

SENATE REPORT NO. 28  
Legislative History  
Senate Report No. 28

Following is the March 5, 1975, Congressional Report from the Interior and Insular Affairs Committee on S. 7. The text below is compiled from the Office of Surface Mining's COALEX data base, not an original printed document, and the reader is advised that coding or typographical errors could be present.

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1975  
Interior and Insular Affairs; United States Senate  
SENATE REPORT NO. 28; 94TH CONGRESS 1st Session; S. 7.  
MARCH 5, 1975. - Ordered to be printed

Preamble

(a) No person shall open or develop any new or previously mined or abandoned site for surface coal mining operations on

Mr. METCALF, from the Committee on Interior and Insular Affairs, submitted the following

REPORT

together with

MINORITY AND ADDITIONAL VIEWS

[To accompany S. 7]

The Committee on Interior and Insular Affairs, to which was referred the bill (S. 7), to provide for the cooperation between the Secretary of the Interior and the States with respect to the regulation of surface coal mining operations, and the acquisition and reclamation of abandoned mines, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

The text of S. 7 as reported follows:

2 A BILL

2 To provide for the cooperation between the Secretary of the Interior and the States with respect to the regulation of surface coal mining operations, and the acquisition and reclamation of abandoned mines, and for other purposes.

2 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 "Surface Mining Control and Reclamation Act of 1975".

I. PURPOSE

172 The purpose of S. 7, the "Surface Mining Reclamation Act of 1975", is to establish an environmentally strong and administratively realistic program

for the regulation of coal surface mining activities and the reclamation of coal mined lands. More specifically, the purposes of S. 7 as reported by the Committee, are to assure that surface coal mining operations - including exploration activities and the surface effects of underground mining - are conducted so as to prevent or minimize degradation to the environment, and that such surface coal mining operations are not conducted where reclamation is not feasible according to the terms and conditions of the Act.

172 Federal legislation regulating surface mining - and particularly surface mining for coal - is needed now. While a number of States do have surface mining reclamation programs, regulation of surface coal mining is not uniform, and in many instances is inadequate. S. 7 as reported by the Committee would provide minimum Federal standards for surface coal mining and reclamation activities to be administered and enforced by the States, and by the Secretary of the Interior on public lands. S. 7 would provide assistance to the States to improve their regulatory and enforcement programs and authorizes funding to the States for that purpose. In the event that a State fails to comply with the Act, the bill provides for Federal enforcement of the State Program, or for establishment of a Federal Program under the authority of the Secretary of the Interior.

172 The bill also provides for the creation of State mining institutes, and of an abandoned mine land reclamation fund for the reparation of past damages.

## II. NEED

172 In recent years the coal industry has experienced a significant shift in technology from predominantly underground mining. Although strip mining first started before World War II, it did not become a significant technology for mining coal until the early 1960's when, for the first time, over 30 percent of the country's coal was produced in surface mines. In 1974, over half of the coal produced came from surface mines.

172 Each week some 1,000 acres of land are disturbed by the surface mining for coal. As of January 1, 1972, there were 4 million acres of land disturbed by surface mining, of which 1.7 million acres (43 percent) were disturbed by surface mining for coal, 1.3 million of these acres in the Eastern coalfields. Only about half these lands have been reclaimed.

172 Federal legislation to regulate surface coal mining is long overdue.

The coal industry can afford the cost of reclaiming surface mined land. What it cannot afford is the continuing uncertainty created by failure to resolve this issue. Enactment of the Surface Mining Control and Reclamation Act will enable the coal industry to proceed with development of our Nation's vast coal resources in a manner which will assure that the other natural resources of our country will not be unnecessarily damaged.

173 Congress has been actively considering surface coal mining legislation for the past 4 years. During the 93d Congress the Senate passed a bill in October of 1973 by a vote of 82 to 8. The House passed its amendment to the Senate bill in July of 1974 by a vote of 291 to 81. The conference committee met almost 30 times for over 100 hours to resolve the differences between the Senate and House versions of the bill.

173 In December 1974, after 4 years of intensive congressional debate, Congress believed that it had resolved the surface mining issue by sending to the President a bill, S. 425, identical to S. 7, as introduced. Unfortunately, the end product of all this intensive study and debate did not become law because the President pocket-vetoed that bill without even giving the Congress a chance to override the veto by returning it before adjournment.

173 It is also worth recalling today that industry has in the past fought strip mining bills far less stringent measures than the legislation before Congress today. The delay in enacting legislation, caused largely by industry's opposition, has brought the nature and scope of the strip mining problem more sharply into focus. The need for strong regulation of strip mining practices is more apparent - to more people - than ever before.

173 Surface coal mining activities have imposed large social and environmental costs on the public at large in many areas of the country in the form of unreclaimed lands, water pollution, erosion, floods, slope failures, loss of fish and wildlife resources, and a decline in natural beauty. Uncontrolled surface coal mining in many regions has effected a stark, unjustifiable, and intolerable degradation in the quality of life in local communities.

173 If surface mining and reclamation are not done carefully, significant environmental damage can result. In addition, unreclaimed or improperly reclaimed surface coal mines pose a continuing threat to the environment, and at times are a danger to public health and safety, public or private property. Similar hazards also occur from the surface effects of underground coal mining, including the dumping of coal waste piles, subsidence and mine fires.

173 Erosion and siltation of streams occur as a result of surface mining. In the Eastern coalfields, where spoil is pushed downslope of mountain mines,

landslides, erosion, sedimentation and flooding are common hazards of mountain surface mining. Unstable highwalls are a hazard to life and property. Highwalls that crumble and erode from weathering ruin drainage patterns and significantly add to water pollution. Material falling off the highwall can retard surface water flow. Erosion increases dramatically when the protective vegetative cover is removed and the soil is not stabilized. Suspended sediment concentration in small Appalachian streams draining strip mined areas can be increased 100 times over that in forest lands. Over 7,000 miles of streams have been affected by surface runoff from coal stripping operations.

174 In the Western coalfields, many of which are in arid or semi-arid areas, the environmental problems associated with surface mining are somewhat different. Erosion rates on Western range lands are among the highest in the United States for upland areas not under cultivation. The arid climate does not provide sufficient moisture for a protective vegetal cover. Once this fragile vegetative cover has been disturbed by mining, erosion increases dramatically. More important, in areas with little rainfall, restoration of vegetative cover is virtually impossible without irrigation. Furthermore, in most of the Western coalfields the coal beds that lie close to the surface are also aquifers. (For example, the strippable coal seams in the Gillette, Wyoming, area serve as an aquifer.) Removal of the coal by surface mining operations would intersect such aquifers that are the source of water for many wells. Flow patterns in such aquifers would be changed and some parts undoubtedly would be dewatered, resulting in reduced availability of water for other uses.

174 There are also areas where surface coal mining is totally inappropriate, such as wilderness areas, areas of historical importance, parks, and wildlife refuges. In other areas, it may be desirable to prohibit surface mining because it would be incompatible with existing or planned land use patterns. Of course, under the provisions of the Act, no surface mining may take place in an area which cannot be properly reclaimed.

174 Because mining conditions, climate, and terrain vary so greatly among the different coalfields, administration of a coal surface mining regulation and reclamation program is more properly done by the States. For example, a program geared to insure proper mining and reclamation in the mountains of Appalachia must understandably be different from one suited to regulating these activities in the arid and semi-arid areas of the West. (Similarly, these regional differences must be reflected in Federal standards promulgated for surface

mining and reclamation on Federal lands.)

174 While many States already do have laws regulating surface coal mining operations, in many instances these laws are inadequate, or are not fully enforced. Most existing State laws and Federal regulations for surface mining and reclamation are inadequate in that they are tailored to suit ongoing mining practices, rather than requiring modification of mining practices to meet established environmental standards. It is the purpose of this Act to effect changes in those mining practices which result in unacceptable or permanent environmental damage, and to eliminate those mining operations which cannot be properly reclaimed.

174 Regardless of the adequacy of a State's mining and reclamation laws, and assuming good faith on the part of the regulatory agency, problems of enforcing such laws frequently stem from a lack of funding and manpower to adequately insure compliance. As a result, violations of the law and regulations are frequent.

174 Uniform minimum Federal standards are therefore needed to establish minimum criteria for regulating surface mining and reclamation activities throughout the country, on both public and private lands, and to assure adequate environmental protection from the environmental impacts of surface mining in all States.

175 In order to assure appropriate local administration of these Federal requirements by the various States, adequate funding and manpower in the State regulatory agencies are essential. For this reason, financial assistance and guidelines are needed for the design and enforcement of State surface mining and reclamation programs in conformance with Federal criteria. It is the purpose of the bill to provide this necessary assistance.

175 The Committee recognizes that there is an urgent need to balance our growing demand for energy resources with the increasing stress we place on the environment in satisfying that demand.

175 Much emphasis is being placed today on greater utilization of our domestic coal resources as a means for achieving greater energy selfsufficiency. President Ford, in his most recent energy message to the Congress called for a doubling of coal production in the next decade.

175 The essential requirement for an adequate supply of domestic energy resources to support the Nation's social and economic wellbeing is thus being increasingly recognized as a major national issue. It is clear, particularly in

the case of coal, that we have ample reserves. By all estimates our physical coal reserves are sufficient to meet our needs, even at greatly increased rates of consumption, for hundreds of years. We have an abundance of coal in the ground. Simply stated, the crux of the problem is how to get it out of the ground and use it in environmentally acceptable ways and on an economically competitive basis.

175 Federal legislation to regulate coal surface mining and reclamation is a crucial measure to insure an adequate energy supply while preserving and maintaining a satisfactory level of environmental quality.

175 The Committee is aware that representatives of the coal industry and the Administration have expressed great concern about possible "production losses" which enactment of S. 7 might cause. The figures given vary so widely as to render them basically meaningless. For example, the Administration has, at various times, indicated "losses" ranging from 14-141 million tons per year.

175 The Administration's latest estimates are based on four assumptions:

175 "(1) Coal prices would not increase.

175 "(2) Mining technology would remain at its present state.

175 "(3) New mining areas would not be opened in the West.

175 "(4) Capital investments would not increase in mining and related industries."

175 It is important to note that the Administration expressly states that "If the reverse of any of the above assumptions occurred, the overall coal production could increase."

175 In view of the rapid and continuing increase in coal prices and the large number of proposed new coal mines in the West, it appears very unlikely that there would be any significant losses of production.

175 The fact is that at current production levels, this country has more than 500 years of coal reserves. It is ridiculous to talk about a diminution in production at present prices, must less those anticipated in the future, and it is even more ridiculous, given the massive amount of our coal reserves, to refuse to assume the relocation of mining operations, for example, to areas which can be prudently mined - in estimating the impact of this bill.

176 The purpose of this bill is to effect the internalization of mining and reclamation costs, which are now being borne by society in the form of ravaged land, polluted water, and other adverse effects, of coal surface mining. The Committee believes that this can be done without significant losses in coal production, under the provisions of S. 7.

### III. MAJOR PROVISIONS

#### 176 (1) SURFACE MINING AND RECLAMATION STANDARDS

176 The informational and environmental requirements of this bill are its most vital provisions. The purpose of the bill is to end the present environmental degradation from surface coal mining and to prevent it in the future. To this end the bill sets forth a series of minimum uniform requirements for all coal surface mining operations on both federal and state lands. These standards deal with three basic issues: preplanning, mining practices, and post-mining reclamation. The first requires that an operator applying for a permit has done certain research regarding adjacent land uses, the characteristics of the coal and the overburden, and hydrologic conditions.

He must include in his application the planned methodology and timetable for the operation in a reclamation plan. The second set of requirements provide that mining methods be used which will minimize or obviate environmental damage or injuries to public health and safety. These include restrictions on the placement of overburden, blasting regulations, water pollution control requirements, and waste disposal standards. The third group of standards regard reclamation and restoration of the mined land to its pre-mined condition. These requirements include backfilling and regrading to approximate original contour, restoration of water quality and quantity, revegetation to pre-mining conditions and elimination of erosion and sedimentation.

176 It is the Committee's understanding that certain States may wish to impose more stringent requirements than those minimum standards set forth in the bill. Some States in fact are already contemplating such measures. However, it was felt that some minimum uniform floor had to be established for the protection of the environment at a time when the growth of surface coal mining is projected to double over the next decade, often in environmentally delicate areas.

#### 176 (2) PROTECTION OF WATER RESOURCES

176 There are a number of provisions in this bill which are designed to protect the quality and quantity of water in areas where surface coal mining operations are being conducted. While coal is in abundant supply in the United States in certain areas, water is frequently a scarce or precious commodity which must be protected during the course of mining. Of course, the Committee recognizes that hydrology conditions vary from region to region. In the East, for example, heavy rainfall or high sulfur content of the coal in certain areas result respectively in heavy sedimentation and acid mine drainage. In the West,

where coal seams are frequently aquifers, and rainfall is infrequent, mining results in loss of water sources and requires years, perhaps decades, for proper reclamation.

177 In addition, where water is so scarce, competing land uses can complicate the regulatory agency's decision to allow mining. For example, at a time when the world is facing an acute food shortage, some of the coal in the West underlays alluvial valley floors, which are the only arable lands in such areas.

177 For these reasons, the bill incorporates a number of carefully drawn provisions for the protection of any area to be mined. The provisions are not restrictive, but they are fully intended to protect the hydrological integrity of any area to be surface coal mined or impacted by such mining. The Committee fully recognizes that there is likely to be some temporary disturbance to water quality and quantity during the actual mining process, and the language of the bill reflects this understanding. Thus, the permit application requirements, reclamation standards, and provisions for designation of areas unsuitable for mining provide for the protection of scarce and vital water resources.

### 177 (3) DESIGNATION OF AREAS UNSUITABLE FOR MINING

177 A decision to permit the surface mining of coal is a land use decision, and as such may at times conflict with other demands on scarce or valued land resources. For this reason the bill provides for a mechanism - on both State and Federal lands - for citizens to petition that certain areas be designated as unsuitable for surface coal mining. Such designation is only temporary, and always subject to review and revision, but it is designed to minimize land use conflicts with regard to surface coal mining. However, in order to prevent a state regulatory authority from conducting an indefinite review, and thus locking up production needlessly, the bill requires a one year deadline on all decisions as to designation.

177 In addition to this designation process, the Committee has made a judgment that certain lands simply should not be subject to new surface coal mining operations. These include primarily and most emphatically those lands which cannot be reclaimed under the standards of this Act and the following areas dedicated by the Congress in trust for the recreation and enjoyment of the American people: lands within the National Park System, the National Wildlife Refuge System, the National Wilderness Preservation System, the Wild and Scenic Rivers System, National Recreation Areas, National Forests, and areas which would adversely affect parks or National Register of Historic Sites.

177 In addition, for reasons of public health and safety, surface coal mining will not be allowed within one hundred feet of a public road (except to provide access for a haul road), within 300 feet of an occupied building or within 500 feet of an active underground mine.

177 Finally, Title VI of the bill provides for a process for the designation of Federal lands unsuitable for the mining of minerals other than coal. This provision was included in the bill, again, as a mechanism for facilitating and legitimizing land use decisions in areas which have inadequate zoning procedures to deal with such problems.

177 Since mining has traditionally been accorded primary consideration as a land use there have been instances in which the potential for other equally or more desirable land uses has been destroyed. The provisions discussed in this section were specifically designed and incorporated in the bill in order to restore more balance to Federal land use decisions regarding mining.

#### 178 (4) VARIANCES

178 The Committee was adamant that there should be no broad exceptions to the vital mining and reclamation standards of this bill. To provide for unlimited exceptions would render the bill meaningless, since it would then be likely that the exceptions would become the rule. On the other hand, the Committee did recognize that there are some valid and important reasons for allowing limited variances to the prescribed standards of the bill, where such variances provide equal or better protection to the environment, and result in a higher post-mining land use. For this reason, there are three provisions in the bill which permit variances to the mining-reclamation standards of the bill. The first permits mountain top mining by granting a variance to the requirement for restoration to approximate original contour and the prohibition of placing spoil on the downslope. Rigid criteria are specified for the granting of such a variance. The second applies to existing surface coal mines in Alaska, which, after a study by the Department of the Interior, may be granted variances from certain revegetation standards. The third permits variances from any of the mining and reclamation standards of the Act, at the Secretary's discretion, for experimental practices that show potential for improved environmental protection over prescribed or currently accepted practices.

#### 178 (5) PROTECTION OF SURFACE OWNER RIGHTS

178 Since the mining of coal became a profitable enterprise, there have been numerous instances in which the mineral estate and the surface estate were separated, both on public and private lands. State laws govern the resolution of any disputes about property rights which might arise from such separations, and this Act does not attempt to tamper with such state laws. The Committee firmly believes that all valid existing property rights must be preserved, and has no intention whatsoever, by any provision of this bill, to change such rights.

178 However, with regard to lands where the Federal government owns the coal, but not the surface estate, the bill does provide for some departure from existing practice.

178 When vast areas of public lands were transferred to private interests in the early part of this century, the mineral rights were withheld for the people of the United States, as a then revolutionary conservation measure. Over time and aggravated by the current wish to develop Western coal, this situation has led to a serious land use confrontation between surface users such as farmers and ranchers and federal coal lessees. In an effort to mitigate such rivalries the bill provides for limited and circumscribed surface owner consent as a condition of issuing a new Federal coal lease. (Existing leases are not affected by this provision.) It requires that all damages, including lost income, be repaid, and that limited additional compensation be paid to surface owner.

179 In order to preclude "blackmail tactics" and "side deals" on the part of surface owners, all negotiations for damages and compensation are to be carried on with the Secretary of the Interior, and not with the coal company.

#### 179 (6) ABANDONED LAND RECLAMATION

179 The bill provides for a fund to be used to reclaim "orphaned" or abandoned mined lands. The fund is to be derived from a reclamation fee to be levied on every ton of coal mined: 35~/ton for surface mined coal and 25~/ton for all coal mined by underground methods, or 10% of the value of the coal at the mine, whichever is less.

179 It is estimated that a million and a half acres of land have been directly disturbed by all coal mining and over 11,500 of streams polluted by sedimentation or acidity from surface or underground mines.

179 Estimates for the cost of repairing these continuing damages run from

\$6- \$10 billion.

179 Although some feel that today's operators should not be required to pay for their precursor's damages, the Committee strongly believes that the burden of paying for this reclamation is rightfully assessed against the coal industry, and, by extension, the consumers of coal. Furthermore, the use of the fund is not limited to past damages. The bill provides that 50% of all fees collected in any one state be returned to that State for the purposes of alleviating the impacts of coal development in the area. Thus, in the West, where there is relatively little damage from past mining, reclamation fee revenues can be used to build the appropriate infrastructure to support a rapidly burgeoning surface coal mining industry. Provisions are made in this title for the rehabilitation of both publicly acquired and private lands, under the jurisdiction of the states, the Secretary of the Interior, or the Secretary of Agriculture.

#### 179 (7) RESEARCH INSTITUTES

179 Within the next decade, it is anticipated that coal production will double, requiring not only a massive influx of capital and equipment, but also of trained personnel and improved, more efficient and safe mining techniques. Mining of other minerals will also become increasingly important and complex. In anticipation of this problem, the bill provides for grants to state mining schools to train mining engineers, technicians and other personnel, and to foster and promote research in improved mining, reclamation and health and safety practices, all of which is to be made available to the public.

#### 179 (8) ENFORCEMENT

179 S. 7 contains comprehensive provisions for inspections, enforcement notices and orders, administrative and judicial review, and penalties. These requirements are of equal importance to the provisions of the bill regarding mining and reclamation performance standards since experience with state surface mining reclamation laws has amply demonstrated that the most effective reclamation occurs when sound performance standards go hadn in hand with strong, equitable enforcement mechanisms.

180 Generally the enforcement provisions of this bill have been modeled after the similar provisions of the Federal Coal Mine Health and Safety Act of 1969. Where the enforcement provisions of this bill depart of the 1969 Health

and Safety Law, they do so to accommodate the fact that this bill encourages the states to retain or develop regulatory authority over surface coal mining and reclamation operations, and seeks to protect the environment and the public health and safety as opposed to the protection afforded the coal miner on coal mine property by the Coal Mine Health and Safety Act.

180 Inspections and enforcement: Federal-State Relationships. - The role of the Federal Government has been carefully delineated in this bill, particularly in regard to its activities in those situations where the State is the prime regulatory authority. During the interim period, section 501(f) provides that beginning no later than one hundred and thirty five days from the date of enactment and continuing until a State program has been approved or a federal program has been implemented, the Secretary is required to carry out a federal enforcement program which includes inspections and enforcement actions in accordance with the provisions of section 521. The intent of this provision is to place the Secretary in the role of assuring compliance with the interim standards during the time of the initial regulatory procedure. The Committee recognizes that this may to some extent duplicate State activity, however it is the view of the Committee that this sort of federal presence at the most crucial time of the administration of this Act will result in uniform, equitable enforcement of the interim standards and will assure that the requirements of the Act get off to a good start.

180 Since practically all surface coal mining operations covered by the initial regulatory procedure are presently regulated by existing State regulatory authorities (the major exception being operations on federal and Indian lands), it is not the purpose of this interim federal enforcement program to place the Secretary of the Interior in the business of issuing mining permits for operations on lands within the jurisdiction of the States. The bill imposes a duty upon the States to review and revise existing permits to insure compliance with the interim standards of section 501, and obliges the States to issue new permits in accordance with those standards. It is the view of the Committee, however, that the Secretary would be required to assure State performance of these duties and obligations, pursuant to the federal inspection and enforcement provisions of section 501(f).

180 Once State programs or Federal programs replace the initial regulatory procedure, section 517 requires that federal inspections must be made for purposes of developing, administering, or enforcing any Federal program, and assisting or evaluating the development, administration, or enforcement of any State program.

180 In those situations in which the Secretary is the regulatory authority, federal inspections must occur on an irregular basis averaging not less than one inspection per month for the operations covered by each permit. In those situations where the State is the regulatory authority and the Secretary carries out inspections for assistance and evaluation purposes, federal inspections should take place in sufficient frequency to carry out properly these compliance functions. In addition to normally programmed inspections, section 521(a)(1) of the bill also provides for special inspections when the Secretary receives information giving him reason to believe that violations of the Act or permit have occurred. Of course an inspection, federal or State, must occur without prior notice to the permittee or his agents or employees.

181 By mandating primary enforcement authority to field inspectors, this bill recognizes, as does federal mine health and safety legislation, that inspectors are in the best position to recognize and control compliance problems. The bill establishes three strong but flexible enforcement mechanisms which provide inspectors with the tools necessary to respond to the most minor and the most serious violations.

181 Cessation Order (section 521(a)(2) ). - During any federal inspection if the inspector determines that any violation of the Act or permit condition or any other condition or practice exists which creates an imminent danger to the health or safety of the public, or is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources, the inspector must order a cessation of the mining operation causing or contributing to the danger or harm. The cessation order may apply to all or a portion of the surface coal mining or reclamation operation in question. The imminent danger or environmental harm closure provision is so critical that it is the only place in the bill where the federal inspector is required to act even if the inspection is being made for the purposes of monitoring a State regulatory authority's performance. To provide otherwise would be to perpetuate the possibility of tragedies such as the Buffalo Crook Flood, which can be at least partially attributed to the sad fact that Government regulation of the collapsed mine waste banks fell between the cracks of the not quite meshed functions of various State and federal agencies.

181 Two other points are necessary to fully explain this provision. Since neither the Congress or any regulatory authority can totally predict the public

and environmental hazards arising from such a complex endeavor as surface coal mining, the bill does not restrict the closure authority of section 521(a)(2) to violations of the Act or permit. Instead any condition or practice giving rise to imminent danger or environmental harm is sufficient to invoke the authority. Lastly while section 701 (28) provides a definition of "imminent danger to the health or safety of the public," there is no definition in the bill for the phrase "significant, imminent environmental harm to land, air, or water resources." This phrase may be undefinable in the abstract, although relatively easy to identify in the concrete; however it is crucial to point out that not only must the environmental harm be imminent but it must also be significant . Since surface coal mining operations by their very nature cause s some degree of environmental harm to land, air, or water resources, even when in full compliance with standards such as are contained in this bill, the immediate cessation order based on significant, imminent environmental harm must not be invoked in cases where only permissive, controlled, or temporary environmental harm is occurring.

182 Notice of Violation (section 521(a)(3)) . - Where the Secretary is the regulatory authority and a federal inspector determines that a permittee is violating the Act or his permit but that the violation is not causing imminent danger to the health or safety of the public or significant, imminent environmental harm, then the inspector must issue a notice to the permittee setting a time within which to correct the violation. If the violation has not been corrected, in the opinion of the inspector, within the established time, the inspector must immediately order a cessation of the mining operation relevant to the violation. The enforcement mechanism of section 520(a)(3) will be utilized by the inspector in the great majority of compliance problems. It not only enables the inspector to gain immediate control of the problem, but also provides him with essential flexibility to appropriately deal with minor as well as major violations.

182 In order to prevent federal-state overlap, the federal inspector is only to use his authority under section 521(a)(3) where the Secretary is the regulatory authority. However in other circumstances the Secretary must insure, in accordance with the provisions of section 521(a)(1), that the State is notified of the compliance problem so that it may act under the terms of the approved state program.

182 Show Cause Order (section 521(a)(4) ). - Where the Secretary is the regulatory authority and a federal inspector determines that a pattern of

violations of the Act or permit exists or has existed and that such violations are caused by the unwarranted failure of the permittee to comply or are willfully caused by the permittee, the inspector must issue an order to the permittee to show cause as to why his permit should not be suspended or revoked.

If the permittee fails to show cause as to why the permit should not be suspended or revoked, the inspector must immediately suspend or revoke the permit.

182 This provision requires that suspension or revocation of a mining permit be preconditioned upon conduct which demonstrably fails to meet the standards of care and diligence which are to be expected of permittees who seek to comply with the law. This is a sound approach particularly in light of the stringency of the closure authority previously discussed.

182 While the bill grants a great deal of authority to federal inspectors, it is important to remember that adequate protection must be afforded the regulated parties against the possibility of abuse of this authority. To this end, formal internal administrative review and judicial review of inspectors' decisions are permitted by sections 525 and 526 respectively. Furthermore section 521(a) (5) insures that due process will begin at the field level and provides the opportunity to modify, vacate, or terminate a clearly erroneous notice or order without the burden of more formal administrative review.

182 Finally it should be noted that while section 521 speaks in terms of federal enforcement, section 521(d) provides that as a condition of approval of any state program submitted pursuant to section 503 of this Act, the enforcement provisions thereof shall at a minimum incorporate sanctions no less stringent than those set forth in section 521 and shall contain the same or similar procedural requirements relating thereto. The Committee expects that the Secretary will use the format of section 521 as the basis for measuring whether state enforcement mechanisms are sufficiently strong and flexible to warrant approval of that portion of submitted state programs.

183 Administrative Review. - In order to assure expeditious review and due process for persons seeking administrative relief of enforcement decisions of Federal inspectors under the provisions of section 521, section 525 of the bill establishes clear, definitive administrative review procedures. Those persons having standing to request such administrative review include permittees against whom notices and orders have been issued pursuant to section 521 and persons having an interest which is or may be adversely affected by such notice or order. Any person with standing may request a public hearing which must be of record and subject to the Administrative Procedure Act. Pending review the

order or notice complained of will remain in effect, except that in narrowly prescribed circumstances temporary relief may be granted from a notice or order issued under section 521(a) (3). In no case, however, will temporary relief be granted if the health or safety of the public will be adversely affected or if significant, imminent environmental harm will be caused. This provision will insure that the mining and reclamation performance standards will continue to protect the public health and safety or the environment during any administrative proceeding in which their validity is challenged, until the issue is determined on the merits.

183 In all cases where a section 521(a) (4) show cause order has been issued a public hearing must be held. The Secretary must issue a decision within sixty days following the completion of the hearing as to whether or not to suspend or revoke the permit. Pending this decision, the permittee may continue to operate if he is otherwise in compliance with the Act or his permit. The alternatives of suspension or revocation are within the discretion of the Secretary. It is expected that the degree of seriousness of the types of violations and kinds of conduct giving rise to the show cause order will be the dominant factor considered by the Secretary in making his decision. These factors should also be considered by the Secretary in his determination of the lengths of suspension periods. On the other hand, in determining the period following revocation within which reclamation must be completed, weight should also be given to the practicalities of the reclamation which needs to be performed. The Committee also expects that the Secretary will give highest priority to administrative review of section 521(a) (4) show cause orders.

183 Judicial Review. - Section 526 of the bill establishes specific provisions for judicial review of Secretarial actions. Because of the thoroughness and degree of due process afforded judicially reviewable actions by the Secretary, judicial review is to be based on the record made before the Secretary. The courts should render their decisions on the basis of whether or not the Secretary's decision was arbitrary and capricious or supported by the record. Temporary relief from Secretarial decisions may be granted only under the same kind of narrowly prescribed circumstances as discussed above in the context of administrative review.

184 Penalties. - Where the Secretary is the regulatory authority, section 518 of the bill provides that civil penalties will be mandatory for violations

leading to a cessation order under section 521. The Secretary has discretionary authority to assess civil penalties for other violations. The Secretary is required to make findings of fact and issue a written decision as to the occurrence of a violation and the amount of the penalty which is warranted only where the person charged has availed himself of the opportunity for a public hearing and the hearing has, in fact, been held. The bill also provides that approved State programs must contain criminal and civil penalties no less stringent than the Federal provisions with the same or similar procedural requirements relating thereto. Aside from the aforementioned points, the civil and criminal penalty provisions of the bill are generally identical to those of the Federal Coal Mine Health and Safety Act of 1969.

#### IV. RELATIONSHIP OF S. 7 AS REPORTED TO ADMINISTRATION'S RECOMMENDED CHANGES

184 On February 6, President Ford transmitted to Congress the Administration's proposed surface coal mining bill which was introduced as S. 652. In his transmittal letter (reprinted in Part X of the report) the President set out the eight "critical" and 19 "important" differences between the Administration's proposal and S. 7.

184 The Committee reviewed the President's letter very carefully. On February 19, representatives of the Department of the Interior explained the proposed changes to the Committee at a public meeting. A number of the changes recommended by the President are included in amendments recommended by the Committee. The President's recommendations (in the order they appear in his February 6 letter) are set out below together with the Committee's comments and recommendations.

#### 184 CRITICAL CHANGES

184 1. Citizen suits. Administration Recommendations: "S. 425 would allow citizen suits against any person for a 'violation of the provisions of this Act'. \* \* \* Citizen suits are retained in the Administration bill, but are modified \* \* \* to provide for suits against (1) the regulatory agency to enforce the act, and (2) mine operators where violations of regulations or permits are alleged."

184 Committee Comment: Section 520 of S. 7 is identical to the citizen suit provision in the Deepwater Port Act of 1974, which the President signed into law one day after his pocket-veto of S. 425. The Committee does not believe that this provision will lead to undue harrassment of operators.

184 Committee Recommendation: No amendment.

184 2. Stream siltation. Administration Recommendation: "S. 425 would prohibit increased stream siltation - a requirement which would be extremely

difficult or impossible to meet and thus could preclude mining activities. In the Administration's bill, this prohibition is modified to require the maximum practicable limitation on siltation."

185 Committee Comment: This recommendation is based on an interpretation of Section 515(b) (10) of S. 7 which is inconsistent with the entire legislative history. Both the Senate and House recognize that surface mining involves at least temporary disruption of the environment. S. 7 accepts this fact and is not a "ban" bill.

185 The Administration fears that some court will interpret "prevent" on page 84, line 13, as a ban despite the overriding language on page 83, lines 20-25 stating the standard as "minimize the disturbance to the prevailing hydrologic balance at the mine site and in associated off-site areas and to the quality and quantity of water in surface and ground water systems. \* \* \* " Adding a reference to "maximum extent practicable" introduces economic tests which are not appropriate to environmental protection and not necessary to permit surface mining.

185 Committee Recommendation: Amend 515(b) (10) (B) by modifying "prevent" with the phrase "to the maximum extent possible, using the best available technology".

185 3. Hydrologic disturbances. Administration Recommendations: "S. 425 would establish absolute requirements to preserve the hydrologic integrity of alluvial valley floors - and prevent offsite hydrologic disturbances. \* \* \* In the Administration's bill, this provision is modified to require that any such disturbances be prevented to the maximum extent practicable so that there will be a balance between environmental protection and the need for coal production."

185 Committee Comment: See comment on 2. above.

185 Committee Recommendation: Amend 515(b) (10) (F) by modifying "preserving" with the phrase "to the maximum extent possible, using the best available technology".

185 4. Ambiguous terms. Administration Recommendation: "In the case of S. 425, there is great potential for court interpretations of ambiguous provisions which could lead to unnecessary or unanticipated adverse production impact. The Administration's bill provides explicit authority for the Secretary to define ambiguous terms so as to clarify the regulatory process and minimize delays due to litigation."

185 Committee Comment: The Administration's proposal is a very unusual

provision. The Secretary has general rulemaking authority to define terms. The courts normally look to administrative interpretations of the law to resolve ambiguities.

185 The Administration believes that this provision would force the courts to give very special weight to the Secretary's interpretation of the law. As far as the Committee can determine, this would be a unique provision, at least in Federal law.

185 Committee Recommendation: No amendment.

185 5. Abandoned land reclamation fund. Administration Recommendation: "S.

425 would establish a tax of 25~ per ton for underground mined coal and 35~ per ton for surface mined coal to create a fund for reclaiming previously mined lands that have been abandoned without being reclaimed, and for other purposes.

\* \* \* The Administration bill would set the tax at 10~ per ton for all coal \* \* which should be ample.

186 "Under S. 425 funds accrued from the tax on coal could be used by the Federal government (1) for financing construction of roads, utilities, and public buildings on reclaimed mined lands, and (2) for distribution to States to finance roads, utilities and public buildings in any area where coal mining activity is expanding. \* \* \* The Administration bill does not provide authority for funding facilities."

186 Committee Comment: The amount of the fee is a carefully worked out compromise. The Administration has done no estimates or calculations on the adequacy of the 10~/ton figure nor on the anticipated cost or scope of the reclamation program. The Bureau of Mines estimates the cost of orphan land rehabilitation to be almost \$7 billion.

186 The broad scope of the program is particularly important in the West, where there are relatively few "orphan lands" but the anticipated social, economic, and environmental impacts of proposed coal development are large. This program would also create a large number of jobs.

186 Committee Recommendation: No amendment.

186 6. Impoundments. Administration Recommendation: "S. 425 could prohibit or unduly restrict the use of most new or existing impoundments, even though constructed to adequate safety standards. In the Administration's bill, the provisions on location of impoundments have been modified to permit their use where safety standards are met.

186 Committee Comment: The concern of the Administration in recommending this change is a fear that S. 7 could be interpreted to require the relocation

of existing in-use dams, which are structurally sound. This is not intended.

186 Committee Recommendation: No amendment.

186 7. National forests. Administration Recommendation: "S. 425 would prohibit mining in the national forests - a prohibition which is inconsistent with multiple use principles and which could unnecessarily lock up 7 billion tons of coal reserves. \* \* \* In the Administration bill, this provision is modified to permit the Agriculture Secretary to waive the restriction in specific areas when multiple resource analysis indicates that such mining would be in the public interest."

186 Committee Comment: The Administration indicated that it has no plans to lease Federal coal within national forests. This ban on mining in national forests represents a careful compromise between last year's House bill which banned surface mining in national forests and national grasslands and the Senate bill which did not contain any such ban. The national grasslands also contain 7 billion tons of coal reserves.

186 Committee Recommendation: No amendment.

186 8. Special unemployment provisions. Administration Recommendation: "The unemployment provision of S. 425(1) would cause unfair discrimination among classes of unemployed persons, (2) would be difficult to administer, and (3) would set unacceptable precedents including unlimited benefit terms, and weak labor force attachment requirements. This provision of S. 425 is inconsistent with Public Law 93-567 and Public Law 93-572 which were signed into law on December 31, 1974, and which significantly broaden and lengthen general unemployment assistance. The Administration's bill does not include a special unemployment provision."

187 Committee Comment: The two public laws referred to by the Administration tie benefits to general trends in the economy and not to the possible impacts of S. 7. The Committee believes that few, if any, coal mine workers will lose their jobs because of enactment of S. 7. However, it seems only fair to provide special benefits to anyone who does become unemployed because of the imposition of new requirements.

187 Committee Recommendation: No amendment.

187 "OTHER IMPORTANT CHANGES"

187 1. Antidegradation. Administration Recommendation: "S. 425 contains a provision which, if literally interpreted by the courts, could lead to a

non-degradation standard similar to that experienced with the Clean Air Act.

\*

\* \* Changes are included in the Administration bill to overcome this problem."

187 Committee Comment: The Administration view is based on a very unlikely interpretation of S. 7. Adoption of the Administration's language for Section 102(a) would not weaken S. 7.

187 Committee Recommendation: Adopt Administration amendment.

187 2. Reclamation fund. Administration Recommendation: "S. 425 would authorize the use of funds to assist private landowners in reclaiming their lands mined in past years. Such a program would result in windfall gains to the private landowners who would maintain title to their lands while having them reclaimed at Federal expense. The Administration bill deletes this provision."

187 Committee Comment: This provision is patterned after the present Soil Conservation Service programs. The original Senate provision was authored by Senator Baker. The Committee recommends adoption of a further amendment proposed by Senator Baker.

187 Committee Recommendation: Expand coverage to 100 acres and give discretionary authority to increase Federal matching share in specific situations.

187 3. Interim program timing. Administration Recommendation: "Under S. 425, mining operations could be forced to close down simply because the regulatory authority had not completed action on a mining permit, through no fault of the operator. The Administration bill modifies the timing requirements of the interim program to minimize unnecessary delays and production losses."

187 Committee Comment: A potential moratorium on surface mining beginning two years after enactment was originally and deliberately included in last year's Senate bill (S. 425) to provide an action-forcing mechanism, by putting operator pressure on states to develop their programs in a timely way. As introduced S. 7 extends this to 2 1/2 years. There is no reason why a moratorium should take place. If the Secretary of the Interior sees that a State is not developing an acceptable regulatory program, he can implement a Federal program.

187 Committee Recommendation: Amend Sections 504 and 506 to avoid possibility of shutdown.

187 4. Federal Preemption Administration Recommendation: "The Federal interim program role provided in S. 425 could (1) lead to unnecessary Federal preemption, displacement or duplication of State regulatory activities, and (2) discourage States from assuming an active permanent regulatory role. \* \* \* In the Administration bill, this requirement is revised to limit the Federal

enforcement role during the interim program to situations where a violation creates an imminent danger to public health and safety or significant environmental harm."

188 Committee Comment: The interim program set out in S. 7 represents a compromise which moved the House away from a Federally-run program. Lack of State enforcement of programs which looked good on paper has been a major problem in the past.

188 Committee Recommendation: No amendment.

188 5. Surface owner consent. Administration Recommendation: "The requirement in S. 425 for surface owner's consent would substantially modify existing law by transferring to the surface owner coal rights that presently reside with the Federal government. S. 425 would give the surface owner the right to "veto" the mining of Federally owned coal or possibly enable him to realize a substantial windfall. In addition, S. 425 leaves unclear the rights of prospectors under existing law. The Administration is opposed to any provision which could (1) result in a lock up of coal reserves through surface owner veto or (2) lead to windfalls. In the Administration's bill surface owner and prospector rights would continue as provided in existing law."

188 Committee Comment: The Administration's position is the same as that of the original Senate bill. This provision, the major bone of contention in the Conference, is a delicate compromise which is best left untouched.

188 Committee Recommendation: No amendment.

188 6. Federal lands. Administration Recommendation: "S. 425 would set an undesirable precedent by providing for State control over mining of Federally owned coal on Federal lands. In the Administration's bill, Federal regulations governing such activities would not be preempted by State regulations."

188 Committee Comment: This provision stems from last year's Senate bill. The Committee believes it is desirable to require surface mining on Federal lands to meet standards at least as stringent as those established by the State in which the mine is located.

188 Committee Recommendation: No amendment.

188 7. Research centers. Administration Recommendation: "S. 425 would provide additional funding authorization for mining research centers through a formula grant program for existing schools of mining. This provision establishes an unnecessary new spending program, duplicates existing authorities for conduct of research, and could fragment existing research efforts already supported by the Federal government. The provision is deleted in the

Administration bill."

188 Committee Comment: The Administration's objection ignores the important training aspects of the provision, (Title III). This provision was in both the Senate and House bills. It stems from a bill vetoed by President Nixon in the 92nd Congress.

188 Committee Recommendation: No amendment.

188 8. Prohibition on mining in alluvial valley floors. Administration Recommendation: "S. 425 would extend the prohibition on surface mining involving alluvial valley floors to areas that have the potential for farming or ranching. This is an unnecessary prohibition which could close some existing mines and which would lock up significant coal reserves. In the Administration's bill reclamation of such areas would be required, making the prohibition unnecessary."

189 Committee Comment : Last year the House bill banned surface mining in alluvial valley floors. The language of S. 7 as introduced (Section 510(b)(5)) is a compromise. Alluvial valley floors in the West frequently have highly significant agricultural values. In view of the world food situation, some special protection of such valley floors which are significant to farming or ranching operations seems justified.

189 Committee Recommendation : Amend 510(b)(5) to make it more precise and somewhat more limited in application.

189 9. Potential moratorium on issuing mining permits. Administration Recommendation : "S. 425 provides for (1) a ban on the mining of lands under study for designation as unsuitable for coal mining, and (2) an automatic ban whenever such a study is requested by anyone. The Administration's bill modifies these provisions to insure expeditious consideration of proposals for designating lands unsuitable for surface coal mining and to insure that the requirement for review of Federal lands will not trigger such a ban."

189 Committee Comment : Section 510(b) of S. 7 bars the issuance of surface mining permits for lands under study for designation, until such time as the study has been completed at which time the ban is lifted if the area is not designated as unsuitable for mining. This ban is necessary since the section also precludes the designation as unsuitable for mining of any area in which mining is already ongoing. The Administration's proposal could lead to having all reviews precluded by the granting of permits prior to a determination being made on designation.

189 The fear that blanket moratoria will occur is unfounded for two reasons. First, each study for designation is made only on a case by case basis upon

specific petition. Second, S. 7 contains specific requirements for petition. The Secretary is required to issue regulations defining those petitions to be considered valid, to preclude frivolous requests.

189 With regard to Federal lands, Section 522(b) requires the Secretary to conduct a review of all Federal lands to determine areas unsuitable for mining. But in order to avoid locking up Federal coal in the case of a protracted study (such as the wilderness study), there is no moratorium on leasing during the period of review under the provisions of S. 7.

189 Committee Recommendation : 1. Amend 522(a) to require the regulatory authority to render a decision on a petition for designation as unsuitable within one year. 2. Amend 522(b) to state specifically that Federal coal leases may be issued during the review period.

189 10. Hydrologic data. Administration Recommendation : "Under S. 425, an applicant would have to provide hydrologic data even where the data are already available - a potentially serious and unnecessary workload for small miners. The Administration's bill authorizes the regulatory authority to waive the requirement, in whole or in part, when the data are already available."

190 Committee Comment : The Administration's proposal appears to be based on a misinterpretation of S. 7 (Section 507(b)(11)). There is nothing to preclude the applicant from using already available data in his permit application. The language proposed by the Administration permits waivers of the "determination of the hydrologic consequences of mining and reclamation" not just data submissions. This determination is very important, particularly in arid and semi-arid areas.

190 Committee Recommendation : No amendment.

190 11. Variances. Administration Recommendation: "S. 425 would not give the regulatory authority adequate flexibility to grant variances from the lengthy and detailed performance specifications. The Administration bill would allow limited variances - with strict environmental safeguards - to achieve specific post-mining land uses and to accommodate equipment shortages during the interim program."

190 Committee Comment : The Committee believes that unlimited variances would greatly weaken the bill by possibly becoming the rule rather than the exception.

190 A provision allowing variances because of equipment shortages in the interim period was in the House bill last year. It is not included in S. 7

because of testimony and information that interim standards could be compiled with using existing equipment, so such variances were not needed.

190 Committee Recommendation : No amendment.

190 12. Permit fee. Administration Recommendation : The requirement in S. 425 for payment of the mining fee before operations begin could impose a large 'front end' cost which could unnecessarily prevent some mine openings or force some operators out of business. In the Administration's bill, the regulatory authority would have the authority to extend the fee over several years."

190 Committee Comment : There is nothing in S. 7 as introduced to explicitly preclude a regulatory authority from doing this. The Joint Statement of Managers on S. 425 expressly stated that annual payments would be acceptable.

190 Committee Recommendation : Adopt Administration amendment.

190 13. Preferential contracting. Administration Recommendation : "S. 425 would require that special preference be given in reclamation contracts to operators who lose their jobs because of the bill. Such hiring should be based solely on an operators reclamation capability. The provision does not appear in the Administration's bill."

190 Committee Comment : S. 7 (Section 707) provides a preference only to operators "who can demonstrate that their \* \* \* operation, despite good faith efforts to comply with the requirements of this Act, have been adversely affected" by regulation. The Secretary would incorporate the preference into his regulations.

190 Committee Recommendation : No amendment.

190 14. Any Class of buyer. Administration Recommendation : "S. 425 would require that lessees of Federal coal not refuse to sell coal to any class of buyer. This could interfere unnecessarily with both planned and existing coal mining operations, particularly in integrated facilities. This provision is not included in the Administration's bill."

191 Committee Comment : This provision (Sec. 523(e)) was included in S. 7 to protect rural electric cooperatives and other small purchasers. It is not intended to abrogate existing contracts. S. 7 prohibits only "unreasonable" denials, not any and all denials.

191 Committee Recommendation : No amendment.

191 15. Contract authority. Administration Recommendation : "S. 425 would provide contract authority rather than authorizing appropriations for Federal

costs in administering the legislation. This is unnecessary and inconsistent with the thrust of the Congressional Budget Reform and Impoundment Control Act.

In the Administration's bill, such costs would be financed through appropriations."

191 Committee Comment : The provision for contract authority (Sec. 714(a)) is designed to permit the Secretary to begin to implement the Act rapidly without waiting for appropriations. This seems necessary in light of the specific statutory timetable.

191 Committee Recommendation : No amendment.

191 16. Indian Lands. Administration Recommendation : "S. 425 could be construed to require the Secretary fo the Interior to regulate coal mining on non-Federal Indian lands. In the Administration bill, the definition of Indian lands is modified to eliminate this possibility."

191 Committee Comment : S. 7 is not intended to require Federal regulation of non-Federal Indian lands.

191 Committee Recommendation : Adopt Administration amendment.

191 17. Interest charge. Administration Recommendations: "S. 425 would not provide a reasonable level of interest charged on unpaid penalties.The Administration's bill provides for an interest charge based on Treasury rates so as to assure a sufficient incentive for prompt payment of penalties."

191 Committee Recommendation : Adopt Administration amendment.

191 18. Prohibition on mining within 500 feet of an active mine. "This prohibition in S. 425 would unnecessarily restrict recovery of substantial coal resources even when mining of the areas would be the best possible use of the areas involved.Under the Administration's bill, mining would be allowed in such areas as long as it can be done safely."

191 Committee Comment : There are serious safety problems involved, particularly from blasting near "gassy" mines.

191 Committee Recommendation : No amendment.

191 19. Haul roads. Recommendation : "Requirements of S. 425 could preclude some mine operators from moving their coal to market by preventing the connection of haul roads to public roads. The Administration's bill would modify this provision."

191 Commitee Comment : This was not the intent of S. 7.

191 Committee Recommendation : Adopt Administration amendment.

## V. COMMITTEE RECOMMENDATION

191 The Committee on Interior and Insular Affairs recommends that S. 7, as amended, be approved by the Senate.

## VI. LEGISLATIVE HISTORY

192 Surface mining has been the subject of legislation for several years. The first hearings were held by the Committee on Interior and Insular Affairs in the 90th Congress. No bills were reported during the 90th and 91st Congresses. During the 92d Congress, the Subcommittee on Minerals, Materials, and Fuels held 4 days of hearings. The Committee unanimously reported a bill (S. 630) in September 1972 with the understanding that Committee members reserved the option to offer amendments on the Senate floor.

192 The House of Representatives passed a bill (H.R. 6482) in October 1972. The 92d Congress adjourned before the Senate considered either bill.

192 The 93d Congress gave intensive consideration to surface coal mining legislation. The Interior Committee held hearings on bills then before it on March 13, 14, 15, and 16. On April 30 the Subcommittee on Minerals, Materials, and Fuels held a hearing on the report prepared by the Council on Environmental Quality entitled "Coal Surface Mining and Reclamation - An Environmental and Economic Assessment of Alternatives."

192 In addition, as part of the study of National Fuels and Energy Policy, the Full Committee and ex-officio members held 3 days of hearings on coal policy issues, which included discussion of the potential impact of Federal surface mining legislation on coal development.

192 The Committee met in public mark-up session for 10 days to consider amendments to S. 425. On September 10, 1973, the Committee completed action on the bill and ordered S. 425 favorably reported to the Senate with the recommendation that the bill as amended be passed. After 2 days of debate S. 425 was passed by the Senate on October 18, 1973, by a vote of 82-8. The bill as amended passed the House on July 25 by a vote of 291-81.

192 Conferees met for more than 100 hours to reconcile the differences between the House and Senate revisions of S. 425. On December 5, 1974, they reported a conference report to their respective houses, which was approved by both bodies. However, the President pocket vetoed the bill, after the Congress had adjourned, thus precluding the opportunity for an override.

192 S. 7 as introduced was identical to the conference report on S. 425. Despite the fact that the Committee had already scrutinized exhaustively the

provisions of the bill, on February 19, 1975, the Committee heard Administration witnesses discuss proposed changes in S. 7. On February 27 and 28, 1975, the Committee marked up S. 7 in open sessions, and on February 28, ordered the bill favorably reported to the full Senate by a vote of 12-2.

## VII. SECTION-BY-SECTION ANALYSIS

### 193 TITLE I - STATEMENT ON FINDINGS AND PURPOSES

#### 193 SECTION 101. FINDINGS

193 This section sets out congressional findings relating to surface mining of coal and other minerals. These include the fact that (1) surface mining is only one of various methods of mining; (2) surface and underground coal mining are significant activities in our national economy; (3) surface mining has numerous adverse economic, environmental and social effects; and (4) surface mining and reclamation technology are developing so that effective and reasonable regulation of surface coal mining is appropriate and necessary to minimize these adverse effects.

193 These findings conclude that (1) because of the diversity of terrain, climate, biologic, chemical, and other physical conditions, the States should have the primary responsibility for regulating surface mining and reclamation, but that a Federal-State cooperative effort is essential to the success of this program and (2) while there is a need to regulate surface mining operations for minerals other than coal, more data and analyses are needed to provide a basis for effective and reasonable regulation.

#### 193 SECTION 102. PURPOSES

193 This section states that the purpose of Congress in passing this Act is to establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations as well as the surface impact of underground coal mining operations. It sets out thirteen specific purposes as steps toward achieving that goal. These recognize that, while all adverse effects of surface mining cannot be prevented immediately and that coal is an essential source of energy, a strong nationwide regulatory program based on minimum Federal standards should be implemented rapidly. This program would assure that surface coal mining operations are not conducted where reclamation which meets these minimum standards is not feasible. The Federal Government would assist the States in developing and implementing such a program. If and

when a State manifests a lack of desire or an inability to participate in or implement that program and to meet the requirements of the Act, the Federal Government is to exercise the full reach of Federal constitutional powers to insure the effectiveness of that program.

193 Another significant purpose of the Act is to provide a means for development of the data and analyses necessary to establish effective and reasonable regulation of surface mining for all minerals other than coal, and to establish mining research and training institutes at state schools of mines.

194 Under certain circumscribed circumstances, the rights of land owners over Federally owned coal are protected from surface mining operations and appropriate procedures established for public participation in the development, revision, and enforcement of regulations, standards, reclamation plans or programs established by any regulatory authority under this Act. The bill also establishes a program for the rehabilitation of lands previously mined and left unreclaimed which continue to substantially degrade the quality of the environment or endanger the health or safety of the public.

#### SECTION-BY-SECTION ANALYSIS TITLE II - OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT

194 To insure administration of the program by an independent agency with neither a resource development (the promotion of mining, marketing, or use of minerals) or resource preservation (pollution control, wilderness, or wildlife management) bias or mission, this title establishes the Office of Reclamation and Enforcement in the Department of the Interior. This Office will be separate from any of the Department's existing bureaus or agencies. It is intended that the Office exercise independent and objective judgment in implementing the Act.

194 To insure sufficient authority to administer the Act the Office will have a Director to be compensated at the rate provided for in level V of the Executive Pay Schedule. Officers and employees of the Office are to be recruited on the basis of their professional competence and capacity to administer the Act objectively. The Act specifically states that there cannot be transferred to the Office any legal authority which has as its purpose promoting the development or use of coal or other minerals.

194 The duties of the Secretary, acting through the Office, include: Administering the various grant-in-aid programs provided in the Act; administering research and development projects provided in the Act; reviewing and approving State programs for surface mining and reclamation operations; developing and administering any Federal program for surface mining and reclamation operations for States which do not have or are not enforcing State Programs; maintaining a Surface Mining and Reclamation Information and Data Center; cooperating with States in dissemination of relevant data and in

standardizing methods of collecting and classifying such data; providing technical assistance to the States to enable them to undertake responsibilities provided for in the Act; monitoring all Federal and State research programs dealing with coal extraction; and recommending research projects designed to improve the feasibility of underground coal mining or develop improved surface mining and reclamation techniques.

194 In order to assist in getting the office established and underway expeditiously, authority is granted to borrow on a reimbursable or other basis personnel from within the Department or from other Federal agencies. Such utilization of personnel might result in a delegation of authority to them, but in these instances, responsibility for those aspects of the program are to remain within the newly created office.

195 Concern has been expressed that the establishment of a new office at the Federal level implicitly requires a similar entity in every State in order to manage the State program. This is not the case. It should be noted that many States already have a particular governmental unit regulating surface coal mining industry. Some aspects of the regulatory program might be carried out on the State level by more than one agency, especially where States with surface coal mining agencies have another agency which regulates surface impacts of underground mines.

SECTION-BY-SECTION ANALYSIS TITLE III - STATE MINING AND MINERAL RESOURCES RESEARCH INSTITUTES SECTION 301. AUTHORIZATION OF STATE ALLOTMENTS TO INSTITUTES

195 SECTION 301. AUTHORIZATION OF STATE ALLOTMENTS TO INSTITUTES

195 This Section authorizes appropriations to assist States in carrying on the work of mineral resources research institutes. Funds are to be distributed by the Secretary of Interior at the rate of \$200,000 for fiscal year 1975, \$300,000 for fiscal year 1976, and \$400,000 for each fiscal year thereafter for five years, to a public college or university, having a qualified school, division or department of mines in each participating State.

195 An advisory Committee created under this title will determine the eligibility of colleges or universities under guidelines requiring that the public college or university have a school, division or department of mines which must have been in existence for at least two years and must have at least five fulltime faculty members. Matching non-Federal funds must be available on a dollar for dollar basis, with the Governor of the State deciding between qualifying colleges or universities within a State, and the Advisory Committee

selecting an eligible private college or university in a State which has no qualifying public college or university.

195 Research carried out at qualifying institutes will cover a wide range of investigations, demonstrations and experiments in mining and minerals resources problems. However, the major thrust of the program would be the training of mineral engineers and scientists.

#### 195 SECTION 302. RESEARCH FUNDS TO INSTITUTES

195 This section authorizes an annual appropriation of \$1 5,000,000 to the Secretary of Interior for fiscal year 1975, to be increased by \$2 ,000,000 annually for six fiscal years thereafter, to assist institutes in carrying out projects of industrywide application which could not otherwise be undertaken or which are especially allotted to the mission of the Department of the Interior. Grants must be approved by the Secretary on the basis of merit and need under criteria which incorporate a prohibition against the use of grant money for the acquisition of land or the rental, purchase, construction or upkeep of buildings.

#### 195 SECTION 303. FUNDING CRITERIA

195 This section requires that each institute designated to receive funds under sections 301 and 302 must set forth a plan showing its curriculum, its plans for training, its policies and procedures and its fiscal responsibility for ensuring that purposes of this title are implemented. If the Secretary finds that Federal monies received by an institute are improperly diminished, lost or misapplied, further allotments to the State concerned will be suspended until such funds have been replaced. Appropriated funds under this title may be used for printing and publishing the results of the authorized research, and cooperative endeavors between institutes and other agencies and individuals are encouraged.

#### 196 SECTION 304. DUTIES OF THE SECRETARY

196 This section charges the Secretary of Interior with administering the title, prescribing rules and regulations, consulting with, assisting and coordinating research with other Federal agencies. In his annual report to Congress, the Secretary will indicate whether the allotment to any State has been withheld, based on a determination as to compliance with provisions of section 303, made by him on or before July 1 of each year following enactment of the title.

#### 196 SECTION 305. AUTONOMY

196 This section disclaims any intent to interfere with the legal

relationship between participating colleges and universities and related State governments, or to authorize Federal control of education at such colleges and universities.

196 SECTION 306. MISCELLANEOUS PROVISIONS

196 This section instructs the Secretary of Interior to cooperate with other Federal agencies, private institutions and individuals in order to avoid duplication of effort and to stimulate research in otherwise neglected areas as part of a comprehensive nationwide program of mining and mineral research. He is to make available to the general public information on projects planned, in progress, or completed. The Secretary at the same time is specifically barred from assuming any authority over mining and mineral research or related responsibilities of other Federal agencies.

196 Provisions of section 3684 of the Revised Statutes relating to advances of funds may be waived by the Secretary in arranging for mining and mineral resources research work under this title. No appropriated funds may be expended unless all information, patents and other developments resulting from the activity will be made public. Appropriations not to exceed \$1 ,000,000 annually are authorized for this purpose. However, the existing rights of patent owners will be protected.

196 SECTION 307. CENTER FOR CATALOGING

196 This section directs the Secretary of Interior to establish a center for cataloging, current and projected scientific research in all fields of mining and mineral resources which will classify for public use such information as is provided by all Federal and non-Federal agencies, colleges, universities, private institutions, firms and individuals. Federal agencies are required to cooperate.

197 SECTION 308. INTERAGENCY COOPERATION

197 This section authorizes the President to clarify agency responsibility and foster interagency coordination in mining and mineral resources research, including review of Governmentwide research, elimination of duplication, identification of technical needs, recommendations as to allocation of technical effort, review of manpower needs and actions to facilitate interagency communication.

197 SECTION 309. ADVISORY COMMITTEE

197 This section provides for the appointment of an Advisory Committee on Mining and Mineral Research by the Secretary of Interior, to be composed of the Director of the Bureau of Mines, the Director of the National Science Foundation, the President of the National Academy of Sciences, the President of the National Academy of Engineering, the Director of the United State Geological Survey, and not more than four other persons knowledgeable in the field of mining and mineral resources research. The Chairman will be designated by the Secretary, who will consult with and consider recommendations of the Committee in conducting research and making grants under this title. Members of the Committee will be compensated at a rate fixed by the Secretary but not to exceed maximum rate of pay under pay grade GS-18 for time spent on committee business or travel time, unless they are Federal, State, or local government employees or officers.

SECTION-BY-SECTION ANALYSIS TITLE IV - ABANDONED MINE RECLAMATION

197 SECTION 401. ABANDONED MINE RECLAMATION FUND

197 This section establishes in the U.S. Treasury an Abandoned Mine Reclamation Fund which derives its dollars from: funds from the lease, sale, rental of lands reclaimed under this Act; user charges on reclaimed lands; and from a reclamation fee collected over a period of 10 years of 35~/ton for surface mined coal and 25~/ton for all coal mined by underground methods, or 10% of the value of the coal at the mine, whichever is less.

197 The differential fee was adopted recognizing the differing costs in meeting various health and safety objectives mandated by law.

197 The purpose of the 10% provision is to prevent an undue economic burden on low cost, lower grade western coal.

197 It is estimated that the reclamation fee would yield approximately \$165 million per year based on the most recent annual coal statistics concerning tonnage, method of mining and average value at the mine. The fee is quite small relative to the current prices of coal. When translated into power cost per kilowatt hour (assuming conservative figures of 10,000 BTU/lb and a conversion rate of 10,000 BTU/kwh) it is less than 0.015 cents per kwhr of electricity. For consumers utilizing from 250 to 750 kwhr per month, this represents an increase of 4-12 cents per month on their utility bill. Such a small increase would not be a burden on current coal consumers or inflationary in nature.

197 The Committee takes the position that the Federal government has a responsibility to remove this longstanding blight from regions which fueled the industrial growth of America prior to the advent of the internal combustion engine. The cost of rehabilitation is estimated at \$7 to \$10 billion.

198 In all, it is estimated that a million and a half acres of land have been directly disturbed by all coal mining and over 11,500 miles of streams polluted by sedimentation or acidity from surface or underground mines.

198 Estimates of program costs for correcting these problems have been made by several Federal agencies during the past four years total nearly \$10 0 billion and are consolidated and summarized as follows:

198 Cost estimates

198 Environmental impact: Millions

198 1. Stabilization, reshaping and revegetation of strip mined lands -  
- -  
\$2,040

198 2. Controlling acid mine drainage, clearing heavily silted streams,  
sealing of mineshafts - - - 6,600

198 3. Stabilization of mine waste banks and removal of fire and flood  
hazards - - - 220

198 4. Control of subsidence under urbanized areas - - - 1,000

198 5. Extinguishment of underground and outcrop mine fires - - - 50

198 Total - - - 9,910

198 These estimates provide a basis for identifying the order of magnitude of funds required to correct these problems.

198 The burden of paying for reclamation is rightfully assessed against the coal industry. The bill adopts the principle that the coal industry, and by extension the consumers of coal, must bear the responsibility for supporting special rehabilitation programs to recover and reclaim areas which have been severely impacted in the past by coal mining operations.

198 Fifty percent of the revenues derived from a county, school district or lands of an Indian tribe are to be returned to that county, school district or Indian tribe for use in accomplishing the purposes of this title.

198 The Act specifies that the Secretary of Interior must use the money in the Fund for certain purposes and must make available to the Secretary of Agriculture up to one-fifth of the Fund for purposes set forth under section

405.

198 SECTION 402. OBJECTIVES OF FUND

198 According to this section, the Fund is for the reclamation of previously mined areas. Reclamation projects are to be given a priority on the following basis: (1) protection of health or safety of the public; (2) protection of the environment from continuing degradation and conservation of land and water; (3) the protection, construction, or enhancement of public facilities and their use; (4) improvement of lands and waters to a suitable condition useful in the economic and social development of the area affected; and (5) research and demonstration projects relating to reclamation and water quality control programs.

198 SECTION 403. ELIGIBLE LANDS

198 This section specifies that only those lands which were mined for coal or affected by such mining, waste banks, coal processing, or other mining processes and abandoned or left in an inadequate reclamation condition prior to the enactment of this Act are eligible for expenditures under the Fund. In addition, there must be no continuing responsibility for reclamation under State or other Federal laws for such lands to be eligible.

199 The inclusion of lands "affected by" coal mining means that in various areas the fund could be used to repair public facilities which have been damaged by activity relating to coal mining. In Eastern Kentucky, for example, public roads have suffered extensive damage from coal-hauling. This is especially true of roads which serve mines that are otherwise inaccessible.

199 SECTION 404. RECLAMATION OF RURAL LANDS

199 This section establishes a program to provide small rural landowners technical and financial resources to reclaim lands affected by coal surface mining operations which were left unreclaimed or inadequately reclaimed.

199 Any one landowner (including owner of water rights), resident, or tenant is limited to a total of 100 acres of land on which reclamation can be conducted under this section, and the Federal share of such work shall not exceed 80% of the costs. The Secretary has discretionary authority to increase the Federal share where he determines that (1) the main benefits from the project are related to off-site water quality or other off-site benefits, and (2) the landowner cannot participate in the program if required to put up 20% of the

cost.

199 This program is administered by the Secretary of Agriculture and the reclamation work is to be accomplished according to a mutually-agreed-upon plan through contracts with the landowner, for periods of not more than ten years, to accomplish the land stabilization conservation work required in order to reclaim the affected lands. This program is to be implemented through the Soil Conservation Service. While the Soil Conservation Service may want to integrate such projects on a watershed or drainage area basis in order to enhance program effectiveness, it is not intended that such an approach and its planning process slow down reclamation or deny work in those areas or instances where the landowners are willing to participate but the watershed planning is not completed. It is also intended that the rural lands program will be coordinated with the reclamation program implemented by the Department of Interior.

199 Up to one-fifth of the money available in the Abandoned Mine Reclamation Fund during any one year shall be made available to the Secretary of Agriculture for the purposes of this section.

199 SECTION 405. ACQUISITION AND RECLAMATION OF ABANDONED AND UNRECLAIMED MINED LANDS

199 This section establishes a program, administered by the Secretary of Interior, for the reclamation of abandoned mine lands or lands affected by surface coal mining operations which are large tracts, or lands to be developed for specific purposes such as commercial, industrial, residential, and other intensive land uses. This program complements the rural lands program provided in Section 404.

200 Four basic steps are required under this program: land identification, land acquisition, land reclamation, and post-reclamation land use including disposition.

200 Prior to initiating reclamation programs on particular tracts of land, the Secretary shall make a thorough study of the areas involved, identifying those lands needing reclamation and establishing projects according to the priorities established in Section 402 above and with costs and benefits computed.

200 Land acquisitions for those parcels on which work will be done can be accomplished by either the Secretary of Interior or the States involved. If a

State acquires such land and transfers it to the Federal Government, up to 90% of the acquisition costs may be Federally funded. For those projects which because of public health or safety or environmental damages require quick and easy acquisition, specific authorities for condemnation and quick land and mineral acquisition are provided to the Secretary of Interior.

200 The reclamation of these acquired lands is to be conducted under Federal control. Contracts for reclamation are to be entered into on a competitive basis. Costs of reclamation are to be borne entirely by the fund.

200 The Secretary of the Interior is given authority to reclaim lands to be used for the purposes of housing for miners, mining related employees or persons displaced by natural disasters or catastrophic failures. Reclamation work in this instance includes the construction of on-and off-site public facilities necessary to support such housing. For the purposes of this section, the term public facilities includes those public works needed for supporting housing (on-and off-lands developed for housing sites), including roads, water, sewers, education, health or other municipal facilities; supporting services and equipment required. Such facilities, works and services may be temporary or permanent. Through this program, the Secretary may provide aid to communities undergoing rapid growth due to the opening of coal mines and coal related operations such as power plants and coal conversion facilities. Employment in all such activities is considered to be coal related. In carrying out this work, the Secretary may contract with other Federal or state agencies, including the Regional Commissions, established under Federal statute for developmental purposes. The Secretary is also given authority to contract for plans, technical assistance and demonstrations. Existing applicable Federal standards for the design and construction of such facilities should, in general, be followed by the Secretary where appropriate, however, the Secretary may fund innovative projects meeting the identified needs.

200 After reclamation, land may be retained in Federal ownership, made available to States or local governments, or disposed of to parties in the private sector. If such land was originally made available to the Federal Government through State acquisition, such State may have a preference to purchase lands after reclamation. The Secretary has the authority to sell land to State or local governments at a price less than fair market value, providing that it is used for valid public purpose and that the cost to the State and local governments shall be no less than the cost to the Fund for the purchase and reclamation of the land. Disposition of the land to the private sector is allowed in those instances for industrial, commercial, residential, or other intensive private uses. Such disposition shall be under a system of competitive

bidding, accepting not less than fair market value of such lands and under other such regulations as the Secretary may require to assure lands are put to a proper use and that the reclamation work is not obviated. The Secretary is also authorized to acquire, develop and transfer land to any project, public or private, for housing sites for persons employed or disabled by mining or dislocated by natural disasters or catastrophic failures. Areas experiencing rapid development of coal reserves qualify for assistance of this type.

201 The Secretary is directed to hold a public hearing in each county in which lands to be reclaimed are located in order to afford local citizens and governments the maximum opportunity to participate in decisions concerning the use of lands once reclaimed.

#### 201 SECTION 406. FILLING VOIDS AND SEALING TUNNELS

201 This section specifically establishes programs for subsidence control and sealing those tunnel shafts and entryways resulting from mining which constitute a hazard for public health or safety. The Secretary is to acquire such interest in lands as he determines necessary to carry out provisions of this section.

#### 201 SECTION 407. FUND REPORT

201 This section requires the Secretary to make an annual report to Congress beginning in January 1976 on reclamation activities accomplished and underway which are supported by the Fund along with recommendations as to future uses of the Fund.

#### 201 SECTION 408. TRANSFER OF FUNDS

201 This section authorizes the Secretary of the Interior to transfer funds to other Federal agencies to accomplish the purposes of this title. It was recognized that this authority might be desirable since such agencies have appropriate program responsibilities and expertise, such as reducing sediment and other pollution from entering reservoirs, navigable waterways as well as in acid mine drainage control.

### SECTION-BY-SECTION ANALYSIS TITLE V - CONTROL OF THE ENVIRONMENTAL IMPACTS OF SURFACE COAL MINING

#### 201 SECTION 501 ENVIRONMENTAL PROTECTION STANDARDS

201 This section requires that within 6 months of the date of enactment of the Act, after due notice, consultation with the Administrator of EPA, and public hearings, the Secretary promulgate and publish in the Federal Register regulations for the establishment of State and Federal programs for the implementation of this Act.

#### 201 SECTION 502 INITIAL REGULATORY PROCEDURES

201 Subsection 502(a) requires that, after the date of enactment of this Act, no person shall conduct any surface mining operations on non-Federal lands without a permit from the appropriate State regulatory agency.

202 Subsection 502(b) requires that, after the date of enactment of this Act, all new mines must be required to comply with 7 key environmental standards.

202 One of these standards pertains to the use of mine waste impoundments to dispose of wastes from both underground and surface mines and coal processing plants. The balance of the standards represent other key provisions of the permanent program pertaining to surface coal mining operations: post-mining land use objectives, regrading to approximate original contour, steep slope requirements including limitation of spoil placement on downslopes, segregation and preservation of topsoil, protection of the hydrologic balance, and revegetation requirements. One hundred thirty-five days after enactment of this Act, Subsection 502(c) applies these same standards to mines in operation prior to the date of enactment of this Act. The standards are applicable to lands from which overburden and the coal seam being mined have not been removed.

202 The application of these standards to existing mining operations will remedy much of the environmental degradation resulting from current coal surface mining practices and provide a fair basis for transition into the full range of requirements in the program. This appears to the committee to be a practical mechanism for assuring compliance without raising the possibility of unwarranted hardship on the operator.

202 Subsection 502(d) allows requests to be made in a permit application for variances from the requirement to restore to approximate original contour.

202 Subsection 502(e) requires all operators to file for permits under an anticipated approved state program. Such permits must be granted or denied within 6 months of the approval of a state program, but in no case later than 30 months from the date of enactment of this Act.

202 Subsection 502(f) requires, within 90 days of the date of enactment of this Act, the establishment of a Federal enforcement program to carry out inspections and enforce the provisions of the Act, until such time as an approved State program or a Federal program has been established. Under this oversight function, Federal inspectors shall have the authority to order correction of violations.

202 Subsection 502(g) allows existing operations to continue in the interval

between disapproval of a State program and implementation of a Federal program.

202 All surface coal mining operations, which include, by definition, impacts incident to underground coal mines, are subject to the initial regulation procedures of section 502 of this bill, but only to the extent that they are located on lands on which operations are regulated by a State. This means that surface coal mining operations located in the four States (Alaska, Arizona, Texas, and Utah) which presently have no regulatory programs directed toward the environmental control of surface coal mining operations are not subject to section 502. Neither are the surface effects of underground coal mining operations subject to section 502, unless the existing State regulatory program is directed at the effects of these operations. This policy is entirely consistent with the State-lead philosophy of this legislation. However, it should be noted that States which do not have a regulatory program established by statute may still participate in the interim program through administrative action of a suitable State agency. Certification of this fact by the Governor of a State to the Secretary of the Interior is sufficient to qualify that State for the interim funding provided in section 502.

#### 203 SECTION 503. STATE PROGRAMS

203 In order for any State to assume its primary role in administering surface mining regulations, this section requires submission to the Secretary of Interior, within 18 months after the passage of the Act, of a State program which demonstrates that the State has legal, financial, and administrative capability for carrying out the provisions of the Act.

203 The State program must specifically show that the State has a law providing for the regulation of surface mining and reclamation in accordance with all provisions of the Act and subsequent regulations. The State program must provide for sanctions or penalties for all violations of State laws, regulations, or conditions of permits concerning surface mining, must meet the minimum requirements of this Act, must provide sufficient administrative and technical personnel with funding to fully implement and enforce provisions of this Act, must show that a process for designating areas unsuitable for surface coal mining has been established and that a process exists for coordinating review of any mine permit with any other Federal or State permit issued under this Act.

203 The Secretary of the Interior is directed to approve or disapprove each State program in whole or in part within 6 months after submission. Prior to such decision he must hold at least one public hearing within the State on the program, disclose views of all Federal agencies having special expertise

pertinent to the proposed State program, obtain the written concurrence of the Administrator of the Environmental Protection Agency for those aspects of the State program relating to federal air and water quality laws.

203 If the Secretary disapproves a State program in whole or in part, the State shall have sixty days to resubmit a revised State program or appropriate portion thereof. No State may resubmit a proposed program after 30 months after the date of enactment of the Act. The Secretary must approve or disapprove a resubmitted State program within 60 days of its resubmittal. It is the intention of the committee that any notification of disapproval be in writing and contain the reasons for disapproval. It is intended that the Secretary's notification be very specific. Only with such specificity will a State know how best to revise its State programs so it will meet with the Secretary's approval.

203 Subsection (d) provides that States that are prevented from preparing, submitting, or enforcing a State program because of a court injunction remain eligible for financial assistance under the Act.

203 This subsection further provides that, despite the provision of Section 502, no Federal program shall be initiated for a State under these circumstances. This bar on imposition of a Federal program ends when the injunction terminates or after 1 year, whichever comes first. The Committee did not want to penalize States which were making a good faith effort to comply with the Act but were prevented from doing so by court action. On the other hand, the Committee does not want to have any undue delay in establishment of a regulatory program which meets the requirements of the Act.

#### 204 SECTION 504. FEDERAL PROGRAMS

204 This section provides for Federal regulation of surface mining and reclamation operations in any State which proves unwilling or unable to do the job itself. In accord with the purposes and findings in Title I, Federal regulation is to occur only if a particular State wishes to forego or fails to assume primary responsibility for regulating surface mining operations within its boundaries.

204 Subsection (a) directs the Secretary to prepare, promulgate, and implement no later than 30 months after enactment of this Act, a Federal program covering surface mining and reclamation operations for any State which (a) fails to submit a State program within 12 months of the promulgation of the Federal regulations required by Section 201, (b) fails to resubmit an acceptable revised State program after the Secretary's disapproval of the original submission, or

(c) fails to enforce all or any part of its approved State program.

204 Promulgation of a Federal program gives the Secretary exclusive jurisdiction for regulation of surface mining operations in the State in those areas not being adequately enforced by the State. Surface mine operators need to know which regulations - Federal or State - they must follow at any given point in time.

204 In preparing and implementing a Federal program, the Secretary is directed to take into account the affected State's terrain, climate, and other physical conditions.

204 If an Act of the State legislature is required to enable the State to comply with the Act, the Secretary is authorized to extend the deadline for submission of a State program up to an additional 6 months.

204 Subsection (c) requires that a public hearing must be held in the affected State prior to promulgation of the Federal program.

204 Subsection (d) provides that all permits issued under an approved State program remain valid after implementation of a Federal program. However, the Secretary is directed to undertake a review of such permits and where such permits fail to meet the requirements of the Act, to afford the permittee reasonable time to conform his operations with those requirements or to submit a new permit application.

204 Subsection (e) provides procedures and timetables for the lifting of the Federal program in any State when a new State program receives the Secretary's approval.

204 Subsection (f) provides that permits issued under the Federal program remain valid under the State program but are subject to review and revision by this State regulatory authority.

204 Subsection (g) further provides that any State laws or regulations regulating surface mining are preempted by the Federal program. This preemption is designed to make it clear to surface mine operators which laws and regulations they must comply with. Other State laws applicable to the operation, such as those relating to air and water quality would not be affected.

205 Subsection (h) provides that any Federal program shall contain a process for coordinating issuance of permits with any other applicable Federal or State permit process.

205 The assumption of regulatory authority over surface mining operations in

any State by the Secretary through promulgation of a Federal program for that State is regarded by the Committee as a "last resort" measure. For this reason, no Federal program shall include a process for designation of non-Federal lands as unsuitable for surface mining for one year after imposition of a Federal program. The Committee hopes this will be an incentive to the States to develop acceptable programs. It is certainly preferable that the State regulate such operations through State programs which meet the requirements of the Act. The Committee hopes and expects that the States, in good faith, will develop and implement strong State programs. However, if they fail to do so, the purpose of the Act and this section in particular is to insure that the full reach of the Federal constitutional powers will be exercised to achieve the purposes of the Act.

#### 205 SECTION 505. STATE LAWS

205 This section contains the standard savings clauses protecting the States rights to have or develop laws and regulations providing more stringent or different controls of surface mining and reclamation operations.

#### 205 SECTION 506. PERMITS

205 This section provides a timetable for obtaining permits to conduct surface mining and reclamation operations pursuant to the Act from either the State regulatory authority under a State program or the Secretary under a Federal program. (Hereafter, the words "regulatory authority" will be used to mean the State regulatory authority where the State is administering the Act under State programs or the Secretary where the Secretary is administering the Act under Federal programs.)

205 Under subsection (a) no person can engage in surface mining without a valid permit under an approved State program or a Federal program after six months after approval of a State program or implementation of a Federal program. There is one exception to this rule. Where there is an approved State program or a Federal program an operation with a valid permit from the State regulatory authority may continue operations if a permit application has been filed but the initial administrative decision has not been rendered. Conscious of the need for increased coal production, the Committee did not want to force current operations to shut down simply because of administrative delay. However, the Committee believes that a firm deadline must be established to serve as an incentive to the Secretary, the States and the operators to comply with the Act.

205 This deadline provides the States with a reasonable period of time after

the Secretary promulgates his regulations to prepare their State programs. (Federal regulations are due 6 months after enactment, State programs are due 18 months after that, and the Secretary must approve or disapprove a State program within 6 months after its submission.) The Committee urges the States to develop acceptable programs as rapidly as possible to avoid a hiatus after the deadline. It also expects the Secretary to issue regulations rapidly and actively assist the States to develop acceptable programs.

206 The exception for operations with valid permits recognizes that there may be delays in the processing of applications which are not the fault of the applicant and for which he should not be penalized. The applicant would be subject to the requirements of the State or Federal program during this period.

206 Subsection (b) provides that the term of permits or permit renewals or extensions issued under State programs shall not exceed 5 years. The Committee believes that 5 years is a reasonable time period but since many States have 1 - or 2-year permits it wishes to allow these to continue.

206 To assure that no one will be locked into outdated reclamation requirements because permits are taken out and renewed without operations being undertaken, subsection (c) provides that permits will terminate if the permittee has not begun operations within 3 years of the issuance of the permit unless otherwise provided in the permit. This flexibility recognizes the longer start-up times required for coal liquefaction and gasification projects.

206 Under Subsection (d), a valid permit includes the right to successive renewals if the permittee has complied with all the requirements of the State or Federal program and has notified the regulatory agency at least 120 days prior to the expiration of his valid permit. As part of the renewal process the regulatory authority must hold a public hearing and may require new conditions or requirements needed to deal with changing conditions. Any application for renewal beyond the original permit boundary areas must be considered as a new permit application.

#### 206 SECTION 507. APPLICATION REQUIREMENTS

206 Subsection (a) requires payment of an application fee designed to cover the actual or anticipated cost of reviewing, administering, and enforcing the permit. The cost of the fee may be paid over the term of the permit.

206 Subsection (b) lists the basic information required in the permit application. The information required here is a key element of the operator's affirmative demonstration that the environmental protection provisions of the Act can be met and includes:

206 (1) identification of all parties, corporations (with their major stockholders), and officials involved to allow identification of parties ultimately responsible for the operation as well as to cross-check the mining application with other applications in the same State and other States;

206 (2) names and addresses of adjacent surface owners;

206 (3) summary listing of past mining and reclamation permits including those suspended or revoked;

206 (4) a copy of the applicant's advertisement published in a local newspaper;

207 (5) a plan for the entire mining operation for the life of the mine including identification of the subareas anticipated to be included on a permit by permit basis, their sequencing, and mining and reclamation activities and a description of method of mining, starting dates, location, termination dates and schedule of activities;

207 (6) evidence of compliance with section 716;

207 (7) evidence of the applicant's legal right to mine;

207 (8) a full description of the on- and off-site hydrologic consequences of mining and reclamation, including the impact on the quality and quantity of water in ground and surface water systems; and

207 (9) maps and data sufficient to fully describe the surface and subsurface features of the area to be mined, the chemical and physical properties and geologic setting, so that basic information is available to the regulatory authority in order to determine the impact of the mining operation and to be able to verify the conclusions reached by the operator with respect to the environmental protection measures proposed in the mining and reclamation plan. Such information shall also include all relevant legal documents, test borings, keyed to the appropriate maps, and independent laboratory analysis of such borings (with certain data regarding the coal seam to be held confidential).

207 Subsection (c) requires the applicant to submit either a certificate issued by an insurance company certifying that he has a public liability insurance policy for the proposed surface mining and reclamation operations or

appropriate evidence that he has satisfied other State or Federal self-insurance requirements which meet the requirements of the regulations promulgated pursuant to the Act.

207 This insurance must be maintained in full force and effect during the term of the permit and all renewals until reclamation operations are complete.

207 Subsection (d) makes the reclamation plan an integral part of the application.

207 Under subsection (e) the applicant must file a complete copy of the application with the local court house of the county in which mining is proposed at the time of submission to the State, so that this application will be available for public review.

#### 207 SECTION 508. RECLAMATION PLAN REQUIREMENTS

207 There is general agreement that since careful preplanning is the key to successful reclamation, submission of a reclamation plan prior to issuance of a mining permit is an essential element of effective regulation. This subsection enumerates the minimum items of information required in any reclamation plan submitted by an applicant for a permit to conduct surface mining operations. A reclamation plan is required as part of the permit application. The plan is the basis by which the regulatory authority determines the feasibility and adequacy of reclamation which is proposed to be done by the applicant under the terms of his permit. It also provides that information provided in the reclamation plan be in the degree of detail necessary to demonstrate that reclamation can be accomplished. The burden of proof is on the applicant. The following specific items of information are required.

208 508(a)(1). A description of the condition of the land area which will be effected by the proposed mining and reclamation must be provided. This description is intended to include general topography, vegetative cover, the cultural development. If the area has been previously mined, the description should cover both the uses of the land existing at the time of the application and those which existed prior to any mining at the site. The description must also include an evaluation of the capability of the site to support a variety of uses prior to any mining disturbance. This description should give consideration to soil and foundation characteristics, topography, and vegetative

cover.

208 The description is to serve as a benchmark against which the adequacy of reclamation and the degradation resulting from the proposed mining may be measured. It is important that the potential utility which the land had for a variety of uses be the benchmark rather than any single, possibly low value, use which by circumstances may have existed at the time mining began.

208 508(a)(3). A similar description is also required of the use to which the land affected by the proposed mining is to be put following reclamation and its capacity to support a variety of alternative uses. The relationship of the proposed use to land use policies and plans existing at the time the reclamation plan is filed must also be prescribed. The comparison of this description with that required by 508(a)(1) will provide an evaluation of the net impact which the proposed mining and reclamation will have upon the usefulness of the area affected.

208 508(a)(5). This section also requires a statement of the techniques and equipment which will be used in the mining and reclamation operations. This should be a complete statement adequate to insure that the reclamation proposed to be accomplished is capable of achievement and that each of the requirements set forth in subsection 515(b) and any regulations promulgated pursuant to that subsection can be complied with.

208 The techniques and procedures which will be used by the applicant to insure compliance with all applicable air and water quality laws and regulations, and health and safety standards must be described in sufficient detail to permit an evaluation of their adequacy and probable effectiveness.

208 The reclamation plan must also set forth a description of the particular considerations which have been given to the conditions found at each site: for example, the effect of precipitation, temperatures, wind, and soil characteristics upon revegetation at the site. Furthermore, there must be a statement of the consideration which has been given to new or alternative reclamation technologies.

208 There must be a discussion of the potential recovery of the mineral resources of the site to be mined. To the extent that any portion of the resource will not be recovered, the reasons and justification for nonrecovery shall be set forth.

208 A detailed time schedule for the completion of the reclamation which is being proposed is to be provided.

208 A statement is required demonstrating that the permittee has considered all applicable State and local land use plans and programs; and disclosure to the regulatory authority of all rights and interests in lands held by the applicant which are contiguous to the lands covered by the permit application is required. The purpose of this disclosure is to provide the regulatory authority with information on the prospective long-term plans of the applicant in the immediate vicinity. The bill would not require public disclosure of this information; however, it does not preclude State law from requiring disclosure of part or all of it.

209 A disclosure to the regulatory authority of the results of test borings made by the applicant in the area covered by the permit and the results of chemical analyses of the coal or other minerals and overburden is required. This information is essential for the critical evaluation of the adequacy of the reclamation plan by the regulatory authority and the interested public. Because of its proprietary nature, information about the mineral (but not the overburden) will be kept confidential if requested by the applicant.

#### 209 SECTION 509. PERFORMANCE BONDS

209 This section sets out the requirements for one of the most important aspects of any program to regulate surface mining and reclamation - the performance bond. The requirements of this section will apply to interim permits as well as State and Federal programs.

209 Subsection (a) provides that once an application is approved a performance bond must be filed before a permit is issued. The amount of bond must be sufficient to assure completion of the reclamation plan if the work had to be performed by a third party at no expense to the public. The regulatory authority sets the amount of the bond on the basis of at least two independent estimates of these costs.

209 The bond covers the area to be mined during the initial term of the permit. As additional land is mined the bond is increased.

209 Subsection (b) requires that bond liability extend for a period coincident with the operator's liability (5 years after completion of reclamation including revegetation or for 10 years in areas where the average annual rainfall is 26 inches or less). This extension is necessary to assure that the bond will be available if revegetation or other reclamation measures fail after initial accomplishment. The longer time period for liability in arid areas recognizes that permanent reclamation, particularly revegetation, is more difficult and uncertain in such areas. This subsection also permits the deposit of cash and negotiable Government bonds or certificates of deposit in lieu of posting a bond. These meet the objectives of the bond, i.e., having a fund

available to accomplish reclamation, just as effectively as a bond.

209 Subsection (c) recognizes that some applicants can satisfy the objectives of the bond requirement through self-insurance or bonding.

209 Subsection (d) provides that the bond or deposit may be adjusted at any time if as a result of experience or changed circumstances, it is determined to be inadequate.

#### 209 SECTION 510. PERMIT APPROVAL OR DENIAL

209 This section provides for the basic requirements for a permit application, outlines the guidelines for permit approval and denial. The section requires that the regulatory authority make a written finding prior to approving a permit, that the following conditions have been met:

210 (a) all conditions of this Act have been met;

210 (b) reclamation will be accomplished according to this Act;

210 (c) all hydrology requirements have been adhered to;

210 (d) the area is not incorporated in an area designated unsuitable for mining;

210 (g) the operation would not adversely affect farming or ranching operations on alluvial valley floors west of the 100th meridian;

210 Subsection 510(c) requires that any applicant for a permit file with the regulatory agency a schedule of any violations of federal law for one year prior to the application.

#### 210 PERMIT APPROVAL OR DENIAL (SECTION 510(C))

210 It prohibits issuance of a mining permit if the application indicated the applicant to be in violation of the Act or a wide range of other environmental requirements. It is not the intention of the Committee that an operator who is charged with the types of violations described in section 510(c) be collaterally penalized through denial of a mining permit if he is availing himself, in good faith, of whatever administrative and judicial remedies may be available to him for the purpose of challenging the validity of violations charged against him. However, the Committee also does not intend that a permit applicant can avoid the purpose of section 510(c) simply by filing an administrative or judicial appeal. It is expected that the regulatory authority will carefully examine those situations where an administrative or judicial appeal is pending in order to ensure to the fullest extent possible that such appeals are not merely frivolous efforts to avoid the requirements of section 510(c).

210 SECTION 511. REVISION OF PERMITS

210 This section establishes a process for the revision of a permit during its term as well as review by either a State regulatory authority or the Secretary of existing permits issued prior to the assumption of regulatory jurisdiction by the current regulatory authority.

210 An operator may submit an application for a permit revision to the regulatory authority and within a period of time established by that agency, the application shall be approved or disapproved. The regulatory authority is to establish guidelines for procedures which may vary depending upon the scale and extent of the proposed revision. In all events, however, the process will be subject to the Act's notice and hearing requirements and a proposed revision which would extend the area covered by existing permit (other than incidental boundary revisions) is to be made through the normal permit application process.

210 The regulatory authority may require revision of a permit during its term provided that it follows the State or Federal program's notice and hearing requirements.

210 SECTION 512. COAL EXPLORATION PERMITS

210 This section requires that all coal exploration operations be subject to regulation under a State or Federal program, and be required to obtain a permit prior to the beginning of exploration activities, by submitting an application similar to, but simpler than, that for a mining operation, which application is to be accompanied by a fee.

211 SECTION 513. PUBLIC NOTICE AND PUBLIC HEARINGS

211 This section assigns the responsibility for giving public notice, holding hearings and submitting comments to the mining permit applicant, the regulatory authority, and interested third parties.

211 The applicant is required to -

211 (a) place an advertisement identifying the ownership, precise location, and boundaries of the land to be affected in a local newspaper of general circulation in the locality of the proposed new surface mine. This advertisement must appear at least once a week for four consecutive weeks;

211 (b) submit, along with the mining permit application, a copy of this advertisement;

211 (c) cooperate with the regulatory authority concerning the inspection of the proposed mine area;

211 (d) assume, if a public hearing is held, the burden of proving that the application is in compliance with State and Federal laws (including provisions of this Act).

211 The regulatory authority must:

211 (a) receive, and make available to the public comments on the application from local agencies, in the same manner and at the same location as are copies of the mining application;

211 (b) submit, within seven days after making application for a mining permit, copies of letters sent to various local governmental bodies whose functions might be affected by the mining operation, notifying them of the intention to surface mine, indicating the application's permit number and where a copy of the mining and reclamation plan may be inspected;

211 (c) provide for public hearings upon request and place notice of such hearings, including date, time, and location, in a newspaper of general circulation in the locality at least once a week for three consecutive weeks prior to the scheduled hearing date;

211 (d) respond in writing to written objections on the mining application received from any party not less than ten days prior to any proposed hearing. Such response shall include (1) the regulatory authority's preliminary assessment of the mining application; (2) proposals as to the terms and conditions of the permit to mine; (3) the amount of bond to be set for the operation; and (4) answers to material factual questions presented in the written objections;

211 (e) make available to the public prior to or at the time of the hearing the regulatory authority's estimate as to any other conditions of mining or reclamation which may be required or contained in the preliminary proposal.

211 For the purpose of such hearings, the regulatory authority may administer oaths; subpoena witnesses and written or printed materials; compel attendance of witnesses or production of materials; take evidence, including site inspection of the land to be affected or other mining operations carried on by the applicant; arrange with the applicant for access to the proposed mining area; and keep a complete record of each public hearing.

212 Interested citizens may -

212 (a) review mining applications at specific locations;

212 (b) file written objections and request hearings concerning mining applications;

212 (c) request inspection of the proposed mining area relative to the

hearing and accompany the inspection tour;

212 (d) review the regulatory authority's written response to the objections submitted;

212 (e) appear at public hearings and present views and comments with respect to the mining application.

#### 212 SECTION 514. DECISIONS OF THE REGULATORY AUTHORITY AND APPEALS

212 Under the administrative procedure established in this section, if hearings on the mining application have been held within 30 days after their completion, the regulatory authority shall provide to the applicant and all parties to the administrative proceeding its written findings granting or denying the permit in whole or in part and stating its reasons.

212 In instances where no hearings have been held, the regulatory authority is to notify the applicant in writing of its decision. If the application has been denied in whole or in part, specific reasons for denial must be included. This response must be given within a reasonable time after submission of the permit application, taking into account the time needed for appropriate field investigations of the site, the complexity of the permit application, whether or not written objections have been filed, and the fulfillment of other administrative responsibilities by the regulatory authority under this Act, including those in sections 208 and 209.

212 Approval of the application results in the issuance of the mining permit. If, however, the permit is denied, then: (a) within 30 days of denial the applicant may request a hearing on the disapproval; (b) upon such a request the regulatory authority will hold the hearing within 30 days, notifying all interested parties and following the procedure outlined above.

212 Any person who has participated in the administrative proceeding shall have the right of judicial review by the appropriate court in accordance with State and Federal law.

#### 212 SECTION 515. ENVIRONMENTAL PROTECTION PERFORMANCE STANDARDS

212 This section sets forth the minimum criteria which must be required by State or Federal programs, the Federal Lands Program, and the interim permit programs regulating surface mining and reclamation operations for coal.

212 These criteria are as follows:

212 (1) maximize coal utilization;

212 (2) restore the land to a condition at least fully capable of supporting

prior-to-mining land uses;

212 (3) restore all mined lands to approximate original contour;

212 (4) stabilize all spoil piles;

212 (5) segregate topsoil for ultimate replacement;

213 (6) restore topsoil;

213 (7) prevent offsite damages;

213 (8) create, if necessary, appropriate impoundments, within the definitions of this Act, if authorized in the approved permit;

213 (9) fill all auger holes;

213 (10) minimize the disturbances to the prevailing hydrologic balance of the minesite and associated offsite areas;

213 (11) stabilize all waste piles;

213 (12) refrain from mining within 500 feet of an underground mine;

213 (13) provide for safe mine waste impoundments with respect to both engineering specifications and location;

213 (14) prevention of hazards to waters from acid-forming materials or fire hazards;

213 (15) insure that the use of explosives be done only with proper notice and precautions;

213 (16) assure that reclamation efforts proceed as contemporaneously as possible with the mining operation;

213 (17) insure that the maintenance of haul roads will prevent erosion and siltation;

213 (18) no alteration of water flow;

213 (19) revegetation of natural species following mining;

213 (20) operator responsibility for reclamation for five years in areas where rainfall is more than 26 inches a year, and 10 years where rainfall is less than 26 inches a year;

213 (21) any other criterion which the Secretary deems necessary for the implementation of this Act.

213 Subsection of (b) of this section provides for variances to be accorded

from the requirements of restoration to approximate original contour and spoil on the downslope. These variances are limited only to these two provisions, and are quite closely circumscribed.

213 Variances may be granted from performance standards which require the restoration of the approximate original contour, the covering of all highwalls, the prohibition against placement of spoil on steep slopes, and liability for establishing revegetation, only in cases of mountaintop removal where industrial, commercial, residential, or public facility development is proposed for post-mining land use and where the regulatory authority, after public notice and public hearing, issues a written finding that the proposed use is a higher or better economic or public use which can only be obtained if one or more of the variances are granted. However, no such variance is to be effective for more than three years, unless substantial progress toward completion of the development is underway according to the schedule shown in the approved mining and reclamation plan.

213 Subsection (d) sets forth certain other performance standards designed to protect the environment, and applying only to steep-slope surface coal mining (which term is not to include mining operations on flat or gently rolling terrain which will leave a plain or predominantly flat area) as follows:

213 (1) spoil or waste materials may not be placed on the slope below the bench or cut, except where temporarily necessary to gain access to the coal seam and then only under specified conditions to prevent slides, erosion and water pollution;

214 (2) the site must be returned to the approximate original contour by covering highwalls completely and limiting disturbance above the highwall;

214 (3) "steep slope" is defined as any slope above 20 degrees or a lesser slope as determined by the regulatory authority after due consideration of the soil, climate and other environmental characteristics of a region or State.

214 One of the key environmental protection standards of S. 7 is the requirement to return a mine site to its "approximate original contour". There has been considerable misunderstanding of this concept and exaggerated descriptions of its impact.

214 Coal industry concern seems to be focused on two aspects of the definition: (1) the need to regrade the mined site so that it "closely resembles" prior surface configuration and "blends into" surrounding terrain and (2) the need to generally "eliminate depressions." Confusion has existed as to

whether or not it will be possible under this definition of approximate original contour to conduct area mining of thick seams covered by a relatively thin layer of overburden.

214 The removal of a thick seam of coal covered by a relatively thin stratum of overburden will create a depression which can not be filled in so as to obtain the original elevation of the land, without hauling an enormous amount of materials from some other location, thereby creating a depression or at least a disturbance somewhere else. Thus it has been argued that S. 7's requirement to return to approximate original contour makes western thick seam coal surface mining physically and/or economically possible. This, however, is an erroneous interpretation of the concept of approximate original contour and ignores the plain words of the statute.

214 First, approximate original contour as it applies to thick seam area mining in the West is not intended to require that the mined site be returned to its original elevation. Original elevation simply often cannot be obtained. A large depression will remain after such mining. What is required is that the coal operator regrade the mined area inside and around the perimeter of the mined area so that the depression blends into the surrounding terrain and that, within the mined area, the surface of the land "closely resembles" its premining configuration. Final highwalls will have to be regarded in order that such blending may be accomplished as well as to comply with the requirement that highwalls be eliminated. It must be emphasized that the requirement to return to approximate original contour does not necessarily mandate the attainment of original elevation.

214 Second, the requirement that depressions be "eliminated" is not intended to refer to large depressions created by the entire mining operation itself but to smaller scale depressions created within the mined area. In other words, it is these smaller scaled depressions which must be eliminated, except where water impoundments are allowed, not the depression created by the entire mining operation.

214 A great deal of misunderstanding has occurred regarding the performance standard relating to the construction and location of water impoundments. The provisions of S. 7 require that both new and existing impoundments must be located in such a manner that they "will not endanger public health safety

should failure occur." It has been argued that this provision could prohibit the use of impoundments throughout the coal-mining industry since under even the best circumstances a minimal risk of danger to one or more individuals will always occur if an impoundment should fail. This argument is based on a patently unreasonable interpretation of the statutory language.

215 The Committee does not intend to prohibit all impoundments. The Committee does intend to require not only that impoundments be built in accordance with stringent construction standards, but also that mining companies be required to design their mining plans so as to avoid locating impoundments in areas where failure would cause entire towns to be wiped out. Impoundments are to be constructed only in safe locations. If they cannot be located safely, then they should not be built.

#### 215 SECTION 516. SURFACE EFFECTS OF UNDERGROUND COAL MINING OPERATIONS

215 Certain of the environmental protection standards for surface mining operations also apply to underground mines. In this section, the Secretary is required to incorporate in his regulations the following key provisions concerning the control of surface effects from underground mining:

215 Underground mining is to be conducted in such a way as to assure appropriate permanent support to prevent surface subsidence of land and the value and use of surface lands, except in those instances where the mining technology approved by the regulatory authority at the outset results in planned subsidence. Thus, operators may use underground mining techniques, such as long-wall mining, which completely extract the coal and which result in predictable and controllable subsidence.

215 Portals, entryways, shafts or accidental breakthroughs between the surface and underground mine workings must be sealed when they are no longer needed for the conduct of the mining operation.

215 Environmental standards controlling the surface disposal of mine wastes, including the use of impoundments, are the same as those discussed in the previous section.

215 After surface operations or other mining impacts are complete at a particular site, the area must be regraded and a diverse and permanent vegetative cover established.

215 Offsite damages must be prevented, fire hazards eliminated, and disturbances to the hydrologic balance minimized both on-site and in associate offsite areas.

215 In order to prevent the creation of additional subsidence hazards from underground mining in developing areas, subsection (c) provides permissive authority to the regulatory agency to prohibit underground coal mining in

urbanized areas, cities, towns, and communities and under and adjacent to industrial buildings, major impoundments, or permanent streams.

215 Subsection (d) provides that all other provisions of the Act and regulations pertaining to State and Federal programs, permits, bonds, inspection and enforcement, public review and administrative and judicial review are applicable to underground mines with such modifications to the application requirements, permit approval and denial procedures and bond requirements deemed necessary by the Secretary in order to accommodate differences between surface and underground mines.

#### 216 SECTION 517. INSPECTIONS AND MONITORING

216 For the purpose of administering and enforcing any approved State or Federal program under this Act, every permittee must establish and maintain appropriate records, make monthly reports to the regulatory authority, install, use and maintain any necessary monitoring equipment or method, evaluate the results of such monitoring in accordance with the procedures established by the regulatory authority, and provide such other information relative to surface mining as the regulatory authority deems reasonable and necessary.

216 Special additional monitoring and data analysis are specified for those mining and reclamation operations which remove or disturb strata that serve as aquifers which significantly insure the hydrologic balance or water use either on or off the mining site. Access to the mine site, monitoring equipment, areas of monitoring, and records of such monitoring and analysis must be provided promptly to authorized representatives of the regulatory authority without advance notice and upon request.

216 A clearly visible sign must be maintained at the mine entrance.

216 This section instructs the regulatory authority to carry out inspection of each mining operation according to the following criteria:

216 (1) averaging not less than one per month for each operation;

216 (2) occurring without prior notice to the operator;

216 (3) including filing of reports adequate to insure the enforcement of the requirements under this Act;

216 (4) rotating inspectors at adequate intervals.

216 After each inspection, the inspector shall notify the operator and the regulatory authority of each violation of any requirement of the Act. Copies of

all inspection reports are to be made available to the affected and interested public at central locations.

#### 216 SECTION 518. PENALTIES

216 Any permittee who violates any permit condition or who violates any other provisions of this title may be assessed a civil penalty by the Secretary not to exceed \$5 ,000 for each violation according to this section, with each day of violation deemed a separate violation. The amount of the penalty shall depend on the circumstances of the situation.

216 A civil penalty shall be assessed only after an opportunity for a public hearing has been afforded the person charged with a violation.

216 Subsection (e) provides for interest to be charged for unpaid civil penalties, which, under subsection (e), may be recovered in an appropriate court. The interest rate will be 6% or the prevailing Department of Treasury borrowing rate, whichever is greater.

216 Any person who willfully and knowingly violates a condition of a permit, or fails or refuses to comply with an order issued by the Secretary under this Act, shall be fined not more than \$1 0,000, or imprisoned for not longer than one year, or both.

217 Subsection (g) provides that the same penalties apply to the officers of a corporation which violates the provisions of this Act, as to an individual.

217 Under subsection (h), any person who knowingly makes a false statement, representation, or certification with respect to any application, record, report, plan or other document filed or required to be maintained under this Act shall be fined not more than \$1 0,000, or imprisoned for not longer than one year, or both.

#### 217 SECTION 519. RELEASE OF PERFORMANCE BONDS OR DEPOSITS

217 This section provides that a permittee may obtain the release of all or part of his performance bond upon request, after public notification and an inspection by the regulatory authority. Sixty percent of the bond may be released when backfilling, regarding and drainage control are completed. The remaining 40 percent is released after revegetation has been accomplished, to the extent that no abnormal suspended solids are further contributed to streamflow or runoff outside the permit area; and the operator's responsibility for reclamation has expired.

217 Under subsection (d), if an application for bond release is denied, the

permittee is to be notified in writing of the reasons therefor.

217 This section also provides that any person or government agency with a valid legal interest may file written objections to a proposed bond release, in which case a public hearing must be held after appropriate public notice.

#### 217 SECTION 520. CITIZEN SUITS

217 Section 520 provides for citizen participation in the enforcement of the Act by civil lawsuits (1) against any person who is alleged to be in violation of the Act or an order of the regulatory authority or (2) against the regulatory authority for alleged failure to perform a nondiscretionary act or duty.

217 Suits may be brought by "any person having an interest which is or may be adversely affected". The Committee intends that this includes persons who meet the requirements for standing to sue set out by the Supreme Court in *Sierra Club v. Morton* (405 U.S. 727 (1972)).

217 Subsection (b) requires that no action for violation of the law may be started for 60 days after notice of the alleged violation to the alleged violator, the Secretary, and the State in which the violation occurs. If the regulatory authority begins a civil action against the violation, no court action could take place on the citizen's suit. The 60-day waiting period does not apply when the violation or failure to act constitutes an imminent threat to the plaintiff's health or safety or would immediately affect a legal interest of the plaintiff.

217 Under subsection (c) actions for violations of the law or regulation may be brought only in the judicial district in which the surface mining operation involved is located.

217 Subsection (d) provides that the court may award costs of litigation to any party and require a bond where a temporary restraining order or preliminary injunction is sought.

217 It also authorizes the court in a citizen suit to require the filing of a bond or equivalent security if a temporary restraining order or preliminary injunction is granted. It is the committee's intent that the courts will carefully consider the circumstances and probable outcome of litigation in deciding whether to require a bond. This will minimize the possibility that

this section might be subject to misuse either by the commencement of frivolous actions against environmentally sound operations or as a substitute for other provisions of this bill which impose more precise requirements for citizen participation in the permit application and performance bond release proceedings.

218 This section is not intended to override the specific provisions of this bill which provide more precise requirements for citizen participation in the permit application and performance bond release proceedings, or to limit access to remedy for damages under any other statute or ing. Nor does it limit any person's right under Federal or State law to seek legal or equitable relief.

218 The Committee believes that citizen suits can play an important role in assuring that regulatory agencies and surface operators comply with the requirements of the Act and approved regulatory programs. The possibility of a citizen suit should help to keep program administrators "on their toes."

#### 218 SECTION 521.FEDERAL ENFORCEMENT

218 The Federal enforcement system contained in this section, while predicated upon the States taking the lead with respect to program enforcement, at the same time provides sufficient Federal backup to reinforce and strengthen State regulation as necessary. Federal standards are to be enforced by the Secretary on a mine-by-mine basis for all or part of the State as necessary without a finding that the State regulatory program should be superseded by a Federal permit and enforcement program.

218 Subsection (a) sets forth a number of specific characteristics for the Federal enforcement program.

218 (1) The Secretary may receive information with respect to violations of provisions of this Act from any source, such as State inspection reports filed with the Secretary, or information from interested citizens.

218 (2) Upon receiving such information, the Secretary must notify the State on such violations and within ten days the State must take action to have the violations corrected. If this does not occur, the Secretary shall order Federal inspection of the operation. If the inspection is based on data from a third party, that party shall be afforded the opportunity to accompany the Federal inspector.

218 (3) If on the basis of inspection, the Secretary determines that a violation has occurred, which creates an imminent danger to public health or safety or can cause imminent significant environmental harm, he shall immediately order cessation of the operation or a relevant portion thereof,

until the violation is abated or the order modified by the Secretary.

218 (4) In the case of a violation which does not cause such imminent danger, the Secretary must issue a notice setting a period of no more than 90 days for abatement of the violation. A pattern of violations caused by unwarranted or willful failure to comply with provisions of the Act requires the Secretary to order the permittee to show cause why his permit should not be suspended or revoked.

219 (5) All orders issued by the Secretary take effect immediately and all orders shall be specific and substantive with respect to the nature of the violation, the remedial action required, time for compliance and seriousness of the violation.

219 Under Subsection (b), if violations occurring under an approved State program appear to result from the failure of the State to enforce the program effectively, the Secretary shall so inform the State. If the problems extend beyond thirty days, the Secretary shall give public notice of his finding with respect to the State program. After public notice, and until the State satisfies the Secretary that it will enforce all provisions of the Act, the Secretary of Interior shall enforce any permit condition required by this Act, shall issue new or renewed permits for surface mining operations, and issue other orders as necessary for compliance with the provisions of this Act.

219 Subsection (c) provides that upon request of the Secretary, the Attorney General of the U.S. may enforce such Secretarial orders for various actions in a district court of the U.S.

219 The Secretary may request the Attorney General to apply for injunctive relief whenever a permittee violates an order of the Secretary, hinders implementation of the Act, refuses to permit inspection of the mine, or refuses to furnish information.

#### 219 SECTION 522. DESIGNATING AREAS UNSUITABLE FOR SURFACE COAL MINING

219 As a condition of having a State program approved by the Secretary of Interior, subsection (a) requires States to establish a planning process enabling decisions on the unsuitability of lands for all or any type of surface coal mining, but not for exploration.

219 Lands must be so designated if reclamation as required by this Act is not economically or physically possible.

219 Lands may be so designated if: (1) Surface coal mining would be incompatible with existing land use plans; (2) the area is a fragile or historic land area; (3) the area is in "renewable resource lands" - those lands where

uncontrolled or incompatible development could result in loss or reduction of long-range productivity, and could include watershed lands, aquifer recharge areas, significant agricultural or grazing areas; (4) the area is in "natural hazard lands" - those lands where development could endanger life and property, such as unstable geological areas.

219 Each study for designation is made only on a case by case basis upon specific petition. In addition, S. 7 contains specific requirements for petition. The Secretary is required to issue regulations defining those petitions to be considered valid, to preclude frivolous requests. Also this section does not apply to lands on which surface coal mining operations were being conducted on the date of enactment of this Act or for which substantial commitments had been made prior to Sept. 1, 1974. Section 510(b) provides that surface coal mining permits will not be issued for lands being considered for designation as unsuitable for surface coal mining. In order to prevent moratoria caused by administrative delay, Section 522(a)(7) requires the regulatory authority to issue a decision on any designation petition within one year. If a decision is not issued within that time, surface coal mining permits may be issued.

220 In complying with this section, a State must have established an appropriate agency, data base and inventory system, methods for implementing land use planning decisions and affording adequate public review.

220 With regard to Federal lands, Section 522(b) requires the Secretary to conduct a review of all Federal lands to determine areas unsuitable for mining. But in order to avoid locking up Federal coal in the case of a protracted study (such as the wilderness study), there is no moratorium on leasing during the period of review under the provisions of this subsection.

220 Under subsection (e), any person having an interest which may be adversely affected may petition either the State or Federal Government to have an area so designated based on the above criteria or to have a designation terminated. Public hearings on any area to be so designated must be held.

220 In addition, prior to the designation of any area as unsuitable for mining, the regulatory authority must prepare from existing and available information a statement on the potential coal resources in the area affected, the overall demand for coal, and the impact of the designation on the environment, the area's economy and the supply of coal.

220 In addition to the prohibition of surface mining which may result from the operation of the designation process, subsection (e) provides for certain outright prohibitions on surface coal mining. This subsection would prohibit new surface coal mining operations on lands within the National Park System, the National Wildlife Refuge Systems, the National Wilderness Preservation System,

the Wild and Scenic Rivers System, National Recreation Areas, National Forests, in areas which would adversely affect parks or National Register of Historic Sites, within one hundred feet of a public road (except where mine access or haul roads join the right-of-way), within 300 feet of an occupied building or one hundred feet from a cemetery.

220 All of these bans listed in subsection (e) are subject to valid existing rights. This language is intended to make clear that the prohibition of strip mining on the national forests is subject to previous state court interpretation of valid existing rights. The language of 522(e) is in no way intended to affect or abrogate any previous state court decisions.

220 The party claiming such rights must show usage or custom at the time and place where the contract is to be executed and must show that such rights were contemplated by the parties. The phrase "subject to valid existing rights" is thus in no way intended to open up national forest lands to strip mining where previous legal precedents have prohibited stripping.

#### 220 SECTION 523.FEDERAL LANDS

220 This section requires the Federal Government to "put its own house in order" at the same time that, through this legislation, it requires the States to establish strong regulatory programs.

220 Subsection (a) requires the Secretary of the Interior to promulgate and implement a Federal Lands Program applicable to all surface mining and reclamation operations taking place pursuant to any Federal law on any Federal lands no later than six months after enactment of the Act. The Federal Lands Program must, at a minimum, incorporate all of the Act's requirements and where the Federal lands are in a State with an approved State program, the requirements imposed by the State. Thus, while the Secretary could, for example, impose more stringent reclamation requirements on Federal lands than were required on non-Federal lands in the State, he could not permit less stringent requirements.

221 Subsection (b) provides that the requirements of the Act and the Federal Lands Program are to be incorporated in all Federal mineral leases, permits, or contracts issued by the Secretary involving surface mining and reclamation operations.

221 Subsection (c) provides for joint Federal-State Programs covering

permits on land areas which contain State and Federal lands either interspersed or checker-boarded within the scope of a single permit or more than one permit for essentially a single operation and which, for conservation and administrative purposes, should be regulated as single management units. The purpose of this provision is to alleviate a significant problem in Western mining. Where Federal and non-Federal lands are checker-boarded, mining operators could find themselves working under two separate permits, two separate bonds, and two entirely different regulatory systems - Federal and State. The joint Federal-State programs should allow the operator to conduct his operation under a single regulatory system. In order to implement joint Federal-State programs the Secretary is authorized to enter into agreements with the States, to delegate authority to the States, or to accept a delegation of authority from the States.

221 Subsection (d) makes it clear that except as provided in subsection (c) the Secretary is not to delegate to the States his primary authority or jurisdiction to regulate or administer mining or other activities on the Federal lands.

221 Subsection (e) provides that no class of purchasers (such as rural electric cooperatives or other small utilities) may be unreasonably denied the opportunity to purchase surface mined Federally owned coal. This provision is not intended to abrogate existing contracts or to preclude future long-term contracts.

221 The Committee feels very strongly that stringent reclamation requirements must be developed before any new or expanded coal surface mining operations are permitted on Federal lands. The Committee expects the Secretary to meet the 6-month deadline for implementation of this program established by subsection (a).

#### 221 SECTION 524. PUBLIC AGENCIES, PUBLIC UTILITIES, AND PUBLIC CORPORATIONS

221 This section applies the requirements contained in the Act to public corporations, public agencies, and publicly owned utilities, including, for example, the Tennessee Valley Authority, which engage in surface mining.

#### 221 SECTION 525. REVIEW BY THE SECRETARY

221 This section provides that any permittee who has had his permit revoked or suspended, and any person adversely affected by such revocation or suspension, may apply to the Secretary for review of such revocation or

suspension within 30 days after such revocation or suspension upon receipt of an application the Secretary shall conduct an appropriate investigation, including public hearings.

#### 222 SECTION 526. JUDICIAL REVIEW

222 Any decision of the Secretary approving or disapproving a State program under section 503 or preparing and promulgating a Federal program under section 504 may be reviewed in an appropriate United States Court of Appeals by a petition filed within 60 days of such decision by a person who participated in the administrative proceedings and who was aggrieved by such decision according to this section.

222 All other decisions or orders of the Secretary shall be reviewable in the appropriate United States District Court for the locality in which the surface coal mining operation is located. Commencement of a proceeding under this section shall not operate as a stay of action by the Secretary unless so ordered by the court.

#### 222 SECTION 527. SPECIAL BITUMINOUS COAL MINES

222 Section 527 provides for the adjustment of several environmental standards for a limited number of existing mine pits in the United States. There are probably a few "open-pit" type coal mines in the Western States which would be unduly burdened by meeting all of the environmental standards as proposed in the bill. In particular, this special provision has been included in the bill to allow special regulations to be applicable to the "big-pit" mine pit at the Kemmerer mine. However, this section would also be applicable to other mines which have the very unusual characteristics of the "big-pit" at Kemmerer.

222 In this provision, "special bituminous coal mines" are defined as operations that would result in excess of 900 feet deep according to existing mine plans, were in existence at least 10 years prior to the date of enactment and met several other criteria. Such mines are not exempted from the Act, but the Secretary is authorized to allow appropriate variation from certain requirements dealing with spoil handling, regarding to approximate original contour, elimination of depressions capable of collecting water, and creation of impoundments. It is thought that some mine pits, because of their setting, design and duration of existing operation are sufficiently committed to a mode of operation which makes adjustment to the basic standards in the act difficult. A judgment was made that in these limited cases, such pits could continue with

their basic mode of operation, meeting the special requirements of this section and all other requirements of the act.

222 The language of this section has been carefully drawn to apply to pits which were operational prior to January 1, 1972, and to coal owned by the operator of the mine on February 27, 1975. New mine pits, those opened or re-started after January 1, 1972, must be designed or adjusted to meet the basic environmental standards of the Act. This applies even in those same settings where existing pits may be determined eligible for the special standards. In other words, specific pits, not entire operations which may cover thousands of acres are eligible under this section. Similarly, in determining the practicability of existing pits to adjust to meet the basic environmental standards of the Act, the Secretary should ascertain that the long-range plan of the pit is such that adjustment cannot be made to bring the operation in conformance with the Act. In some instances, it would seem probable that the reworking of old pits or combination of existing pits on a mined site would provide an opportunity for a mining operation adjustment to meet the basic provisions of the Act and the eligibility for exceptions should be so conditioned.

223 Eligibility is carefully defined under this section so that eligibility for exceptions under this section would not become the rule rather than the exception and so that it specifically applies only to existing mine pits which have been producing coal in commercial quantities since January 1, 1972.

#### 223 SECTION 528. SURFACE MINING OPERATIONS NOT SUBJECT TO THIS ACT

223 This section provides specific exemptions for two types of coal surface mining which would otherwise be subject to the Act.

223 These are (1) the extraction of coal by a landowner for his own noncommercial use from land owned or leased by him, and (2) the extraction of coal where surface mining affects 2 acres or less.

223 The Committee felt that these two classes of surface mining cause very little environmental damage and that regulation of them would place a heavy burden on both the miner and the regulatory authority. The exemption for "noncommercial" use does not include coal surface mining done by one unit of an integrated company which uses all of the coal in its own manufacturing plants (e.g., surface mining of metallurgical coal owned by a steel company for use in the company's steel mills, or surface mining for coal owned by an electric utility for use in its own powerplants).

223 SECTION 601. DESIGNATION OF AREAS AS UNSUITABLE FOR MINING OF MINERALS OTHER THAN COAL

223 Under the Mining Law of 1872 anyone is free to explore for hard rock minerals in the public domain, including minerals reserved to the United States located under surface held in private ownership. Upon the discovery of a valuable deposit, the mining laws convey the right to mine without regard to the environmental consequences and with severely limited protection for the surface owner or property owners within the vicinity of the mining operation. Quite literally, this allows a mining company to prospect and mine in people's back yards and other developed areas where mining is totally inconsistent with established land uses or areas of extremely important environmental value. While the Committee chose not to address the surface effects of mining of minerals other than coal in S. 7, it did include a mechanism in title VI which would allow the elimination of the worst abuses under the mining law on a case by case basis but would not unduly interfere with the operation of the mining law pending its complete review and revision.

224 Section 601 establishes a program for designating areas of Federal lands unsuitable for mining of minerals other than coal. Upon the request of the governor of any State, or petition of any citizen which contains allegations of fact with supporting evidence, the Secretary shall review a proposed area for designation. Under this provision an area may be designated unsuitable for non-coal surface mining if the lands involved are either used for residential or related purposes, or if mining operations would have an adverse impact on lands used primarily for such purposes, and the mineral estate remains in the public domain.

224 It should be emphasized that the section does not withdraw any area from the operation of mining laws, nor does it ignore the interests of mineral development. Indeed, before any designation could be made, the Secretary would be required to make a determination of the impact of such a designation upon the availability of necessary minerals. The section simply says that where mineral entry is obviously inappropriate from an environmental and planning viewpoint - on the basis of rather narrow criteria - mineral entry may be prohibited.

224 Furthermore, while title VI grants authority to the Secretary to prohibit mining operations for minerals or materials other than coal on Federal lands, designation of an area of Federal lands in Alaska under this provision or under title VI will not affect such land's availability for selection by the

State of Alaska under the Alaska Statehood Act or by Alaska Natives under the Alaska Native Claims Settlement Act.

SECTION-BY-SECTION ANALYSIS TITLE VII - ADMINISTRATIVE AND MISCELLANEOUS PROVISIONS

224 SECTION 701. DEFINITIONS

224 This section contains 27 definitions: Secretary; State; Office; commerce; surface coal mining operations; surface mining and reclamation operations; lands within any State; Federal lands; Indian lands; Indian tribe; State program; Federal program; Federal lands program; reclamation plan; State regulatory authority; regulatory authority; person; permit; permit applicant; permittee; fund; other minerals; approximate original contour; operator; permit area; unwarranted failure to comply; and alluvial valley floors.

224 Of importance to this analysis are "surface mining operations," "Indian lands," "lands within any State," "other minerals," "back-filling to approximate contour," and "alluvial valley floors".

224 "Surface mining operations" is so defined to include not only traditionally regarded coal surface mining activities but also surface operations incident to underground coal mining, and exploration activities. The effect of this definition is that only coal surface mining is subject to regulation under the Act. Activities included are excavation to obtain coal by contour, strip, augur, dredging, in situ distillation or retorting and leaching or any other form of mining except open pit mining; and the cleaning, or other processing or preparation and loading for interstate commerce of coal at or near the mine site. Activities not included are the extraction of coal in a liquid or gaseous state by means of wells, or pipes unless the process includes in situ distillation of retorting and the extraction of coal incidental to extraction of other minerals where coal does not exceed 16 2/3 percent of the tonnage removed. The last exception is designed to exclude operations, such as limestone quarries, where coal is found but is not the mineral being sought. "Surface mining operations" also includes all areas upon which occur surface mining activities and surface activities incident to underground mining. It also includes all roads, facilities structures, property, and materials on the surface resulting from or incident to such activities, such as refuse banks, dumps, culm banks, impoundments and processing wastes.

225 "Indian lands" is defined to mean all lands within the exterior boundaries of Indian reservations, and all lands held in trust for or supervised

by any Indian tribe. Coal surface mining on these lands is not subject to regulation under the Act.

225 "Land within any State" is so defined and used throughout the Act so as to insure that the States, through their State programs, will not assert any additional authority over Federal lands or Indian lands, other than that authority delegated to them by the Secretary in developing joint Federal-State programs.

225 "Other minerals" is defined to include clay, stone, sand, gravel, metalliferous and nonmetalliferous ores, and any other solid material or substance of commercial value excavated in solid form from natural deposits on or in the earth, exclusive of coal and those minerals which occur naturally in liquid or gaseous form.

225 "Approximate original contour" is defined so as to bar depressions capable of collecting water except where retention of water is determined by the regulatory authority to be required or desirable for reclamation purposes.

225 "Alluvial valley floors" are defined as unconsolidated stream laid deposits where water availability is sufficient for subirrigation or flood irrigation agricultural activities.

#### 225 SECTION 702. OTHER FEDERAL LAWS

225 This section contains the standard savings clauses concerning existing State or Federal mine health and safety, and air and water quality laws, and the mining responsibilities of the Secretary and heads of other Federal agencies for lands under their jurisdiction.

225 Specifically, it disclaims any conflict between the Act or any State regulations approved pursuant to it, and the Federal Metal and Nonmetallic Mine Safety Act, the Federal Coal Mine Health and Safety Act, the Federal Water Pollution Control Act, the Clean Air Act as amended, the Solid Waste Disposal Act, the Refuse Act, and the Fish and Wildlife Coordination Act.

225 This section also specifies those actions taken to implement the Act which must be considered as "major Federal actions" for the purpose of Section 102(2)(c) of the National Environmental Policy Act of 1969.

#### 225 SECTION 703. EMPLOYEE PROTECTION

225 Section 703 makes unlawful the discharge or discrimination against any person who has filed a suit or testified under provisions of the Act, and gives such person recourse to review by the Secretary of Labor.

226 After opportunity for public hearing, the Secretary is to make findings of fact and issue orders where a violation has occurred, for reinstatement of the employee with compensation. The Secretary's orders are subject to judicial review. The applicant in a successful pleading is to be reimbursed for his costs, including attorney fees. The Secretary is required to evaluate the effects of enforcement of the Act on employment, to investigate complaints, and hold public hearings concerning alleged discharges and layoffs. His subsequent report and any recommendations are to be made public.

226 SECTION 704. PROTECTION OF GOVERNMENT EMPLOYEES

226 This section extends to surface coal mine inspectors the same rights and protections accorded to other Federal inspectors in the course of their duties.

226 SECTION 705. GRANTS TO THE STATES

226 This section authorizes the Secretary to cooperate with and to make annual grants to States for administering State programs under the Act, disbursed at the rate of 80% of total costs the first year, 60% the second year, and 40% during the third and fourth years. Technical assistance, training, instructional material and a continuing inventory of information for evaluating the effectiveness of State programs are among the types of assistance to be rendered by the Secretary. All Federal departments and agencies having relevant data are to assist as well.

226 SECTION 706. ANNUAL REPORT

226 This section requires the Secretary to submit to the President and the Congress an annual report on Federal and State activities pursuant to the Act and recommendations for appropriate administrative or legislative action.

226 SECTION 707. PREFERENCE FOR PERSONS ADVERSELY AFFECTED BY THE ACT

226 This section requires that in developing regulations for the award of contracts under Title IV and Section 715 of this Act, the Secretary provide for preferential consideration to be given to coal surface mine operators who can demonstrate that, despite good faith efforts to comply with this Act, they have been adversely affected by its implementation, and to individual miners whose employment has thus been adversely affected.

226 The purpose of this section is to alleviate any social dislocations and costs which occur as a result of the application of the Act. In many sections of the country, surface mining operations are of critical importance to the

economic and material well being of local communities. Thus any dampening effect the Act may have on such operations may work hardships on local economies and employment. This provision equipment developed and used in surface mining will not be ignored in or lost to the reclamation efforts.

#### 227 SECTION 708. EMPLOYMENT IMPACT AND UNEMPLOYMENT ASSISTANCE

227 Under the provisions and limitations of this section, the Secretary of Labor shall make grants, in accordance with regulations prescribed by him, to States to provide cash benefits to any individual who loses his job in the coal mining industry as a direct result of the closure of a mine which closed as a direct result of the administration and enforcement of this Act and who is not eligible for unemployment assistance or who has exhausted all rights to regular, additional, and extended compensation under all State unemployment compensation laws and chapter 85 of title 5, United States Code, and has no further rights to regular, additional, or extended compensation under any State or Federal unemployment compensation law.

227 The determination as to whether an individual is unemployed as a result of such administration and enforcement (within the meaning of such regulations) shall be made by the State in which the individual was last employed in accordance with such industry, business, or employer certification process.

#### 227 SECTION 709. SEVERABILITY

227 This section contains a standard severability clause.

#### 227 SECTION 710. ALASKAN SURFACE COAL MINE STUDY

227 Section 710 recognizes that the physical setting of the far north coal fields in Alaska may require special provisions for environmental control which are not required in the coal fields in the 48 contiguous States. Accordingly, some of the specific provisions of this bill may need to be adjusted in order to allow operations within the environmental objectives and intent of this legislation.

227 The Secretary is directed to contract with the National Academy of Sciences-National Academy of Engineering for a study to determine if additional or different environmental protection provisions are needed. The Academies offer an opportunity for an independent analysis of this problem and will be able to combine appropriate engineering and environmental capability for the effort.

227 SECTION 711. STUDY OF RECLAMATION STANDARDS FOR SURFACE MINING OF OTHER MINERALS

227 Section 711 is designed to meet short-term needs for information. It directs the Chairman of the Council on Environmental Quality to contract with the National Academy of Sciences - National Academy of Engineering, and such other government agencies or private groups as may be needed, for an indepth study of current and developing technology for surface mining of minerals other than coal and of open pit mining. This study is to be designed to assist in the establishment of effective and reasonable regulation of surface and open pit mining and reclamation.

227 The Committee's decision to limit the scope of S. 7 to coal surface mining was based on several factors. One of these was that it did not have sufficient information about the nature and characteristics of surface mining for other minerals and about open pit mining.

228 Surface mining of coal is the most immediate and pressing problem. It accounts for 43 percent of the total land disturbed in the United States by all forms of surface mining. However, the Committee recognizes the need to regulate surface mining for other minerals, particularly sand and gravel which accounts for 25 percent of the total surface area disturbed by surface mining. Thus, subsection 711(b) requires that the study together with specific legislative recommendations shall be submitted to the Congress and the President within 18 months after enactment of the Act. The study and recommendations with respect to surface and open pit mining for sand and gravel is to be submitted within one year.

228 SECTION 712. INDIAN LANDS STUDY

228 Section 712 directs the Secretary of the Interior to study the question of regulation of surface mining on Indian lands which will achieve the purposes of the Act and recognize the special jurisdictional status of Indian lands. The Secretary is directed to consult with Indian tribes and to report to Congress as soon as possible but no later than January 1, 1976.

228 In the interim, this section also provides that surface coal mining operations on Indian lands meet certain environmental standards at least as stringent as those in this Act, and requires the Secretary to incorporate such standards in all leases.

228 SECTION 713. EXPERIMENTAL PRACTICES

228 In order to encourage advances in mining and reclamation practices, this section permits the regulatory authority to authorize departures in individual cases on an experimental basis from the environmental protection performance standards promulgated under this Act. Such departures may be authorized if (i) the experimental practices are potentially more or at least as environmentally protective, as those required by promulgated standards; and (ii) the mining operation is no larger than necessary to determine the effectiveness and economic feasibility of the experimental practices.

228 SECTION 714. AUTHORIZATION OF APPROPRIATIONS

228 This section authorizes appropriations for the purposes of this Act in the following sums: \$10 million for the fiscal year ending June 30, 1975; \$20 million for each of the two succeeding fiscal years; and \$30 million for each of the succeeding fiscal years thereafter.

228 SECTION 715. RESEARCH AND DEMONSTRATION PROJECTS ON ALTERNATIVE COAL MINING TECHNOLOGIES

228 This section authorizes the Secretary to conduct and promote research and demonstration projects relating to improved alternatives to present coal mining, mine waste disposal, and health and safety practices. It authorizes the appropriation of \$35 million per year for five years for this program.

229 Special problems arise where coal deposits have been reserved to the United States but title to the surface has been conveyed to private individuals. This section establishes as Federal coal leasing policy a requirement that the Secretary of the Interior not lease for surface mining without the consent of the surface owner, Federal coal deposits underlying land owned by a person who has his principal place of residence on the land, or personally farms or ranches the land affected by the mining operation, or receives directly a "significant portion" of his income from such farming. The Committee does not intend by this to impose an arbitrary or mechanical formula for determining what is "significant." This should be construed in terms of the importance of the amount to the surface owner's income. Significant is not intended to be measured by a fixed percentage of income. For example, where a person's gross income is relatively small, a loss of but a fraction thereof may be significant. By so defining "surface owner", the bill should prevent speculators purchasing land only in the hope of reaping a windfall profit simply because Federal coal

deposits lie underneath the land.

229 At the same time, so that there will not be any undue locking up of Federal coal, generous compensation is guaranteed to the surface owner, based not only upon the market value of the property of the land, but also the costs of dislocation and relocation, loss of income and other values and damages.

229 The procedure for obtaining surface owner consent is intended to assure that the surface owner will be dealing solely with the Secretary in deciding whether or not to give his consent to surface coal mining. Penalties would be assessed to discourage the making of "side deals" in order to circumvent the strict provisions governing surface owner consent.

229 In order to give Congress and the Administration an opportunity to assess the impacts of this provision, Section 716 does not go into effect until February 1, 1976. However, it imposes a moratorium on leasing of Federal coal under private surface until that time, unless the owner of the surface consented to surface coal mining prior to February 27, 1975. The Committee is aware that many surface owners have already entered into agreements with coal companies which intend to attempt to obtain Federal coal leases. Section 716 is not intended to apply retroactively so as to require new consents and payments to the surface owner where written consents have already been negotiated.

229 The requirement that coal deposits subject to Section 716 be offered for lease by competitive bidding is not intended to override any rights which the holder of a Federal prospecting permit may have to a coal lease. If such a permittee has a property right, it is protected under Section 716(i) which provides that nothing in Section 716 enlarges or diminishes any property rights held by the United States or any other land owner.

229 Section 716 establishes as one criterion for Federal coal leasing "that the Secretary shall, in his discretion but to the maximum extent practicable" refrain from leasing Federal coal underlying lands held by surface owners. In implementing this policy, the Secretary should consider economic as well as physical conditions in determining what is "practicable."

230 This section requires that any application for a permit for surface coal mining of Federal coal must include either the written consent of the permittee or lessee of the surface lands to be affected, or evidence of the execution of a bond to secure payment for all damages to the surface estate resulting from the mining operations.

VIII. COST ESTIMATES PURSUANT TO SECTION 252 OF THE LEGISLATIVE REORGANIZATION ACT OF 1970

230 In accordance with Section 252(a) of the Legislative Reorganization Act of 1970 (Public Law 91-150, 91st Congress) the Committee provides the following estimate of cost.

230 A. ADMINISTRATION OF THE ACT

230 Fiscal year 1975 . - It is estimated that about one half or \$1 0 million of the funds authorized for the initial fiscal year, especially those provided by section 714 will be needed for obligation during the balance of this fiscal year. The Committee recognizes that the Secretary of Interior has made some commitment of other resources in order to partially prepare for the enactment of this legislation and such funds should be made available upon enactment for the continuation and expansion of this work.

230 Fiscal years 1976 and 1977. - It is estimated that \$3 0 million will be needed for each of the first two full years of activities under this Act. From this, \$1 0 million each year is available for: (1) reimbursing the States for implementing the minimum Federal environmental performance standards during the interim program while the States are developing their permanent regulatory programs; (2) funding the development of regulatory programs for Indian tribes; (3) developing a capability within the States to meet the responsibilities under the designation of lands authority (section 522); and (4) meeting various planning requirements of other portions of the Act as referenced in section 714.

230 During each of these two years, \$2 0 million is made available to the Secretary of Interior to establish and operate an Office of Surface Mining Reclamation and Enforcement in order to carry out the administrative responsibilities under the Act, including the review of State programs, providing for Federal enforcement, and other activities identified in Title II.

230 Fiscal year 1978 and later. - S. 7 authorizes \$3 0 million per year to the Secretary of Interior on a continuing basis. It is estimated that this will be needed to provide matching grants to the States during the first four years of implementation of the approved State program and to cover the expenses of the Federal administration and enforcement responsibilities under the Act.

231 B. RESEARCH AND DEMONSTRATION ON ALTERNATIVE COAL MINING TECHNOLOGIES

231 [In millions of dollars]		Fiscal year -			
	1976	1977	1978	1979	1980
R. & D. mine technology, sec. 715(c)	35	35	35		
	35				

231 Fiscal years 1976-80. - S. 7 authorizes for each of these five fiscal years, \$3 5 million for research and demonstration of alternatives mining technologies which have lesser environmental impacts and increased resource recovery compared to existing surface coal mining operations.

231 C. STATE MINING AND MINERAL RESOURCES RESEARCH INSTITUTES

231 [In millions of dollars]		Fiscal year -					
		1975	1976	1977	1978	1979	1980
Allotments to institutes (sec. 301(a))	14	7	10.5	14	14	14	14
Research funds to institutes (sec. 302(a))	27	15	17.0	19	21	23	25
Planning (sec. 306(d))	1	1	1.0	1	1	1	1
Total	42	23	28.5	34	36	38	40

231 Fiscal year 1976. - It is anticipated that 35 institutions will qualify for the section 301(a) grants at the outset and with three hundred thousand dollars per institution authorized, the total comes to 10.5 million dollars. It is anticipated that research funds for the institutions and for other purposes will be used at the authorized levels in order to meet the critical requirements of manpower training and research. Funds available under section 306(d) should be used in this initial year for the administrative planning necessary.

231 Fiscal years 1977-81. - The amount shown for allotments to institutes are based on grants of four hundred thousand dollars annually with 35 institutions qualifying. The research funds to these institutes increase at a rate of \$2 million annually. Funds available under section 306 will be used for a combination of planning, administration, and publication of research results. With the orderly growth of the program of institution building and research and training support, the total appropriation through this period increases in an

orderly manner from \$34 million to \$42 million annually.

231 D. STUDIES

231 For a study regarding the need for variances to the provisions of this Act for surface coal mining in Alaska, the sum of \$2 50,000 is authorized to be spent over the first two years after the date of enactment of this Act;

232 For a study of reclamation standards for surface mining of minerals other than coal, the sum of \$5 00,000 is authorized to be spent over a period of 18 months after enactment of this Act;

232 For research and demonstration projects on alternative coal mining technologies, there is authorized to be appropriated \$3 5,000,000 each year for five years beginning in fiscal year 1976.

IX. TABULATION OF VOTES CAST IN COMMITTEE

232 Pursuant to Section 133(b) of the Legislative Reorganization Act of 1946, as amended, the following is a tabulation of votes of the Committee during consideration of S. 7:

232 1. During the Committee's consideration of the Surface Mining Reclamation Act of 1975 many voice votes and formal roll call votes were taken on amendments to the bill. These votes were taken in open public session and, because they were previously announced by the Committee in accord with the provisions of Section 133(b), it is not necessary that they be tabulated in the Committee Report.

232 2. S. 7 was ordered favorably reported to the Senate on a roll call vote of 12 yeas and 2 nays. The vote was as follows:

232 Jackson - Yea

232 Church - Yea

232 Metcalf - Yea

232 Johnston - Yea

232 Abourezk - Yea

232 Haskell - Yea

232 Glenn - Yea

232 Stone - Yea

232 Bumpers - Yea

232 Fannin - Nay

232 Hansen - Yea

232 Hatfield - Yea

232 McClure - Yea

232 Bartlett - Nay

X. EXECUTIVE COMMUNICATIONS

232 The following letter from President Ford was sent to the Congress accompanied by S. 652, the administration's bill, introduced by request on February 11, 1975.

232 THE WHITE HOUSE, Washington, February 6, 1975.

232 The HONORABLE, President, U.S. Senate Washington, D.C.

232 DEAR MR. PRESIDENT: Our Nation is faced with the need to find the right balance among a number of very desirable national objectives. We must find the right balance because we simply cannot achieve all desirable objectives at once.

232 In the case of legislation governing surface coal mining activities, we must strike a balance between our desire for environmental protection and our need to increase domestic coal production. This consideration has taken on added significance over the past few months. It has become clear that our abundant domestic reserves of coal must become a growing part of our Nation's drive for energy independence.

232 Last December, I concluded that it would not be in the Nation's best interests for me to approve the surface coal mining bill which passed the 93rd Congress as S. 425. That bill would have:

233 Caused excessive coal production losses, including losses that are not necessary to achieve reasonable environmental protection and reclamation requirements. The Federal Energy Administration estimated that the bill, during its first full year of operation would reduce coal production between 48 and 141 million tons, or approximately 6 to 18 percent of the expected production. Additional losses could result which cannot be quantified because of ambiguities in the bill. Losses of coal production are particularly important because each lost ton of coal can mean importing four additional barrels of foreign oil.

233 Caused inflationary impacts because of increased coal costs and Federal

expenditures for activities which, however desirable, are not necessary at this time.

233 Failed to correct other deficiencies that had been pointed out in executive branch communications concerning the bill.

233 The energy program that I outlined in my State of the Union Message contemplates the doubling of our Nation's coal production by 1985. Within the next ten years, my program envisions opening 250 major new coal mines, the majority of which must be surface mines, and the construction of approximately

150 new coal fired electric generating plants. I believe that we can achieve these goals and still meet reasonable environmental protection standards.

233 I have again reviewed S. 425 as it passed the 93rd Congress (which has been reintroduced in the 94th Congress as S. 7 and H.R. 25) to identify those provisions of the bill where changes are critical to overcome the objections which led to my disapproval last December. I have also identified a number of provisions of the bill where changes are needed to reduce further the potential for unnecessary production impact and to make the legislation more workable and effective. These few but important changes will go a long way toward achieving precise and balanced legislation. The changes are summarized in the first enclosure to this letter and are incorporated in the enclosed draft bill.

233 With the exception of the changes described in the first enclosure, the bill follows S. 425.

233 I believe that surface mining legislation must be reconsidered in the context of our current national needs. I urge the Congress to consider the enclosed bill carefully and pass it promptly.

233 Sincerely,

233 GERALD R. FORD.

233 Enclosure.

233 SUMMARY OF PRINCIPAL CHANGES FROM S. 425 (S. 7 AND H.R. 25)  
INCORPORATED  
IN THE ADMINISTRATION'S SURFACE MINING BILL

233 The Administration bill follows the basic framework of S. 425 in establishing Federal standards for the environmental protection and reclamation of surface coal mining operations. Briefly, the Administration bill, like S. 425:

233 covers all coal surface mining operations and surface effects of underground coal mining;

233 establishes minimum nationwide reclamation standards; places primary regulatory responsibility with the States with Federal backup in cases where the States fail to act; creates a reclamation program for previously mined lands abandoned without reclamation;

234 establishes reclamation standards on Federal lands.

234 Changes from S. 425 which have been incorporated in the Administration bill are summarized below.

#### 234 Critical changes

234 1. Citizen suits. - S. 425 would allow citizen suits against any person for a "violation of the provisions of this Act." This could undermine the integrity of the bill's permit mechanism and could lead to mine-by-mine litigation of virtually every ambiguous aspect of the bill even if an operation is in full compliance with existing regulations, standards and permits. This is unnecessary and could lead to production delays or curtailments. Citizen suits are retained in the Administration bill, but are modified (consistent with other environmental legislation) to provide for suits against (1) the regulatory agency to enforce the act, and (2) mine operators where violations of regulations or permits are alleged.

234 2. Stream siltation. - S. 425 would prohibit increased stream siltation - a requirement which would be extremely difficult or impossible to meet and thus could preclude mining activities. In the Administration's bill, this prohibition is modified to require the maximum practicable limitation on siltation.

234 3. Hydrologic disturbances. - S. 425 would establish absolute requirements to preserve the hydrologic integrity of alluvial valley floors - and prevent offsite hydrologic disturbances. Both requirements would be impossible to meet, are unnecessary for reasonable environmental protection and could preclude most mining activities. In the Administration's bill, this provision is modified to require that any such disturbances be prevented to the maximum extent practicable so that there will be a balance between environmental protection and the need for coal production.

234 4. Ambiguous terms. - In the case of S. 425, there is great potential for court interpretations of ambiguous provisions which could lead to unnecessary or unanticipated adverse production impact. The Administration's bill provides explicit authority for the Secretary to define ambiguous terms so as to

clarify the regulatory process and minimize delays due to litigation.

234 5. Abandoned land reclamation fund. - S. 425 would establish a tax of 35~ per ton for underground mined coal and 25~ per ton for surface mined coal to create a fund for reclaiming previously mined lands that have been abandoned without being reclaimed, and for other purposes. This tax is unnecessarily high to finance needed reclamation. The Administration bill would set the tax at 10~ per ton for all coal, providing over \$1 billion over ten years which should be ample to reclaim that abandoned coal mined land in need of reclamation.

234 Under S. 425 funds accrued from the tax on coal could be used by the Federal government (1) for financing construction of roads, utilities, and public buildings on reclaimed mined lands, and (2) for distribution to States to finance roads, utilities and public buildings in any area where coal mining activity is expanding. This provision needlessly duplicates other Federal, State and local programs, and establishes eligibility for Federal grant funding in a situation where facilities are normally financed by local or State borrowing. The need for such funding, including the new grant program, has not been established. The Administration bill does not provide authority for funding facilities.

235 6. Impoundments. - S. 425 could prohibit or unduly restrict the use of most new or existing impoundments, even though constructed to adequate safety standards. In the Administration's bill, the provisions on location of impoundments have been modified to permit their use where safety standards are met.

235 7. National forests. - S. 425 would prohibit mining in the national forests - a prohibition which is inconsistent with multiple use principles and which could unnecessarily lock up 7 billion tons of coal reserves (approximately 30% of the uncommitted Federal surfaceminable coal in the contiguous States). In the Administration bill, this provision is modified to permit the Agriculture Secretary to waive the restriction in specific areas when multiple resource analysis indicates that such mining would be in the public interest.

235 8. Special unemployment provisions. - The unemployment provision of S. 425 (1) would cause unfair discrimination among classes of unemployed persons, (2) would be difficult to administer, and (3) would set unacceptable precedents including unlimited benefit terms, and weak labor force attachment requirements. This provision of S. 425 is inconsistent with Public Law 93-567 and Public Law

93-572 which were signed into law on December 31, 1974, and which significantly broaden and lengthen general unemployment assistance. The Administration's bill does not include a special unemployment provision.

#### 235 Other important changes

235 In addition to the critical changes from S. 425, listed above, there are a number of provisions which should be modified to reduce adverse production impact, establish a more workable reclamation and enforcement program, eliminate uncertainties, avoid unnecessary Federal expenditures and Federal displacement of State enforcement activity, and solve selected other problems.

235 1. Antidegradation . - S. 425 contains a provision which, if literally interpreted by the courts, could lead to a nondegradation standard (similar to that experienced with the Clean Air Act) far beyond the environmental and reclamation requirements of the bill. This could lead to production delays and disruption. Changes are included in the Administration bill to overcome this problem.

235 2. Reclamation fund . - S. 425 would authorize the use of funds to assist private landowners in reclaiming their lands mined in past years. Such a program would result in windfall gains to the private landowners who would maintain title to their lands while having them reclaimed at Federal expense. The Administration bill deletes this provision.

235 3. Interim program timing. - Under S. 425, mining operations could be forced to close down simply because the regulatory authority had not completed action on a mining permit, through no fault of the operator. The Administration bill modifies the timing requirements of the interim program to minimize unnecessary delays and production losses.

236 4. Federal preemption . - The Federal interim program role provided in S. 425 could (1) lead to unnecessary Federal preemption, displacement or duplication of State regulatory activities, and (2) discourage States from assuming an active permanent regulatory role, thus leaving such functions to the Federal government. During the past few years, nearly all major coal mining States have improved their surface mining laws, regulations and enforcement activities. In the Administration bill, this requirement is revised to limit the Federal enforcement role during the interim program to situations where a violation creates an imminent danger to public health and safety or significant environmental harm.

236 5. Surface owner consent . - The requirement in S. 425 for surface owner's consent would substantially modify existing law by transferring to the surface owner coal rights that presently reside with the Federal government. S. 425 would give the surface owner the right to "veto" the mining of Federally owned coal or possibly enable him to realize a substantial windfall. In addition, S. 425 leaves unclear the rights of prospectors under existing law. The Administration is opposed to any provision which could (1) result in a lock up of coal reserves through surface owner veto or (2) lead to windfalls. In the Administration's bill surface owner and prospector rights would continue as provided in existing law.

236 6. Federal lands. - S. 425 would set an undesirable precedent by providing for State control over mining of Federally owned coal on Federal lands. In the Administration's bill, Federal regulations governing such activities would not be preempted by State regulations.

236 7. Research centers . - S. 425 would provide additional funding authorization for mining research centers through a formula grant program for existing schools of mining. This provision establishes an unnecessary new spending program, duplicates existing authorities for conduct of research, and could fragment existing research efforts already supported by the Federal government. The provision is deleted in the Administration bill.

236 8. Prohibition on mining in alluvial valley floors. - S. 425 would extend the prohibition on surface mining involving alluvial valley floors to areas that have the potential for farming or ranching. This is an unnecessary prohibition which could close some existing mines and which would lock up significant coal reserves. In the Administration's bill reclamation of such areas would be required, making the prohibition unnecessary.

236 9. Potential moratorium on issuing mining permits. - S. 425 provides for (1) a ban on the mining of lands under study for designation as unsuitable for coal mining, and (2) an automatic ban whenever such a study is requested by anyone. The Administration's bill modifies these provisions to insure expeditious consideration of proposals for designating lands unsuitable for surface coal mining and to insure that the requirement for review of Federal lands will not trigger such a ban.

236 10. Hydrologic data. - Under S. 425, an applicant would have to provide hydrologic data even where the data are already available - a potentially serious and unnecessary workload for small miners. The Administration's bill authorizes the regulatory authority to waive the requirement, in whole or in part, when the data are already available.

237 11. Variances. - S. 425 would not give the regulatory authority adequate flexibility to grant variances from the lengthy and detailed performance specifications. The Administration bill would allow limited variances - with strict environmental safeguards - to achieve specific

post-mining land uses and to accommodate equipment shortages during the interim program.

237 12. Permit fee. - The requirement in S. 425 for payment of the mining fee before operations begin could impose a large "front end" cost which could unnecessarily prevent some mine openings or force some operators out of business. In the Administration's bill, the regulatory authority would have the authority to extend the fee over several years.

237 13. Preferential contracting. - S. 425 would require that special preference be given in reclamation contracts to operators who lose their jobs because of the bill. Such hiring should be based solely on an operators reclamation capability. The provision does not appear in the Administration's bill.

237 14. Any Class of buyer. - S. 425 would require that lessees of Federal coal not refuse to sell coal to any class of buyer. This could interfere unnecessarily with both planned and existing coal mining operations, particularly in integrated facilities. This provision is not included in the Administration's bill.

237 15. Contract authority. - S. 425 would provide contract authority rather than authorizing appropriations for Federal costs in administering the legislation. This is unnecessary and inconsistent with the thrust of the Congressional Budget Reform and Impoundment Control Act. In the Administration's bill, such costs would be financed through appropriations.

237 16. Indian lands. - S. 425 could be construed to require the Secretary of the Interior to regulate coal mining on non-Federal Indian lands. In the Administration bill, the definition of Indian lands is modified to eliminate this possibility.

237 17. Interest charge. - S. 425 would not provide a reasonable level of interest charged on unpaid penalties. The Administration's bill provides for an interest charge based on Treasury rates so as to assure a sufficient incentive for prompt payment of penalties.

237 18. Prohibition on mining within 500 feet of an active mine. - This prohibition in S. 425 would unnecessarily restrict recovery of substantial coal resources even when mining of the areas would be the best possible use of the areas involved. Under the Administration's bill, mining would be allowed in such areas as long as it can be done safely.

237 19. Haul roads. - Requirements of S. 425 could preclude some mine operators from moving their coal to market by preventing the connection of haul

roads to public roads. The Administration's bill would modify this provision.

237 The attached listing shows the sections of S. 425 (or S. 7 and H.R. 25) which are affected by the above changes.

238

\*3\*LISTING OF PRINCIPAL PROVISIONS IN S. 425 (S. 7 AND H.R. 25) THAT ARE CHANGED IN THE ADMINISTRATION'S BILL

Subject	Title or section S. 425, S. 7, H.R. 25	Administration bill
Critical changes:		
1. Clarify and limit the scope of citizens suits	520	420.
2. Modify prohibition against stream siltation	515(b)(10)(B), 516(b)(9)(B).	415(b)(10)(B), 416(b)(9)(B).
3. Modify prohibition against hydrological disturbances	510(b)(3), 515(b)(10)(E).	410(b)(3), 415(b)(10)(E).
4. Provide express authority to define ambiguous terms in the act	None	601(b).
5. Reduce the tax on coal to conform more nearly with reclamation needs and eliminate funding for facilities.	401(d)	301(d).
6. Modify the provisions on impoundments	515(b)(13), 516(b)(5).	415(b)(13), 416(b)(5).
7. Modify the prohibition against mining in national forests	522(e)(2)	422(e)(2).
8. Delete special unemployment provisions	708	None.
Other important changes:		
1. Delete or clarify language which could lead to unintended "antidegradation" interpretations.	102(a) and (d)	102(a) and (c).
2. Modify the abandoned land reclamation program to (1) provide both Federal and State acquisition and reclamation with 50/50 cost sharing, and (2) eliminate cost sharing for private land owners.	Title IV	Title III.
3. Revise timing requirements for interim program to minimize		

unanticipated delays.	502(a) thru (c) 506(a).	402(a) and (b) 406(a).
4. Reduce Federal preemption of State role during interim program	502(f), 521(a)(4)	402(c), 421(a)(4).
5. Eliminate surface owner consent requirement; continue existing surface and mineral rights.	716	613.
6. Eliminate requirement that Federal lands adhere to requirements of State programs.	523(a)	423(a).
7. Delete funding for research centers	Title III	None.
8. Revise the prohibition on mining in alluvial valley floors	510(b)(5)	410(b)(5).
9. Eliminate possible delays relating to designations as unsuitable for mining.	510(b)(4), 522(c)	410(b)(4), 422(c).
10. Provide authority to waive hydrologic data requirements when data already available.	507(b)(11)	407(b)(11).
11. Modify variance provisions for certain post-mining uses and equipment shortages.	515(c)	402(d), 415(c).
12. Clarify that payment of permit fee can be spread over time	507(a)	407(a).
13. Delete preferential contracting on orphaned land reclamation	707	None.
14. Delete requirement on sales of coal by Federal lessees	5 523(e)	None.
15. Provide authority for appropriations rather than contracting authority for administrative costs.	714	612.
16. Clarify definition of Indian lands to assure that the Secretary of the Interior does not control non-Federal Indian lands.	701(9)	601(a)(9).
17. Establish an adequate interest charge on unpaid penalties to minimize incentive to delay payments.	518(d)	418(d).
18. Permit mining with 500' of an active mine where this can be done safely.	515(b)(12)	415(b)(12).
19. Clarify the		

restriction on haul roads  
from mines connecting with  
public roads.

522 (e) (4)

422 (e) (4) .

XI. MINORITY AND ADDITIONAL VIEWS

FANNIN, BARTLETT

HANSEN

McCLURE

SUPP-VIEW: XI. MINORITY AND ADDITIONAL VIEWS

MINORITY VIEWS OF SENATORS PAUL J. FANNIN AND DEWEY F. BARTLETT

The Congress in the last session and again in this current session has moved forward to preempt state laws governing reclamation of strip mined land. Why does the Congress feel this need when 32 States already require reclamation of surface mined land and of these, 25 have updated or enacted new laws since 1970? Their laws are tailored to meet the peculiar and specific climatic, geologic, geographic and other conditions which vary from state to state. Is the land not really being reclaimed under state enforcement? Where is the evil? Are some, which do, failing to combat their problems? What necessitates a federal law?

S. 7, under the guise of being a "reclamation" bill, which supposedly allows surface mining if the land can be reclaimed, is really a measure designed to preclude the mining of coal by surface mining methods in as many instances as possible. This "ban" philosophy is woven throughout the bill, from the purposes section to the surface owner consent provision.

There is a second philosophy which promotes underground mining as a substitute. Two short sections - one from the findings section and one from the purposes section - reveal this general thrust.

SEC. 101(b) - "the overwhelming percentage of the nation's coal reserves can only be extracted by underground mining methods, and it is, therefore, essential to the national interest to insure the existence of an expended and economically healthy underground coal mining industry."

SEC. 102(j) - "It is the purpose of this Act to encourage the full utilization of coal resources through the development and application of underground extraction technologies."

There are very serious implications inherent in a national policy that

promotes underground mining while limiting surface mining. There are those that would have us believe that the United States can produce more than adequate coal supplies via underground methods which will meet the anticipated increase in demand. The facts are exactly to the contrary. Surface mining recovery technology makes it possible today to realize 98% recovery of the coal being mined while the bulk of underground mining (90%) uses the "room and pillar" technique that recovers only about 55% of the coal. Today, surface mining reclamation techniques can restore the land to equal or higher uses but techniques of underground mining are still in the infant stage as well as the technology to recover more of the coal.

240 Consider the facts expressed in the following Bureau of Mines statistics:

\*4\*CHARTS  
 \*4\*I. ESTIMATED  
 COAL PRODUCTION BY  
 METHODS OF MINING  
 \*4\*[In billion  
 tons]

	Underground	Surface	Total
1972	304,103	291,284	595,000
1975	335,700	349,010	685,000
1977	360,990	394,010	755,000
1980	396,530	498,470	895,000
1985	458,870	641,130	1,100,000

Source: Division of Fossil Fuels Minerals Supply, Bureau of Mines, May 22, 1974.

\*5\*II.  
 RECOVERABLE  
 STRIPPABLE  
 RESERVES  
 \*5\*[In billion  
 tons]

	Low sulfur	Medium sulfur	High sulfur	Total
Western	29.3	1.4	0.6	31.3
Interior	.6	1.2	6.7	8.5
Eastern	1.9	1.4	1.9	5.2
Total	31.8	4.0	9.2	45.0
Percent	70.6	9.0	70.4	100

Source: Bureau of Mines.

\*6\*III.  
 DEMONSTRATED  
 COAL RESERVE  
 BASE OF THE  
 UNITED STATES  
 \*6\*[In  
 billion tons]

	Anthracite	Bituminous	Subbituminous	Lignite	Total
Mined:					
Underground:					
East	7.0	162	0	0	169.0
West	.5	31	98	0	129.0

Total	7.5	192	98	0	297.0
Surface:					
East	.5	33	0	1	34.5
West	.0	8	67	27	103.0
Total	.5	41	67	28	137.0
Grand total	7.0	233	165	28	n1 434.0

n1 Totals may not add due to rounding.

Source: Bureau of Mines.

Chart I estimates the potential coal production levels by methods of mining. Because of the vast Western coal deposits that are easily and economically recoverable, there is great potential for expanded strip mining production. By 1985 this nation can increase by 120% the coal mined in 1972 by surface mining methods, but it can only increase by 50% the amount mined from underground. Statistics also reveal that almost one third of the demonstrated coal reserves, or 137 billion tons is in beds so close to the surface that underground mining is impractical, and three-fourths of this amount is located in states west of the Mississippi River.

241 Both political parties agree that coal production must be drastically increased to lessen the pressures caused by our dependence on foreign high-priced crude oil. President Ford in his message to Congress in January 1975 called for doubling coal production to 1.2 billion tons by 1985. The Senate Majority Leader and the Speaker of the House urged this past Saturday, March 1, 1975, in the Congressional Program for Economic Recovery and Energy Sufficiency (the Democrats' response to President Ford's energy package) that coal production be increased to 1.4 billion tons by 1985 - more than doubling current production.

Even if this nation could drastically increase underground mined coal, which it cannot, an additional factor must be considered - that factor is the human one. Consider the number of lives lost due to cave-ins, black lung, explosions and all the hazards incident to underground mining. The health and safety of our miners is vital and its measure of importance is incalculable.

S. 7 implements these twin philosophies by certain techniques. First, underground mining is encouraged by specifically failing to regulate it except when it causes surface effects; by pronouncements of preference in section 101, 102, and the surface owner consent section, 716, and also by taxing surface mined coal at a higher rate than coal produced by underground mining. Next, surface mining is banned in five broad areas set out in section 122, which include the national forests, the national wilderness system, within 300 feet of a public road, park, or building. Then, surface mining is mandatorily precluded in those areas where reclamation pursuant to this stringent act is not feasible. And to cap it all, surface mining may be precluded (by being designated unsuitable) if such mining will:

(a) be incompatible with existing land use plans or programs; or

(b) affect fragile or historic lands in which such operations could result in significant damage to important historic, cultural, scientific, and esthetic values and natural systems; or

(c) affect renewable resource lands in which such operations could result in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products, and such lands to include aquifers and aquifer recharge areas; or

(d) affect natural hazard lands in which such operations could substantially endanger life and property, such lands to include areas subject to frequent flooding and areas of unstable geology.

These considerations have absolutely nothing to do with whether the land can be fully reclaimed. These are lands which will not be mined because another purpose has been given priority even if that purpose could be fully realized after the coal is mined. It may be that all land could fall into at least one of these categories.

Perhaps the most illustrative example of this "ban" philosophy is seen in section 510, the Permit Approval or Denial section. Before a mining application can be approved, the regulatory authority must find that:

(a) the assessment of the cumulative impact of all anticipated mining in the area on the hydrologic balance has been made, and the operation has been designed to prevent to the maximum extent possible (using the best available technology) irreparable offsite impacts to the hydrologic balance.

242(b) the area is not within an area designated unsuitable or is not within an area "being considered" for such designation.

(c) the surface mining operation, if located west of the one hundredth meridian west longitude, would not have a substantial adverse effect on farming or ranching operations being conducted on alluvial valley floors where they are significant to farming or ranching operations.

Stripping the legalese away, what this section means is that if the surface mining operation even temporarily alters the hydrologic balance as it is interpreted by the regulatory authority, then surface mining could be precluded. It means that such mining could be prohibited even if all the federal and state

water quality laws are fully observed. This is a de facto amendment to the Federal Water Quality laws by a committee which lacks the expertise to make the proper judgments. If the mining were to be attempted in an alluvial valley in the West, it will be precluded not because reclamation under this act cannot be achieved, but because farming or ranching operations are given preference over surface mining for coal. The paramount danger inherent in the alluvial valley issue is the extent, the scope, the dimension of the definition of "alluvial valley." During the consideration of this section in markup, the Department of Interior representatives who were present the entire time responded to the question of how much land will be included under the definition - and specifically where in the Powder River Basin of Wyoming and Montana would surface mining be precluded. The Department said it had no maps to pinpoint alluvial valleys, but that the definition in the act would preclude mining of millions of acres in the Powder River Basin and other areas in the West. For the uninitiated, the Fort Union formation in and around the Powder River Basin contains the great bulk of our entire nation's huge coal reserves.

Nearly half of this nation's coal production last year came from strip mines, and in the short run, increased coal supplies can only come from western coal, most of which can only be recovered by stripping. Time and again it has been said that coal is our "ace in the hole" and is the only domestic fuel that can relieve the pressures - national and international - caused by dependence on exorbitantly priced foreign crude oil. We will need to double coal production by 1985 to maintain any form of self-sufficiency, yet in this Congress right now, this Senate Interior Committee has voted to reduce coal production by at least 48 to 141 million tons a year or 6 to 18 percent of our total production. How can we justify to the American consumer cutting production when their utility rates are climbing out of sight?

We predict that the losses will be even greater as the ambiguous provisions of S. 7 which cannot now be quantified are resolved.

Foreseen production losses alone should be sufficient to keep this act from becoming law, but consider some other side effects: 49,980 jobs will be lost, electric utility rates will climb 10 to 16 percent, 1.7 million barrels per day of imported oil costing \$2.75 billion per year will be needed to replace lost coal production. The total economic costs to the U.S. economy will be in the range of \$6.2 billion, not counting the human misery incident to the loss of jobs.

243 The issues involved cannot be viewed in a vacuum. We must consider the

every day realities of inflation, dependence upon foreign energy sources, jobs, American security, and plain old economics. The majority of this committee expressly defeated an amendment I offered to clarify the section on stream siltation (section 515(b)(10)) which requires the administering authority to "minimize the disturbances to the prevailing hydrologic balance . . . by conducting surface coal mining operations so as to prevent additional contributions of suspended solids to the streamflow . . ." This language prohibits any increase in stream siltation and thus would preclude mining near water courses. My amendment, to add "to the maximum extent practicable", after the word "prevent", was rejected because the language was said to introduce an economic test to measure the extent of what could be done to stop siltation, and that economics are not appropriate to environmental protection. This majority analysis is a vacuum that leads to the ridiculous; we in Congress can pass laws requiring something to be done, though we know it to be impossible. Reclamation of our strip mined lands is a socially desirable goal, but the level of that reclamation has to be tied to economics unless our real intent is really to preclude surface mining of coal. The total disregard of the economic ramifications of the standards imposed in S. 7 convinces us that the act is truly intended to ban strip mining. Other committee action strengthened this conviction.

As a policy matter, the committee banned open pit mining for coal except for one mine already in existence - the Kemmerer in Wyoming. This extreme environmental decision cost the consumer - at least in 1973 production terms - four mines in Carbon County, Wyoming, at 6.5 million tons; one mine in Lewis County, Washington, at 3.2 million tons, and one mine in Alaska at 700,000 tons. As a practical matter, the de facto prohibition on new open pit operations will prevent the recovery of considerable amounts of coal in Colorado, Utah, Washington, and Wyoming because the only feasible method for mining some huge, thick, pitching seams in the West is by the prohibited open pit.

Coal will be tougher to mine in the West - if it can be done at all - because the committee refused to grant variance authority from the requirement to restore to approximate original contour as set forth in section 515(b)(3) or 515(d). The issue was whether, given all the environmental safeguards elaborated in section 515(c)(3), which includes sixteen specific environmental tests before a variance can be granted, the regulatory authority should be given flexibility in granting variances for industrial, commercial, residential, or public facilities to meet post-mining uses for the affected land.

The committee voted to allow this variance for Eastern United States strip

mining operations, but not Western. This decision defies logic unless the intent is to preclude strip mining in as many instances as possible.

Consider

this example: If the post-mining use of the western land is a planned residential community surrounding a man-made lake, the land must nevertheless be

returned to approximate original contour, even if the builder must again alter

that original contour to accommodate his project. Economics again are viewed in

a vacuum.

244 S. 425, vetoed by the President in December 1974, contained a prohibition against further leasing of federal coal until February 1, 1976. As most know, the Secretary of the Interior, faced with environmental pressure, has

not leased any federal coal in the West for over three years.

Environmentalists

claim that because there is 16.1 billion tons already under lease, there is no

need to break the current moratorium. But Bureau of Land Management figures bring relevance to the 16.1 billion tons by showing that all but four billion tons are already committed under long term contracts, are in environmentally unacceptable mining areas, or are in less than logical mining units. That in fact, of the remaining 4.01 billion tons, half is expected to be committed to contract soon, and that, thus, only approximately two billion tons of reserves

are available to meet the huge expansion dictated by our growing energy needs.

What logic is there to locking up, even for one day, coal reserves that belong

to all the people of this nation, when they must now be programmed by lease if

future energy demands are to be met? Unless, indeed, the intent is actually to

preclude surface mining of coal?

The committee rejected a House provision which exempted anthracite coal mines

from the environmental reclamation standards of section 515 and the surface effects of underground mining of section 516. The rejected provision would have

left coal mines predominately located in Pennsylvania under that state's environmental protection provisions. We believe all the states should be treated equally, just as all surface mining operations should be so treated, and

so we felt that all states should control reclamation standards. Although the

committee did not adopt this approach, we support the elimination of an exemption which would give relief to only one state and one small segment of the

surface mining industry.

In conclusion, we agree with President Ford's veto of this bill in December

1974. The committee has not made enough changes to warrant his signature and we

urge him to veto this measure again is significant changes are not made in conference. From experience, in the previous conference we see little likelihood of success. We agree with the President and with the Democratic leadership of the Congress who all call for accelerated coal production between

now and 1985. We find this bill to be the very antithesis of the policy to increase coal supplies because it is, in essence, a ban on strip mining.

We find the encouragement of underground mining at the expense of surface mining dangerous, as well as incapable of meeting the demands for additional coal. We believe our nation cannot afford this bill. It will hamstring our efforts to wean ourselves from imported crude oil, cost the consumer in higher utility rates, cost the nation blackouts and brownouts because additional coal-fired power plants will not be built, and put thousands of Americans out of work. The issue of striking a balance between reclaiming our lands and still mining the essential energy source will be moot, if this act becomes law, because the bulk of strippable coal reserves won't be mined. Every available fact points toward stripped coal as the only opportunity this nation has to become energy self-sufficient.

245 There are huge low sulfur Western coal reserves that in many instances can only be extracted by surface mining. Such a system is the safest for our miners, it is the only efficient method that can capture 98% of the resource. Coal is the only domestic fuel which we have in abundance, and only through apt regulation of surface mining on a state by state basis can we insure full and total reclamation of our precious land. Finally, 32 states have exemplary reclamation laws and much of this federal scheme was borrowed from states like Pennsylvania and Montana. So why create this Procrustean bed?

The impediments which this committee has adopted in the form of S. 7 are not in the best interests of this nation, and we only hope that if the President's veto of it cannot be sustained, the Congress will awaken and repeal it before it cripples us as an industrial nation.

PAUL J. FANNIN.

DEWEY F. BARTLETT.

247 ADDITIONAL VIEWS OF SENATOR CLIFFORD P. HANSEN

I voted with the majority to report S. 7 from Committee. It is my view that a bill to require the reclamation of mined lands is necessary. Restoration of the land to agricultural production or to other prior or better uses has my full support. I am also pleased the Committee Members retained in Section 523 the Metcalf-Hansen Amendment, which provides that the state law will prevail if state requirements for mined land reclamation are stronger than Federal

requirements.

During consideration of the bill, I stressed three points. First, the bill should guarantee reclamation of mined lands; second, it should treat surface owners fairly; and third, it should allow our nation to use its abundant supply of coal.

It is my feeling that the bill as reported fails in the second objective. In my opinion, the bill does not compensate adequately those ranchers willing to permit mining. There is little inducement, given the formula compensation in Section 716, for a rancher to rearrange his operation and/or to relocate for a surface mining operation. Ranchers and farmers deserve to be adequately compensated for permitting a disruption in their operations that might involve decades.

The failure of the second objective may necessarily result in failure of the final objective by locking up Federal coal. A lockup due to the language in Section 716 would be most regrettable in this time of critical domestic energy need.

I also have strong reservations about the ban Section 510(b)5 may place on surface mining of an undefined amount of coal "West of the one hundredth meridian west longitude." Although Section 701(27) defines "alluvial valley floors" as "unconsolidated stream laid deposits . . . ," it was generally admitted by the Committee and the Interior Department that this definition was not definitive and that alluvial valleys could encompass "millions of acres."

It is my feeling that requiring the applicant to affirmatively demonstrate, before a permit is approved, that mining on alluvial valley floors would not have a substantial adverse effect on farming or ranching operations on those valley floors is most irresponsible since the term "alluvial valleys" is undefined. This burden will be impossible if the term "alluvial valleys" remains unclear.

Placement of this particular subsection in the Permit or Denial Section may prevent consideration of reclamation. The applicant must meet the affirmative burden required in this section before reclamation may be considered. If the purpose of this act is to "assure that surface mining operations are not conducted where reclamation as required by this act is not feasible," it can be inferred that reclamation should at least be considered. If the affirmative burden is not met, reclamation cannot be considered. It is my feeling that this section should be placed in Section 515, The Environmental Protection Performance Standards Section, in order that reclamation may at least be

considered before a permit is denied.

Even if an adverse effect can be shown, if the adverse effect can be eliminated through reclamation, the surface owner should be afforded the opportunity to deny or to consent to mining on his land.

The Environmental Protection Performance Standards Section in my opinion affords adequate safeguards to protect the hydrologic integrity and land quality without creating an effective surface mining ban on alluvial valleys.

Finally, the lockup of Federal coal which could result from such an inexact definition could be substantial.

It is my feeling that at the very least this term should be defined and the precise areas affected known before this legislation becomes law.

CLIFFORD P. HANSEN.

249 ADDITIONAL VIEWS OF SENATOR JAMES A. McCLURE

S. 7 SURFACE MINING CONTROL AND RECLAMATION ACT OF 1975

The Senator Interior Committee, by unanimous voice vote of the quorum in attendance, accepted my amendment to strike Sec. 529 relating to the issuance of separate regulations for anthracite coal surface mines. Separate regulations for anthracite coal surface mines benefit the industry in a single state. I am persuaded that this exception should not be allowed. If this country is going to accept a strong environmental approach to the regulation of surface coal mining operations, we cannot in good conscience do it by accepting that provision which says in effect, "Everyone must meet the standards of this Act except one state".

If a valid case can be made for a change in part of the bill, that change should affect all the states and all the industry equally. If specific reasons can be found to change unworkable provisions of this bill requiring exemptions for a segment of the industry, let us examine them all very closely.

Provisions of the Act, Sec. 505 dealing with State Law, allows state law to prevail over federal law if the standards are higher. How can we logically, then, make a specific exemption allowing one state to have lower standards?

JAMES A. McCLURE.

## XII. 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, S. 7, 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):

SECTION 1114, TITLE 18, UNITED STATES CODE

@ 1114. Protection of officers and employees of the United States

Whoever kills any judge of the United States, any United States Attorney, any Assistant United States Attorney, or any United States marshal or deputy marshal or person employed to assist such marshal or deputy marshal, any officer or employee of the Federal Bureau of Investigation of the Department of Justice, any officer or employee of the Postal Service, any officer or employee of the secret service or of the Bureau of Narcotics and Dangerous Drugs, any officer or enlisted man of the Coast Guard, any officer or employee of any United States penal or correctional institution, any officer, employee or agent of the customs or of the internal revenue or any person assisting him in the execution of his duties, any immigration officer, any officer or employee of the Department of Agriculture or of the Department of the Interior designated by the Secretary of Agriculture or the Secretary of the Interior to enforce any Act of Congress for the protection, preservation, or restoration of game and other wild birds and animals, any employee of the Department of Agriculture designated by the Secretary of Agriculture to carry out any law or regulation, or to perform any function in connection with any Federal or State program or any program of Puerto Rico, Guam, the Virgin Islands of the United States, or the District of Columbia, for the control or eradication or prevention of the introduction or dissemination of animal diseases, any officer or employee of the National Park Service, any officer or employee of, or assigned to duty, in the field service of the Bureau of Land Management, any employee of the Bureau of Animal Industry of the Department of Agriculture, or any officer or employee of the Indian field service of the United States, or any officer or employee of the National Aeronautics and Space Administration directed to guard and protect property of the United States under the administration and control of the National Aeronautics and Space Administration, any security officer of the Department of State or the Foreign Service, or any officer or employee of the Department of Health, Education, and Welfare or of the Department of Labor or the Department of the Interior assigned to perform investigative, inspection, or law enforcement functions, while engaged in the performance of his official duties, or an account of the performance of his official duties,

252 shall be punished as provided under sections 1111 and 1112 of this title. (June 25, 1958, ch. 645, 62 Stat. 756; May 24, 1949, ch. 139, @ 24, 63

Stat. 93; Oct. 31, 1951, ch. 655, @ 28, 65 Stat. 721; June 27, 1952, ch. 477, title IV, @ 402(c), 66 Stat. 276; July 29, 1958, Pub.L. 85-568, title III, @ 304(d), 72 Stat. 434; July 2, 1962, Pub.L. 87-518, @ 10, 76 Stat. 132; Aug. 27, 1964, Pub.L. 88-493, @ 3, 78 Stat. 610; July 15, 1965, Pub.L. 89-74, @ 8(b), 79 Stat. 234; Aug. 2, 1968, Pub.L. 90-449, @ 2, 82 Stat. 611; Aug. 12, 1970, Pub.L. 91-375, @ 6(j)(9), 84 Stat. 777; Oct. 27, 1970, Pub.L. 91-513, title II, @ 701(i)(1), 84 Stat. 1282; Dec. 29, 1970, Pub.L. 91-596, @ 17(h)(1), 84 Stat. 1607.)