows than any other factor. The Committee does agree with the statement of Dr. Edgar L. Dessen, chairman of the Task Force on Pneumoconiosis of the American College of Radiology that "we would doubt that radiology will become a statistically exact science."

The Department of Labor acknowledges that more than 60 percent of the X-rays which are submitted as positive for pneumoconiosis are re-read by the government's consulting radiologists as negative. As a general proposition reasonable men can differ, and this holds true for radiographic interpretations as well as for other fields of endeavor. The imperfection of this art is also indicated in cases of miners whose X-rays were interpreted as negative and who have, on autopsy, been revealed to have suffered from varying stages of pneumoconiosis.

There is little reason, as a matter of policy, for the government to interpose panels of second-guessers, particularly where the original interpreter of a claimant's X-ray was a qualified radiologist. The Committee therefore intends that this provision be retroactively applied to denied and pending claims as well as to new ones. If, in the case of a claim by a living miner, an X-ray is objectively determined not to be of acceptable quality, the Secretary shall request that another X-ray be taken. Where fraud is suspected, the Committee expects the Secretary to take such action as may be appropriate, but he shall specifically describe the reasons upon which this suspicion is based.

In order to meet the needs of providing more specially trained practitioners to examine coal worker's for pneumoconiosis, and make those judgments, it is recommended by the Committee that the National Institute for Occupational Safety and Health increase its efforts and activities to work with the appropriate organizations and physicians familiar with the particular problems diagnosing black lung, to further develop a program to assist physicians in this regard.

EMPLOYMENT NO BAR TO CLAIMS

The Committee bill provides that a miner may file a claim for benefits notwithstanding the fact that he is working if he meets one of three criteria: (1) he has 10 or more years of coal mine employment, (2) he is eligible to exercise the option to transfer to less dusty mine conditions under section 203 of the Act, or (3) he has X-ray evidence of the development of pneumoconiosis.

The Committee is aware that there are miners who believe they are

disabled and are entitled to benefits, but who will not file claims because they fear their claims will be denied, or they do not choose to terminate their employment and wait for months on end for the determination of their claims. It is unfair to place potentially eligible working miners in such an uncomfortable dilemma. The Committee bill provides a viable alternative to this predicament, and directs the Secretary to deal with claims filed pursuant to this new provision as expeditiously as possible. The limitation on those who may so file was imposed to keep to a manageable level the number of claims processed under this program.

DEFINITION—TOTAL DISABILITY

The Committee bill modifies the definition of total disability in several respects. First, it provides that a miner's employment in a mine at the time of death shall not be used as conclusive evidence that the miner was not totally disabled. As was pointed out in earlier discussions of certain "widows' provisions," miners have in the past (as many continue to do) forced themselves to work even though they could and should have been determined to be disabled, in order to be able to continue to support their families. Prior to 1969, of course, there was no Black Lung Benefits program to give such miners an opportunity to quit work before they died or became totally incapacitated.

Under current law, a widow whose husband was working in a mine at the time he died is likely to be precluded from obtaining benefits unless she is fortunate enough to be able to take advantage of the conclusive presumption of total disability where complicated pneumoconiosis can be proved.

The revised definition of total disability also provides that the Secretary, in consultation with NIOSH, shall establish criteria for all medical tests which accurately reflect total disability in coal miners. An earlier draft bill before the Subcommittee on Labor required that standards in effect for claims filed after June 30, 1973 not be more restrictive than standards that were utilized on or before June 30 (interim standards). The so-called "interim standards" used by Social Security under part B are less stringent than the 1969 "permanent standards" which HEW promulgated for use under part C. Another provision in the earlier draft required that arterial blood gas test standards be adjusted to equate to spirometry values. Although the first provision is in the House-passed H.R. 10760, and the second provision is contained in S. 3183, these were both eliminated in Subcommittee.

As was the case with the 1972 amendments to Title IV, the Committee is not qualified to assess the appropriateness of medical test standards to be used to determine disability in coal miners. It is for this reason that the Secretary, in consultation with NIOSH, is given the authority to establish the criteria for all medical tests.

Social Security maintains that the interim standards do not accruately determine actual disability, that they were used under part B only to clear away the backlog of claims arising from the 1972 amendments, and that the permanent standards more accurately identify disabling respiratory and pulmonary functions in coal miners.

The United Mine Workers, along with a number of pulmonary specialists who routinely examine coal miners for disability, believe that even the interim standards are too stringent, since these were based on the Kory-AMA values which are in turn based on a norm taken from examining the pulmonary capacities of hospital workers, and not coal miners. The UMWA much prefers the ILO standards which were established for strenuous, heavy work. Normal functional levels for moderately active persons are substantially lower than the functional levels demanded by the strenuous exertion of coal mine work. Nevertheless, they believe that the interim (Kory-AMA) standards are (albeit inadequate) certainly not as bad as the permanent standards. They find acceptable legislative language which requires that part C standards not be more restrictive than the interim standards.

In 1972, the Committee stressed that, in interpreting the amendments, the miner should have the benefit of any doubt. The Committee underscores and reaffirms this position taken in 1972 with respect to the 1976 amendments, and specifically in this context, expresses its expectation that the Secretary of Labor will promulgate standards which give the benefit of any doubt to the coal miner.

OTHER EVIDENCE

The Committee bill adds a sentence to section 413(b) of the Act to require that each miner who files a claim be provided an opportunity to substantiate the claim by means of a complete pulmonary evaluation.

The Committee expressly intends that the term "complete pulmonary evaluation" include a physical examination, ventilatory studies (spirometry), a chest X-ray, and an arterial blood gas test at exercise, except where such exercise is medically contraindicated.

This provision is intended to complement that portion of the existing section 413(b) which requires that in determining the validity of claims, all relevant evidence is to be considered. The elements of the complete pulmonary evaluation identified above are included as relevant evidence, and the Committee in the instant provision intends that each miner claimant, to the extent feasible, be permitted the opportunity of such an evaluation.

The Committee takes notice of the fact that available facilities for the conduct of arterial blood gas tests are limited. That fact must not be used in the Black Lung Benefits program as a justification to deny miner claims on the grounds that he or she did not take such tests. The Committee is disappointed that funds available for clinical facilities under section 427(c) of the Act have not been used in part for blood gas testing facilities, and it expects that in light of the importance attached by the Committee to the establishment of such facilities (including personnel) to meet the additional demand occasioned by the enactment of this provision, such funds will be so utilized.

TRUST FUND

While payment of claims under the part B program was to have been the government's responsibility, the intention of Congress was that part C claims were to have been the responsibility of the oper-

ators. In actuality however, under part C only 73 claims are being paid by operators, while over 2,000 are being paid by the Secretary of Labor. Further, industry is contesting 97 percent of the claims for which the Secretary has determined operator liability.

One of the principal features of the bill is a provision which finally shifts the burden of the part C program which has heretofore been borne by the government back to the industry.

Section 6 of the Committee bill establishes a trust fund administered by the Secretaries of Labor, HEW and the Treasury. Operators are to pay assessed amounts into the fund in an amount sufficient to meet the fund's obligations. Where a responsible operator can be identified in connection with an approved claim, the payment of benefits to that claimant shall be, as is the current practice, the obligation of the responsible operator. Where no responsible operator is identified, the Secretary assigns the claims to the fund, which then becomes responsible for paying the benefits to the claimant.

While operators, by means of the assessment levied against them, pay into the fund, the operators are to have no title or interest in the fund assets; and operators will have no right to litigate any questions concerning the assignment of claims to the fund or the payment of benefits out of the fund's assets.

In addition, the bill provides that where a responsible operator has not made arrangements for the payment of benefits arising from claims assigned to him, pursuant to Section 423 of the Act; or where the operator fails to commence payment of such benefits within 30 days after the Secretary's initial determination of a responsible operator, the Secretary shall commence the payment of such benefits out of the fund. In such cases, the Secretary is authorized to bring a civil action to recover such amounts paid by the fund from the responsible operator. It is the Committee's expectation that by this mechanism, the appropriate forum for the litigation of the questions of the claimant's eligibility and the responsibility of the operator is provided; while prompt payment of benefits to claimants during the pendency of such litigation is assured.

As previously noted, operators will contribute to the fund on the basis of assessments for each class of mine operations which will be established and periodically revised by the Secretary of Labor, in amounts sufficient to insure the Fund's obligations. The bill provides that the Secretary shall classify mine operations by type of operation, and the bill contemplates that different assessment rates will be applicable to the different types of operations.

The classification of the different types of mine operations could be on the basis of the means of extracting the coal, differentiating, for example, between surface mining and deep mining; or whether the operation is a mining operation or a milling operation or preparation plant. Moreover such a classification could be based on the type of coal mined, such as lignite, bituminous, or anthracite.

The need for such classification relates to the fact that a separate assessment rate may be indicated for the different types of operations. Thus, in establishing the assessment rate for the type of operation, the Secretary may consider such factors as the overall productivity of that type of operation as compared with other types of operations;

the comparative incidence of disease among employees of the various types of mining operations, and the market value of the product of the type of operation.

The Committee does not intend that the Secretary establish a separate rate of assessment for every mine operator. Rather, as stated above, it is the Committee's intent that rates be established for each classification of mine operator, and that a per ton assessment rate be uniformly applicable to all operators within each classification.

SUCCESSOR AND FORMER OPERATORS

When the black lung benefits provision of the Federal Coal Mine Health and Safety Act of 1969 were first enacted, it was the expectation of the Congress that after the Federally financed portion of the program terminated, individual coal mine operators would assume the liability for benefits either under an approved state workers' compensation program or under Part C of the Federal Act. In order to facilitate the assessment of liability against coal mine operators, Section 422(i) prohibited the avoidance of such liability by coal mine operators through the mechanism of a post enactment transfer of assets. Further, the history of the 1969 Act clearly specifies that the operator liability provisions of the Act were to be liberally construed in favor of finding such operator liability. These provisions and this intent remained unchanged by the 1972 amendments.

The experience of the Department of Labor to date indicates that Congressional intent in this regard has not been effectuated. Only approximately 25% of all approved Department of Labor claims are being assessed against coal mine operators, and many current and prior coal mine operators have been able to avoid liability altogether as a result of changed operations and various corporate transactions. It is the Committee's opinion that many of these business entities should be required to bear the cost of disability and death arising out of employment in their mines, regardless of changes in existing corporate frameworks.

During the last two decades, the coal industry has undergone major structural changes. Of the 50 largest coal companies, 29 have become captive of other industries such as oil, steel, public utilities and other large industrial corporations. In most instances these acquisitions transferred intact the ownership of the mines and operations of existing coal producers to the larger and more diversified parent corporations. It must be noteed that frequently the management, employees, mines and type of mining operations remained unchanged by the merger, acquisition of assets or other type of corporate transaction in question. In addition, a number of business entities which previously engaged in extensive coal mining operations, although no longer directly involved in the extraction of coal, still derive substantial revenues from the leasing of coal properties, the sale and processing of coal, and the like. It was originally the intent of Congress that such entities should bear the liability for black lung disease arising out of employment in their mines.

The bill amends Section 422(i) to correct the inequities which have developed under existing law. Many coal operators have avoided liability for claims arising out of employment in their mines because of

various corporate transactions and changes in corporate operations. This provision is not intended to require the payment of benefits by corporations who, since prior to December 30, 1969, have not derived revenues from the sale, mining, preparation, transportation or processing of coal or from the leasing of coal lands, mines, or facilities. It is intended that a prior operator still deriving revenues from coal holdings, however, should be liable for black lung claims arising out of employment in his mines, and the Secretary may wish to investigate the possibility of designing special self-insurance provisions under Section 423 of the Act to avoid any undue hardship to such prior operators.

It is further the intention of this section to ensure that individual coal operators rather than the trust fund bear the liability for claims arising out of such operator's mines, to the maximum extent feasible.

Section 422(i)(1) provides that any coal mine operator which acquired its coal mining business on or after January 1, 1959 through the corporate transaction known as a transfer of assets shall be responsible for those claims which the seller would have been required to pay if such transfer had not occurred. A transfer of assets which was completed prior to January 1, 1959 shall not transfer liability to the successor. January 1, 1959 has been selected as a cutoff date because most of these transactions occurred during the 1960s and after black lung disease was generally recognized as a hazard of coal mining. This provision will thus require the payment of individual operator financed benefits in the majority of those cases involving the intact acquisition of large coal producers by other large industrial concerns.

Paragraph (2) of Section 422(i) provides that no prior coal mine operator either as that term is defined in paragraph (1) of this section or as that term may be otherwise defined shall be relieved of liability arising out of employment in such prior operator's mines. It is the intention of this section to require the payment of benefits by the prior operator where, for example, such operator now derives revenues from the leasing of coal mines or from the sale, processing, or transportation of coal, or where there is indirect mining of coal through a related business entity. The January 1, 1959 limitation contained in paragraph 1 of this section is not available as a defense to liability by such prior operator, in any case.

Paragraph 3 of Section 422(i) enumerates certain corporate transactions other than a transfer of assets and provides that such transactions also may not be utilized by a coal operator as a defense to liability for blank lung benefits arising from employment prior to such transactions. The types of transactions enumerated in this paragraph are not subject to the January 1, 1959 limitation contained in paragraph 1.

Paragraph 4 of Section 422(l) provides that this amended Section 422(i) is applicable with respect to all claims filed on or after July 1, 1973. The purpose of this paragraph is to prohibit the avoidance of liability by coal operators falling within the categories set forth in this subsection with respect to all claims filed, whether or not such claims have been adjudicated. The subsection is given retrospective application in order that the assignment of claims liability conform to Congress' original intent in establishing coal operator liability under the Act.

REVIEW AND TRANSFER OF DENIED AND PENDING CLAIMS

The Committee bill includes a new section 432 of the Act which permits part B claimants whose claims have been finally adjudicated as denied by the Social Security Administration to refile under part C. Such claims are to be processed expeditiously. Survivor claimants whose claims under part B were denied solely because the miner was employed at the time of death, and who are otherwise eligible, are to be awarded benefits as of January 1, 1974. Eligible survivors whose claims were denied under part C for the same reason are entitled to benefits as of January 1, 1974 or the date the prior claim was filed, whichever is later.

The Committee believes that this provision is consistent with the complete transition of part C to an industry supported program and will, at the same time, eliminate a significant part of the remaining burden on the Federal Treasury. The provision does not mandate that persons with claims pending under part B must file a new claim under part C. This may be advantageous to a claimant whose claim has not been finally determined to exhaust administrative remedies under part B, particularly in light of the retroactive application of certain provisions of the bill.

The phrase "finally adjudicated as denied by the Social Security Administration" means that administrative remedies have been exhausted, and the only remaining option is to allow the administrative determination to stand, or to seek judicial review. Such a claim filed under part B which is adjudicated by the courts will, if allowed, be payable under part B.

The Committee, in providing for expedited processing of refiled claims under this provision, contemplates that the Secretary of Health, Education, and Welfare and the Secretary of Labor will notify each individual whose claim has been denied under part B and part C, and with respect to part B denied claims, the Committee expects the claimant at the time of notification to be provided a simple form or even a post card, on which the claimant will indicate whether or not he or she wishes the claim to be reviewed. If the claimant thus requests a review, this will also constitute a refiling of the claim under part C, although the claimant may wish to file more recent medical and other evidence. The files of such claimant will be transferred forthwith from the Department of Health, Education, and Welfare to the Department of Labor. The Committee expects the two Departments to come to a speedy agreement on the means of implementing this provision.

Special note.—Acceptance of Certain Evidence Under Part B.

The Committee understands that the Department of Health, Education, and Welfare has violated the intent of Congress by adopting regulations which preclude the taking of new evidence in a part B claim after June 30, 1973 before the Department has made its final determination of eligibility for benefits. The regulations assert that a claim is not "effectively filed" unless all evidence is submitted prior to that date.

The Committee wishes to inform the Department that such a construction is incorrect, and is in conflict with the intent, if not the

letter. of the law. Section 414(b) of the Federal Coal Mine Health and Safety Act states only that "No benefits shall be paid under this part after December 31, 1973, if the claim therefor was filed after June 30, 1973." When a claim has been submitted to the Social Security Administration under part B, it is filed for purposes of section 414(b), even though additional evidence has been submitted before a final administrative determination of eligibility.

The processing of a claim quite naturally may include the taking of evidence in addition to that initially submitted with the claim. As a rule, a disabled miner or widow does not have at his or her disposal a plethora of legal assistance to aid in the accumulation of all tests and documentation necessary for the determination of a claim when it is filed. The imposition of such an arbitrary and stern requirement on such claimants cannot be countenanced by this Committee, and to deny a claim which was filed by June 30, 1973 but not "effectively filed" until sometime after that date and before the final administrative determination of eligibility is a perverse interpretation of the law which is cruel and unjust.

It is the Committee's understanding that literally hundreds of black lung cases are tied up in Federal District Courts because of this one issue—whether medical evidence taken after June 30, 1973 with respect to a claim filed by June 30, 1973 is admissible in determining part B claims. The Committee expects that its clear expression of legislative intent herein will result in the modification of the regulations referred to, as well as in the clarification of the law for the benefit of the courts.

OTHER PROVISIONS

Definition of pneumoconiosis.—The Committee bill expands the definition of pneumoconiosis to include the sequelae of the disease (such as cor pulmonale) and respiratory and pulmonary impairments arising out of coal mine employment.

Although it is the understanding of the Committee that it has been the practice of the Social Security Administration to encompass these additional impairments in the allowance of claims, it is appropriate for the Committee specifically to include them in law, in order to preserve continuity in their application.

Definition of miner.—The term is expanded in the Committee bill to include additional workers. Existing law limits the term miner to "any individual who is or was employed in a coal mine." The expanded definition in the Committee bill includes those managers or owners of very small mining operations who themselves work or have worked in the extraction of coal. The number of such individuals is very small—not more than 500—but the Committee believes that they should be permitted to apply for benefits by virtue of their work as coal miners.

Also included in the definition are those who process or transport coal, under conditions substantially similar to those in an underground coal mine, so that "outside men"—workers at the tipple and preparation plant workers, for example, are clearly covered as miners. The term includes coal mine construction workers when they work in conditions substantially similar to conditions in underground coal mines.

Field offices.—The Committee believes there is a clear need for the Labor Department to do more to assist Black Lung Benefits claimants with their claim filing and processing in the field. Such field offices should be located in proximity to active coal mining areas, and in areas from which it is anticipated that substantial numbers of claims will emanate. It would, of course, be a misuse of funds to establish field offices in locations far from the coal fields, except in population centers which can be expected to generate claims.

Information to potential beneficiaries.—The bill reported by the Committee would require general dissemination of information on the changes in the law made by the 1976 amendments to interested persons and groups (such as labor unions, coal mine operators, and black lung representatives) who in turn would widely re-disseminate such information to potential claimants. To the extent appropriate, this process should be coordinated with the effort under section 10 of the bill to notify denied claimants of their rights to refile a claim under part C.

MISCELLANEOUS

Several important provisions are contained in section 7 of the reported bill under the heading "miscellaneous." Among these, subsections (c) and (e) eliminate the existing law's limitation on the filing of a claim by a widow or other survivor.

Section 421(b)(2)(D) requires that a State workman's compensation law approved by the Secretary provide that a claim is timely filed if filed within three years of the discovery of total disability due to pneumoconiosis, or the date of such death, as the case may be. Section 422(f)(1) imposes the same general requirement on the Secretary of Labor, and subsection (f)(2) further states that any claim based on eligibility under section 411(c)(4) (the 15-year rebuttable presumption) shall be filed within three years after last exposed employment in a coal mine for living miners, and for a survivor, such claim must be filed within fifteen years from the date of the miner's last exposed employment.

These provisions have exerted an extreme and unnecessary hardship on many widows who, for one reason or another, did not file claims under part B. The Committee is informed that more widows' claims have been denied solely because of this arbitrary "statute of limitations" provision than for any other reason. This is a tragic and unintended result which must be corrected forthwith. The Committee bill thus altogether removes these artificial limitations on filing of claims by widows.

Subsection (b) of section 7 of the bill corrects another hardship now being visited on recent widows. The Social Security Act allows survivors to negotiate disability checks where the beneficiary dies. This provision is incorporated by reference in section 413(b) of the Black Lung Law.

Subsection (d) of section 7 of the bill eliminates paragraph (3) of section 422(e) of the Act, which provides that no benefit payments shall be required under part C for any period after twelve years after the date of enactment of the Act. This period expires on December 30, 1981. By eliminating this termination date, the Committee thus conforms part C to part B, under which benefits are to be paid for life, or

for the period during which the beneficiaries are entitled to benefits.

Subsection (f) eliminates the year-by-year authorization of appropriations for black lung clinical facilities under section 427(c) of the Act by making the authorization of $10 million per year permanent. Additional clinical facilities for the analysis, examination, and treatment of disabled coal miners are desperately needed. Past years' appropriations have been far less than the amount authorized.

Subsection (g) of section 7 of the bill makes the amendment in part B the Black Lung Benefits Reform Act of 1976 applicable to part C. The subsection also eliminates the provision of section 430 of the Act which prohibits the consideration of any employment after June 30, 1971 in determining whether a miner was employed at least fifteen years with respect to claims based on the presumption of section 411(c)(4).

June 30, 1971, is specified in section ____ of the Coal Mine Health and Safety Act as the date by which underground coal mines must have attained a level of respirable dust of not more than 3 milligrams per cubic meter. A temporary waiver of the date requirement is provided for in the law.

Although the Department of the Interior has maintained that 94 percent of the nation's active underground coal mine sections are meeting the later two milligram standard, the General Accounting Office, in a report entitled "Improvements Still Needed in Coal Mine Dust-Sampling Program and Penalty Assessments and Collections" dated December 31, 1975, said that "GAO found many weaknesses in the dust-sampling program affecting the accuracy and validity of results and making it virtually impossible to determine how many mine sections were in compliance."

Corroboration of the GAO position is to be found in an internal memorandum from a research supervisor of the Bureau of Mines concerning the review of current Mine Enforcement and Safety Administration (MESA) dust enforcement program in coal mining operations. That memorandum states unequivocally that "it is evident that a grave health hazard still exists in our coal mine environments." Further, the memorandum indicates "As a result of this (MESA's) inadequate enforcement program, our coal mine personnel are being subjected to flagrantly hazardous environments, despite public reports to the contrary."

The Committee is persuaded by this and other evidence that compliance with Federal dust standards is not universal, that miners are continuing to contract black lung disease, and that the 1971 cutoff date thus has no particular significance for the purpose of section 430 of the Act.

OCCUPATIONAL DISEASE STUDY

The Committee bill includes a section which mandates a study by the Department of Labor, in cooperation with the National Institute for Occupational Safety and Health (NIOSH), of all occupationally related pulmonary and respiratory diseases.

The Committee believes that a comprehensive study such as this, with its specific objectives, would provide much valuable new and additional information on the status of job-induced lung diseases in the

United States. We have accumulated a considerable body of knowledge about coal workers' pneumoconiosis, and have embarked on a program of treatment and benefits for its sufferers. The same cannot be said of many other industry-caused pulmonary and respiratory diseases. The Committee recognizes that occupational disease is emerging as a serious and complex matter to be addressed through control of toxic substances, occupational safety and health regulation, including mine health and safety, the workers' compensation system and other programs. This study will assist in formulating improvements and reforms in such programs.

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: None.

(Motion by Mr. Randolph to report H.R. 10760, as amended, was adopted by unanimous voice vote.)

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:

Fiscal year:	*Millions*
1977	[1] $113
1978	([2])
1979	([2])
1980	([2])
1981	([2])

[1] This total represents the amount of repayable advances by the Federal Government to the trust fund. Such amount is to be repaid to the Treasury within five years, with interest.

[2] Cost estimate to the trust fund for subsequent years supplied by Congressional Budget Office.

Congress of the United States,
Congressional Budget Office,
Wahington, D.C., September 20, 1976.

Hon. Harrison A. Williams, Jr.,
Chairman, Committee on Labor and Public Welfare, U.S. Senate, Washington, D.C.

Dear Mr. Chairman: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for H.R. 10760, the Black Lung Benefits Reform Act of 1976.

Should the Committee so desire, we would be pleased to provide further details on the attached cost estimate.

Sincerely,

Alice M. Rivlin,
Director.

Attachment.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill No.: H.R. 10760.
2. Bill title: Black Lung Benefits Reform Act of 1976.
3. Purposes of bill: H.R. 10760 provides for the reform of the present black lung benefits program by expanding and redefining entitlement to that program, by establishing a black lung disability benefit trust fund, and by transferring to the Department of Labor claims that had been denied under Part B which could be reopened as a result of this bill.

The following provisions in the bill will have an impact on the overall cost of the black lung program:

A. Section 2 amends the definition of a "miner" to include "any individual who works or who has worked in or around a coal mine in coal extraction or the processing and transporting of coal". The section also provides for survivors of miners who had been employed at the time of their death to now file a claim for benefits.

B. Section 3 establishes a new entitlement to benefits for a living miner if that miner had worked 25 years or more in the mines and is partially or totally disabled and, also, establishes an irrebuttable presumption for the survivors of miners who had worked 25 or more years in the mine before the time of their death.

C. Section 4 eleminates the provision under current law that establishes current employment as a bar to filing for benefits.

D. Section 5 amends current law to now require the Secretary to accept the interpretation of an x-ray submitted in support of a claim if that x-ray were interpreted by a board-certified or eligible radiologist. Current law would allow for the re-reading of such x-rays. Also, under Section 5, is a proviso which specifically allows a claim supported by affidavits in the case of a deceased miner, if there is no other medical evidence, to be accepted as evidence of the disability.

E. Section 6 provides for the establishment of a trust fund within the Department of Labor to pay all claims under Part C where the responsible mine operator cannot be identified. This section also amends Section 422(i) of the Black Lung Act to provide that an operator who acquired a mine or its assets from a prior operator after January 1, 1959, shall be liable for benefits which would have been payable by the prior operator. This provision moves the date back ten years from that which exists under current law.

F. Section 7 removes the current time limitation on filing of a claim by a widow from the present three years. This section also authorizes $10 million each fiscal year for black lung clinical facilities.

G. Section 8 authorizes the Secretary of Labor to establish the necessary field offices to assist claimants with the filing and processing of claims.

H. Section 10 provides that any person who filed a Part B claim and whose claim had been ultimately denied by the Social Security Administration, may file a new claim under Part C if they deem that, under the provisions of this bill, they would now become eligible for entitlement.

I. Section 12 requires the Department of Labor, in conjunction with the National Institute of Occupational Safety and Health, to study all occupationally related lung diseases in the United States, including an analysis of factors similar to coal workers pneumoconiosis and its sequelae. This study would also look at the adequacy of workers' compensation programs for such diseases and the status and adequacy of and safety.

4. Cost estimate: (Table following.)

COST ESTIMATE

[In millions of dollars]

	1977	1978	1979	1980	1981
Section 2(c): Employment at Time of Death	3.7	1.6	1.6	1.7	1.7
Section 2(b): "Miner" Definition	.7	.7	.7	.8	.8
Section 3: 25-Year Presumption	23.1	25.1	27.2	29.4	31.8
Section 4: Current Employment Bar	2.0	.7	.7	.8	.8
Section 5(a):					
Rereadings of X-rays	78.8	33.0	36.0	39.2	42.6
Affidavits as Evidence	7.1	3.2	3.5	3.7	4.0
Section 6(b): Offsets due to 1959 Cut-off	−20.5	−10.2	−12.4	−14.8	−17.2
Section 7(e): Deadline on Widows' Filing	2.6	3.0	3.5	4.0	4.6
Section 7(f): Clinical Facilities	10.0	10.0	10.0	10.0	10.0
Section 8: Field Offices	2.5	2.6	2.8	3.0	3.2
Section 12: Lung Diseases Study	1.5	.8			
Total program costs	111.5	70.5	73.7	77.8	82.3
Administrative costs	3.0				
Total costs	114.5	70.5	73.7	77.8	82.3

5. Basis for estimate: In general, the data used to develop the cost estimates of the various sections was provided by the Department of Labor and the Social Security Administration. Assumptions for the average monthly benefits for both miners and survivors were based upon the 1976 average monthly benefits inflated by CBO Federal pay raise projections for the next five years. Thus, an average benefit of $295 per month was used for miners in 1977 and a $218 benefit for survivors. Future benefits were inflated by 6.0 percent in 1978 and 6.2, 6.1, and 6.3 percent for 1979–1981, respectively.

The overall additional costs to the Federal government resulting from Sections 2, 3, 4, 5, and 7(e) are based solely on the liability to the trust fund. Although the entitlement provisions of this bill would increase benefit payments significantly, according to the Department of Labor only 40 percent of that total would be paid through the trust fund, and the remaining 60 percent paid by the responsible mine operators. The Department of Labor indicates that the provision under Section 6 which moves the date back to 1959 to establish liability of the mine operators would increase the identifica-

tion rate of those operators from the present 25 percent up to 60 percent. The following represents, on a section-by-section basis, the assumptions used in determining the costs related to those sections:

Section 2—The definition of "miner" in Section 2 would provide, according to testimony of the independent coal operators, an additional 500 potential beneficiaries among the small coal mine operators to the program. Estimates for the cost of this section are, thus, based upon this number of potential beneficiaries and use, in calculating 1978–1981 costs, projected mortality rates of 7.6 percent in 1978 (and an additional .3 percent per year) for miners and 4.4 percent (and an additional .2 percent per year) for survivors. These mortality rates, supplied by the Social Security Administration, are used throughout this cost estimate.

Also under Section 2, the provision that a miner's survivor—who had been previously barred from filing a claim because the miner was employed at the time of his death—can now file would, according to the Social Security Administration, apply to a total of 1,500 survivor beneficiaries. Costs were estimated using this estimate and, because of the retroactivity back to 1974 of this provision, a total first-year benefit of $6,215 was used. It should be noted that, throughout this estimate, where retroactivity is included, the first-year benefit will be $8,416 for entitlements where both miners and survivors are involved and $6,215 where, as in this case, only survivors were involved.

Section 3—Provides entitlement to benefits for miners who have worked 25 or more years in the mines and have a partially or totally disabling respiratory or pulmonary impairment. This provision also establishes an irrebuttable presumption for entitlement to the survivors of miners who had served 25 years in the mines. The costs attributable to this section involve both beneficiaries who had originally applied for benefits under Part B and had been denied, as well as new beneficiaries under Part C (including some who had applied and been denied). Social Security estimates that the total number of individuals who have worked 25 years in the mines and applied under their program was 20,000. Under Part C, there are an estimated 17,600 beneficiaries. Of this total potential population of 37,600, CBO estimates that there is a total of 11,925 survivors who would be automatically entitled and 7,250 miners who would also qualify with 25 years and a partial disability. Multiplying this by the average annual benefit for each year between 1977 and 1981 and using the mortality rates listed above, estimates were made of the costs of the beneficiaries. As well, additional costs were attributed to this provision because of an increase in claims of 15,000 per year filed with the Department of Labor for 1978 through 1981.

Section 4—Provides that a miner may file a claim, while still employed, if the miner has ten or more years in a coal

mine, if he has x-ray evidence of pneumoconiosis, or if he is eligible to exercise the option to transfer to a less dusty mine area. This provision amends the Act which barred individuals from filing claims while still employed. According to the Social Security Administration, this would bring a total of 600 new beneficiaries into the program and would provide payments retroactively as far back as 1974. The estimate of costs was based upon this number of beneficiaries and used $8,416 for the average retroactive payment in 1977, the average monthly payments in subsequent years, and the mortality rates listed above. The Department of Labor indicated this section would have no significant cost impact.

Section 5—Makes two cost-relevant changes in the Act: First, the Secretary of Labor will now be required to accept an interpretation of an x-ray submitted in support of a claim if such interpretation was made by a board-certified or board-eligible radiologist and if the x-ray was of acceptable quality and taken by a qualified technologist or technician. Based upon a study prepared by the Department of Labor of claims denied under Part C, it is estimated that 28 percent of those denials were based solely on a rereading of an x-ray. Because this bill requires that interpretation to have been done by a board-certified or eligible radiologist, it is further assumed that only 50 percent of those claims would now become eligible under this provision. SSA indicates that there are approximately 84,000 denials and the Department of Labor, based upon the number of claims presently filed, indicates 80,000 potential denials. Using these as bases, and accounting for retroactivity, the costs for 1977 were determined. The potential effect on future applicants under Part C was determinde by assuming the same overall 14 percent of potential claims denied for the 15,000 new applicants projected for each of the future years. Also, outyear costs included the same mortality rates and increases in the average benefit payments as for the above sections. Under Section 5, as well, the costs of the provision which specifically allows a claim supported by affidavits in the case of a deceased miner were also calculated. The number of potential beneficiaries was estimated by the Social Security Administration at 2,000 and, under Part C, by the Department of Labor, at 860. In determining the costs, retroactivity was included in the 1977 estimate.

Section 6—Establishes the trust fund and the assumption of liability by that fund for payment of claims where no responsible mine operator can be identified. This section has cost impact in two ways: (1) Since 60 percent of the claims can be attributed to a responsible mine operator, only 40 percent of these costs resulting from this bill will be shown as Federal expenditures; and (2) because of the provision under this section that moves the date from which an operator can be liable for benefits from 1969 to 1959, the identification rate of responsible mine operators will increase from 25 to 60 percent. This increase in the identification rate will decrease the Federal liability for present and future claims that will

be approved under current law. Assuming current law, the total potential liability for approved claims under Part C, given the present filing and approval rates, would be $60 million in 1977. If the identification rate were 25 percent, then the Federal government would be liable for $45 million of this amount. However, if the identification rate were 60 percent, the Federal government would only be liable for $24 million and thus a savings can be seen (the actual numbers were slightly different from $60 million—thus, the actual savings amounted to $20.5 million).

Section 7—Removes the time limitation on filing of a claim by a widow. According to the Department of Labor, this could potentially involve 10,000 claims. Using a 20 percent approval rate (based upon the 10 percent approval rate under existing law and an additional 10 percent based upon the provisions in this bill), it is calculated that there would be a total of 2,000 additional new beneficiaries. Costs were projected on this basis with no inclusion of retroactivity.

Section 7 also provides authorization of $10 million for each fiscal year for black lung clinical facilities. This total sum is included in the cost estimate for the five-year period.

Section 8—Authorizes the Secretary of Labor to establish necessary field offices to assist claimants with filing and processing of claims. The Department of Labor estimated 1977 costs for these field offices at $2.5 million. Subsequent years' costs are based upon this, inflated by the Federal wage deflators listed above.

Although Section 10, in itself, does not have any cost implications, it merits some discussion because of its effect on Part B claims. Under Section 10, any person who filed a Part B claim in the past and whose claim was finally adjudicated as denied by the Social Security Administration, is permitted to file a new claim under Part C if they deem that they would now be entitled to services. The effect of this provision is, according to the Social Security Administration, to essentially eliminate any new entitlements under Part B and transfer all entitlements to Part C. All the costs that have been calculated under this bill that relate to entitlemens will be Part C costs and therefore payable under either the trust fund or by the responsible mine operator. In a sense, this section represents a potential cost savings, for without it, all new entitlements provided under this bill could be possibly filed under Part B. Since 100 percent of the costs under part B are paid by the Federal government as opposed to the projected 40 percent under Part C, the overall Federal costs of this bill would be significantly greater.

Section 12—Requires the Department of Labor, in conjunction with the National Institute of Occupational Safety and Health, to study occupationally related lung diseases in the United States. In order to carry out this study, it is estimated that the costs—for the 18 months necessary to complete the work—would be $1.5 million in the first year and $800,000 in the second year.

The administrative costs to the Department of Labor to implement this bill are calculated on the basis of an assump-

tion of a total of 100,000 claims processed in the first year, which would require approximately 120 man-years. Using $25,000 per man-year (including support services) as an estimated cost, the overall 1977 adminstrative costs were estimated. Increased adminstrative costs due to this bill in subsequent years are assumed to be insignificant.

6. Estimate comparison: None.

7. Previous CBO estimate: A previous cost estimate was prepared for the House version of H.R. 10760. Because of major differences between that bill and the Senate version, a cost comparison would not be applicable.

8. Estimate prepared by Jeffrey C. Merrill.

9. Estimate approved by James L. Blum, Assistant Director for Budget Analysis.

Section-by-Section Analysis

SECTION 1—SHORT TITLE

Cites the bill as the "Black Lung Benefits Reform Act of 1976".

SECTION 2—DEFINITIONS

(*a*) "Pneumoconiosis" definition in the Act is amended to mean a chronic dust disease of the lung and the sequelae of such disease, including respiratory and pulmonary impairments, arising out of coal mine employment.

(*b*) "Miner" definition is amended to include any individual who works or has worked in or around a coal mine in coal extraction. The term also includes certain other persons when they work under conditions similar to an underground mine: those engaged in coal processing or transportation or in coal mine construction.

(*c*) "Total disability" definition provides that the Secretary of Labor is to promulgate regulations, subject to appropriate provisions of section 413 (b) and (c) of the Act, and to the following: (1) for a living miner, a miner is totally disabled when pneumoconiosis prevents employment similar to coal mine work in which he was regularly engaged, (2) for a deceased miner, the fact that a miner was working at the time of death shall not be conclusive evidence that he was not totally disabled, and (3) regulations shall not be more restrictive than those applying to section 223(d) of the Social Security Act. Further, the Secretary, in consultation with NIOSH, is to establish medical test criteria which accurately reflect total disability in coal miners.

(*d*) "Fund" means the trust fund (Black Lung Disability Insurance Fund) established under section 424.

SECTION 3—ENTITLEMENTS

(*a*) Section 411(c) is amended by adding a paragraph (5) which (A) entitles a living miner to benefits if the miner worked 25 years

in one or more mines and if the miner is partially or totally disabled by pneumoconiosis; and (B) in the case of a deceased miner, the eligible survivors of such miner shall be entitled to benefits if the miner worked 25 years in one or more mines prior to the date of enactment of the bill, unless it is established that the miner was not partially or totally disabled when he died. Eligible survivors are to furnish evidence, as available, to the Secretary at his request, on the health of the miner at the time of death.

(*b*) A new subsection (e) is added to section 411 of the Act which measures a year of employment, for purposes of section 411(c), as any year the miner (1) has four quarters of coverage under section 213 of the Social Security Act, or (2) was continuously on a coal company payroll and was employed as a miner, or (3) the Secretary otherwise determines that he was employed as a miner. Credit is to be given for appropriate portions of years worked.

(*c*), (*d*), (*e*) *Sections* 412, 414, and 421, respectively, are amended to conform those sections to the entitlement provisions.

(*f*) A new subsection (*f*) of section 411 is added to define "partially disabled" for purposes of 411(c)(5) as diminished capacity due to pneumoconiosis to earn the wages received at the time of the miner's last coal mine employment.

SECTION 4—EMPLOYMENT NO BAR TO CLAIMS AND BENEFITS

Section 413 of the Act is amended by adding a new subsection (d) which provides that a miner may file a claim while still employed if the miner has 10 or more years in a coal mine, or if the miner has X-ray evidence of pneumoconiosis, or if the miner is eligible to exercise the option to transfer to a less dusty mine area pursuant to section 203 of the Act. The Secretary is to notify such a claimant as soon as practicable, of his eligibility or potential eligibility, and benefits shall be paid as of the month following the month of termination of the miner's employment.

SECTION 5—EVIDENCE REQUIRED TO ESTABLISH CLAIM

(*a*) Section 413(b) is amended to insert a proviso which requires the Secretary to accept an interpretation of an X-ray submitted in support of a claim if such interpretation was made by a board certified or board eligible radiologist, if the X-ray is of acceptable quality, and if the X-ray was taken by a radiologist or qualified radiologic technologist or technician, except where the Secretary has reason to believe the claim is fraudulent.

A new sentence immediately follows the above proviso, which specifically provides that affidavits alone, in the case of a deceased miner, may be taken to establish a claim, if there is no medical evidence, or if such evidence is insufficient.

(b) Section 413(b) is further amended by adding a new sentence which requires that each miner claimant shall be provided an opportunity to substantiate his or her claim by means of a complete pulmonary evaluation.

SECTION 6—TRUST FUND AND OPERATOR LIABILITY

(*a*) A new section 424 establishes in the Department of Labor a trust fund, of which the Secretary of Labor is to be managing trustee. The fund shall consist of appropriations, assessments, penalties, and other interest, income, gains, or earnings.

When the entitlement to benefits is established under section 422, and the Secretary determines that (A) an operator is not insured, or has not paid benefits within 30 days of an eligibility determination, or (B) there is no responsible operator, the fund shall pay benefits. An operator under clause (A) shall be liable for such amounts paid in a civil action brought by the Secretary. In a case under clause (B), a fund liability determination is final. No operator or representative shall be a party to, or intervene in, any determination under clauses (A) or (B), but existing rights, duties, and liabilities under sections 422 and 423 are preserved.

No operator is to have any rights to fund assets.

The Secretary is to prescribe regulations governing the fund, benefit payments, assessment rates, and collections, as soon as practicable after enactment.

All assessments, penalties, and interest paid shall be commingled in the fund, and the Secretary need not segregate any portion.

The Secretary of the Treasury is to invest such fund assets as are not required to meet current withdrawals. Duties regarding such investments are specified.

No profit or return on investment shall be considered income for purposes of Federal or State income taxes.

The fund shall be used to pay benefits, for operation and administration expenses, and for repayment of advances. Personnel and resources of the Department of Labor and other agencies may be utilized, subject to fund reimbursement.

Each coal mine operator is to pay assessments into the fund, which fund is to assume part C benefit obligations and administrative costs of the Secretary, shall repay the Federal treasury the amount of benefits paid after January 1, 1974, and all repayable advances with interest.

The Secretary is to establish an initial assessment as soon as practicable after enactment. Each type of coal mine operation is to be classified, and a rate established on an equitable basis, taking into account appropriate factors, including productivity of each class. Operators in each class are subject to a uniform assessment per ton of coal. After one year the Secretary shall adjust the assessment rate as necessary. Assessments are to be considered ordinary business expenses for purposes of section 162(a) of the Internal Revenue Code.

The Secretary is authorized to investigate and gather data as necessary to determine assessments to be paid. Witnesses may be called to testify under oath. Federal, State and local agencies may be utilized with their consent. Coal operators are to keep necessary records and make reports as determined by the Secretary.

Appropriations are authorized to provide advance amounts necessary to pay benefits and meet expenses. Such amounts are advances, to be repaid within five years, with interest.

An operator who fails to pay an assessment or comply with a rule, is subject to a civil action brought by the Secretary. Relief may

include an order requiring future payments and past-due assessments, with 9 percent interest per annum. The Secretary shall assess a civil penalty up to an amount equal to the defaulted assessment. Such penalties may be recovered in a civil action.

(*b*) Section 422(i) is amended to provide that an operator who acquired a mine or its assets from a prior operator after January 1, 1959, shall be liable for benefits which would have been payable by the prior operator. Prior operators are not relieved of any liability. Rules regarding the application of the subsection to various corporate reorganizations are specified.

SECTION 7—MISCELLANEOUS

(*a*) Provides that title IV may be cited as the "Black Lung Benefits Act."

(*b*) Authorizes a disabled miner's widow to negotiate benefit checks.

(*c*) Removes time limitation on filing of a claim by a widow in section 421, which requires certain provisions in State laws approved by the Secretary.

(*d*) Eliminates from section 422(e) the provision which terminates the payment of claims after twelve years following enactment of the 1969 Act, thus making part C permanent.

(*e*) Removes time limitation on filing of a claim by a widow.

(*f*) Authorizes $10 million each fiscal year for black lung clinical facilities.

(*g*) Eliminates the June 30, 1971 employment cutoff applicable to part C claims under section 411(c)(4).

SECTION 8—FIELD OFFICES

Authorizes the Secretary of Labor to establish necessary field offices to assist claimants with filing and processing. Such offices are to be reasonably accessible to claimants, and the Secretary may make any arrangements necessary with other Federal or State agencies to use their personnel and facilities.

SECTION 9—INFORMATION TO POTENTIAL BENEFICIARIES

The Secretaries of Labor and HEW shall jointly disseminate changes in the law made by the bill, and an explanation thereof, to interested persons and groups, and shall notify, through appropriate organizations, individuals who may be eligible for benefits by reason of the changes. Assistance in preparing and processing claims shall be given to each potential beneficiary.

SECTION 10—REVIEW AND TRANSFER OF DENIED AND PENDING CLAIMS

A new section 432 is added to the Act which provides as follows:

(*a*) Any person who filed a Part B claim and whose claim is finally adjudicated as denied by the Social Security Administration may file a new claim under part C.

(*b*) The Secretary is to prescribe regulations necessary to expedite the processing of such claims, and the Secretary of HEW shall furnish all pertinent claim information to the Secretary.

(*c*) Except as otherwise provided in the Act, a claim filed under subsection (*a*) shall be treated as a new claim. A survivor who filed under part B and was denied solely because the miner was employed when he died, shall be entitled to benefits from January 1, 1974. A survivor who filed under part C and was denied for the same reason shall be entitled to benefits from January 1, 1974, or from the time the prior claim was filed, whichever is later.

SECTION 11—EFFECTIVE DATES

(*a*) The Act takes effect on the date of enactment, except as specified in subsections (*b*) and (*c*).

(*b*) Amendments made by sections 2 (a), (b), and (c); section 3; section 4; and section 5 are effective as of December 30, 1969, except that claims approved solely because of section 3 shall be payable from the date of enactment.

(c) Amendments made by section 6(a) are effective on January 1, 1977, except that section 424(d) (authorization of appropriations to fund) is effective on the date of enactment.

SECTION 12—OCCUPATIONAL DISEASE STUDY

(*a*) Requires the Department of Labor, with NIOSH, to study all occupationally related lung diseases in the United States, to include analyses of factors similar to coal workers' pneumoconiosis and its sequelae; the adequacy of workers' compensation programs for such diseases; and the status and adequacy of Federal health and safety laws and regulations relating to industries with which such diseases are associated.

(*b*) The study is to be completed and a report submitted to the President and to the appropriate Committees of the Congress within 18 months after enactment.

SECTION 13—PROGRAM TERMINATION

Provides that no new claim for benefits under part C shall be accepted after December 31, 1981.

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 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 to which no change is proposed is shown in roman):

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969, AS AMENDED

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".

* * * * * * *

TITLE IV—BLACK LUNG BENEFITS

PART A—GENERAL

SEC. 401. (*a*) 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 coal mines; that there are a number of survivors of coal miners whose deaths were due to this 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 who are totally disabled due to pneumoconiosis and to the surviving dependents of miners whose death was due to such 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.

(*b*) *This title may be cited as the "Black Lung Benefits Act."*

SEC. 402. For purposes of this title—

(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 Secu-

rity 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 a coal mine.] *and its sequelae, including respiratory and pulmonary impairments, arising out of coal mine employment.*

(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 coal mine.]

(d) The term "miner" means any individual who works or has worked in or around a coal mine in the extraction of coal. Such term also includes an individual who works or has worked in processing or transporting coal, or in coal mine construction during the period such individual worked under conditions substantially similar to conditions in an underground coal mine.

(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 minor 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 here support from the miner at the time of his death.

[(f) 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.]

(f) The term "total disability" has the meaning given it by regulation of the Secretary of Labor, subject to the relevant provisions of subsections (b) and (d) of section 413, except that—

(1) in the case of a living miner, 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;

(2) in the case of a deceased miner, such regulations shall provide that a miner's employment in a mine at the time of death shall not be used as conclusive evidence that the miner was not totally disabled; and

(3) such regulations shall not provide more restrictive criteria than those applicable under section 223(d) of the Social Security Act. The Secretary, in consultation with the National Institute for Occupational Safety and Health, shall establish criteria for all appropriate medical tests under this subsection which accurately reflect total disability in coal miners as defined in paragraph (1).

(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

(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.

(h) The term "fund" means the Black Lung Disability Insurance Fund established pursuant to section 424.

Part B—Claims for Benefits Filed on or Before December 31, 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 to total disability of any miner due to pneumoconiosis, and in respect to the death of any miner whose death was due to 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 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 coal mines and died from a respirable disease there shall be a rebuttable presumption that his death was due to pneumoconiosis;

(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; [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 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.] *mine;*

(5)(A) in the case of a living miner who was employed for twenty-five years or more in one or more coal mines, if such miner is partially or totally disabled due to pneumoconiosis, he or she shall be entitled to the payment of benefits; and

(B) in the case of a deceased miner who was employed for twenty-five years or more in one or more coal mines prior to the date of enactment of the Black Lung Benefits Reform Act of 1976, the eligible survivors of such miner shall be entitled to the payment of benefits, unless it is established that at the time of his death such miner was not partially or totally disabled due to pneumoconiosis. Eligible survivors shall, upon request by the Secretary, furnish such evidence as is available with respect to the health of the miner at the time of his death.

(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.

(e) For the purposes of determining the applicability of the presumptions of subsection (c) of this section, a miner will be deemed to have been employed in a coal mine for any year in which—

(1) he has four quarters of coverage, as defined in section 213 of the Social Security Act as a miner; or

(2) he was continuously on the payroll of a coal company and was employed as a miner; or

(3) The Secretary determines on the basis of other evidence that he was employed as a miner.

In determining the number of years of a miner's coal mine employment, the Secretary shall give the miner credit for the appropriate portion of any year in which he or she worked only part of a year.

(f) For the purposes of subsection (c)(5) of this section, 'partially disabled, means diminished capacity due to pneumoconiosis to earn the wages which the miner received at the time of his last coal mine employment.

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, *or in the case of a miner entitled to benefits under paragraph (5) of section 411(c) of this title,* the [disabled] miner shall be paid benefits during the disability, *or during the period of such entitlement,* 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 benefit 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).

(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 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.

(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.

(b) Notwithstanding subsection (a), benefit payments under this section to a miner or his 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, 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. 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, 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, but no claim for benefits under this part shall be denied solely on the basis of the results of a chest roentgeno-

gram. 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: *Provided, That the Secretary shall accept a board certified or board eligible radiologist's interpretation of a chest roentgenogram which is of acceptable quality submitted in support of a claim for benefits under this title if such roentgenogram has been taken by a radiologist or qualified radiologic technologist or technician, except where the Secretary has reason to believe that the claim has been fraudulently represented. Where there is no medical evidence, or where such evidence is insufficient in the case of a deceased miner, affidavits may be taken as sufficient evidence to establish that a miner was totally disabled due to pneumoconiosis or that his death was due to pneumoconiosis.*

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),] (*l*) *and* (*n*), 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. *Each miner who files a claim for benefits under this title shall be provided an opportunity to substantiate his or her claim by means of a complete pulmonary evaluation.*

(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 by 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.

(d) (1) A miner who is eligible to exercise the option to transfer to a position of reduced concentration of respirable dust in the mine atmosphere pursuant to section 203 of this Act, or who has evidence of the development of pneumoconiosis demonstrated by chest roentgenogram, or who has been employed for ten or more years in a coal mine, may file a claim for benefits before terminating such employment.

(2) The Secretary shall notify such a miner, as soon as practicable after filing a claim, whether the miner would be eligible for benefits except for such miner's employment status at the time of filing.

(3) If the Secretary makes a determination of eligibility or potential eligibility under paragraph (2) of this subsection, benefits shall be

paid as of the month after the month of termination of such miner's coal mine employment.

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, 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, 1973, 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 field 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 6 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, 1973, if the claim therefor was filed after June 30, 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, 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] *payable* to such miner with respect to disability due to pneumoconiosis, *or with respect to an entitlement under paragraph (5) of section 411(c) of this title*, prior to his death, or (2) the death of such miner occurred prior to January 1, 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 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—

(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.

PART C—CLAIMS FOR BENEFITS AFTER DECEMBER 31, 1973

SEC. 421. (a) On and after January 1, 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, *and in the case of claims for benefits filed on the basis of eligibility under paragraph (5) of section 411(c)*, 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 section 402(f) of this title and to those standards established under part B of this title, and by the regulations of the Secretary of Health, Education, and Welfare promulgated [thereunder;] *thereunder, except that such standards shall not be required to include provisions for the payment of benefits based upon conditions substantially equivalent to conditions described in paragraph (5) of section 411(c);*

(D) any claim for benefits on account of total disability for 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:] *after a medical determination of total disability due to pneumoconiosis;*

(E) there are in effect provisions with respect to prior and successor operators which are substantially equivalent to the provisions contained in section 522(i) of this part; and

(F) there are applicable such other provisions, regulations or interpretation, 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.

(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.

SEC. 422. (a) During any period after December 31, 1973, 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, 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 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) 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 therefore 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, [1974; or] *1974.*

[(3) for any period after twelve years after the date of enactment of this Act.]

(f) [(1)] Any claim for benefits *by a miner* 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.] *after a medical determination of total disability due to pneumoconiosis.*

[(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 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.]

(i)(1) During any period in which this section is applicable to the operator of a coal mine or mines who on or after January 1, 1959, acquired such mine or mines 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 or mines, or owner of such assets on or after January 1, 1959, such operator 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 by such prior operator as if the acquisition had not occurred and the prior operator had continued to be a coal mine operator.

(2) Nothing in this subsection shall relieve any prior operator of any liability under this section whether or not such prior operator is or was a coal mine operator on the effective date of this Act or any amendments thereto.

(3) For purposes of this subsection, and notwithstanding the January 1, 1959 time limitation of paragraph (1) of this subsection, the following rules apply in the case of certain corporate reorganizations:

(A) If an operator ceases to exist by reason of a reorganization which involves a mere change in identity, form, or place of organization, however effected a successor operator or other cor-

porate or business entity resulting from such reorganization shall be treated as the operator to whom this section applies.

(B) If an operator ceases to exist by reason of a liquidation into a parent corporation, the parent corporation shall be treated as the operator to whom this section applies.

(C) If an operator ceases to exist by reason of a merger or, consolidation, or division, the successor operator or corporation, or business entity shall be treated as the operator to whom this section applies.

(4) The provisions of this section shall be applicable with respect to all claims filed on or after July 1, 1973.

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 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 payment; 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, 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, child, parent, brother, or sister under this title.]

SEC. 424. (a)(1) There is hereby established in the Department of Labor a trust fund to be known as the Black Lung Disability Fund (hereinafter referred to as the "fund"). The trustees of the fund shall

be the Secretary, the Secretary of the Treasury, and the Secretary of Health, Education, and Welfare, all ex officio. The Secretary shall be the Managing Trustee and shall hold, operate, and administer the fund. The fund shall consist of such sums as may be appropriated to the fund, assessments paid into the fund as required by section 424(b) any penalties recovered under section 424(c), and any interest, income, gains, or earnings as may accrue to the fund.

(2) If a miner or widow, child, parent, brother or sister is entitled to benefits under section 422 and the Secretary determines that (A) 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 thirty days of an initial determination of elibility by the Secretary, or (B) there is no operator who was required to secure the payment of such benefits, the fund shall upon such determination by the Secretary 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 (A), the operator shall be liable to the fund in a civil action brought by the Secretary and in an amount equal to the amount paid to such miner or his widow, child, parent, brother, or sister under this title. In a case referred to in clause (B) a determination that the fund is liable for the payment of benefits shall be final. No operator or representative of operators may bring any proceeding, or intervene in any proceedings, held for the purpose of determining claims for benefits under clause (A) or (B), except that nothing in this section shall affect the rights, duties, or liabilities of any operator in proceedings under section 422 or section 423 of this title.

(3) No operator shall have any right, title, or interest in fund assets, income, or other earnings of the fund.

(4) As soon as practicable after the effective date of this section, the Secretary shall prescribe regulations as he deems necessary to provide for the operation of the fund, the payment of benefits, the establishment of assessment rates, and for the collection of assessments, penalties, and interest owing the fund by a coal mine operator.

(5) All assessments, penalties, and interest paid to the fund under this section shall be held and administered by the Secretary as a single fund, and the Secretary shall not be required to segregate any part of the fund assets which may be claimed to represent accruals or interests of any individuals.

(6)(A) It shall be the duty of the Secretary of the Treasury to invest such portion of the 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 (1) on original issue at the issue price, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under the Second Liberty Bond Act, as amended, are hereby extended to authorize the issuance at par of public debt obligations for purchase by the fund. Such obligations issued for purchase by the fund shall have maturities fixed with due regard for the needs of the fund and shall bear interest at a rate equal to the average market yield

(computed by the Secretary of the Treasury on the basis of market quotations as of the end of the calendar month next preceding the date of such issue) on all marketable interest-bearing obligations of the United States then forming a part of the public debt which are not due or callable until after the expiration of four years from the end of such calendar month; except that where such average market yield is not a multiple of one-eighth of 1 per centum, the rate of interest on such obligations shall be the multiple of one-eighth of 1 per centum nearest such market yield. The Secretary of the Treasury may purchase other interest-bearing obligations of the United States or obligations guaranteed as to both principal and interest by the United States, on original issue or at the market price, only where he determines that the purchase of such other obligations is in the public interest.

(B) Any obligations acquired by the fund (except public debt obligations issued exclusively to the fund) may be sold by the Secretary of the Treasury at the market price, and such public debt obligations may be redeemed at par plus accrued interest.

(C) The interest on, and the proceeds from the sale or redemption of, any obligations held in the fund shall be credited to and form part of the fund.

(7) Any profit or return on any investment or reinvestment made by the Secretary of the Treasury shall not be considered as income for the purpose of Federal or State income taxation.

(8)(A) Amounts in the fund shall be available for making expenditures necessary for the payment of benefits pursuant to section 424(a)(2), and for all expenses of operation and administration under this part, and for the repayment with interest of any advances to the fund. The Secretary is authorized in carrying out his responsibilities under this section to use the personnel and resources of the Department of Labor, subject to reimbursement by the fund, and to use the personnel and resources of any other Federal agency, subject to reimbursement by the fund.

(B) The fund shall pay the obligations incurred by the Secretary with respect to all claims filed on or after July 1, 1973, and shall repay into the Federal treasury amounts equal to amounts expended for such claims paid prior to the effective date of this section, except that the fund shall not be obligated to pay or reimburse for benefits for any period of eligibility prior to January 1, 1974.

(9) The Secretary shall keep accounts and records of administration of the fund, which shall include a detailed account of all investments receipts, and disbursements.

(10) The Secretary may employ such counsel, accountants, agents, actuaries, and employees of the fund as he considers necessary. He shall charge the compensation of such persons and any other related expenses against the fund.

(b)(1) Each operator of a coal mine shall pay assessments into the fund in amounts sufficient to insure the payment of all benefits pursuant to section 424(a)(2), for all expenses of administration and operation under this part, and for the replayment with interest of any advances to the fund.

(2) The initial assessment of each operator shall be established by the Secretary as soon as practicable after the effective date of this section. In establishing the initial and any subsequent assessment for

each operator, the Secretary shall classify each type of coal mine operation. The respective rate of assessment for each class of coal mine operation shall be established by the Secretary on an equitable basis and the rate per ton for each class shall take into account such factors as are appropriate, including the productivity of each class of mine operation. The operators within each class determined by the Secretary shall be subject to a uniform assessment per ton of coal mined within such class. Beginning one year after the date upon which the Secretary established the initial assessment rate, he shall periodically modify or adjust the assessment rate per ton of coal mined to reflect the income and expenses of the fund to the extent necessary to permit the fund to discharge its responsibilities under this Act.

(3) For purposes of section 162(a) of the Internal Revenue Code of 1954 (relating to trade or business expenses), any assessment paid by an operator of a coal mine under paragraph (1) shall be considered to be an ordinary and necessary expense of carrying on the trade or business of such operator.

(c)(1) The Secretary may investigate and gather data regarding such matters as he may deem necessary to determine the assessment to be paid by coal mine operators, and may enter such places and inspect such records (and make transcriptions thereof).

(2) In making his inspections and investigations under this section the Secretary may require the attendance and testimony of witnesses and the production of evidence under oath. Witnesses shall be paid the same fees and mileage that are paid in the courts of the United States. In a case of contumacy, failure, or refusal of any person to obey such an order, any district court of the United States or the United States court of any territory or possession, within the jurisdiction of which such person is found, resides, or transacts business shall, upon the application of the Secretary, have jurisdiction to issue such person an order requiring such person to appear if, as, and when so ordered, and to give testimony relating to the matter under investigation or in question, and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(3)(A) For the purpose of determining the assessments to be established under this section the Secretary may, with the consent and cooperation of appropriate State agencies, utilize the services of State and local agencies and their employees and, notwithstanding any other provision of law, may reimburse from the fund such State and local agencies for such services.

(B) For the purpose of determining the liability of any coal mine operator under this part, the Secretary may enter into agreements with any agency of the United States and may reimburse from the fund any such agency for services rendered for this purpose.

(4) Each coal mine operator shall make, keep, and preserve and make available to the Secretary, such records as the Secretary may prescribe as necessary or appropriate for the enforcement of this part. The Secretary may require the periodic reporting by each coal mine operator of such information as he may deem necessary for the purpose of carrying out his responsibilities under this section, and may specify the method of determining the number of tons of coal mined by each such operator.

(d)(1) There are authorized to be appropriated to the fund such sums as may be necessary to provide the fund with advance amounts which the Secretary estimates are necessary for the payment of benefits pursuant to section 424(a)(2) and expenses of operation and administration of the fund under this section.

(2) Sums authorized to be appropriated by subsection (d)(1) shall be repayable advances to the fund and shall be repaid by the fund with interest into the general fund of the Treasury no later than five years after any appropriation authorized under subsection (d)(1).

(3) Interest on such advances shall be at a rate determined by the Secretary of the Treasury, taking into consideration the current average yield during the month preceding the date of the advance involved, on marketable interest-bearing obligations of the United States of comparable maturities then forming a part of the public debt rounded to the nearest one-eighth of 1 per centum.

(e)(1) If an operator fails or refuses to pay an assessment required to be paid under this section within thirty days after notification thereof, or if an operator fails or refuses to comply with a rule promulgated pursuant to this section, the Secretary is authorized to bring a civil action in the appropriate United States district court to require the payment of such assessment or compliance with such rule. In any such action, the court may issue an order granting appropriate relief, including but not limited to an order requiring the payment of such assessment in the future, as well as past due assessments, together with 9 per centum annual interest on all past due assessments.

(2) An operator who fails or refuses to pay any assessment required to be paid under this section shall be assessed a civil penalty by the Secretary in such amount as the Secretary may prescribe, but not in excess of an amount equal to the assessment the operator failed or refused to pay. Such penalty shall be in addition to any other liability of the operator under this Act. Penalties assessed under this paragraph may be recovered in a civil action brought by the Secretary and penalties so recovered shall be deposited in the fund.

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, 1974, 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.] *fiscal year.* 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. 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 part to enable the parties to present information relating to such violations. 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 title 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.

(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 *and by the Black Lung Benefits Reform Act of 1976* 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.] *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.

SEC. 432. (a) Any person who has filed a claim for benefits under part B of this title prior to July 1, 1973, and whose claim has been finally adjudicated as denied by the Social Security Administration may file a new claim for benefits and, subject to the provisions of section 422(q) of this part, may be awarded such benefits as are appropriate under this part.

(b) The Secretary shall prescribe in the Federal Register regulations as necessary to provide for the expedited processing of any claim filed under subsection (a) of this section. The Secretary of Health, Education, and Welfare shall promptly furnish all pertinent information in his possession relating to such a claim to the Secretary.

(c)(1) Except as is otherwise provided in this Act, a claim for benefits filed under subsection (a) of this section shall be treated as a new claim for benefits filed under section 422 of this title.

(2) The survivor of a miner who elects to file a new claim under this subsection, and whose prior claim was denied under part B of this title solely on the basis of the employment of the miner at the time

of such miner's death, shall be entitled to receive benefits for all periods of eligibility beginning on January 1, 1974.

(3) The survivor of a miner who elects to file a new claim under this subsection, and whose prior claim was denied under this part solely on the basis of the employment of the miner at the time of such miner's death, shall be entitled to receive benefits for all periods of eligibility beginning on January 1, 1974, or the date such survivor filed a prior claim under this part, whichever is later.

ADDITIONAL VIEWS OF SENATOR SCHWEIKER

During its consideration of H.R. 10760, the Subcommittee on Labor adopted an amendment offered by Senator Javits which would prohibit the filing of any new claims for benefits under Part C of the black lung program after December 31, 1981.

I believe there is a continuing need for the black lung program and that it would be ill-advised at this time for the Congress to establish a cut-off date for the filing of new claims. As a result I offered an amendment during full committee consideration of the bill to strike the Javits provision, thus recognizing the continuing need for the program and allowing for the filing of new claims beyond December 31, 1981. This amendment was adopted by the Committee on a rollcall vote of 9 to 3 and will be offered as a Committee amendment on the floor during the full Senate's consideration of H.R. 10760. I believe adoption of this amendment is critically important to Congress' continuing recognition that this nation's coal miners are vitally important resource and must be protected from the unique hazards inherent in their occupation.

In 1969 Congress took affirmative, constructive action to insure safe working conditions for this nation's coal miners. I believed, as I am sure those who supported the Federal Coal Mine Safety and Health Act of 1969 did, that this legislation would be sufficient to eliminate, or at least to reduce, the widely-recognized hazards asociated with coal mining. One of the most critically important elements of the Coal Mine Health and Safety Act was the mandating of dust standards. Under the Act the level of respirable coal dust in any mine was not to exceed 2 milligrams per cubic centimeter of air. If this standard were being met today perhaps it would be possible to terminate the black lung program after December 31, 1981, because there would be a minimal incidence of black lung disease. Unfortunately, it has become clear to me through testimony before the Committee and through a GAO report of December. 1975 that the mandated dust standard is not being met. On the basis of this evidence it would be unjustified for Congress to assume that coal mines will be any less dusty in five years and based on such an assumption prohibit the filing of any claims for black lung benefits after December 31, 1981. The black lung program should not be terminated until Congress has substantial evidence that compliance with the mandated dust standard is being achieved. At that time the program might be terminated since it will no longer be needed, but until such time so Congress can be certain that working conditions in coal mines are not leading to the development of pneumoconiosis the program should be continued.

It should be noted that H.R. 10760 provides for effective transfer of the responsibility for payment of black lung benefits from the federal government to the coal mining industry by establishing an industry-financed trust fund. Therefore, permitting the filing of claims for benefits beyond December 31, 1981 will result in minimal expense to this

nation's taxpayers while forcing the industry to assume ultimate responsibility for the hazardous conditions which prevail in the mines. If the coal mining industry achieves compliance with the mandated dust standards its financial obligations under the program will be reduced and miners will be provided with safe working conditions. This is a goal that should be pursued, but we should not terminate the black lung program until it is achieved.

○

Calendar No. 1236

94TH CONGRESS
2d Session

SENATE

REPORT
No. 94-1303

BLACK LUNG COAL TAX

SEPTEMBER 24, 1976.—Ordered to be printed

Mr. LONG, from the Committee on Finance, submitted the following

REPORT

[To accompany H.R. 10760]

together with

MINORITY VIEWS

The Committee on Finance, to which was referred the bill (H.R. 10760) to amend the Federal Coal Mine Health and Safety Act to revise the black lung benefits program established under such Act in order to transfer the residual liability for the payment of benefits under such program from the Federal Government to the coal industry, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

I. SUMMARY OF THE BILL

The bill H.R. 10760 to amend the Black Lung Benefits Program passed the House of Representatives on March 2, 1976, and was reported to the Senate by the Committee on Labor and Public Welfare on September 16, 1976. Because the bill, as reported by that Committee, establishes an earmarked coal tax to finance the Black Lung Benefits Program, the bill has been referred to the Committee on Finance.

Benefit provisions.—The bill, as reported by the Committee on Labor and Public Welfare, modifies a number of the eligibility criteria with respect to benefits under the Black Lung Program and in particular cases some of the evidentiary requirements. The Committee on Finance did not make any modifications on these aspects of the legislation.

Financing provisions.—Under the present law and under H.R. 10760, as reported by the Committee on Labor and Public Welfare, a part of the cost of black lung benefits is charged directly against the former employer of the beneficiary when liability can be established

under certain statutory criteria. Where this is not possible, the present law provides for the costs of benefits to be financed out of Federal general revenues. The Labor and Public Welfare Committee bill would have substituted for general revenue financing, a tax on coal mining operations. The rate of tax would have been set by the Secretary of Labor according to the amount of revenue needed to meet the bill's requirements and the Secretary would have been given the discretion to vary the rate among different classes of coal mining operations.

II. General Discussion of the Bill

The black lung program under present law.—The present Black Lung Benefits Program provides benefits to miners totally disabled by black lung disease (pneumoconiosis) and to their dependents and survivors. There are actually two separate programs under the present law. For claims filed before June 30, 1973, benefits are paid out of Federal general revenues and administered by the Social Security Administration. This is a large scale program under which over 500 thousand beneficiaries are receiving benefits at a cumulative cost already in excess of $4 billion. Benefits are payable for the life of the disabled miner and dependents as long as they continue to meet the conditions of eligibility. Under the second program, for claims filed after June 30, 1973, benefits are to be provided through approved state workmen's compensation laws, or, in the absence of such laws, through a program administered by the Secretary of Labor. As no state law has yet been approved, the program is entirely administered by the Secretary of Labor. Benefits are payable by the responsible coal operator, where one can be identified under standards in the law, and from general revenues where no responsible operator can be identified. At the present time, practically all benefits under this program are being paid out of general revenues.

Amendments proposed by the Labor and Public Welfare Committee.—The bill, as reported by the Labor and Public Welfare Committee makes significant changes in the present black lung program. These changes are of two basic types. First, the bill amends the program so as to significantly expand the eligibility for benefits and to ease the proof requirements for establishing eligibility. The most significant of these liberalizations of the program and the estimated amount of additional benefits that would result therefrom are summarized in the table below:

	Fiscal year [1] —				
	1977	1978	1979	1980	1981
Allows survivors to claim benefits even if miner was employed at the time of death	$9.25	$4.0	$4.0	$4.2	$4.2
Expands term "miner" to include those who work on the surface, e.g., in processing or transporting coal	1.75	1.75	1.75	2.0	2.0
Creates certain presumptions of eligibility where miners have 25 years of mine employment	57.7	62.7	68.0	73.5	79.5
Allows miners to file for benefits even if they are still employed	5.0	1.7	1.7	2.0	2.0
Bars Labor Department from challenging X-ray interpretations submitted on behalf of claimants by any qualified radiologist	197.0	82.5	90.0	98.0	106.5
For survivorship claims, permits affidavits to be used to establish eligibility in the absence of medical evidence	17.7	8.0	8.7	9.2	10.0
Time limitation on filing claims for widows' benefits	6.5	7.5	8.7	10.0	11.5
Total increased benefit costs [2]	295.0	168.2	183.0	199.0	215.7

[1] These additional costs are the total of the benefits estimated to be paid by the trust fund and the additional benefits paid by the operators through insurance or self-insurance. The new costs chargeable to the Federal trust fund are shown in pt. III of this report.

[2] Totals may not add due to rounding.

Greater details on the liberalizations of these benefit provisions are contained in the report of the Labor and Public Welfare Committee (S. Rept. 94–1254).

The Labor and Public Welfare Committee also recommended a major change in the financing provisions of the benefit program administered by the Department of Labor. While it makes no change with respect to the financing of the benefits where a responsible operator can be identified, it provides a new financing mechanism in those cases in which no such operator can be found. Instead of such benefits being payable from Federal general revenues, benefits would be payable from a trust fund financed by assessments levied on coal operators by the Secretary of Labor. Operators would be assessed an amount sufficient to meet the fund's obligations. The Secretary would classify mine operations and levy a uniform per-ton assessment upon each classification.

The Committee on Finance has modified this tax provision to provide instead that the rate of tax will be 10¢ per ton of coal sold (15¢ in the case of anthracite). This tax, like other Federal taxes, would be assessed and collected by the Treasury Department.

Trust fund for black lung benefits.—The legislation reported by the Committee on Labor and Public Welfare establishes a Black Lung Trust Fund to receive the receipts of the new coal tax and to pay out the benefits in those cases where payments are not changed to individual mine operators. The Committee on Finance has made several amendments to the provisions in the bill as reported by the Labor and Public Welfare Committee. These amendments specify that the Secretary of the Treasury, not the Secretary of Labor, will be the managing trustee and they provide for the automatic appropriation into the trust fund of the amounts collected under the new coal tax. The Committee also authorizes general revenue appropriations for the trust fund if the receipts from the coal tax are insufficient to meet benefit costs.

Under the Labor and Public Welfare committee bill the trust fund was to be set up in the Labor Department with the Secretary of Labor as the managing trustee and with the Secretary of the Treasury and the Secretary of Health, Education, and Welfare as the other trustees. The trust fund would receive its funding from the coal taxes assessed by the Secretary and would be responsible for the costs of administering the program and for paying those benefits which were not chargeable against individual mine operators. (In addition, the fund would serve as a revolving fund, paying benefits in cases where mine operators failed or delayed in making the payments for which they were liable. When the amounts owed were subsequently collected from such defaulting employers, the fund would be reimbursed.) The bill also provided for the appropriation of funds as an advance from general revenues to meet the costs of benefit payments until the coal tax collections reached a sufficient level to operate the programs. These advances were to be repaid within five years.

Finance Committee amendments.—The Finance Committee, though concerned with the additional cost resulting from the benefit liberalizations proposed by the Labor and Public Welfare Committee, made no change in these provisions.

The Finance Committee limited its consideration to the financing provisions of the bill. It has retained the trust fund concepts embodied in the bill reported by the Labor and Public Welfare committee but has made a number of modifications consistent with its amendments to the coal tax provisions. The Committee was concerned with the degree of discretion given to the Secretary of Labor to levy assessments on the industry. He could establish classifications, but the bill did not specify any required basis for the classifications used. The Labor and Public Welfare Committee's report makes plain that the Secretary would have discretion to classify mines on the basis of the means of extracting coal, whether the operation is a mining or milling one, or the classification could be on the type of coal mine. The bill further states that the rates for the different classifications shall be established "on an equitable basis . . . which takes into account such factors as are appropriate including productivity of each class of mine operation." The Labor and Public Welfare Committee's report again specified a number of different factors which the Secretary may consider, including productivity, comparative incidence of disease and market value of the product. However, in effect, the matter of classification and rate variation is left to the discretion of the Secretary of Labor. The Committee has considerable doubt as to the constitutionality of such a delegation of taxing authority to the Secretary of Labor; but it has no doubt that it is unwise to do so. The Finance Committee amendment removes this discretionary authority and infact provides that the trust fund will be financed by a specified excise tax on the first sale or use of coal. The rate of tax on anthracite is 15¢ per ton and on other types of coal is 10¢ per ton. This differential is due to the generally recognized fact that anthracite miners are subject to significantly higher risks of contracting black lung disease.

The Committee bill authorizes general revenue contributions to the fund to pay any excess of benefit costs over the amount received from the coal tax. The Committee estimates that the proceeds of the tax will be less than the amount of benefits payable from the trust fund. The Committee believes that this need for a general revenue contribution to the trust fund will call the attention of the Senate to the size of the costs involved in this program.

The Committee on Finance has also modified some of the technical aspects of the Black Lung Disability Trust fund to bring it into closer conformity with the model of the Social Security trust funds. The Secretary of the Treasury (rather than the Secretary of Labor) is designated to hold the fund and to serve as the managing trustee. Specific provision is made for the automatic appropriation into the trust fund of amounts equal to all coal tax collections.

Detailed explanation of coal excise tax provision.—The Finance Committee amendment to the bill imposes a new excise tax on the sale of coal by the producer. This excise tax is added to the manufacturers excise tax provisions already existing in the Internal Revenue Code, and in general the same rules applicable to those taxes are to be applied to the new excise tax on coal. However, the tax is imposed only on coal produced in the United States, not on coal imported into the United States.

The excise tax is imposed at a rate of 15¢ per ton on the sale of anthracite coal which is extracted by shaft, drift, or slope mining

techniques from underground deposits. All other coal (including lignite) is subject to the tax at a rate of 10¢ per ton. The determination of what coal is considered to be anthracite coal is to be made in accordance with the conventional industry definition of that type of coal.

Although the tax is imposed on the sale of coal by the producer, use by the producer (for example, coal mined by a steel company for its own use) is, under the rules of present law applicable to manufacturers excise taxes generally, to be treated as sold by that producer. In these cases the constructive sale is to be treated as having taken place after the mining of the coal and after any sizing, breaking, and cleaning of the coal.

The exemptions for sales for various uses which are provided generally under the various manufacturers excise taxes are not provided for purposes of the tax on coal. Thus, for example, coal that is produced in the United States but is subsequently exported is to be subject to the excise tax. Moreover, sales to the United States Government for its own use are not to be exempted from this tax. In addition, sales to another person for further manufacture are not to be exempted. For example, if a coal producer sells coal which is to be processed into coke, the tax is to be imposed on the producer of the coal and not on the subsequent processor. Similarly, if a coal producer processes coal into coke for its own use, the tax is to be imposed on the coal rather than on the processed coke. However, the rules applicable to other manufacturers excise taxes which relate to imposing the tax on persons that acquire taxable articles in nontaxable transfers (for example, where such articles are assigned to a creditor or are received in bankruptcy proceedings) are to apply for purposes of the excise tax on coal.

Finally, the rules governing the assessment and collection of manufacturers excise taxes generally apply to the new excise tax on coal.

The new tax on coal is to apply to sales taking place after March 31, 1977. In the case of coal used by the producer, the tax is to be imposed on any coal which reaches the point of constructive sale after that date.

III. Budgetary Impact of the Committee Bill

The amendments to the bill made by the Committee on Finance do not affect benefit expenditures under the Black Lung Benefits program. Reports on the costs and revenues of the Finance Committee bill and the Labor and Public welfare committee bill are included at the end of this section of the report. The committee estimates that the revenues anticipated from the tax on coal will, over the next five years, be somewhat less than the new costs of the bill which are chargeable to the trust fund.

[In millions]

	Fiscal years—					5-year total
	1977	1978	1979	1980	1981	
New revenues	$30	$74	$77	$80	$84	$345
New costs chargeable to trust fund	101	57	61	65	69	353

The costs shown in the above table are in addition to the current law costs of operating the black lung benefits program. The bill would also transfer to the trust funds certain costs which have been charged to general revenues. This intra-fund transfer would not have any overall budgetary impact.

Congressional Budget Office

Cost estimate, September 24, 1976

1. Bill number: H.R. 10760.
2. Bill title: Black Lung Benefits Reform Act of 1975.
3. Purpose of bill: The Senate Finance Committee, to whom H.R. 10760 was re-referred from the Senate Committee on Labor and Public Welfare, amended section 6 of this bill with regard to the means of raising revenues to support the Black Lung Trust Fund. Under the Finance Committee's provision, a sales tax of 10 cents per ton is placed on coal (15 cents per ton for anthracite), the receipts of which will be collected by the Treasury Department and paid into the fund. The bill also authorizes funds to be appropriated from general revenues to meet the remainder of the funds required for benefit payments and expenses for which the trust fund is liable under H.R. 10760.
4. Cost estimate:

[In millions of dollars]

	1977	1978	1979	1980	1981
Total trust fund liability	130.5	89.7	96.3	103.1	110.7
Revenues to the trust fund	30.0	73.7	77.2	79.8	83.9
Additional appropriations required above current law	70.5				
Net budget savings below current law		16.0	16.3	15.0	14.8

5. Basis for estimate: Total trust fund liability is based upon the estimated liability for new entitlements under H.R. 10760 (see Senate Report 94–1254 for cost estimate), plus the present and future liability for Part C under current law.

Projected revenues to the trust fund are based on estimates of coal production provided by the Joint Tax Committee. For fiscal year 1977, because of the effective date of April 1, 1977, only half-year revenues were calculated. Also, because collections are lagged one month, revenues in the last month of each fiscal year are reflected in the following year totals.

Additional appropriations and net savings are based upon the difference between the total costs generated by H.R. 10760 less the revenues raised through the tax provision. Where revenues exceed the costs of the bill, the savings will be seen in the decreased appropriations necessary to cover liability generated for Part C under current law. Current law projections assume an annual growth rate in claims of 15,000 with an estimated approval rate of 10 percent. Costs to the trust fund for future years for these beneficiaries do assume, however, a 60 percent identification rate for responsible mine operators, as would be the case under H.R. 10760.

6. Estimate comparison: Not applicable.
7. Previous CBO estimate: A cost estimate was prepared for the House version of H.R. 10760 in December of 1975. The cost estimate prepared for the Senate version was transmitted on September 20, 1976.
8. Estimate prepared by: Jeffrey C. Merrill.
9. Estimate approved by:

JAMES L. BLUM,
Assistant Director for Budget Analysis.

CONGRESSIONAL BUDGET OFFICE

COST ESTIMATE

1. Bill number: H.R. 10760
2. Bill title: Black Lung Benefits Reform Act of 1976
3. Purposes of bill: H.R. 10760 provides for the reform of the present black lung benefits program by expanding and redefining entitlements to that program, by establishing a black lung disability benefit trust fund, and by transferring to the Department of Labor claims that had been denied under part B which could be reopened as a result of this bill.

The following provisions in the bill will have an impact on the overall cost of the black lung program:

A. Section 2 amends the definition of a "miner" to include "any individual who works or who has worked in or around a coal mine in coal extraction or the processing and transporting of coal". The section also provides for survivors of miners who had been employed at the time of their death to now file a claim for benefits.

B. Section 3 establishes a new entitlement to benefits for a living miner if that miner had worked 25 years or more in the mines and is partially or totally disabled and, also, establishes an irrebuttable presumption for the survivors of miners who had worked 25 or more years in the mine before the time of their death.

C. Section 4 eliminates the provision under current law that establishes current employment as a bar to filing for benefits.

D. Section 5 amends current law to now require the Secretary to accept the interpretation of an X-ray submitted in support of a claim if that X-ray were interpreted by a board-certified or eligible radiologist. Current law would allow for the re-reading of such X-rays. Also, under section 5, is a proviso which specifically allows a claim supported by affidavits in the case of a deceased miner, if there is no other medical evidence, to be accepted as evidence of the disability.

E. Section 6 provides for the establishment of a trust fund within the Department of Labor to pay all claims under part C where the responsible mine operator cannot be identified. This section also amends Section 422(i) of the Black Lung Act to provide that an operator who acquired a mine or its assets from a prior operator after January 1, 1959, shall

be liable for benefits which would have been payable by the prior operator. This provision moves the date back ten years from that which exists under current law.

F. Section 7 removes the current time limitation on filing of a claim by a widow from the present three years. This section also authorizes $10 million each fiscal year for black lung clinical facilities.

G. Section 8 authorizes the Secretary of Labor to establish the necessary field offices to assist claimants with the filing and processing of claims.

H. Section 10 provides that any person who filed a part B claim and whose claim had been ultimately denied by the Social Security Administration, may file a new claim under part C if they deem that, under the provisions of this bill, they would now become eligible for entitlement.

I. Section 12 requires the Department of Labor, in conjunction with the National Institute of Occupational Safety and Health, to study all occupationally related lung diseases in the United States, including an analysis of factors similar to coal workers pneumoconiosis and its sequelae. This study would also look at the adequacy of workers' compensation programs for such diseases and the status and adequacy of federal activities in the areas of health and safety.

4. Cost estimate:

[In millions of dollars]

	1977	1978	1979	1980	1981
Sec. 2(c)—Employment at time of death	3.7	1.6	1.6	1.7	1.7
Sec. 2(b)—"Miner" definition	.7	.7	.7	.8	.8
Sec. 3—25-year presumption	23.1	25.1	27.2	29.4	31.8
Sec. 4—Current employment bar	2.0	.7	.7	.8	.8
Sec. 5(a)—					
Rereadings of X-rays	78.8	33.0	36.0	39.2	42.6
Affidavits as evidence	7.1	3.2	3.5	3.7	4.0
Sec. 6(b)—Offsets due to 1969 cutoff	−20.5	−10.2	−12.4	−14.8	−17.2
Sec. 7(e)—Deadline on widows' filing	2.6	3.0	3.5	4.0	4.6
Sec. 7(f)—Clinical facilities	10.0	10.0	10.0	10.0	10.0
Sec. 8—Field offices	2.5	2.6	2.8	3.0	3.2
Sec. 12—Lung diseases study	1.5	.8			
Total program costs	111.5	70.5	73.7	77.8	82.3
Administrative costs	3.0				
Total costs	114.5	70.5	73.7	77.8	82.3

5. Basis for estimate: In general, the data used to develop the cost estimates of the various sections was provided by the Department of Labor and the Social Security Administration. Assumptions for the average monthly benefits for both miners and survivors were based upon the 1976 average monthly benefits inflated by CBO Federal pay raise projections for the next five years. Thus, an average benefit of $295 per month was used for miners in 1977 and a $218 benefit for survivors. Future benefits were inflated by 6 percent in 1978 and 6.2, 6.1, and 6.3 percent for 1979–1981, respectively.

The overall additional costs to the Federal government resulting from sections 2, 3, 4, 5, and 7(e) are based solely on the liability to the trust fund. Although the entitlement

provisions of this bill would increase benefit payments significantly, according to the Department of Labor only 40 percent of that total would be paid through the trust fund, with the remaining 60 percent paid by the responsible mine operators. The Department of Labor indicates that the provision under Section 6 which moves the date back to 1959 to establish liability of the mine operators would increase the identification rate of those operators from the present 25 percent up to 60 percent. The following represents, on a section-by-section basis, the assumptions used in determining the costs related to those sections:

Section 2, the definition of "miner" in Section 2 would provide, according to testimony of the independent coal operators, an additional 500 potential beneficiaries among the small coal mine operators to the program. Estimates for the cost of this section are, thus, based upon this number of potential beneficiaries and use, in calculating 1978–1981 costs, projected mortality rates of 7.6 percent in 1978 (and an additional 0.3 percent per year) for miners and 4.4 percent (and an additional 0.2 percent per year) for survivors. These mortality rates, supplied by the Social Security Administration, are used throughout this cost estimate.

Also under section 2, the provision that a miner's survivor—who had been previously barred from filing a claim because the miner was employed at the time of his death—can now file would, according to the Social Security Administration, apply to a total of 1,500 survivor beneficiaries. Costs were estimated using this estimate and, because of the retroactivity back to 1974 of this provision, a total first-year benefit of $6,215 was used. It should be noted that, throughout this estimate, where retroactivity is included, the first-year benefit will be $8,416 for entitlements where both miners and survivors are involved and $6,215 where, as in this case, only survivors were involved.

Section 3 provides entitlement to benefits for miners who have worked 25 or more years in the mines and have a partially or totally disabling respiratory or pulmonary impairment. This provision also establishes an irrebuttable presumption for entitlement to the survivors of miners who had served 25 years in the mines. The costs attributable to this section involve both beneficiaries who had originally applied for benefits under Part B and had been denied, as well as new beneficiaries under Part C (including some who had applied and been denied). Social Security estimates that the total number of individuals who have worked 25 years in the mines and applied under their program was 20,000. Under Part C, there are an estimated 17,600 beneficiaries. Of this total potential population of 37,600, CBO estimates that there is a total of 11,925 survivors who would be automatically entitled and 7,520 miners who would also qualify with 25 years and a partial disability. Multiplying this by the average annual benefit for each year between 1977 and 1981 and using the mortality rates listed above, estimates

were made of the costs of the beneficiaries. As well, additional costs were attributed to this provision because of an increase in claims of 15,000 per year filed with the Department of Labor for 1978 through 1981.

Section 4 provides that a miner may file a claim, while still employed, if the miner has ten or more years in a coal mine, if he has x-ray evidence of pneumoconiosis, or if he is eligible to exercise the option to transfer to a less dusty mine area. This provision amends the Act which barred individuals from filing claims while still employed. According to the Social Security Administration, this would bring a total of 600 new beneficiaries into the program and would provide payments retroactively as far back as 1974. The estimate of costs was based upon this number of beneficiaries and used $8,416 for the average retroactive payment in 1977, the average monthly payments in subsequent years, and the mortality rates listed above. The Department of Labor indicated this section would have no significant cost impact.

Section 5 makes two cost-relevant changes in the Act: First, the Secretary of Labor will now be required to accept an interpretation of an x-ray submitted in support of a claim if such interpretation was made by a board-certified or board-eligible radiologist and if the x-ray was of acceptable quality and taken by a qualified technologist or technician. Based upon a study prepared by the Department of Labor of claims denied under Part C, it is estimated that 28 percent of those denials were based solely on a rereading of an x-ray. Because this bill requires that interpretation to have been done by a board-certified or eligible radiologist, it is further assumed that only 50 percent of those claims would now become eligible under this provision. SSA indicates that there are approximately 84,000 denials and the Department of Labor, based upon the number of claims presently filed, indicates 80,000 potential denials. Using these as bases, and accounting for retroactivity, the costs for 1977 were determined. The potential effect on future applicants under Part C was determined by assuming the same overall 14 percent of potential claims denied for the 15,000 new applicants projected for each of the future years. Also, outyear costs included the same mortality rates and increases in the average benefit payments as for the above sections. Under Section 5, as well, the costs of the provision which specifically allows a claim supported by affidavits in the case of a deceased miner were also calculated. The number of potential beneficiaries was estimated by the Social Security Administration at 2,000 and, under Part C, by the Department of Labor, at 860. In determining the costs, retroactivity was included in the 1977 estimate.

Section 6 establishes the trust fund and the assumption of liability by that fund for payment of claims where no responsible mine operator can be identified. This section has cost impact in two ways: (1) Since 60 percent of the claims can be attributed to a responsible mine operator, only 40 percent

of these costs resulting from this bill will be shown as Federal expenditures; and (2) because of the provision under this section that moves the date from which an operator can be liable for benefits from 1969 to 1959, the identification rate of responsible mine operators will increase from 25 to 60 percent. This increase in the identification rate will decrease the Federal liability for present and future claims that will be approved under current law. Assuming current law, the total potential liability for approved claims under Part C, given the present filing and approval rates, would be $60 million in 1977. If the identification rate were 25 percent, then the Federal government would be liable for $45 million of this amount. However, if the identification rate were 60 percent, the Federal government would only be liable for $24 million and thus a savings can be seen (the actual numbers were slightly different from $60 million—thus, the actual savings amounted to $20.5 million).

Section 7 removes the time limitation on filing of a claim by a widow. According to the Department of Labor, this could potentially involve 10,000 claims. Using a 20 percent approval rate (based upon the 10 percent approval rate under existing law and an additional 10 percent based upon the provisions in this bill), it is calculated that there would be a total of 2,000 additional new beneficiaries. Costs were projected on this basis with no inclusion of retroactivity.

Section 7 also provides authorization of $10 million for each fiscal year for black lung clinical facilities. This total sum is included in the cost estimate for the five-year period.

Section 8 authorizes the Secretary of Labor to establish necessary field offices to assist claimants with filing and processing of claims. The Department of Labor estimated 1977 costs for these field offices at $2.5 million. Subsequent years costs are based upon this, inflated by the Federal wage deflators listed.

Although Section 10, in itself, does not have any cost implications, it merits some discussion because of its effect on Part B claims. Under Section 10, any person who filed a Part B claim in the past and whose claim was finally adjudicated as denied by the Social Security Administration, is permitted to file a new claim under Part C if they deem that they would now be entitled to services. The effect of this provision is, according to the Social Security Administration, to essentially eliminate any new entitlements under Part B and transfer all entitlements to Part C. All the costs that have been calculated under this bill that relate to entitlements will be Part C costs and therefore payable under either the trust fund or by the responsible mine operator. In a sense, this section represents a potential cost savings, for without it, all new entitlements provided under this bill could be possibly filed under Part B. Since 100 percent of the costs under Part B are paid by the Federal government as opposed to the projected 40 percent under Part C, the overall Federal costs of this bill would be significantly greater.

Section 12 requires the Department of Labor, in conjunction with the National Institute of Occupational Safety and Health, to study occupationally related lung diseases in the United States. In order to carry out this study, it is estimated that the costs—for the 18 months necessary to complete the work—would be $1.5 million in the first year and $800,000 in the second year.

The administrative costs to the Department of Labor to implement this bill are calculated on the basis of an assumption of a total of 100,000 claims processed in the first year, which would require approximately 120 man-years. Using $25,000 per man-year (including support services) as an estimated cost, the overall 1977 administrative costs were estimated. Increased administrative costs due to this bill in subsequent years are assumed to be insignificant.

6. Estimate comparison: None.

7. Previous CBO estimate: A previous cost estimate was prepared for the House version of H.R. 10760. Because of major differences between that bill and the Senate version, a cost comparison would not be applicable.

8. Estimate prepared by: Jeffrey C. Merrill.

9. Estimate approved by:

JAMES L. BLUM,
Assistant Director for Budget Analysis.

IV. VOTE OF THE COMMITTEE IN REPORTING THE BILL

In compliance with section 133 of the Legislative Reorganization Act of 1946, the following statement is made relative to the vote by the committee on the motion to report the bill. The bill was ordered reported by voice vote.

CHANGES IN EXISTING LAW MADE BY THE BILL

In the opinion of the committee, it is necessary, in order to expedite the business of the Senate, to dispense with the requirements of subsection 4 of rule XXIX of the Standing Rules of the Senate (relating to the showing of changes in existing law made by the committee amendment, as reported).

MINORITY VIEWS

H.R. 10760 would amend the Black Lung Benefits Act of 1969 to greatly liberalize the eligibility requirements for black lung benefits. The bill was referred to the Committee on Finance because of its financing provisions which call for the creation of a Black Lung Disability Trust Fund to be financed by assessments on coal mine operators.

The substantial changes recommended by the Committee's majority will significantly improve the financing provisions of the bill. Nevertheless, we cannot support this bill. We should emphasize, however, that we do not oppose making disability benefits available to those who in fact suffer from black lung disease as a result of working in mines. Rather, we strongly endorse full and adequate lifetime compensation for sufferers from black lung, equated on the basis of their disability. But this bill does more than that. It will preclude doctors retained or employed by the government from reviewing cases to determine if an individual in fact has black lung disease. Moreover, it will create a presumption that if the disease is present to any extent in anyone who works in or around a mine for a specified period of years, he will be considered totally disabled and entitled to benefits.

Recognizing that changes such as those described above will cause a significant increase in benefit payments, the bill creates a benefit trust fund to be financed by so-called "assessments" (which in reality are taxes) on the coal industry. As referred to the Committee on Finance, the taxing provisions were so vague and left so much to administrative discretion that some on the Committee had concern that the provision could raise substantial constitutional questions. The Committee's changes are improvements, but much remains to be done before this bill is in a form which warrants enactment. For example, available evidence suggests that the incidence of black lung disease varies greatly with the type of coal and the type of mine involved. The Committee bill makes an attempt to recognize this fact, but it may well be that the two-tier rate of tax approved by the Committee should be further divided. At this late date, consideration of such additional refinements is virtually impossible. In our view, action next year on this bill would permit a more equitable taxing structure to be developed.

We also have a more basic question about the use of a trust fund to finance these benefits. Trust funds have in the recent past been roundly criticized as leading to uncontrolled and uncontrollable spending. Although this particular trust fund will nominally be funded by assessments on a single industry, it still involves the collection of a tax followed by a disbursement of these public funds in an "off-budget" process. Such collections and disbursements may well belong within, rather than without, the Congressional budget and appropriations process.

In our view, this bill makes some highly questionable changes in the benefit structure and thus makes it necessary to develop a new source of financing. The Finance Committee's approach is an improvement, but much needs to be done both to make any system of taxation more equitable and to assure that we are not embarking on a precedent setting system of off-budget financing for occupational diseases.

CARL T. CURTIS,
PAUL FANNIN,
CLIFFORD P. HANSEN.

○

Calendar No. 1236

94TH CONGRESS
2D SESSION

H. R. 10760

[Report No. 94–1254]

[Report No. 94–1303]

IN THE SENATE OF THE UNITED STATES

MARCH 3, 1976

Read twice and referred to the Committee on Labor and Public Welfare

SEPTEMBER 16, 1976

Reported by Mr. RANDOLPH, with an amendment, referred to the Committee on Finance until September 24, 1976

[Strike out all after the enacting clause and insert the part printed in italic]

SEPTEMBER 24, 1976

Reported by Mr. LONG, with amendments

[Omit the part printed in black brackets and insert the part printed in italic]

AN ACT

To amend the Federal Coal Mine Health and Safety Act to revise the black lung benefits program established under such Act in order to transfer the residual liability for the payment of benefits under such program from the Federal Government to the coal industry, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

~~SHORT TITLE~~

~~SECTION 1. This Act may be cited as the "Black Lung Benefits Reform Act of 1975".~~

~~ENTITLEMENTS~~

~~SEC. 2. (a) Section 411(c) of the Federal Coal Mine Health and Safety Act of 1969 (30 U.S.C. 921(c)), here-~~

~~inafter in this Act referred to as the "Act", is amended—~~

~~(1) in paragraph (3) thereof, by striking out "and" at the end thereof;~~

~~(2) in paragraph (4) thereof, by striking out the next to the last sentence thereof, and by striking out the period at the end thereof and inserting in lieu thereof a semicolon; and~~

~~(3) by adding at the end thereof the following:~~

~~"(5) if a miner was employed for thirty years or more in one or more underground coal mines such miner (or, in the case of a deceased miner, the eligible survivors of such miner) shall be entitled to the payment of benefits; and~~

~~"(6) if a miner was employed for twenty-five years or more in one or more anthracite coal mines such miner (or, in the case of a deceased miner, the eligible survivors of such miner) shall be entitled to the payment of benefits.~~

~~The Secretary shall not apply all or a portion of any requirement of this subsection that a miner shall have worked in an underground mine if the Secretary determines that conditions of such miner's employment in a coal mine other than an underground mine were substantially similar to conditions in an underground mine.~~".

~~(b) Section 412(a)(1) of the Act (30 U.S.C. 922 (a)(1)) is amended—~~

~~(1) by inserting immediately after "pneumoconiosis," the following: "or in the case of a miner entitled to benefits under paragraph (5) or paragraph (6) of section 411(c) of this title,";~~

~~(2) by striking out "disabled" the first place it appears therein; and~~

~~(3) by inserting immediately after "disability" the second place it appears therein the following: ", or during the period of such entitlement,".~~

~~(c)(1) Section 414(a) of the Act (30 U.S.C. 924 (a)) is amended by adding at the end thereof the following new paragraph:~~

~~"(4) A claim for benefits under this part may be filed at any time on or after the date of the enactment of the Black Lung Benefits Reform Act of 1975 by a miner (or, in the case of a deceased miner, the eligible survivors of such miner) if the date of the last exposed employment of such miner occurred before December 30, 1969.".~~

~~(2) The Secretary of Labor shall be responsible for the administration of the provisions of section 414(a)(4) of the Act (30 U.S.C. 924(a)(4)), as added by paragraph (1).~~

~~(d) Section 414(c) of the Act (30 U.S.C. 924(c)) is~~

~~amended by inserting immediately after "pneumoconiosis" the following: ", or with respect to an entitlement under paragraph (5) or paragraph (6) of section 411(c) of this title,".~~

~~(c)(1) Section 421(a) of the Act (30 U.S.C. 931(a)) is amended by inserting immediately after "pneumoconiosis" the second place it appears therein the following: ", and in any case in which benefits based upon eligibility under paragraph (5) or paragraph (6) of section 411(c) are involved,".~~

~~(2) Section 421(b)(2)(C) of the Act (30 U.S.C. 931(b)(2)(C)) is amended by inserting immediately before the semicolon at the end thereof the following: ", except that such standards shall not be required to include provisions for the payment of benefits based upon conditions substantially equivalent to conditions described in paragraphs (5) and (6) of section 411(c)".~~

~~(f) Section 430 of the Act (30 U.S.C. 938) is amended by inserting "and by the Black Lung Benefits Reform Act of 1975" immediately after "1972", by inserting immediately after "section 411(c)(4)" the following: "and the applicability of entitlements based upon conditions described in paragraphs (5) and (6) of section 411(c),", and by striking out "whether a miner was employed at least fifteen~~

~~years" and inserting in lieu thereof the following: "the period during which the miner was employed".~~

~~OFFSET AGAINST WORKMEN'S COMPENSATION BENEFITS~~

~~SEC. 3. The first sentence of section 412 (b) of the Act (30 U.S.C. 922 (b)) is amended by inserting immediately after "disability of such miner" the following: "due to pneumoconiosis".~~

~~CURRENT EMPLOYMENT AS A BAR TO BENEFITS~~

~~SEC. 4. (a) The first sentence of section 413 (b) of the Act (30 U.S.C. 923 (b)) is amended by inserting immediately before the period at the end thereof the following: "or solely on the basis of employment as a miner if (1) the location of such employment has recently been changed to a mine area having a lower concentration of dust particles; (2) the nature of such employment has been changed so as to involve less rigorous work; or (3) the nature of such employment has been changed so as to result in the receipt of substantially less pay".~~

~~(b) Section 413 of the Act (30 U.S.C. 923) is amended by adding at the end thereof the following new subsection:~~

~~"(d) (1) A miner may file a claim for benefits whether or not such miner is employed by an operator of a coal mine at the time such miner files such claim.~~

~~"(2) The Secretary shall notify a miner, as soon as practicable after the Secretary receives a claim for benefits from such miner, whether, in the opinion of the Secretary, such miner—~~

~~"(A) is eligible for benefits on the basis of the provisions of paragraph (1), (2), or (3) of subsection (b); or~~

~~"(B) would be eligible for benefits, except for the circumstances of the employment of such miner at the time such miner filed a claim for benefits.".~~

~~APPEALS~~

~~SEC. 5. The last sentence of section 413(b) of the Act (30 U.S.C. 923(b)) is amended by inserting immediately before the period at the end thereof the following: ", except that a decision by an administrative law judge in favor of a claimant may not be appealed or reviewed, except upon motion of the claimant".~~

~~INDIVIDUAL NOTIFICATIONS~~

~~SEC. 6. Part B of title IV of the Act (30 U.S.C. 911 et seq.) is amended by adding at the end thereof the following new section:~~

~~"SEC. 416. (a) For purposes of assuring that all individuals who may be eligible for benefits under this part are afforded an opportunity to apply for and, if entitled thereto, to receive such benefits, the Secretary shall undertake~~

~~a program to locate individuals who are likely to be eligible for such benefits and have not filed a claim for such benefits.~~

~~"(b) The Secretary shall seek to determine, in cooperation with operators and with the Secretary of the Interior, the names and current addresses of individuals having long periods of employment in coal mining and, if such individuals are deceased, the names and addresses of their widows, children, parents, brothers, and sisters. The Secretary shall then directly, by mail, by personal visit by a delegate of the Secretary, or by other appropriate means, inform any such individuals (other than those who have filed a claim for benefits under this title) of the possibility of their eligibility for benefits, and offer them individualized assistance in preparing their claims where it is appropriate that a claim be filed.~~

~~"(c) Notwithstanding any other provision of this part, a claim for benefits under this part, in the case of an individual who has been informed by the Secretary under subsection (b) of the possibility of his eligibility for benefits, shall, if filed no later than six months after the date he was so informed, be considered on the same basis as if it had been filed on June 30, 1973.".~~

~~DEFINITIONS~~

~~SEC. 7. (a) Section 402 (f) of the Act (30 U.S.C. 902 (f)) is amended by adding at the end thereof the following new undesignated paragraph:~~

"With respect to a claim filed after June 30, 1973, such regulations shall not provide more restrictive criteria than those applicable to a claim filed on June 30, 1973.".

(b) Section 402 of the Act (30 U.S.C. 902) is amended by inserting immediately after paragraph (g) the following new paragraph:

"(h) The term 'fund' means the Black Lung Disability Insurance Fund established by section 423 (a).".

EVIDENCE REQUIRED TO ESTABLISH CLAIM

SEC. 8. (a) Section 413 (b) of the Act (30 U.S.C. 923 (b)) is amended by inserting immediately after the second sentence thereof the following new sentence: "Where there is no relevant medical evidence in the case of a deceased miner, such affidavits shall be considered to be sufficient to establish that the miner was totally disabled due to pneumoconiosis or that his death was due to pneumoconiosis.".

(b) The last sentence of section 413 (b) of the Act (30 U.S.C. 923 (b)) is amended by striking out "and (l)," and inserting in lieu thereof "(l), and (n),".

(c) The second sentence of section 413 (b) of the Act (30 U.S.C. 923 (b)) is amended by striking out the period at the end thereof and inserting a colon and the following: "*Provided*, That unless the Secretary has good cause to believe (1) that an X-ray is not of sufficient quality or an autopsy report is not accurate, to demonstrate the

~~presence of pneumoconiosis, or (2) that the condition of the miner is being fraudulently misrepresented, the Secretary shall accept such report, or in the case of the X-ray, accept the opinion of the claimant's physician, concerning the presence of pneumoconiosis and the stage of advancement of pneumoconiosis.".~~

~~CLAIMS FILED AFTER DECEMBER 31, 1973~~

~~SEC. 9. (a) (1) The first sentence of section 422 (a) of the Act (30 U.S.C. 932 (a)) is amended—~~

~~(A) by inserting immediately before the period at the end thereof the following: ", or with respect to entitlements established in paragraph (5) or paragraph (6) of section 411 (c) of this title"; and~~

~~(B) by inserting immediately after "except as otherwise provided in this subsection" the following: "and to the extent consistent with the provisions of this part,".~~

~~(2) The last sentence of section 422 (a) of the Act (30 U.S.C. 932 (a)) is amended—~~

~~(A) by striking out "benefits" and inserting in lieu thereof "premiums and assessments"; and~~

~~(B) by striking out "to persons entitled thereto".~~

~~(3) Section 422 (b) of the Act (30 U.S.C. 932 (b)) is amended by inserting "(1)" immediately after "(b)", and by adding at the end thereof the following new paragraph:~~

~~"(2)(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) of this part each operator of a coal mine in such State shall secure the payment of assessments against such operator under section 424(g) of this part by (i) qualifying as a self-insurer in accordance with regulations prescribed by the Secretary; or (ii) insuring and keeping insured the payment of such assessments 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 (ii) of subparagraph (A) of this paragraph, every policy or contract of insurance shall contain—~~

~~"(1) a provision to pay assessments required under section 424(g) of this part, notwithstanding the provisions of the State workmen's compensation law which may provide for payments which are less than the amount of such assessments;~~

~~"(2) a provision that insolvency or bankruptcy of the operator or discharge therein (or both) shall not relieve the carrier from liability for the payment of such assessments; 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 (ii) of subparagraph (A) of this paragraph 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.~~".

~~(4) Section 422(b)(1) of the Act, as so redesignated by paragraph (3), is amended—~~

~~(A) by striking out "benefits" and inserting in lieu thereof "premiums and assessments"; and~~

~~(B) by striking out "section 423" and inserting in lieu thereof "section 424~~".

~~(5) Section 422(c) of the Act (30 U.S.C. 932(c)) is amended to read as follows~~:

"~~(c) Benefits shall be paid during such period under this section by the fund, subject to reimbursement to the fund by operators in accordance with the provisions of section 424(g) of this title, 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 sec-

~~tion, except that (1) the Secretary may modify any such regulation promulgated by the Secretary of Health, Education, and Welfare; and (2) no operator shall be liable for the payment of any benefit (except as provided in section 424 (f) of this title) on account of death or total disability due to pneumoconiosis, or on account of any entitlement based upon conditions described in paragraphs (5) and (6) of section 411 (c), which did not arise, at least in part, out of employment in a mine during the period when it was operated by such operator.~~".

~~(6) Section 422 (c) of the Act (30 U.S.C. 932 (c)) is amended—~~

~~(A) by striking out "required" and inserting in lieu thereof "made"; and~~

~~(B) by adding "or" immediately after the semicolon in paragraph (1) thereof, by striking out ", or" at the end paragraph (2) thereof and inserting in lieu thereof a period, and by striking out paragraph (3) thereof.~~

~~(7) Section 422 (f) (2) of the Act (30 U.S.C. 932 (f) (2))~~ is amended—

~~(A) by inserting "paragraph (4), (5), or (6) of" immediately after "eligibility under";~~

~~(B) by striking out "section 411 (c) (4)" the first~~

~~place it appears therein and inserting in lieu thereof "section 411 (c)";~~

~~(C) by striking out "from a respiratory or pulmonary impairment"; and~~

~~(D) by striking out "section 411 (c) (4) of this title, incurred as a result of employment in a coal mine" and inserting in lieu thereof "any of such paragraphs".~~

~~(8) Section 422 (h) of the Act (30 U.S.C. 932 (h)) is amended by striking out the first sentence thereof.~~

~~(9) Section 422 (i) of the Act (30 U.S.C. 932 (i)) is amended to read as follows:~~

~~"(i) (1) The Secretary shall promulgate regulations providing for the prompt and expeditious consideration of claims under this section.~~

~~"(2) (A) The Secretary shall promulgate regulations providing for the prompt and equitable hearing of appeals by claimants who are aggrieved by any decision of the Secretary.~~

~~"(B) Any such hearing shall be held no later than forty-five days after the date upon which the claimant involved requests such hearing. A hearing may be postponed at the request of the claimant involved for good cause.~~

~~"(C) Any such hearing shall be held at a time and a place convenient to the claimant requesting such hearing.~~

~~"(D) Any such hearing shall be of record and shall be subject to the provisions of sections 554, 555, 556, and 557 of title 5, United States Code.~~

~~"(3) (A) Any individual, after any final decision of the Secretary made after a hearing to which he was a party, may obtain a review of such decision by a civil action commenced no later than ninety days after the mailing to him of notice of such decision, or no later than such further time as the Secretary may allow.~~

~~"(B) Such action shall be brought in a district court of the United States in the State in which the claimant resides.~~

~~"(C) The Secretary shall file, as part of his answer, a certified copy of the transcript of the record, including the evidence upon which the findings and decision complained of are based.~~

~~"(D) The court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Secretary, with or without remanding the case for a rehearing. The findings of the Secretary as to any fact, if supported by the weight of the evidence, shall be conclusive.~~

~~"(E) The court shall, on motion of the Secretary made before he files his answer, remand the case to the Secretary for further action by the Secretary, and may, at any time,~~

~~on good cause shown, order additional evidence to be taken before the Secretary, and the Secretary shall, after the case is remanded, and after hearing such additional evidence if so ordered, modify or affirm his findings of fact or his decision, or both, and shall file with the court any such additional and modified findings of fact and decision, and a transcript of the additional record and testimony upon which his action in modifying or affirming was based. Such additional or modified findings of fact and decision shall be reviewable only to the extent provided for review of the original findings of fact and decision.~~

"~~(F) The judgment of the court shall be final, except that it shall be subject to review in the same manner as a judgment in other civil actions. Any action instituted in accordance with this paragraph shall survive notwithstanding any change in the person occupying the office of Secretary or any vacancy in such office.~~".

~~(10) In the case of any miner or any survivor of a miner who is eligible for benefits under section 422 of the Act (30 U.S.C. 932) as a result of any amendment made by any provision of this Act, such miner or survivor may file a claim for benefits under such section no later than three years after the date of the enactment of this Act, or no later than the close of the applicable period for filing claims under~~

~~section 422(f) of the Act (30 U.S.C. 932(f)), whichever is later.~~

~~(b) Section 423 of the Act (30 U.S.C. 933) is amended to read as follows:~~

~~"SEC. 423. (a)(1) There is hereby established in the Treasury of the United States a trust fund to be known as the Black Lung Disability Insurance Fund. The fund shall consist of such sums as may be appropriated as advances to the fund under section 424(c)(1) of this part, the assessments paid into the fund as required by section 424(g), the premiums paid into the fund as required by section 424(a), the interest on, and proceeds from, the sale or redemption of any investment held by the fund, and any penalties recovered under section 424(c), including such earnings, income, and gains as may accrue from time to time which shall be held, managed, and administered by the trustees in trust in accordance with the provisions of this part and the fund.~~

~~"(2) Fund assets, other than such assets as may be required for necessary expenses, shall be used solely and exclusively for the purpose of discharging obligations of operators under this part. Operators shall have no right, title, or interest in fund assets, and none of the earnings of the fund shall inure to the benefit of any person, other than through~~

~~the payment of benefits under this part, together with appropriate costs.~~

~~"(b) (1) (A) The fund shall have seven trustees. Except as provided in subparagraph (B), trustees shall serve for terms of four years.~~

~~"(B) Of the trustees first elected under this subsection—~~

~~"(i) four shall be elected for terms of two years; and~~

~~"(ii) three shall be elected for terms of one year.~~

~~The Secretary shall determine, before the date of the first election under this subsection, whether each trustee office involved in such election shall be for a term of one year or two years. Such determination shall be made through the use of an appropriate method of random selection, except that at least one trustee nominated under paragraph (2) (A) shall serve for a term of two years.~~

~~"(C) Any trustee may be a full time employee of an operator, except that no more than one trustee may be employed by any one operator or any affiliate of such operator.~~

~~"(2) (A) Two trustees shall be nominated and elected by operators having an annual payroll not in excess of $1,500,000 (hereinafter referred to as 'small operators').~~

~~"(B) Five trustees shall be nominated and elected by all operators.~~

~~"(3) No later than 60 days after the date of the enactment of the Black Lung Benefits Reform Act of 1975, all operators shall certify to the Secretary their payrolls for the 12-month period ending December 31, 1974. The Secretary shall then publish a list setting forth the number of votes to which each small operator and each operator is entitled, computed on the basis of one vote for each $500,000 or fraction thereof of payroll. Trustees shall be elected no later than 180 days after the date of the enactment of such Act.~~

~~"(4) Candidates seeking nomination for election to the office of trustee under paragraph (2)(A) shall submit to the Secretary petitions of nomination reflecting the approval of small operators representing not less than 2 per centum of the aggregate annual payroll of all small operators. Candidates seeking such nomination under paragraph (2)(B) shall submit petitions reflecting the approval of operators representing not less than 2 per centum of the aggregate annual payroll of all operators.~~

~~"(5) The Secretary shall promulgate regulations for the nomination and election of trustees. Such regulations shall include provisions for the nomination and election of trustees, including the nomination and election of trustees to fill any vacancy caused by the death, disability, resignation, or removal of any trustee. The Secretary shall certify the results of all nominations and elections. Two or more trustees~~

~~may at any time file a petition, in the United States district court where the fund has its principal office, for removal of a trustee for malfeasance, misfeasance, or nonfeasance. The cost of any such action shall be paid from the fund, and the Secretary may intervene in any such action as an interested party.~~

"~~(6) The trustees shall organize by electing a Chairman and Secretary and shall adopt such rules governing the conduct of their business as they consider necessary or appropriate. Five trustees shall constitute a quorum and a simple majority of those trustees present and voting may conduct the business of the fund.~~

"~~(c) (1) The trustees shall act on behalf of all operators with respect to claims filed under this part.~~

"~~(2) (A) Except as provided by subparagraph (B)~~, ~~the fund may not participate or intervene as a party to any proceeding held for the purpose of determining claims for benefits under this part.~~

"~~(B) (i) If the fund is dissatisfied with any determination of the Secretary with respect to a claim for benefits under this part, the fund may, no later than thirty days after the date of such determination, file with the United States court of appeals for the circuit in which such determination was made a petition for review of such determination. A copy of such petition shall be forthwith transmitted by the clerk of the~~

~~court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which he based his determination, as provided in section 2112 of title 28, United States Code.~~

~~"(ii) The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive, except that the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary thereupon may make new or modified findings of fact and may modify his previous determination, and shall certify to the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.~~

~~"(iii) The court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject 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.~~

~~"(iv) Any finding of fact of the Secretary relating to the interpretation of any chest roentgenogram or any other medical evidence which demonstrates the existence of pneumoconiosis or any other disabling respiratory or pulmonary impairment, shall not be subject to review under the provisions of this subparagraph.~~

~~"(3) No operator may bring any proceeding, or intervene in any proceeding, held for the purpose of determining claims for benefits under this part.~~

~~"(4) It shall be the duty of the trustees to report to the Secretary and to the operators no later than January 1 of each year on the financial condition and the results of the operations of the fund during the preceding fiscal year and on its expected condition during the current and ensuing fiscal year. Such report shall be included in a report to the Congress by the Secretary not later than March 1 of each year on the financial condition and the results of the operations of the fund during the preceding fiscal year and on its expected condition and operations during the current and next ensuing fiscal year. The report of the Secretary shall be printed as a House document of the session of the Congress to which the report is made.~~

~~"(5) (A) The trustees shall take control and management of the fund and shall have the authority to hold, sell, buy, exchange, invest, and reinvest the corpus and income of the fund. All premiums paid to the fund under section 424(a)(1) shall be held and administered by the trustees as a single fund, and the trustees shall not be required to segregate and invest separately any part of the fund assets which may be claimed to represent accruals or interests of any individuals. It shall be the duty of the trustees to invest~~

such portion of the assets of the fund as is not required to meet obligations under this part, except that the trustees may not invest any advances made to the fund under section 424(c). The trustees shall make investments under this paragraph in accordance with the provisions of section 404(a)(1)(C) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104(a)(1)(C)).

"(B) Any profit or return on any investment or reinvestment made by the trustees under subparagraph (A) shall not be considered as income for purposes of Federal or State income taxation.

"(6)(A) Amounts in the fund shall be available for making expenditures to meet obligations of the fund which are incurred under this part, including the expenses of providing medical benefits as required by section 432 of this title, and the operation, maintenance, and staffing of the office of the fund. The trustees may enter into agreements with any self-insured person or any insurance carrier who has incurred obligations with respect to claims under this part before the effective date of this paragraph, under which the fund will assume the obligations of such self-insured person or insurance carrier in return for a payment or payments to the fund in such amounts, and on such terms and conditions, as will fully protect the financial interests of the fund.

"(B) Beginning on the effective date of this paragraph,

~~payments shall be made from the fund to meet any obligation incurred by the Secretary with respect to claims under this part before such effective date. The Secretary shall cease to be subject to such obligations on such effective date.~~

~~"(7) The trustees shall keep accounts and records of their administration of the fund, which shall include a detailed account of all investments, receipts, and disbursements.~~

~~"(8) At no time during the administration of the fund shall the trustees be required to obtain any approval by any court of the United States or by any other court of any act required of them in connection with the performance of their duties or in the performance of any act required of them in the administration of their duties as trustees. The trustees shall have the full authority to exercise their judgment in all matters and at all times without any such approval of such decisions. The trustees may file an application in the United States district court where the fund has its principal office for a judicial declaration concerning their power, authority, or responsibility under this Act (other than the processing and payment of claims). In any such proceeding, only the trustees and the Secretary shall be necessary or indispensable parties, and no other person, whether or not such person has any interest in the fund, shall be entitled to participate in any such proceeding. Any final judgment entered in such~~

~~proceeding shall be conclusive upon any person or other entity claiming an interest in the fund.~~

~~"(9) The trustees may employ such counsel, accountants, agents, and employees as they consider advisable. The trustees may charge the compensation of such persons and any other expenses, including the cost of fidelity bonds and indemnification and fiduciary insurance for trustees and other fund employees, necessary in the administration of the fund, against the fund.~~

~~"(10) The trustees shall have the power to execute any instrument which they consider proper in order to carry out the provisions of the fund.~~

~~"(11) The trustees may, through any duly authorized person, vote any share of stock which the fund may hold.~~

~~"(12) The trustees may employ actuaries to such extent as they consider advisable. No actuary may be employed by the trustees under this paragraph unless such actuary is enrolled under section 3042(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1242(a)).~~

~~"(d) Nothing in this Act or in the Black Lung Benefits Reform Act of 1976 shall be construed as exempting the fund, or any of its activities or outlays, from inclusion in the Budget of the United States Government or from any limitations imposed thereon.".~~

~~(c) Section 424 of the Act (30 U.S.C. 934) is amended to read as follows:~~

~~"SEC. 424. (a) (1) 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 a coal mine in such State shall pay premiums into the fund in amounts sufficient to ensure the payment of benefits under this part.~~

~~"(2) The initial premium rate of each operator shall be established by the Secretary as a rate per ton of coal mined by such operator. Beginning one year after the date upon which the Secretary establishes initial premium rates, the trustees may modify or adjust the premium rate per ton of coal mined to reflect the experience and expenses of the fund to the extent necessary to permit the trustees to discharge their responsibilities under this Act, except that the Secretary may further modify or adjust the premium rate to ensure that all obligations of the fund will be met. Any premium rate established under this subsection shall be uniform for all mines, mine operators, and amounts of coal mined.~~

~~"(3) For purposes of section 162 (a) of the Internal Revenue Code of 1954 (relating to trade or business expenses), any premium paid by an operator of a coal mine under paragraph (1) shall be considered to be an ordinary~~

~~and necessary expense in carrying on the trade or business of such operator.~~

~~"(4) For purposes of this subsection —~~

~~"(A) the term 'coal' means any material composed predominantly of hydrocarbons in a solid state;~~

~~"(B) the term 'ton' means a short ton of two thousand pounds; and~~

~~"(C) the amount of coal mined shall be determined at the first point at which such coal is weighed.~~

~~"(b) The Secretary shall advise the Secretary of the Treasury or his delegate of premium rates established under subsection (a)(1). The Secretary of the Treasury or his delegate shall collect all premiums due and payable by operators under subsection (a)(1), and transmit such premiums to the fund. Collections shall be effected by the Secretary of the Treasury or his delegate in the same manner as, and together with, quarterly payroll reports of employers. In order to ensure the payment of premiums by all operators, the Secretary, after consultation with the Secretary of the Interior, shall certify, not less than annually, the names of all operators subject to this Act.~~

~~"(c)(1) In any case in which an operator fails or refuses to pay any premium required to be paid under subsection (a)(1), the trustees of the fund shall bring a civil action in the appropriate United States district court to~~

require the payment of such premium. In any such action, the court may issue an order requiring the payment of such premiums in the future as well as past due premiums, together with 9 per centum annual interest on all past due premiums.

"(2) An operator who fails or refuses to pay any premium required to be paid under subsection (a) (1) may be assessed a civil penalty by the Secretary of the Treasury or his delegate in such amount as such Secretary or his delegate may prescribe, but not in excess of an amount equal to the premium the operator failed or refused to pay. Such penalty shall be in addition to any other liability of the operator under this Act. Penalties assessed under this paragraph may be recovered in a civil action brought by such Secretary or his delegate, and penalties so recovered shall be deposited in the fund.

"(d) The Secretary shall be required to make expenditures under this part only for the purpose of carrying out his obligation to administer this part. All other expenses incurred under this part shall be borne by the fund, and if borne by the Secretary, shall be reimbursed by the fund to the Secretary.

"(e) (1) There are hereby authorized to be appropriated to the fund such sums as may be necessary to provide the fund with amounts equal to 50 per centum of the amount

~~which the Secretary estimates is necessary for the payment of benefits under this part during the first twelve month period after the effective date of this section. Any amounts appropriated under this paragraph may be used only for the payment of benefits under this part.~~

~~"(2) (A) Sums authorized to be appropriated by paragraph (1) shall be repayable advances to the fund.~~

~~"(B) Such advances shall be repaid with interest into the general fund of the Treasury no later than five years after the first appropriation made under paragraph (1).~~

~~"(3) Interest on such advances shall be at a rate determined by the Secretary of the Treasury, taking into consideration the current average yield during the month preceding the date of the advance involved, on marketable interest bearing obligations of the United States of comparable maturities then forming a part of the public debt rounded to the nearest one eighth of 1 per centum.~~

~~"(f) (1) During any period in which section 422 of this title is applicable with respect to a coal mine an operator of such mine who, after the date of the enactment of this title, acquired such mine or substantially all the assets thereof from a person (hereinafter in this paragraph referred to 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 this section and~~

section 423 of this title, secure the payment of all benefits for which the prior operator would have been liable under section 422 of this title with respect to miners previously employed in such mine if the acquisition had not occurred and the previous operator had continued to operate such mine.

"(2) Nothing in this subsection shall relieve any prior operator of any liability under section 422 of this title.

"(g) (1) The fund shall make an annual assessment against any operator who is liable for the payment of benefits under section 422 of this title. Such assessment against any operator of a coal mine shall be in an amount equal to the amount of benefits for which such operator is liable under section 422 of this title with respect to death or total disability due to pneumoconiosis arising out of employment in such mine, or with respect to entitlements established in paragraph (5) or paragraph (6) of section 411(c) of this title.

"(2) Any operator against whom an assessment is made under paragraph (1) shall pay the amount involved in such assessment into the fund no later than thirty days after receiving notice of such assessment.

"(3) The provisions of subsection (c) of this section shall apply in the case of any operator who fails or refuses

~~to pay any assessment required to be paid under this subsection.".~~

~~(d) Section 421(b)(2)(E) of the Act (30 U.S.C. 931(b)(2)(E)) is amended by striking out "section 422(i)" and inserting in lieu thereof "section 424(f)".~~

~~CLINICAL FACILITIES~~

~~SEC. 10. The first sentence of section 427(c) of the Act (30 U.S.C. 937(c)) is amended by striking out "of the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975" and inserting in lieu thereof "fiscal year, and $2,500,000 for the period beginning July 1, 1976, and ending September 30, 1976".~~

~~MEDICAL CARE~~

~~SEC. 11. (a) Part C of title IV of the Act (30 U.S.C. 931 et seq.) is amended by adding at the end thereof the following new section:~~

~~"SEC. 432. The provisions of subsections (a), (b), (c), (d), and (g) of section 7 of the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 907 (a), (b), (c), (d), and (g)) shall be applicable to persons entitled to benefits under this part on account of total disability or on account of eligibility under paragraph (5) or paragraph (6) of section 411(c), except that references in such section to the employer shall be considered to refer to the trustees of the fund.".~~

~~(b) The Secretary of Health, Education, and Welfare shall notify each miner receiving benefits under part B of the Black Lung Benefits Act on account of his total disability who the Secretary has reason to believe became eligible for medical services and supplies on January 1, 1974, of his possible eligibility for such benefits. Where the Secretary so notifies a miner, the period during which he may file a claim for medical services and supplies under part C of such Act shall not terminate before six months after such notification was made.~~

~~TRANSITIONAL PROVISIONS~~

~~SEC. 12. (a) The Secretary of Health, Education, and Welfare, and the Secretary of Labor shall disseminate to interested persons and groups the changes in the Black Lung Benefits Act made by this Act. Each such Secretary shall undertake a program to give individual notice to individuals who they believe are likely to have become eligible for benefits by reason of such changes.~~

~~(b) (1) The Secretary of Labor (with respect to part B and part C of the Black Lung Benefits Act) shall review each claim which has been denied, and each claim which is pending, under each such part, taking into account the amendments made to each such part by this Act. Such Secretary shall approve any such claim if the provisions of either such part, as so amended, require such approval.~~

~~(2) Such Secretary, in undertaking the review required by paragraph (1), shall not require the resubmission of any claim which is the subject of any such review.~~

~~(3) Such Secretary shall establish such procedures as he considers necessary or appropriate to determine whether a claimant whose claim is reviewed under this subsection has met the requirements of section 411(c) of the Act (30 U.S.C. 921(c)) relating to years of employment, as amended by section 2(a) of this Act, except that such Secretary shall seek to make any such determination, to the extent practicable, without seeking to obtain access to any record or other information maintained by the Secretary of Health, Education, and Welfare.~~

~~SHORT TITLE FOR ACT~~

~~SEC. 13. Section 401 of the Act (30 U.S.C. 901) is amended by inserting "(a)" immediately after "SEC. 401." and by adding at the end thereof the following new subsection:~~

~~"(b) This title may be cited as the 'Black Lung Benefits Act'.".~~

~~MINE ACCIDENT WIDOWS~~

~~SEC. 14. (a) If a miner was employed for seventeen years or more in one or more underground coal mines, and died as a result of an accident in any such coal mine which occurred on or before June 30, 1971, any eligible survivor of~~

~~such miner shall be entitled to the payment of benefits under part B of the Black Lung Benefits Act.~~

~~(b) For purposes of this section, benefit payments to a widow, child, parent, brother, or sister of any miner to whom subsection (a) applies shall be reduced, on a monthly or other appropriate basis, by an amount equal to any payment received by such widow, child, parent, brother, or sister under the workmen's compensation, unemployment compensation, or disability laws of the miner's State.~~

~~(c) The Secretary of Labor shall be responsible for the administration of the provisions of this section.~~

~~ADMINISTRATION OF BLACK LUNG BENEFITS ACT~~

~~SEC. 15. (a) (1) The Division of Coal Mine Workers' Compensation is hereby transferred to the Office of the Secretary of Labor.~~

~~(2) The Secretary shall act through the Division in carrying out the provisions of the Black Lung Benefits Act.~~

~~(b) (1) The Secretary, in carrying out the Black Lung Benefits Act, shall establish and operate such field offices as may be necessary to assist miners and other persons with respect to the filing of claims under such Act. Such field offices shall be established and operated in a manner which makes them reasonably accessible to such miners and other persons.~~

~~(2) The Secretary, in connection with the establish-~~

~~ment and operation of field offices under paragraph (1), may enter into arrangements with other Federal departments and agencies, and with State agencies, for the use of existing facilities operated by such departments and agencies.~~

~~(c) For purposes of this section—~~

~~(1) the term "Division" means the Division of Coal Mine Workers' Compensation established in the Office of Workers' Compensation Programs by the Assistant Secretary of Labor for Employment Standards under the Secretary's Order No. 13-71 (36 Federal Register 8755); and~~

~~(2) the term "Secretary" means the Secretary of Labor.~~

~~EFFECTIVE DATES~~

~~SEC. 16. (a) This Act shall take effect on the date of its enactment, except that—~~

~~(1) the amendments made by section 2 shall be effective on and after December 30, 1969, except that claims approved solely because of the amendments made by section 2, which were filed before the date of the enactment of this Act, shall be awarded benefits only for the period beginning on such date of enactment;~~

~~(2) the amendments made by sections 4, 5, and 8 shall be effective on and after December 30, 1969;~~

~~(3) the amendments made by section 6 shall not require the payment of benefits for any period before the date of the enactment of this Act; and~~

~~(4) the amendments made by section 9 shall take effect on January 1, 1976, except that (A) the Secretary of Labor shall establish initial premium rates for operators under section 424(a)(1) of the Black Lung Benefits Act, as added by section 9(c) of this Act, no later than January 1, 1976; and (B) such Secretary shall make the estimate required by section 424(c)(1) of such Act, as added by section 9(c) of this Act, as soon as practicable after the date of the enactment of this Act.~~

~~(b) In the event that the payment of benefits to miners and to eligible survivors of miners cannot be made from the Black Lung Disability Insurance Fund established by section 423(a) of the Act, as added by section 9(b) of this Act, the provisions of the Act relating to the payment of benefits to miners and to eligible survivors of miners, as in effect immediately before January 1, 1976, shall remain in force as rules and regulations of the Secretary of Labor, until such provisions are revoked, amended, or revised by law. Such Secretary shall make benefit payments to miners and to eligible survivors of miners in accordance with such provisions.~~

~~WHITE LUNG STUDY~~

~~SEC. 17. (a) The Committee on Education and Labor of the House of Representatives is authorized and directed to conduct a study of white lung disease, also known as silicosis or talcosis, including, but not limited to, the extent and severity of the disease in the United States; the relationship, if any, between white lung disease and black lung disease; the adequacy of current workman compensation programs in compensating victims of white lung disease; a review of current mine safety and Occupational Safety and Health regulations relating to talc mining to determine whether such regulations are adequate to protect the safety and health of talc miners; and the need, if any, for Federal legislation to protect the safety and health of talc miners or to provide additional compensation for the victims of white lung.~~

~~(b) The Committee shall report their findings and any legislative recommendations to the Congress not later than one year after enactment of this Act.~~

That this Act may be cited as the "Black Lung Benefits Reform Act of 1976".

DEFINITIONS

SEC. 2. (a) Section 402(b) of the Federal Coal Mine Health and Safety Act of 1969, as amended (30 U.S.C.

801–960) (hereinafter in this Act referred to as the "Act"), is amended to read as follows:

"(b) The term 'pneumoconiosis' means a chronic dust disease of the lung and its sequelae, including respiratory and pulmonary impairments, arising out of coal mine employment."

(b) Section 402(d) of the Act is amended to read as follows:

"(d) The term 'miner' means any individual who works or has worked in or around a coal mine in the extraction of coal. Such term also includes an individual who works or has worked in processing or transporting coal, or in coal mine construction during the period such individual worked under conditions substantially similar to conditions in an underground coal mine.".

(c) Section 402(f) of the Act is amended to read as follows:

"(f) The term 'total disability' has the meaning given it by regulation of the Secretary of Labor, subject to the relevant provisions of subsections (b) and (d) of section 413, except that—

"(1) in the case of a living miner, such regulations shall provide that a miner shall be considered totally disabled when pneumoconiosis prevents him from en-

gaging 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;

"(2) in the case of a deceased miner, such regulations shall provide that a miner's employment in a mine at the time of death shall not be used as conclusive evidence that the miner was not totally disabled; and

"(3) such regulations shall not provide more restrictive criteria than those applicable under section 223 (d) of the Social Security Act. The Secretary, in consultation with the National Institute for Occupational Safety and Health, shall establish criteria for all appropriate medical tests under this subsection which accurately reflect total disability in coal miners as defined in paragraph (1).".

(d) Section 402 of the Act is further amended by adding at the end thereof the following new paragraph:

"(h) The term 'fund' means the Black Lung Disability Insurance Fund established pursuant to section 424.".

ENTITLEMENTS

SEC. 3. (a) Section 411(c) of the Act is amended—

(1) in paragraph (3) thereof, by striking out "and" at the end thereof:

(2) in paragraph (4) thereof, by striking out the period at the end thereof and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following:

"(5)(A) in the case of a living miner who was employed for twenty-five years or more in one or more coal mines if such miner is partially or totally disabled due to pneumoconiosis, he or she shall be entitled to the payment of benefits; and

"(B) in the case of a deceased miner who was employed for twenty-five years or more in one or more coal mines prior to the date of enactment of the Black Lung Benefits Reform Act of 1976, the eligible survivors of such miner shall be entitled to the payment of benefits, unless it is established that at the time of his death such miner was not partially or totally disabled due to pneumoconiosis. Eligible survivors shall, upon request by the Secretary, furnish such evidence as is available with respect to the health of the miner at the time of his death.".

(b) Section 411 of the Act is further amended by adding at the end thereof the following:

"(e) For the purposes of determining the applicability of the presumptions of subsection (c) of this section,

a miner will be deemed to have been employed in a coal mine for any year in which—

"(1) he has four quarters of coverage, as defined in section 213 of the Social Security Act, as a miner; or

"(2) he was continuously on the payroll of a coal company and was employed as a miner; or

"(3) the Secretary determines on the basis of other evidence that he was employed as a miner.

In determining the number of years of a miner's coal mine employment, the Secretary shall give the miner credit for the appropriate portion of any year in which he or she worked only part of a year.".

(c) Section 412(a)(1) of the Act is amended—

(1) by inserting immediately after "pneumoconiosis," the following: "or in the case of a miner entitled to benefits under paragraph (5) of section 411(c) of this title,";

(2) by striking out "disabled" the first place it appears therein; and

(3) by inserting immediately after "disability," the second place it appears therein the following: ", or during the period of such entitlement,".

(d) Section 414(e) of the Act is amended by—

(1) striking out the words "being paid" and inserting in lieu thereof the word "payable"; and

(2) inserting immediately after "pneumoconiosis," the following: "or with respect to an entitlement under paragraph (5) of section 411(c) of this title,".

(e)(1) Section 421(a) of the Act is amended by inserting immediately after "pneumoconiosis," the second place it appears therein the following: "and in the case of claims for benefits filed on the basis of eligibility under paragraph (5) of section 411(c),".

(2) Section 421(b)(2)(C) of the Act is amended by inserting immediately before the semicolon at the end thereof the following: ", except that such standards shall not be required to include provisions for the payment of benefits based upon conditions substantially equivalent to conditions described in paragraph (5) of section 411(c)".

(f) Section 411 of the Act is further amended by adding at the end thereof the following new subsection:

"(f) For the purposes of subsection (c)(5) of this section, 'partially disabled' means diminished capacity due to pneumoconiosis to earn the wages which the miner received at the time of his last coal mine employment.".

EMPLOYMENT NO BAR TO CLAIMS AND BENEFITS

SEC. 4. Section 413 of the Act is amended by adding at the end thereof the following new subsection:

"(d)(1) A miner who is eligible to exercise the option to transfer to a position of reduced concentration of respirable

dust in the mine atmosphere pursuant to section 203 of this Act, or who has evidence of the development of pneumoconiosis demonstrated by chest roentgenogram, or who has been employed for ten or more years in a coal mine, may file a claim for benefits before terminating such employment.

"(2) The Secretary shall notify such a miner, as soon as practicable after filing a claim, whether the miner would be eligible for benefits except for such miner's employment status at the time of filing.

"(3) If the Secretary makes a determination of eligibility or potential eligibility under paragraph (2) of this subsection, benefits shall be paid as of the month after the month of termination of such miner's coal mine employment.".

EVIDENCE REQUIRED TO ESTABLISH CLAIM

SEC. 5. (a) Section 413(b) of the Act is amended by inserting immediately before the period at the end of the second sentence thereof a colon and the following: ": Provided, That the Secretary shall accept a board certified or board eligible radiologist's interpretation of a chest roentgenogram which is of acceptable quality submitted in support of a claim for benefits under this title if such roentgenogram has been taken by a radiologist or qualified radiologic technologist or technician, except where the Secretary has reason to believe that the claim has been fraudulently represented. Where there is no medical evidence, or where such evidence

is insufficient in the case of a deceased miner, affidavits may be taken as sufficient evidence to establish that a miner was totally disabled due to pneumoconiosis or that his death was due to pneumoconiosis".

(b) Section 413(b) of the Act is further amended by adding at the end thereof the following "Each miner who files a claim for benefits under this title shall be provided an opportunity to substantiate his or her claim by means of a complete pulmonary evaluation.".

[*TRUST FUND AND OPERATOR LIABILITY*

[*SEC. 6. (a) Section 424 of the Act is amended to read as follows:*

[*"SEC. 424. (a)(1) There is hereby established in the Department of Labor a trust fund to be known as the Black Lung Disability Fund (hereinafter referred to as the 'fund'). The trustees of the fund shall be the Secretary, the Secretary of the Treasury, and the Secretary of Health, Education, and Welfare, all ex officio. The Secretary shall be the Managing Trustee and shall hold, operate, and administer the fund. The fund shall consist of such sums as may be appropriated to the fund, assessments paid into the fund as required by section 424(b), any penalties recovered under section 424(c), and any interest, income, gains, or earnings as may accrue to the fund.*

[*"(2) If a miner or widow, child, parent, brother,*

or sister is entitled to benefits under section 422 and the Secretary determines that (A) 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 thirty days of an initial determination of eligibility by the Secretary, or (B) there is no operator who was required to secure the payment of such benefits, the fund shall upon such determination by the Secretary 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 (A), the operator shall be liable to the fund in a civil action brought by the Secretary and in an amount equal to the amount paid to such miner or his widow, child, parent, brother, or sister under this title. In a case referred to in clause (B), a determination that the fund is liable for the payment of benefits shall be final. No operator or representative of operators may bring any proceeding, or intervene in any proceedings, held for the purpose of determining claims for benefits under clause (A) or (B), except that nothing in this section shall affect the rights, duties, or liabilities of any operator in proceedings under section 422 or section 423 of this title.

["(3) No operator shall have any right, title, or interest in fund assets, income, or other earnings of the fund.

["(4) As soon as practicable after the effective date of

this section, the Secretary shall prescribe regulations as he deems necessary to provide for the operation of the fund, the payment of benefits, the establishment of assessment rates, and for the collection of assessments, penalties, and interest owing the fund by a coal mine operator.

[*"(5) All assessments, penalties, and interest paid to the fund under this section shall be held and administered by the Secretary as a single fund, and the Secretary shall not be required to segregate any part of the fund assets which may be claimed to represent accruals or interests of any individuals.*

[*"(6)(A) It shall be the duty of the Secretary of the Treasury to invest such portion of the fund as is not 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 (1) on original issue at the issue price, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under the Second Liberty Bond Act, as amended, are hereby extended to authorize the issuance at par of public debt obligations for purchase by the fund. Such obligations issued for purchase by the fund shall have maturities fixed with due regard for the needs of the fund and*

shall bear interest at a rate equal to the average market yield (computed by the Secretary of the Treasury on the basis of market quotations as of the end of the calendar month next preceding the date of such issue) on all marketable interest-bearing obligations of the United States then forming a part of the public debt which are not due or callable until after the expiration of four years from the end of such calendar month; except that where such average market yield is not a multiple of one-eighth of 1 per centum, the rate of interest on such obligations shall be the multiple of one-eighth of 1 per centum nearest such market yield. The Secretary of the Treasury may purchase other interest-bearing obligations of the United States or obligations guaranteed as to both principal and interest by the United States, on original issue or at the market price, only where he determines that the purchase of such other obligations is in the public interest.

["(B) Any obligations acquired by the fund (except public debt obligations issued exclusively to the fund) may be sold by the Secretary of the Treasury at the market price, and such public debt obligations may be redeemed at par plus accrued interest.

["(C) The interest on, and the proceeds from the sale or redemption of, any obligations held in the fund shall be credited to and form part of the fund.

["(7) Any profit or return on any investment or rein-

vestment made by the Secretary of the Treasury shall not be considered as income for the purpose of Federal or State income taxation.

["(8)(A) Amounts in the fund shall be available for making expenditures necessary for the payment of benefits pursuant to section 424(a)(2), and for all expenses of operation and administration under this part, and for the repayment with interest of any advances to the fund. The Secretary is authorized in carrying out his responsibilities under this section to use the personnel and resources of the Department of Labor, subject to reimbursement by the fund, and to use the personnel and resources of any other Federal agency, subject to reimbursement by the fund.

["(B) The fund shall pay the obligations incurred by the Secretary with respect to all claims filed on or after July 1, 1973, and shall repay into the Federal treasury amounts equal to amounts expended for such claims paid prior to the effective date of this section, except that the fund shall not be obligated to pay or reimburse for benefits for any period of eligibility prior to January 1, 1974.

["(9) The Secretary shall keep accounts and records of administration of the fund, which shall include a detailed account of all investments, receipts, and disbursements.

["(10) The Secretary may employ such counsel, accountants, agents, actuaries, and employees of the fund as he

considers necessary. He shall charge the compensation of such persons and any other related expenses against the fund.

[*"(b)(1) Each operator of a coal mine shall pay assessments into the fund in amounts sufficient to insure the payment of all benefits pursuant to section 424(a)(2), for all expenses of administration and operation under this part, and for the repayment with interest of any advances to the fund.*

[*"(2) The initial assessment of each operator shall be established by the Secretary as soon as practicable after the effective date of this section. In establishing the initial and any subsequent assessment for each operator, the Secretary shall classify each type of coal mine operation. The respective rate of assessment for each class of coal mine operation shall be established by the Secretary on an equitable basis and the rate per ton for each class shall take into account such factors as are appropriate, including the productivity of each class of mine operation. The operators within each class determined by the Secretary shall be subject to a uniform assessment per ton of coal mined within such class. Beginning one year after the date upon which the Secretary established the initial assessment rate, he shall periodically modify or adjust the assessment rate per ton of coal mined to reflect the income*

and expenses of the fund to the extent necessary to permit the fund to discharge its responsibilities under this Act.

["(3) For purposes of section 162(a) of the Internal Revenue Code of 1954 (relating to trade or business expenses), any assessment paid by an operator of a coal mine under paragraph (1) shall be considered to be an ordinary and necessary expense of carrying on the trade or business of such operator.

["(c)(1) The Secretary may investigate and gather data regarding such matters as he may deem necessary to determine the assessments to be paid by coal mine operators, and may enter such places and inspect such records (and make transcriptions thereof).

["(2) In making his inspections and investigations under this section the Secretary may require the attendance and testimony of witnesses and the production of evidence under oath. Witnesses shall be paid the same fees and mileage that are paid in the courts of the United States. In a case of contumacy, failure, or refusal of any person to obey such an order, any district court of the United States or the United States court of any territory or possession, within the jurisdiction of which such person is found, resides, or transacts business shall, upon the application of the Secretary, have jurisdiction to issue such person an order requiring such

person to appear if, as, and when so ordered, and to give testimony relating to the matter under investigation or in question, and any failure to obey such order of the court may be punished by said court as a contempt thereof.

[*"(3)(A) For the purpose of determining the assessments to be established under this section the Secretary may, with the consent and cooperation of appropriate State agencies, utilize the services of State and local agencies and their employees and, notwithstanding any other provision of law, may reimburse from the fund such State and local agencies for such services.*

[*"(B) For the purpose of determining the liability of any coal mine operator under this part, the Secretary may enter into agreements with any agency of the United States and may reimburse from the fund any such agency for services rendered for this purpose.*

[*"(4) Each coal mine operator shall make, keep, and preserve and make available to the Secretary, such records as the Secretary may prescribe as necessary or appropriate for the enforcement of this part. The Secretary may require the periodic reporting by each coal mine operator of such information as he may deem necessary for the purpose of carrying out his responsibilities under this section, and may specify the method of determining the number of tons of coal mined by each such operator.*

[*"(d)(1) There are authorized to be appropriated to the fund such sums as may be necessary to provide the fund with advance amounts which the Secretary estimates are necessary for the payment of benefits pursuant to section 424(a)(2) and expenses of operation and administration of the fund under this section.*

[*"(2) Sums authorized to be appropriated by subsection (d)(1) shall be repayable advances to the fund and shall be repaid by the fund with interest into the general fund of the Treasury no later than five years after any appropriation authorized under subsection (d)(1).*

[*"(3) Interest on such advances shall be at a rate determined by the Secretary of the Treasury, taking into consideration the current average yield during the month preceding the date of the advance involved, on marketable interest-bearing obligations of the United States of comparable maturities then forming a part of the public debt rounded to the nearest one-eighth of 1 per centum.*

[*"(e)(1) If an operator fails or refuses to pay an assessment required to be paid under this section within thirty days after notification thereof, or if an operator fails or refuses to comply with a rule promulgated pursuant to this section, the Secretary is authorized to bring a civil action in the appropriate United States district court to require the payment of such assessment or compliance with such rule.*

In any such action, the court may issue an order granting appropriate relief, including but not limited to an order requiring the payment of such assessment in the future, as well as past due assessments, together with 9 per centum annual interest on all past due assessments.

[*"(2) An operator who fails or refuses to pay any assessment required to be paid under this section shall be assessed a civil penalty by the Secretary in such amount as the Secretary may prescribe, but not in excess of an amount equal to the assessment the operator failed or refused to pay. Such penalty shall be in addition to any other liability of the operator under this Act. Penalties assessed under this paragraph may be recovered in a civil action brought by the Secretary and penalties so recovered shall be deposited in the fund.".*]

TRUST FUND AND OPERATOR LIABILITY

SEC. 6. (a) Section 424 of the Act is amended to read as follows:

"SEC. 424. (a)(1) There is hereby established on the books of the Treasury of the United States a trust fund to be known as the Black Lung Disability Fund (hereinafter referred to as the 'fund'). The fund shall remain available without fiscal year limitation and shall consist of such amounts as may be appropriated to it and deposited in it as provided in subsection (b).

"(2) The trustees of the fund shall be the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health, Education, and Welfare. The Secretary of the Treasury shall be the managing trustee and shall hold, operate, and administer the fund.

"(b)(1) There are hereby appropriated to the fund, out of any money in the Treasury not otherwise appropriated, amounts equivalent to the taxes received in the Treasury under section 4121 of the Internal Revenue Code of 1954.

"(2) There are authorized to be appropriated to the fund, as repayable advances, such sums as may be necessary for payments in accordance with the provisions of subsection (d) made before April 1, 1978. Advances made pursuant to this paragraph shall be repaid, and interest on such advances shall be paid, to the general fund of the Treasury when the Secretary of the Treasury determines that moneys are available in the fund for such repayments. Interest on such advances shall be at rates computed in the same manner as provided in subsection (c)(2).

"(3) There are authorized to be appropriated to the fund such additional amounts as may be necessary to carry out the provisions of this section.

"(c)(1) The Secretary of the Treasury shall hold the

trust fund and (after consultation with the other trustees of the fund) shall report to the Congress not later than the first day of April of each year on the financial condition and the results of the operations of the fund during the preceding fiscal year and on its expected condition and operations during the fiscal year in which the report is made. The report shall be printed as a House document of the session of the Congress to which the report is made.

"(2) It is the duty of the Secretary of the Treasury to invest such portion of the 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 the issue price, or (B) by purchase of outstanding obligations at the market price. The purposes for which obligations the United States may be issued under the Second Liberty Bond Act are hereby extended to authorize the issuance at par of special obligations exclusively to the trust fund. The special obligations shall bear interest at a rate equal to the average rate of interest, computed as to the end of the calendar month next preceding the date of such issue, borne by all marketable interest-bearing obligations of the United States then forming a part of the public debt.

Where such average rate is not a multiple of one-eighth of 1 per centum, the rate of interest of such special obligations shall be the multiple of one-eighth of 1 per centum nearest such average rate. Such special obligations shall be issued only if the Secretary determines that the purchase of other interest-bearing obligations of the United States, or of obligations guaranteed as to both principal and interest by the United States on original issue or at the market price, is not in the public interest.

"(3) Any obligation acquired by the fund (except special obligations issued exclusively to the fund) may be sold by the Secretary at the market price and such special obligations may be redeemed at par plus accrued interest.

"(4) The interest on, and the proceeds from the sale or redemption of, any obligations held in the fund shall be credited to and form a part of the fund.

"(d) Amounts in the fund shall be available for the payment of—

"(1) benefits under section 422 in cases in which the Secretary determines that—

"(A) an operator liable for the payment of 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 thirty days of an initial determination of eligibility by the Secretary, or

"(B) there is no operator who is required to secure the payment of such benefits, and

"(2) obligations incurred by the Secretary of Labor with respect to all claims filed on or after July 1, 1973, and for the repayment into the Federal treasury of an amount equal to the sum of the amounts expended for such claims which were paid prior to the date of enactment of the Black Lung Benefits Reform Act of 1976, except that the fund shall not be obligated to pay or reimburse for benefits for any period of eligibility prior to January 1, 1974,

"(3) repayments of, and interest on, advances to the fund under subsection (b)(2), and

"(4) all expenses of operation and administration under this part.

"(e)(1) If an amount is paid out of the fund to an individual entitled to benefits under section 422 and the Secretary determines, under the provisions of section 422 and 423, that an operator was required to secure the payment of all or a portion of such benefits, the operator is liable to the United States for repayment to the fund of the amount of such benefits the payment of which is properly attributable to him.

"(2) If any operator liable to the fund under paragraph (1) refuses to pay, after demand the amount of such liability (including interest) there shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such operator. The lien arises on the date on which such liability is determined, and continues until it is satisfied or becomes unenforceable by reason of lapse of time.

"(3)(A) Except as otherwise provided under this subsection, the priority of the lien shall be determined in the same manner as under section 6323 of the Internal Revenue Code of 1954. That section shall be applied for such purposes by substituting 'lien imposed by section 424(e)(2) of the Federal Coal Mine Health and Safety Act of 1969' for 'lien imposed by section 6321'; 'operator liability lien' for 'tax lien'; 'operator' for 'taxpayer'; 'lien arising under section 424(e)(2) of the Federal Coal Mine Health and Safety Act of 1969' for 'assessment of the tax'; and 'payment of the liability is made to the Black Lung Disability Fund' for 'satisfaction of a levy pursuant to section 6332(b)' each place such terms appear.

"(B) In the case of a bankruptcy or insolvency proceeding, the lien imposed under paragraph (2) shall be treated in the same manner as a tax due and owing to the

United States for purposes of the Bankruptcy Act or section 3466 of the Revised Statutes (31 U.S.C. 191).

"(C) For purposes of applying section 6323(a) of the Internal Revenue Code of 1954 to determine the priority between the lien imposed under paragraph (2) and the Federal tax lien, each lien shall be treated as a judgment lien arising as of the time notice of such lien is filed.

"(D) For purposes of this subsection, notice of the lien imposed under paragraph (2) shall be filed in the same manner as under section 6323 (f) and (g) of the Internal Revenue Code of 1954.

"(4)(A) In any case where there has been a refusal or neglect to pay the liability imposed under paragraph (2), the Secretary may bring a civil action in a district court of the United States to enforce the lien of the United States under this section with respect to such liability or to subject any property, of whatever nature, of the operator or, in which he has any right, title, or interest, to the payment of such liability.

"(B) The liability imposed by paragraph (1) may be collected at a proceeding in court if the proceeding is commenced within six years after the date upon which payment of the liability was first due, or prior to the expiration of any period for collection agreed upon in writing by the operator and the United States before the expiration of such

six-year period. The period of limitation provided under this subparagraph shall be suspended for any period during which the assets of the employer are in the custody or control of any court of the United States, or of any State, or the District of Columbia, and for six months thereafter, and for any period during which the operator is outside the United States if such period of absence is for a continuous period of at least six months.".

(b) Subsection (i) of section 422 of the Act is amended to read as follows:

"(i)(1) During any period in which this section is applicable to the operator of a coal mine or mines who on or after January 1, 1959, acquired such mine or mines 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 or mines, or owner of such assets on or after January 1, 1959, such operator 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 by such prior operator as if the acquisition had not occurred and the prior operator had continued to be a coal mine operator.

"(2) Nothing in this subsection shall relieve any prior operator of any liability under this section whether or not

such prior operator is or was a coal mine operator on the effective date of this Act or any amendments thereto.

"(3) For purposes of this subsection, and notwithstanding the January 1, 1959, time limitation of paragraph (1) of this subsection, the following rules apply in the case of certain corporate reorganizations:

"(A) If an operator ceases to exist by reason of a reorganization which involves a mere change in identity, form, or place of organization, however effected a successor operator or other corporate or business entity resulting from such reorganization shall be treated as the operator to whom this section applies.

"(B) If an operator ceases to exist by reason of a liquidation into a parent corporation, the parent corporation shall be treated as the operator to whom this section applies.

"(C) If an operator ceases to exist by reason of a merger or, consolidation, or division, the successor operator or corporation, or business entity shall be treated as the operator to whom this section applies.

"(4) The provisions of this section shall be applicable with respect to all claims filed on or after July 1, 1973.".

EXCISE TAX ON COAL

SEC. 6A. (a) Chapter 32 of the Internal Revenue Code of 1954 (relating to manufacturers excise taxes) is

amended by inserting after subchapter A the following new subchapter:

"Subchapter B—Coal

"Sec. 4121. Imposition of tax.

"SEC. 4121. IMPOSITION OF TAX.

"(a) IN GENERAL.—There is hereby imposed on the sale of coal by the producer a tax at the rate of—

"(1) 15 cents per ton in the case of anthracite coal extracted by shaft, drift, or slope mining techniques from underground deposits, and

"(2) 10 cents per ton in the case of coal (including lignite) not subject to the rate described in paragraph (1).

"(b) DEFINITION OF TON.—For purposes of this section, the term 'ton' means 2,000 pounds.".

(b)(1)(A) Section 4221 of such Code (relating to certain tax-free sales) is amended by inserting "(other than under section 4121)" after "this chapter".

(B) Section 4293 of such Code (relating to exemption for United States and possessions) is amended by inserting "(other than under section 4221)" after "chapters 31 and 32".

(2) USE NOT TREATED AS SALE.—Section 4217(a) of such Code (relating to lease considered as sale) is

amended by inserting "other than coal" after "article" the first time it appears.

(c) The table of subchapters for such chapter is amended by inserting after the item relating to subchapter A the following new item:

"Subchapter B. Coal.".

(d) The amendments made by this section apply to sales after March 31, 1977.

MISCELLANEOUS

SEC. 7. (a) Section 401 of the Act is amended by inserting "(a)" immediately following "SEC. 401." and by adding at the end thereof the following new subsection:

"(b) This title may be cited as the 'Black Lung Benefits Act'.".

(b) Section 413(b) of the Act is amended (1) by striking out "(f)," and (2) by striking out "and (l)," in the last sentence thereof and by inserting in lieu thereof "(l) and (n),".

(c) Section 421(b)(2)(D) of the Act is amended to read as follows:

"(D) any claim for benefits on account of total disability of a miner due to pneumoconiosis is deemed to be timely filed if such claim is filed within three years after a medical determination of total disability due to pneumoconiosis;".

(d) Section 422(e) of the Act is amended by inserting "or" at the end of paragraph (1) thereof; by striking out "; or" at the end of paragraph (2) thereof and by inserting in lieu thereof a period; and by striking out paragraph (3) in its entirety.

(e) Section 422(f) of the Act is amended to read as follows:

"(f) Any claim for benefits by a miner under this section shall be filed within three years after a medical determination of total disability due to pneumoconiosis.".

(f) Section 427(c) of the Act is amended by striking out "of the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975" and by inserting in lieu thereof "fiscal year".

(g) Section 430 of the Act is amended by—

(1) inserting "and by the Black Lung Benefits Reform Act of 1976" immediately after "1972"; and

(2) by striking out the colon and all the language that follows it and inserting in lieu thereof a period.

FIELD OFFICES

SEC. 8. The Secretary of Labor is authorized to establish and operate such field offices as necessary to assist miners and survivors in the filing and processing of claims under title IV of the Federal Coal Mine Health and Safety Act of 1969.

Such field offices shall, to the extent feasible, be reasonably accessible to such miners and survivors. The Secretary of Labor may, in the establishment of such field offices, enter into such arrangements as he deems necessary with the heads of other Federal departments, agencies, and instrumentalities, and with State agencies, for the use of existing facilities and personnel under their control.

INFORMATION TO POTENTIAL BENEFICIARIES

SEC. 9. The Secretary of Health, Education, and Welfare and the Secretary of Labor shall jointly disseminate to interested persons and groups the changes in title IV of the Federal Coal Mine Health and Safety Act made by this Act, together with an explanation of such changes, and shall undertake, through appropriate organizations, groups, and coal mine operators, to notify individuals who are likely to have become eligible for benefits by reason of such changes. Individual assistance in preparing and processing claims shall be offered and provided to potential beneficiaries.

REVIEW AND TRANSFER OF DENIED AND PENDING CLAIMS

SEC. 10. Title IV of the Act is further amenled by adding at the end thereof the following new section:

"SEC. 432 (a) Any person who has filed a claim for benefits under part B of this title prior to July 1, 1973, and whose claim has been finally adjudicated as denied by

the Social Security Administration may file a new claim for benefits and, subject to the provisions of section 422(g) of this part, may be awarded such benefits as are appropriate under this part.

"(b) The Secretary shall prescribe in the Federal Register regulations as necessary to provide for the expedited processing of any claim filed under subsection (a) of this section. The Secretary of Health, Education, and Welfare shall promptly furnish all pertinent information in his possession relating to such a claim to the Secretary.

"(c)(1) Except as is otherwise provided in this Act, a claim for benefits filed under subsection (a) of this section shall be treated as a new claim for benefits filed under section 422 of this title.

"(2) The survivor of a miner who elects to file a new claim under this subsection, and whose prior claim was denied under part B of this title solely on the basis of the employment of the miner at the time of such miner's death, shall be entitled to receive benefits for all periods of eligibility beginning on January 1, 1974.

"(3) The survivor of a miner who elects to file a new claim under this subsection, and whose prior claim was denied under this part solely on the basis of the employment of the miner at the time of such miner's death, shall be entitled to

receive benefits for all periods of eligibility beginning on January 1, 1974, or the date such survivor filed a prior claim under this part, whichever is later.".

EFFECTIVE DATES

SEC. 11. (a) Except as specified in subsections (b) and (c) of this section, this Act shall take effect on the date of its enactment.

(b) The amendments made by section 2 (a), (b), and (c); section 3; section 4; and section 5 of this Act shall be effective as of December 30, 1969, except that claims approved solely because of the amendments made by section 3 which were filed before the date of enactment of this Act shall be awarded benefits only for the period beginning on such date.

[(c) The amendments made by section 6(a) of this Act shall be effective as of January 1, 1977, except that section 424(d) of title IV of the Act, as amended by this Act, shall be effective as of the date of enactment of this Act.]

OCCUPATIONAL DISEASE STUDY

SEC. 12. (a) The Department of Labor, in cooperation with the National Institute for Occupational Safety and Health, shall conduct a study of all occupationally related pulmonary and respiratory diseases, incuding the extent and severity of such diseases in the United States. Such study shall further include analyses of (1) any etiologic,

symptomatologic, and pathologic factors which are similar to such factors in coal workers' pneumoconiosis and its sequelae; (2) the adequacy of current workers' compensation programs in compensating persons with such diseases; and (3) the status and adequacy of Federal health and safety laws and regulations relating to the industries with which such diseases are associated.

(b) The study required by subsection (a) of this section shall be completed and a report thereon submitted to the President and the appropriate committees of the Congress within eighteen months after the date of enactment of this Act.

PROGRAM TERMINATION

SEC. 13. No new claim for benefits under part C of the Act shall be accepted after December 31, 1981.

Passed the House of Representatives March 2, 1976.

Attest: EDMUND L. HENSHAW, JR.,

Clerk.

Calendar No. 1236

94TH CONGRESS
2D SESSION

H. R. 10760

[Report No. 94–1254]

[Report No. 94–1303]

AN ACT

To amend the Federal Coal Mine Health and Safety Act to revise the black lung benefits program established under such Act in order to transfer the residual liability for the payment of benefits under such program from the Federal Government to the coal industry, and for other purposes.

MARCH 8, 1976

Read twice and referred to the Committee on Labor and Public Welfare

SEPTEMBER 16, 1976

Reported with an amendment, referred to the Committee on Finance until September 24, 1976

SEPTEMBER 24, 1976

Reported with amendments

BLACK LUNG COAL TAX

Mr. HELMS. Mr. President, the Senator from North Carolina commends the leadership on both sides for the cooperation which is so manifest in moving legislation along in these last days of the session. I know it is frustrating for the distinguished Senator from West Virginia, but he is doing an excellent job, as is the distinguished Senator from Michigan.

Concerning the pending business, the motion to consider H.R. 10760, the Senator from North Carolina wants to make it clear that he has no desire to delay consideration of this bill. I do want to make certain, however, that the Senate understands what it is doing.

In the first place, as I understand it, this bill will cost about $130 million, to be provided equally by additional taxes on the product and the other $65 million by direct appropriation. But that does not take into consideration, Mr. President, the fact that the Federal Government is the single largest consumer of coal. The estimates available to the Senator from North Carolina indicate that this will be an additional cost of $20 million to the taxpayers of this country, which is in fact an indirect appropriation.

The Senator from North Carolina feels that this bill should be referred to the Appropriations Committee to consider that fact.

Mr. DURKIN. Will the Senator yield for a question?

Mr. HELMS. Yes.

Mr. DURKIN. Has the Senator given any though to what lung cancer and other cancer-related problems cost the Government as a result of the personal hardships suffered by the miners?

Mr. HELMS. Of course, I have, and will direct comments to that in my discussion later. The fact that someone has black lung as a direct result of his employment is one thing and he has my sympathy and my genuine interest in being of assistance. However, if the Senator will take the time to read the bill, he will see the potential for defrauding the taxpayers—who, after all, will be footing a substantial part of the cost. I assure the Senator that these aspects of this bill will be discussed in some detail before this measure is finally disposed of.

Mr. DURKIN. Does the Senator agree that black lung is a serious affliction these days?

Mr. HELMS. Unquestionably. The Senator from North Carolina, like the Senator from New Hampshire, is also in favor of motherhood and against sin. But that happens not to be the question before us. We are talking about the taxpayers' money and how it shall be spent.

Mr. RANDOLPH. Mr. President, who has the floor?

Mr. HELMS. The Senator from North Carolina has the floor.

Mr. ROBERT C. BYRD. May I say to the distinguished Senator that the Committee on the Budget has submitted a report and I read the first paragraph as follows:

> The Committee on the Budget to which was referred the resolution S. 559, waiving section 402(a) of the Congressional Budget Impoundment Control Act of 1974 with respect to the consideration of H.R. 10760, the Black Lung Benefit Reform Act, having considered the same reports favorably thereon and recommends that the resolution be adopted.

So this is the budget waiver and it was entered yesterday.

Mr. HELMS. It has not been voted upon.

Mr. ROBERT C. BYRD. That is correct.

Mr. HELMS. And only 9 Senators voted out of the 16: is that correct?

Mr. ROBERT C. BYRD. I do not know that.

Mr. HELMS. I do. And I think it is also a fact that the Budget Committee has tried to operate on a unanimous basis heretofore. Here we have a measure which, if my information is correct and I believe it is, had 8 Senators favoring it and 1 switched his vote and made it 9 of the 16 Senators on the Budget Committee who voted to approve the waiver. A pretty close situation, Mr. President. But that is neither here nor there. We will get to that later.

Mr. ROBERT C. BYRD. I see no portion of the report that is dedicated to any objections.

Mr. HELMS. I understand that, but the facts I recited are accurate.

Mr. RANDOLPH. Will my colleague from North Carolina yield for the briefest of comments?

Mr. HELMS. I am delighted to yield.

Mr. RANDOLPH. I in no wise would attempt to indicate that a statement made about the legislation from the standpoint of its consideration should be withdrawn, but I do want to say that I conducted the hearings in the Subcommittee on Labor of the Labor and Public Welfare Committee. They were very thorough hearings. Some 35 witnesses were heard. I would remaind my able colleague that the House bill took approximately 2 years in its consideration before that body acted on the measure. This legislation is not new. We first passed it in 1969; then later in 1972, and now, hopefully, again in 1976.

The first legislation was passed 1 year

before we gave attention to the broader problems of occupational health and safety for industry generally in the country.

We believe that the nature of the mining of coal is such that pneumoconiosis, known as black lung, had taken a toll of those persons who had labored to supply the energy necessary for America to achieve preeminence among the countries of the world.

Mr. HELMS. Mr. President, will the Senator indulge me just one observation?

Mr. RANDOLPH. Oh, yes.

Mr. HELMS. I have no disagreement with the Senator about people who have worked underground to mine our coal and who have become ill with black lung. I have the deepest sympathy for them, and interest in them. The Senator from North Carolina is not an incompassionate man. I just want to make sure that we are not setting up another ripoff of the taxpayer in our efforts to help those who are worthy.

Mr. RANDOLPH. I know that.

Mr. HELMS. But I would ask the Senator, is it true, as has been reported to me, that under the provisions of this bill, X-rays of the chest are not even to be made available to the Labor Department?

Mr. RANDOLPH. No; that is not correct. During the debate those matters would certainly be considered. I shall not keep the Senator long, because if the bill comes to the floor there will be, of course, a factual discussion of the provisions of the bill, and a determination by Senators as to how they will vote. I respect the convictions of any Senator who, after debate, makes his determination.

But after the first bill was passed, I would say to the Senator, we came to the realization, over a long series of hearings, that the Social Security Administration was not taking into account the pulmonary and respiratory diseases that afflict coal miners in a determination of the establishment of black lung, pneumoconiosis.

We thought, in the original bill, that as well as the X-rays, these ailments I have just mentioned would be considered; but it was indicated that they would not. So the Senator from West Virginia now speaking proposed that second bill which came in 1972, which in a sense made it obligatory that those types of ailments be included in determining eligibility for benefits; that they be, of course, given the weight that they should be given by those making the decisions as to entitlement to benefits.

Now, the House of Representatives—I shall not discuss their measure, but the House measure ie very different from the Senate measure. We changed the House measure. I will not go into the details of the House measure except to say that its so-called entitlement feature, with which the Senator from North Carolina is familiar, the blanket payment, as it were, after a certain number of years working in the mines, has been changed in the Senate version, which I hope we shall have the opportunity to discuss here.

I know the concern of my diligent colleague from North Carolina. Our concerns in the overall are both on the same level, and that it, insofar as possible, to bring the benefits to miners and their widows and their children that should come to them.

The costs, very frankly, have been very, very much more than we anticipated at the beginning of our studies and the passage of the first bill. I readily acknowledge that. We were working in a new field, as it were, and the estimates were wrong. I say that now as I have said it in the past. But the Federal payments will go down rather than go up, we think, under the provisions of this bill, if we are able to have the opportunity to explain it in detail as the debate will take place.

I only appeal to the Senator from North Carolina to give the bill the opportunity for consideration within the Senate. Then what happens, of course, is within the determination of the Senator from North Carolina and the other Senators who will be called on to cast their votes.

Having said this, there is no criticism by the Senator from West Virginia of the Senator from North Carolina; I want him to know that.

Mr. HELMS. I thank the Senator. He knows of my affection and respect for him. Mr. President, I am going to reserve further comment until this matter is actually before the Senate.

Mr. DURKIN. Mr. President, will the Senator yield for a brief unanimous-consent request?

Mr. HELMS. I yield the floor to the able Senator.

PRIVILEGE OF THE FLOOR

Mr. DURKIN. I ask unanimous consent that Steve Gordon and Mike Coven of my staff be granted the privilege of the floor.

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

Mr. RANDOLPH. Mr. President, I ask unanimous consent that during the consideration of H.R. 10760, Donald Elisburg, Mike Goldberg, Eileen Mayer, Robert Humphreys, Martin Jensen, and Nik Edes be given the privilege of the floor, during both the debate and votes thereon.

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

Mr. LAXALT. Mr. President, I ask unanimous consent that Don Ubben of my staff be granted the privilege of the floor.

Mr. ROBERT C. BYRD. Mr. President, who has the floor?

The PRESIDING OFFICER. The Senator from Nevada has the floor.

Mr. HELMS. Mr. President, may I——

The PRESIDING OFFICER. Does the Senator from Nevada yield to the Senator from North Carolina?

Mr. LAXALT. I am happy to yield; I have only a unanimous-consent request that Don Ubben, of my staff, be granted the privilege of the floor.

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

Mr. HELMS. Mr. President, I ask unanimous consent that Dr. James P. Lucier, of my staff, be granted the privilege of the floor during the consideration of H.R. 10760 and any votes thereon.

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

Mr. FANNIN. Mr. President, I ask unanimous consent that Gordon Gilman, of my staff, and Lynne Davis, of the staff of Senator BAKER, be accorded the privilege of the floor during the consideration of this measure.

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

Mr. HELMS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistanst legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER Without objection, it is so ordered.

ORDER FOR VOTE AT 2 P.M. ON MOTION TO PROCEED ON BLACK LUNG LEGISLATION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that a vote on the motion to proceed to consideration of the black lung bill occur at 2 p.m. today.

The PRESIDING OFFICER. Is there objection?

Mr. JAVITS. What is the unanimous consent?

Mr. ROBERT C. BYRD. That a vote on the motion to proceed to the black lung bill occur at the hour of 2 p.m. today.

Mr. JAVITS. I thank the Senator.

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

Mr. ROBERT C. BYRD. Mr. President, I yield to the Senator from West Virginia on a matter that has been cleared on both sides, I am advised.

The PRESIDING OFFICER. The Senator from West Virginia.

PRIVILEGE OF THE FLOOR—H.R. 10760

Mr. HELMS. Mr. President, I ask unanimous consent that Gordon Jones of Senator GARN's staff, Mr. Dick Bryant of my staff, and Mrs. Margo Carlisle of Senator WILLIAM L. SCOTT's staff be accorded the privilege of the floor during consideration of the pending measure and votes thereon.

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

Mr. HELMS. I thank the Chair, and 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. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

BLACK LUNG COAL TAX

Mr. ROBERT C. BYRD. Mr. President, I ask for the yeas and nays on the motion to proceed to the consideration of the black lung bill which vote will occur at 2 p.m. today.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. ROBERT C. BYRD. 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. HANSEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

PRIVILEGE OF THE FLOOR—H.R. 10760

Mr. HANSEN. Mr. President, I ask unanimous consent that my staff member, Linda Goold may be accorded the privilege of the floor during the debate and all votes on this bill under consideration.

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

Mr. HANSEN. 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. BARTLETT. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

PRIVILEGE OF THE FLOOR—H.R. 10760

Mr. BARTLETT. Mr. President, I ask unanimous consent that Ed King of my staff be accorded the privilege of the floor during the debate and votes on this measure.

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

PRIVILEGE OF THE FLOOR—H.R. 10760

Mr. FANNIN. Mr. President, I ask unanimous consent that Al Toppelberg of Senator HUGH SCOTT's office be granted the privilege of the floor during the debate on this measure.

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

Mr. FANNIN. 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. PASTORE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. FANNIN. Mr. President, I ask unanimous consent that Mr. Don Moorehead of the staff of the Committee on Finance be accorded the privilege of the floor during debate and vote on H.R. 10760.

The PRESIDING OFFICER (Mr. BUMPERS). Without objection, it is so ordered.

Mr. FANNIN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. GRIFFIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

ORDER FOR RECOGNITION OF SENATOR HUGH SCOTT FOLLOWING THE VOTE ON H.R. 10760

Mr. GRIFFIN. Mr. President, I ask unanimous consent that, following the vote, which is scheduled for 2 p.m., Senator HUGH SCOTT of Pennsylvania be recognized for 10 minutes.

The PRESIDING OFFICER. Is there objection? The Chair hears none.

Without objection, it is so ordered.

Mr. GRIFFIN. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. DURKIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

PRIVILEGE OF THE FLOOR

Mr. DURKIN. Mr. President, I ask that Steve Pearlstein be granted the privilege of the floor during consideration and vote on H.R. 10760.

Mr. ROBERT C. BYRD. Reserving the right to object, what was the request?

Mr. DURKIN. I am asking the privilege of the floor for staff.

Mr. ROBERT C. BYRD. I have no objection.

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

Mr. DURKIN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. BUMPERS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. STONE). Without objection, it is so ordered.

BLACK LUNG COAL TAX

The Senate continued with the consideration of the bill (H.R. 10760) to amend the Federal Coal Mine Health and Safety Act to revise the black lung benefits program established under such act in order to transfer the residual liability for the payment of benefits under such program from the Federal Government to the coal industry, and for other purposes.

ADDITIONAL STATEMENT

Mr. CULVER. Mr. President, only recently has our country recognized the debilitating effects of black lung disease. The Black Lung Reform Act of 1969 was our country's initial legislative effort to provide relief for the hundreds of thousands of miners who suffer from this dread illness.

Mr. President, coal worker's pneumoconiosis is a disease of the present and not just the past. Over 5,000 active miners die annually from this insidious and devastating disease.

Of course, the ideal solution to black lung would be to remove its cause and,

to that end, the Coal Mine Health and Safety Act of 1969 requires that since December 30, 1972, the average concentration of respirable dust to which a miner is exposed cannot exceed 2 milligrams per cubic meter of air. Undeniably, since the health and safety bill was enacted and the Mining Enforcement and Safety Administration's dust sampling and enforcement program was implemented, the amount of respirable dust in coal mines has been substantially reduced. The plain fact is, though, that every year thousands of miners are still crippled despite improvements in efforts and techniques to control coal dust in the mines. In addition, a recent General Accounting Office study found many weaknesses in the dust sampling program, making determinations on the dust count virtually impossible.

The full scope of illness and disability experienced by the miners of this country will never be fully recognized. We do know that currently benefits are being paid monthly to 500,000 miners, their widows and dependents. In my home State of Iowa, 3,280 benefits are currently being paid; 1,200 miners receive benefits as of December 30, 1975, while another 1,042 widows and 1,038 dependents also receive some compensation.

But the fact that the program has thus far benefited many is no consolation to those whose benefits were denied. In Iowa, for example, approximately one-third of the claims filed by miners were denied; and based on recent evidence, it is apparent that there are many denied claims which should have been allowed under the 1972 amendments to title IV of the Federal Coal Mine Health and Safety Act of 1969.

The 1972 amendments attempted to redress the unforeseen inadequacies of the 1969 act. For example, denial of a claim based solely on a negative chest X-ray—one that did not exhibit pneumoconiosis—was prohibited. Respiratory and pulmonary impairment in coal miners other than coal worker's pneumoconiosis per se, were for the first time brought into the program as compensable under certain conditions. But there are still strong indications that there were many disabled miners and their widows whose claims continued to be delayed or denied. It is obvious that the present black lung benefits program contains serious inequities. As a result, thousands of coal miners and their survivors are unable to qualify for benefits and will be unable to qualify in the future even though they are precisely the victims of the disease whom the Congress intended to assist by this program.

H.R. 10760 will do much to help miners and their families deal with the scourges of black lung. It will expand the definitions of "miner" to include workers around a coal mine. It will improve benefits. Miners who have worked 25 years or more in the mines and have partially or totally disabling respiratory or pulmonary impairment are entitled to benefits. A working miner may file claims for benefits if eligible to transfer to less dusty mine conditions, or if there is X-ray evidence of black lung.

Affidavits of survivors may be sufficient to establish eligibility where there is no medical evidence, or where such evidence is insufficient.

A Government trust fund is established, to be supported by a periodic assessment against coal operators, to finance the cost of claims for which no responsible operator has been identified, and for administration expenses. Operators of current coal mining operations who have acquired a coal mine or its assets subsequent to January 1, 1959 will be responsible for black lung claims which arise with respect to the acquired predecessor operator.

We cannot do away with the problems immediately; they are insurmountable. But we can make great headway with the implementation of this legislation.

The PRESIDING OFFICER (Mr. BUMPERS). The hour of 2 o'clock having arrived, the Senate will now proceed to vote on the motion to take up H.R. 10760.

The yeas and nays have been ordered. 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 Indiana (Mr. HARTKE), the Senator from Wyoming (Mr. MCGEE), the Senator from Minnesota (Mr. MONDALE), the Senator from New Mexico (Mr. MONTOYA), the Senator from Connecticut (Mr. RIBICOFF), the Senator from Florida (Mr. CHILES), the Senator from Michigan (Mr. PHILIP A. HART), the Senator from Massachusetts (Mr. KENNEDY), and the Senator from California (Mr. TUNNEY) are necessarily absent.

I further announce that the Senator from Montana (Mr. MANSFIELD), the Senator from Ohio (Mr. GLENN), the Senator from Hawaii (Mr. INOUYE), and the Senator from South Dakota (Mr. MCGOVERN) are absent on official business.

I further announce that, if present and voting, the Senator from Connecticut (Mr. RIBICOFF) would vote "yea."

Mr. GRIFFIN. I announce that the Senator from Maryland (Mr. BEALL), the Senator from Oklahoma (Mr. BELLMON), the Senator from New York (Mr. BUCKLEY), the Senator from Kansas (Mr. DOLE), the Senator from Alaska (Mr. STEVENS), the Senator from Ohio (Mr. TAFT), and the Senator from South Carolina (Mr. THURMOND) are necessarily absent.

I also announce that the Senator from Virginia (Mr. WILLIAM L. SCOTT) is absent on official business.

I further announce that, if present and voting, the Senator from South Carolina (Mr. THURMOND) would vote "nay."

The result was announced—yeas 68, nays 10, as follows:

[Rollcall Vote No. 682 Leg.]

YEAS—68

Abourezk	Brock	Byrd, Robert C.
Allen	Brooke	Cannon
Baker	Bumpers	Case
Bartlett	Burdick	Church
Bayh	Byrd, Harry F., Jr.	Clark
Biden		Cranston
Culver	Javits	Pell
Domenici	Johnston	Percy
Durkin	Leahy	Proxmire
Eagleton	Long	Randolph
Eastland	Magnuson	Roth
Fong	Mathias	Schweiker
Ford	McClellan	Scott, Hugh
Garn	McIntyre	Sparkman
Gravel	Metcalf	Stafford
Hart, Gary	Morgan	Stennis
Haskell	Moss	Stevenson
Hatfield	Muskie	Stone
Hathaway	Nelson	Symington
Hollings	Nunn	Talmadge
Huddleston	Packwood	Weicker
Humphrey	Pastore	Williams
Jackson	Pearson	Young

NAYS—10

Curtis	Hansen	McClure
Fannin	Helms	Tower
Goldwater	Hruska	
Griffin	Laxalt	

NOT VOTING—22

Beall	Hartke	Ribicoff
Bellmon	Inouye	Scott, William L.
Bentsen	Kennedy	Stevens
Buckley	Mansfield	Taft
Chiles	McGee	Thurmond
Dole	McGovern	Tunney
Glenn	Mondale	
Hart, Philip A.	Montoya	

So the motion to proceed to the consideration of H.R. 10760 was agreed to.

BLACK LUNG COAL TAX

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

The PRESIDING OFFICER. The pending business is H.R. 10760, which the clerk will state.

The legislative clerk read as follows:

A bill (H.R. 10760) to amend the Federal Coal Mine Health and Safety Act to revise the black lung benefits program established under such act in order to transfer the residual liability for the payment of benefits under such program from the Federal Government to the coal industry, and for other purposes.

Mr. RANDOLPH. Mr. President, what is the situation as to the time allotted on this bill for general debate?

The PRESIDING OFFICER. There is no time limitation.

Mr. RANDOLPH. Mr. President, I yield myself such time as I may need.

The PRESIDING OFFICER. There is no time limitation.

Mr. RANDOLPH. Well, I am going to do that anyway, if I may.

Mr. President, the Members of the Senate have, in the last few minutes, by a vote of 68 to 10, decided that the so-called black lung legislation would be brought before the Senate for consideration, and hopefully for determination.

I think it is important for all of us to realize that this measure, as reported from the Committee on Labor and Public Welfare and by the Committee on Finance, is a worthwhile, timely, and necessary measure. It is not as strong a bill as some persons would prefer, but it does provide, in my opinion, a number of constructive changes which will result in a more just and equitable benefit program for coal miners and their widows.

I think that Senators will be interested in these changes to which I make reference.

First, a trust fund managed by the Secretary of the Treasury and supported by a per ton tax on coal to pay claims for benefits for which there is no last responsible operator.

For example, there are coal companies that came into existence. They were operated for a period of years and then the mine or mines were closed and no successor operator is available to undertake the liabilities of the prior operator.

Two, chest X-rays must be accepted as evidence and not be reread by the Federal Government or interpreted by qualified radiologists.

Mr. NUNN. Will the Senator from West Virginia yield for about 20 seconds for a unanimous-consent request for another Senator who left the Chamber?

Mr. RANDOLPH. Yes, I am delighted to yield.

Mr. NUNN. Mr. President, I ask unanimous consent that Mr. John Cevette of Senator HASKELL's staff be accorded privileges of the floor during this debate.

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

Mr. NUNN. I thank the Senator from West Virginia.

Mr. CANNON. Will the Senator yield to me for a unanimous-consent request?

Mr. RANDOLPH. I am happy to yield.

Mr. CANNON. I ask unanimous consent that Bill Kroger of my staff be permitted the privilege of the floor during consideration of this measure.

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

Mr. RANDOLPH. Three, the term "total disability" is redefined to provide that in the case of a deceased miner the fact that a miner was employed at the time of his death is not conclusive evidence that he was not totally disabled.

Four, an entitlement to benefits for miners with 25 years in the mine if they are partially or totally disabled due to pneumoconiosis and a similar entitlement for eligible survivors.

Five, part C of the Black Lung Benefits Act is made permanent.

Six, a widow or other survivor of a disabled miner may file a claim at any time after the miner's death. Currently, the widow must file within 3 years or lose her eligibility.

Seven, the time limitation on years of work for purposes of the 15-year rebuttable presumption is eliminated.

Mr. President, these are some of the principal changes in the present law and contemplated hopefully in the passage of this bill.

H.R. 10760 would impose a net initial cost to the Federal Government. I think we have to be very candid and frank as we quote the figures. The first year the cost to the Federal Government will be approximately $70.5 million. There was a discussion before we brought the bill up today, as I have had colloquy with the able Senator from North Carolina (Mr. HELMS).

But those amounts, I stress now, would be repayable from the trust fund with interest within 5 years.

In subsequent years no additional costs would accrue to the Federal Government as a result of the provisions of this bill and, in fact, the Congressional Budget Office estimates that there would be a substantial reduction in the Federal obligation in future years below that which would be required under current law.

Under the bill, as reported by the Finance Committee, the tax is imposed on the first sale or use of each ton of coal production.

The rate is 15 cents per ton for anthracite coal and 10 cents per ton for coal other than anthracite.

Mr. President, these amounts represent a very small increase for coal companies and their customers since the current carlot price for coal, FOB the mine, ranges from $27 to $47 per ton.

These normal market fluctuations, market changes, have a far greater impact on coal operators than will the taxes imposed in this measure. Costs for the transportation of coal are 40 times more expensive than the tax contemplated in this bill.

Mr. President, I know that many Members are concerned about this legislation. Frankly they were concerned again in 1972 when they made these improvements to the initial legislation. They are concerned today.

We do not automatically bring these bills to the floor. We bring them because there has been a need proven for changes, as I have indicated, in the prior legislation.

So, I think it is important that I stress the fact that I believe the time has come when the industry itself must absorb a portion of the cost of providing the benefits for disabled coal miners and their widows.

The coal companies have not voluntarily assume this burden. It is not an easy burden, and they have not yet assumed it. The coal industry in the United States is presently supporting a total of only 100 claims for benefits. To place this figure in perspective, the Federal Government has assumed liability for the payment of about 360,000 claims, representing over 500,000 beneficiaries.

The industry has contested the allowance of 97 percent of the claims for which the Secretary of Labor of the United States has determined operator liability.

Someone might say: "Senator RANDOLPH, you are Representative of a great coal State."

And I am, and I have labored through the years for the coal industry as well as for those who mine the coal. I have tried always to be very fair in these matters. Often I have stood when there were not many persons around me fighting for the rights of coal and the industry that has the obligation to develop the mines.

But think of this in 1974, there were only 73 mines in the United States that produced more than 1 million tons of coal annually, out of a total of about 600 million tons that year. By comparison, between 700,000 and 1 million tons were produced by 28 mines, of which 10 were deep mines. Between 500,000 and 700,000 tons were produced by 31 mines.

For between 400,000 and 500,000 tons there were 43 mines. Between 300,000 and 400,000 tons, there were 59 mines. Between 200,000 and 300,000 tons produced, the number is listed at 101 mines. And, between 100,000 and 200,000 tons, there were 262 mines. In 1974, there were 524 mines producing between 100,000 and 1 million tons of coal annually. About one-half of these mines, according to the best information we can secure, are underground operations.

In my State of West Virginia a modern deep mine might cost $100 million to be brought into being. This very heavy outlay of money also is a very big risk.

So when I speak of the industry I speak of a lot of small companies. I am not a carping critic of coal companies, because they deserve, frankly, the understanding of Members of this body.

But today I speak as I have on the two prior occasions in 1969 and 1972, as did my colleagues Senator ROBERT C. BYRD from West Virginia, and others in this body, for that which is right from the standpoint of benefits to those who provide the energy and oftentimes contract tragic pneumoconiosis as a result of their labors.

One might say that these figures do not reflect favorably on the coal industry. But it is imperative that we impose a responsibility that has not been undertaken to date.

The pending bill would create a trust fund to support these claims for which there is no identifiable, responsible operator.

Taking into account the changes made in the bill, about 40 percent of the claims would fall in this category. The remaining 60 percent of the claims would be the responsibility of the individual employer.

Thus, the Federal Government, under this legislation, finally will be relieved, as the Federal Government should be relieved, of the cost burden that equitably rests with the coal mines, the operators in whose mines thousands of miners have contracted disabling black lung disease and other pulmonary and respiratory ailments. By their work they aided the consuming public of America through supplying coal. There have been some very unsatisfactory strikes, wildcat in nature, which slowed down production, but miners have been on the job.

Has the Nation benefited? Yes, it has, directly and indirectly, from those who have mined the coal as well as those who have put up the investments for the companies.

In coal, we have America's most abundant energy resource. This is not the time to speak only for coal. Coal will someday be recognized—I hope very soon—as providing the opportunity for development of greater independence from the petroleum, which flows into the United States in increasing amounts. Perhaps this is not the time to speak of it, but I think there is danger of another oil embargo in the next 60 or 90 days. There are reasons why the thinking leaders of Saudi Arabia might feel that the United States has not always met commitments to meet their weapons needs, and other aids from the United States. A cut back in production or an embargo by Saudi Arabia, the greatest producer, could occur again, such as the embargo of 3 years ago.

Coal can be mined only by men who go beneath the Earth. It does not just happen. Of course, we have labor-saving devices which have reduced the actual number of miners. But in a State like West Virginia there are some 45,000 coal miners who are making their contribution toward energy supplies in the United States.

There has been no cutting the corners. There has been no attempt to bring this legislation into this body, even at this last hour, because there was a feeling that perhaps, because Members would be leaving or might not be giving attention to what is taking place on the floor. There is no thought that those who bring it here might be attempting to move other than in the light of this Chamber.

I remind my colleagues that on March 2 of this year, the House of Representatives passed H.R. 10760. In several respects, the pending bill is similar to the House-passed bill. The House took some 2 years in the preparation and passage of that measure.

Certain aspects of the House bill have raised serious concerns among a number of Senators, and I recognize that as a fact. Chief among those was a section which provided an automatic entitlement to benefits for miners who worked in one or more mines for a specific number of years. It was difficult for certain Senators, and understandably so, to support a provision based solely on years of service, with no showing of disability.

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

Mr. RANDOLPH. I yield.

Mr. HELMS. The Senator is addressing one of the points to which the Senator from North Carolina was referring a while ago, when he stated his concerns about this measure. I am delighted that he is going into this in the depth that he is.

Mr. RANDOLPH. I appreciate the comment of the Senator from North Carolina, who I know considers measures—not only this one but others as well—very carefully in making his decisions in this body.

There is, I say to my colleagues, according to a substantial body of medical authority, a relationship between pneumoconiosis and the number of years worked in a coal mine. The longer a man works in the mine, the more that miner is exposed to the coal dust. The relationship between years of mining and disabling pneumoconiosis is a different matter, however. As is the case with most diseases, people do not always react the same way. They do not always respond with the same intensity. There is a variance to the same exposure. There are different degrees—or even no showing, perhaps—of pneumoconiosis.

It is important, I say to the Senator from North Carolina and other Senators, that this bill which we have brought to the floor substantially modifies the entitlement provision in the House bill. In addition to the years of service requirement, there must be a showing of partial or total disability due to pneumoconiosis which, as I said earlier today in colloquy with the able Senator, include respiratory and pulmonary impairments arising from employment in the coal mines.

In my view, the reason for opposing this provision, in a sense, has lessened. The pending measure is a measure of justice. It has much to commend it. I wish particularly to identify at this point those provisions which will be of special benefit to the widows of disabled coal miners.

First, I remind my colleagues that the definition of "total disability" in the law has been modified to state that in the case of the deceased miner, the fact that he was employed in a mine at the time he died may not be used as conclusive evidence that the miner was not totally disabled. Many, many widows write to me, as they do to other Senators. They implore me to assist them in obtaining benefits. Their husbands, they write, were employed in the coal mines at the time their husbands died. Their claims were disallowed for that reason.

Often I have heard it said that miners work long beyond the time they should work because of poor health. They actually should cease working. But these miners worked many times because they had no alternative. They had to support their wives and their children in the only way that they actually knew how to make a living in those hills and valleys of the many States with which the Senator from North Carolina is familiar. We call it Appalachia. This provision will, at last, bring relief to those widows. The only obstacle to the collection of benefits was the fact that their husbands were working at the time of death.

Second, an arbitrary time limitation on the filing of part C claims by widows and other survivors has been eliminated. Existing law requires that a widow file a claim within 3 years after the death of her miner husband. This impediment resulted in real hardship to many widows whose claims would have been allowed but for the passage of time. In our committee bill, reported on the floor, we believe that this limitation is unreasonable and unnecessary.

Third, the committee bill provides that, in the case of a deceased miner, where there is no relevant medical evidence, or where such evidence is insufficient, affidavits may be sufficient to establish a claim. Although by inference, existing law permits claims to be established through affidavit evidence only, the pending bill provides for and spells it out clearly. In many cases, particularly where a miner died several years ago, there is little, if any, medical evidence available to substantiate a claim. Often, an attending physician or a coroner, who is unfamiliar with pneumoconiosis, or simply because the immediate cause of death was heart failure, did not indicate in diagnostic sheets or death certificates the words that would trigger the allowance of a claim.

Fourth, there is a 25-year entitlement for widows. If the widow or other eligible survivor can show that the miner worked for that period prior to the enactment of this bill, such survivor would be entitled to benefits lest the Secretary of Labor would be able to show that the miner was not partially or totally disabled by pneumoconiosis when he died.

Mr. President, these are the major provisions of the bill as they apply specifically to the benefits for widows. Widows, of course, will benefit from other provisions of the measure, along with disabled miner claimants who are living. I am taking the time this afternoon to detail the provisions of the bill that the record may be very clear regardless of what happens on this measure. We spell it out. We know there is justice in what we are doing. We hope the Senate and, later, the two bodies can agree and the President can sign the measure.

One of the primary provisions in H.R. 10760, both as it passed the House and now is pending before the Senate, is that, in shorthand vernacular, it prohibits the "rereading of X-rays."

This is the most expensive feature in both bills. It is my understanding that an amendment to strike this provision will be proposed. Then we can address the issue in greater detail if and when the amendment is actually brought to us for debate. I point out, however, that the Black Lung Benefits Act of 1972 prohibits the denial of a claim solely on the basis of the results of a chest X-ray. I also note that neither the Committee on Labor and Public Welfare, nor the Senate, nor the House of Representatives, intended in the first act in 1969 or the second act in 1972, to permit the wholesale rereading of miners' X-rays. There must be some type of quality control—that is essential. This should be limited to occasions when unreadable or fraudulent X-rays are submitted to support a claim. The use of Government contract rereaders to review X-rays and their interpretations is, to coal miners and miners' widows, one of the most objectionable features—and it is objectionable to me—of the administration of the black lung benefits program as it now is operating.

Mr. President, it is my understanding that more than 60 percent—I hope my colleagues will listen to these words—more than 60 percent of the X-rays submitted as positive for pneumoconiosis to the Department of Labor are reread by the contract radiologists as negative. As we have said in the committee report on the pending bill—and listen to these words—there is little reason, as a matter of policy, for the Government to interpose panels of second guessers, particularly where the original interpreter of a claimant's X-ray was a qualified radiologist.

There are several other provisions in H.R. 10760, as amended, which are important as we restructure the black lung program. Under section 4 of the bill, as the chairman of our Committee on Labor and Public Welfare understands, a miner may file a claim for benefits while he is still at work in a coal mine if he has had 10 years at work within the mines, or if he has X-ray evidence of pneumoconsists, or if he is eligible to transfer to what we call less dusty mine conditions pursuant to section 203 of the Coal Act. This will permit the ill miner to determine whether he is entitled to benefits without the necessity of endangering his livelihood or placing his family on welfare or public assistance. The definition of total disability is modified to require the Secretary of Labor to establish medical test criteria which accurately reflect total disability to coal miners.

At the present time, the Secretary is required by HEW to use the social security disability standards, although HEW, under part B of the black lung program, was less restrictive and used what we call interim standards. The International Labor Organization has, for some time, used another set of standards, still less restrictive, which are applied to those who engage in strenuous, heavy work. There is no question, no Member of this body would question that coal mining is strenuous work. It is often very, very heavy work. It is my hope that the Secretary will adopt disability standards that relate to the coal miners' capacity to do this heavy work.

Section 3(b) of the bill requires that every miner claimant be given an opportunity to do what? To take a complete

pulmonary evaluation, to include arterial blood gas tests, at exercise. Ventilatory studies in coal mines often do not show any impairment.

I realize that we deal with a very complex subject. We understand that. That is the reason we are trying to build in here, not layer on layer, but trying, as best we can, to be appreciative of the problems and to have the very best of component parts in the establishment of the black lung or the failure to prove pneumoconiosis.

Now, studies sometimes show that the miners do not show impairment. Impairment is often demonstrated in the miner's inability to adequately transfer oxygen from the lungs into the bloodstream. This medical characteristic is quite common among the disabled coal miners, and blood gas testing, therefore, is often the only way to qualify for disability. The test is highly important in establishing claims for benefits.

I refer to the Committee on Finance because it has considered the trust fund and the tax aspects of this bill, as amended. A hearing was held on September 21, 1976. Then the committee, after that session, held an exeeutive meeting the next day, and the committee filed its report on September 24.

Although the Committee on Labor and Public Welfare and the Committee on Finance differ in approach to the trust fund concept, and although I am not wholly satisfied that the changes that were made to the bill by the Finance Committee are necessary, I, as one Member of the Senate and as a member of the Labor and Public Welfare Committee, as a Senator who conducted the hearings on this bill, am willing—and I say this to the chairman of the Finance Committee, the able Senator from Louisiana (Mr. LONG)—to accept these changes that the Finance Committee has made.

In the interest of the passage of the bill, Mr. President—and I have talked about the major provisions of the bill as reported, the amendments, to the Senate, now, Senators, I want to emphasize that you have had the opportunity to review the bill in greater detail in the Committee on Labor and Public Welfare and in the report of the Committee on Finance. This opportunity has been given to you and to your staffs.

The pending bill is sound, the pending measure is responsible. The features in the House bill—we have removed many of those or modified them which we believe to be objectionable, and what remains is. in my judgment, measure on which the Senate can place its stamp of approval because it does resolve many of the inequities and injustices of the existing program.

Now, it will have very little impact on Federal expenditures. Most of the appropriating contemplated in the bill will be repaid with interest, and the bill will actually reduce Federal spending with the existing law. The pending bill will not be excessively costly to the coal companies. Yet it will help thousands of disabled coal miners and widows.

Mr. President, this is not a perfect bill, but this is a good bill. This is a needed bill and one deserving, in my opinion, of the substantial support of the Senators at the present time.

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

Mr. ROBERT C. BYRD. Mr. President, was the Senator wanting time?

Mr. HUDDLESTON. Yes; 2 minutes.

BLACK LUNG COAL TAX

The Senate continued with the consideration of the bill (H.R. 10760) to amend the Federal Coal Mine Health and Safety Act to revise the black lung benefits program established under such act in order to transfer the residual liability for the payment of benefits under such program from the Federal Government to the coal industry, and for other purposes.

Mr. HUDDLESTON. I thank the distinguished majority leader.

I just want to associate myself with the remarks of the distinguished Senator from West Virginia (Mr. RANDOLPH).

I, too, come from a coal-producing State. As a matter of fact, my State has produced more coal than any other during the past few years.

We recognize the problems that have developed in the black lung program as it has been administered in recent years.

The bill that is before us is one that will correct many of the deficiencies of the present program. There is no need for me to reiterate the points that have been made so well and so eloquently by the distinguished Senator from West Virginia (Mr. RANDOLPH).

However, I do want to express my support for the position he has indicated, and my hope that the Senate will give careful consideration to this bill with all of its important implications, and all it means in a human way to the people who have devoted their lifetimes to the extracting of our coal which means so much to this country in meeting our energy needs.

I thank the distinguished Senator.

LISTING OF REFERENCE MATERIALS

U.S. Congress. House. Committee on Education and Labor. General Subcommittee on Labor. *Hearings on H.R. 3476, H.R. 8834, H.R. 8835, and H.R. 8838.* 93rd Congress, 2nd session.

U.S. Congress. House. Committee on Education and Labor. Subcommittee on Labor Standards. *Hearings on H.R. 7, H.R. 8 and H.R. 3333.* 94th Congress, 1st session.

U.S. Congress. Senate. Committee on Labor and Public Welfare, Subcommittee on Labor. *Hearings on H.R. 10760 and S. 3183.* 94th Congress, 2nd session.

U.S. Congress. Senate. Committee on Finance. *Hearing on H.R. 10760.* 94th Congress. 2nd session.