

NCSA

NATIONAL CRUSHED STONE ASSOCIATION

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December 17, 1965

Letter No. 35

To NCSA Active Members and other Crushed Stone Producers

H. R. 8989 - FEDERAL METAL AND NONMETALLIC
MINE SAFETY BILL

Gentlemen:

The crushed stone and other mining interests strongly and forthrightly oppose HR 8989, the Federal Metal and Nonmetallic Mine Safety Bill. This measure, under the guise of an alleged need for Federal safety legislation, would needlessly impose costly and burdensome provisions on mine and quarry operators through the discretionary action of the Secretary of the Interior, without any basic restrictions on his considerable authority or standards for its exercise. While HR 8989 has been amended to permit the states to regulate and enforce their state safety standards equivalent to Federal requirements, the pressure for the adoption of more stringent regulations and enforcement procedures will ever be present.

We believe the mining industries can be regulated best and without Federal help by state authorities who are familiar with the diverse factors affecting mining operations in their particular state, e.g., climate, geological formations, kinds of metals and minerals available, the conditions under which mining must be conducted, interrelation of the impact of the regulations on different types of mining operations, the effect on local employment, etc.

Moreover, whatever the merits of Federal safety regulations, the authority to impose and enforce them should not be so unlimited as is proposed in HR 8989, which would give the Secretary of the Interior unbridled authority and discretion without any legislative standards or restrictions. Under this bill he would literally have life or death power over quarries.

We need your help! With this letter are the following enclosures in the order listed.

Mine Safety Bill Amendments Fail to Remove Objectionable Features
(legal analysis of objectionable features of HR 8989)

House Committee on Education and Labor Summary of Provisions of
HR 8989 (released before House amendments)

Summary of Amendments Accepted by House on Sept. 2, 1965

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Copy of HR 8989 - The Federal Metal and Nonmetallic Mine Safety Bill
(approved by House of Representatives on Sept. 2, 1965)

To gain an insight into the effect of HR 8989 on your business we urge your careful consideration of the legal analysis and bill's provisions. A brief review of the House Education and Labor Committee summary and the amendments approved by the House will reveal the objections raised by mining interests have been heard but that the bill is still fundamentally objectionable since it fosters the development and application of Federal standards when more effective and applicable regulations and enforcement procedures can be developed by the states to meet their individual conditions and requirements.

The Senate Subcommittee on Labor is scheduled to hold hearings on HR 8989 early next year. The full Committee on Labor and Public Welfare will then consider the measure before Senate action.

The basic objections outlined in this letter and in the enclosed materials should be kept in mind in your contacts with your Senators and your Representatives (the latter will be called upon to consider HR 8989 again if the Senate makes any changes in the bill).

Many Senators and Representatives are home for the Holiday Season. You can increase the effectiveness of your contacts if you present your views to them personally before they return to Washington early in January.

Our industry has good reason to be proud of its safety record, accomplished as it has been largely by operator initiative and entirely without the prod of Federal legislation! HR 8989 is entirely unnecessary and can be both cumbersome and costly to your company if enacted. Now is the time to act!

Cordially,



W. L. Carter
Executive Director

WLC/gth
Encls.

Senate Committee on Labor and Public Welfare

Democrats

Lister Hill, of Alabama
Patrick V. McNamara, of Michigan
Wayne Morse, of Oregon
Ralph W. Yarborough, of Texas
Joseph S. Clark, of Pennsylvania
Jennings Randolph, of West Virginia
Harrison A. Williams, Jr. of New Jersey
Claiborne Pell, of Rhode Island
Edward M. Kennedy, of Massachusetts
Gaylord Nelson, of Wisconsin
Robert F. Kennedy, of New York

Republicans

Jacob K. Javits, of New York
Winston L. Prouty, of Vermont
Peter H. Dominick, of Colorado
George Murphy, of California
Paul J. Fannin, of Arizona

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Prepared for: NATIONAL CRUSHED STONE ASSOCIATION
By: Gall, Lane and Powell, Washington, D. C.

MINE SAFETY BILL AMENDMENTS FAIL
TO REMOVE OBJECTIONABLE FEATURES

Before passing the Federal Metal and Nonmetallic Mine Safety Bill (H. R. 8989), the House of Representatives adopted several amendments to the Bill which had been sponsored by Congressman Aspinall. */ Those amendments, however, were directed primarily to the right of the states to conduct their own mine safety inspection programs and, as such, left uncorrected most of the objectionable features of the Bill which would make its application to stone producers' operations so onerous.

Thus, the Bill still authorizes the Secretary of Interior to develop and issue "mandatory standards" subject only to the requirement that such standards "deal with conditions or practices which could cause death or serious physical harm." Since it is possible to reason that almost any condition or practice "could" produce such a result, it is plain that the Bill still does not impose any meaningful limitation upon the Secretary's authority in this respect. Yet stone producers would be required to comply with these "mandatory standards" or have their operations shut down until they did so. Moreover, no state-conducted inspection program could be approved for substitution for the federal program unless the state standards were at least as strict as the Secretary's standards. For this reason, the right given to the states by the amendments to appeal the Secretary's refusal to approve a state program is virtually meaningless to the individual stone producer since, in any event, he will be required to comply with standards which are at least as strict as the Secretary's.

Similarly, the amended Bill still does not provide adequate educational or practical experience requirements for the individuals who will actually inspect the quarries and mines. The amended Bill now provides that, "to the maximum extent feasible," no person is to be selected as an inspector "unless he has the basic qualification of at least five years' practical mining experience" and that:

"(I)n assigning mine inspectors to the inspection and investigation of individual mines, due consideration shall be given to their previous practical experience in the State, district, or region, where such inspections are to be made."

*/ See NCSA Letter No. 26 (September 10, 1965)

(continued)

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This language does represent an improvement over the original Bill which did not establish any requirements whatever to be met by inspectors. However, it still does not protect a stone producer from the possibility of having his operations inspected and, perhaps, shut down by an individual who, because his "practical mining experience" was gained in another type of mining, has never been in a quarry before! Moreover, this language provides no assurance that the individual's "experience" was of such a nature as to, in any way, make him capable of conducting a competent inspection. Yet this individual could shut down quarries or mines for extended periods of time based solely on his determination, and his alone, that there was a danger existing which could cause death or serious physical harm.

Nor does the amended Bill provide an affected producer with the opportunity for an independent review of the facts upon which the order shutting down his operation is based. Rather, the Secretary's findings of fact supporting withdrawal orders would be binding upon the Courts. Moreover, the producer seeking the limited Court review which is available would be required to pay the entire cost of having the record from which he is appealing prepared for the Court.

Likewise, the amended Bill still does not prevent the possibility from arising that health and safety standards developed by the Secretary might be relied upon in law suits brought by injured employees or other persons claiming that a stone producer had been guilty of negligence and should be held liable for their injuries.

Finally, the amended Bill still does not place any meaningful restriction upon the release of information which is developed by the mine inspections or from the reports which operators would be required to submit. As a result, an inspector could, with impunity, furnish information concerning a mine or quarry to a union which is interested in organizing the operator's employees. What is more, such information would not necessarily have to be related to health and safety conditions at the mine or quarry.

As the foregoing makes plain, H. R. 8989, even as amended, would still be highly objectionable and undesirable in its potential application to stone producers' operations. It underscores, moreover, the necessity for continued opposition to the Bill.

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COPY

Committee on Education and Labor
(Summary of Provisions as Approved
by this Committee Before House Action)

H. R. 8989
(AS AMENDED)

FEDERAL METAL AND NONMETALLIC MINE SAFETY ACT
OF 1965

Purpose

The purpose of this bill is to reduce the high accident rate and improve health and safety conditions in the mining and milling operations carried on in the metal and nonmetallic industries.

Summary of Major Provisions

1. Scope of coverage

The bill covers every "mine" whose products regularly enter commerce or whose operations affect commerce. The term "mine" is defined to mean an area of land from which minerals other than coal and lignite are extracted in non-liquid form or, if in liquid form, are extracted with workers underground. The term is also defined to include private roads appurtenant to such an area of land, excavations, underground passageways and workings, and structures and equipment used in extracting minerals or in milling them.

As this definition indicates, coal and lignite, which are already covered by the Federal Coal Mine Safety Act, are not embraced by this bill. Nor does coverage of this bill extend to petroleum or any mineral extracted in liquid form from the earth (unless through the employment of workers underground).

2. Reporting by mine operators

Operators of mines subject to the proposed act will be required to submit reports to the Secretary of the Interior, at least annually, of accidents, injuries, occupational diseases, and related data. The Secretary may require such reports, if he believes it necessary, at more frequent intervals. The Secretary, in turn, is required to analyze and publish in summary or detailed form the information obtained, and make all information obtained available for public inspection.

3. Federal inspection - general

The Secretary is authorized to make any inspections and investigations he believes to be necessary, at any time, of mines subject to the act, for the purposes of obtaining information relating to health and safety, of determining whether health and safety standards or orders issued under the act are being observed, and of evaluating the manner in which an approved State plan (see below) is being carried out.

4. Federal inspection of underground mines

The Secretary is required to inspect, at least annually, each underground mine subject to the act, except mines located in States with approved State plans.

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5. Development of health and safety standards

The Secretary is directed to develop and publish health and safety standards for mines subject to the act. He must appoint advisory committees to assist him in developing these standards, and any such advisory committee must include, in equal numbers, representatives of workers and mine operators, and must also include at least one representative of a State mine inspection or safety agency.

6. Mandatory standards and their enforcement

Each of these health and safety standards which deals with "conditions or practices which could cause death or serious physical harm" must then be designated by the Secretary as a "mandatory" standard. The Secretary must consult with an advisory committee before making such a designation.

In those States which do not have an approved State plan, the Secretary is directed to enforce these designated mandatory standards upon all mine operators subject to the act. If inspection reveals a condition or practice which could cause death or serious physical harm "before the imminence of such danger can be eliminated," the Secretary must issue an order forbidding the presence of any persons in the area in which the danger exists, other than those whose presence there is necessary in order to eliminate the danger. If, however, the mine operator's violation of a mandatory standard has not created an immediate or imminent danger of death or serious physical harm, then the Secretary shall fix a reasonable time for abatement of the violation. If the violation is not abated within the time fixed, including any extension of time that may be granted, the Secretary must then issue an order forbidding the presence of any persons in the area in which danger caused by the violation exists, other than those whose presence there is necessary to eliminate the danger.

Orders may be appealed to the Secretary by a mine operator, and the Secretary must afford the operator opportunity for a hearing. A final order made by the Secretary, after appeal, may then be appealed by the operator to a U.S. court of appeals. The court must accept as conclusive the findings of the Secretary as to facts, if his findings are supported by substantial evidence on the record considered as a whole.

The enforcement provisions do not become effective until 1 year after the date of enactment of the act.

7. Delegation of authority to the States

Any State may submit to the Secretary a plan under which the State's own mine inspection or safety agency proposed to assume responsibility for development and enforcement of health and safety standards in those mines located in the State which are subject to the act.

The Secretary is required to approve any such plan submitted by a State, if it meets certain specified conditions. Among these conditions are: (1) The State plan must provide for inspection, at least annually, of all mines subject to the act, above ground as well as below - except quarries and sand and gravel pits; (2) it must provide for the enforcement of health and safety standards which will be "substantially as effective" as the mandatory standards designated by the Secretary of the Interior; (3) it must promise that the State will provide the funds and the qualified personnel necessary for satisfactory enforcement of such standards; (4) it must specify

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satisfactory measures to be taken by the State agency to guard against loss of life or damage to property - e.g., from cave-ins or fires-arising from mines which are closed or abandoned after the act becomes effective.

The Secretary is required to make a continuing evaluation of the manner in which each approved State plan is being carried out. His evaluation must be made, in part, on the basis of his own inspection of mines in each State with such an approved plan. If he finds-after giving the state opportunity for a hearing-a substantial failure on the part of a State to carry out satisfactorily its plan, he must cancel his approval of the plan.

So long as an approved State plan is in effect, the Secretary has no direct authority to enforce mine health and safety standards in that State. Enforcement power rests exclusively with the State. The Secretary retains, however, his authority to inspect mines in the State.

8. Criminal penalties

In those States which do not have an approved State plan in effect, mine operators are made liable to criminal penalties (fines of \$100 to \$3,000 and imprisonment of up to 60 days), upon conviction in Federal court of one specified offense. This offense is: violation of, or refusal or failure to comply with, an order of withdrawal and debarment of persons from a mine or designated area of a mine, if - at the time the order of withdrawal and debarment is made - a danger exists "that could cause death or serious physical harm in such mine immediately or before the imminence of such danger can be eliminated."

9. Education and training

The Secretary is directed to develop expanded programs of health and safety education and training for mine operators, managers, supervisors, and rank-and-file employees in mines covered by the act.

10. Administration

The Secretary is directed to vest the major responsibility for administering the act in the agency of the Department of the Interior which has the major responsibility for administering the Federal Coal Mine Safety Act.

11. Appropriations

Authorization is given for the appropriation of such funds as may be necessary to carry out the provisions of the act.

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SUMMARY OF THE AMENDMENTS TO H. R. 8989

ACCEPTED ON THE FLOOR OF THE HOUSE OF REPRESENTATIVES

Sept. 2, 1965

1. Section 3 of the bill was amended to stipulate that "mines", as defined in the bill, whose operations "substantially" affect commerce will be subject to the Act. Before amendment, the bill extended coverage to all mines whose operations "affect commerce."

The practical effect of this amendment is difficult to assess. It may cause the exclusion from coverage of some small mines, quarries, sand and gravel pits, and mills, whose operations will be considered to "affect commerce," but not substantially."

2. Section 13(a) was amended to stipulate that a state, "at any time" may submit to the Secretary of the Interior its plan for development and enforcement of mine safety standards.

Insertion of the phrase "at any time" makes it clear that a state does not forego all later opportunity to establish its own mine safety plan in lieu of Federal enforcement by failing to submit such a plan at an early date after this Act becomes effective.

3. Section 13(b) was amended to omit the phrase "in the judgement of the Secretary," from the sentence which read: "The Secretary shall approve the plan submitted by a State . . . if, in the judgment of the Secretary, such plan . . ."

It was necessary to eliminate this phrase in view of the next amendment described below.

4. Section 13 was further amended by the incorporation of a new subsection, 13(d). This was the major amendment, of those accepted on the Floor. This amendment takes away from the Secretary of the Interior the final authority to refuse approval to, or withdraw approval from, a state plan. It provides the state a right of appeal to the Federal courts from an adverse decision of the Secretary with respect to the adequacy of the state plan or the adequacy of the manner in which it is being carried out by the state.

Specifically, the state may file an appeal with the appropriate United States Circuit Court of Appeals no later than sixty days after notice of the Secretary's final decision. However, the court must accept the Secretary's finding of fact as conclusive, if these findings are supported by "substantial evidence." Nevertheless, if "good cause" is shown, the court may remand the case to the Secretary, with the instructions that he take further evidence. Such remanding of the case may or may not lead the Secretary to make new or modified findings of fact, or to even modify his previous decision. Any new or modified findings of fact, by the Secretary must also be accepted by the court as conclusive, if supported by substantial evidence.

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The Circuit Court, after hearing the appeal, is given the authority to affirm the decision of the Secretary, or to set it aside, in whole or in part. The practical effect of a decision by the Circuit Court to set aside, entirely, the Secretary's action in refusing approval of a state plan submitted to him would be to put that state plan into operation, and thereby exempt mines in that state from direct Federal mine safety enforcement authority.

Both parties - i.e., the Secretary and the state - may file an appeal with the United States Supreme Court against the decision of the Circuit Court. If the Supreme Court, however, does not decide to review the case, the judgment of the Circuit Court will be final.

5. Section 14 is amended to specify that the Secretary of the Interior has authority to appoint those who are to administer the Act. However, such appointments must be made: (1) "subject to the civil service laws" (2) by the Secretary "acting through" that agency of the Department of the Interior "which has the major responsibility for carrying out the Federal Coal Mine Safety Act" - namely, the Bureau of Mines.

The effect of this amendment is to make clear that mine inspectors and other Federal employees selected to administer this Act must be appointed under civil service and through the Bureau of Mines.

6. Section 14 is also amended to require that those appointed as mine inspectors, of mines covered under this Act, shall - "to the maximum extent feasible" - have had at least five years of "practical mining experience."

7. Section 14 is further amended to direct the Secretary, in his assignment of a mine inspector to specific mines, to give "due consideration" to the inspector's "previous practical experience" in the state, district, or region whose mines he is assigned to inspect.

The obvious intention of this amendment is to assure, where reasonably feasible, that a mine will not be inspected by a Federal inspector who has had little or no previous familiarity with the mining operations of the particular area in which the mine is located.

8. Section 17 is amended to change the effective dates of certain parts of the Act.

The amendment postpones, until one year after the date of publication in the Federal Register of mandatory mine health and safety standards, the power of the Secretary to issue a notice to a mine operator requiring the abatement of a violation of such a standard or to issue an order of withdrawal and debarment of persons from a mine where the Secretary finds an imminent danger of death or serious physical harm exists. In addition, these powers of the Secretary cannot be exercised in any state within less than ninety days after the adjournment of the next regular session of the state legislature which convenes after the date of publication of the mandatory standards in the Federal Register.

Before this amendment, H.R. 8989 had simply provided that these powers of the Secretary were to become effective one year after the date of enactment of the Act. This provision impliedly instructed the Secretary that it was his responsibility to assure that the mandatory standards were designated within one year after the date of enactment.

The extent to which this amendment will postpone the effective date of the Secretary's powers to issue abatement notices and orders of withdrawal and debarment will depend upon the time lag between the enactment of the Act and the designation of mandatory standards, as well as upon the timing of legislative sessions in the individual states - particularly in those states whose legislatures meet only biennially. To illustrate what would be presumably an extreme possibility for postponement of Federal enforcement power: Assume an 18-month lag between the date of enactment of the Act and the date of publication in the Federal Register of the mandatory health and safety standards which the Secretary must develop in consultation with advisory committees. Assume that the next regular session of the legislature of State X, a state whose legislature meets biennially, does not convene until 18 months after the Federal Register publication date, and that the legislative session lasts four months. In this hypothetical extreme case, a total of 43 months or three years and seven months would elapse between the date of enactment of the Act and the date at which Federal mine inspectors would acquire the authority, in State X, to issue notices of abatement or orders to withdraw and debar persons from mines where an immediate or imminent danger of death or serious physical harm is found to exist.

The purpose of delaying the effective date until ninety days after the close of the next state legislative session is to give the state legislature the opportunity - if it decides to avail itself of the opportunity - to look at the mandatory standards designated by the Secretary, take action to pass any new legislation that may be required for establishment of a state inspection and enforcement plan to be presented for the Secretary's approval, and to appropriate the money that will be necessary in order to have the state plan carried out to the Secretary's satisfaction. Since an approved plan, among other things, has to "provide for the development and enforcement of health and safety standards...which are or will be substantially as effective ...as the mandatory standards" designated by the Secretary, it is not unreasonable to require that a substantial amount of time be given a state, after it has learned what these mandatory standards are to be, in which to decide whether it wishes to develop and finance a state plan embodying substantially as effective standards.

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89th Congress
1st Session

H. R. 8989

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IN THE SENATE OF THE UNITED STATES

September 7, 1965

Read twice and referred to the Committee on Labor and Public Welfare

AN ACT

To promote health and safety in metal and nonmetallic mineral industries,
and for other purposes.

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

Sec. 2 For the purposes of this Act:

(a) The term "commerce" means trade, traffic, commerce, transportation, or communication between any State, the Commonwealth of Puerto Rico, the District of Columbia, or any territory or possession of the United States, and any other place outside the respective boundaries thereof, or wholly within the District of Columbia, or any territory or possession of the United States, or between points in the same State, if passing through any point outside the boundaries thereof.

(b) The term "mine" means (1) an area of land from which minerals other than coal or lignite are extracted in nonliquid form or, if in liquid form, are extracted with workers underground, (2) private ways and roads appurtenant to such area, and (3) land, excavations, underground passageways, and workings, structures, facilities, equipment, machines, tools, or other property, on the surface or underground, used in the work of extracting such minerals other than coal or lignite from their natural deposits in nonliquid form, or if in liquid form, with workers underground, or used in the milling of such minerals, except that with respect to protection against radiation hazards such term shall not include property used in the milling of source material as defined in the Atomic Energy Act of 1954, as amended.

(c) The term "operator" means the person, partnership, association, or corporation, or subsidiary of a corporation operating a mine, and owning the right to do so, and includes any agent thereof charged with responsibility for the operation of such mine.

(d) The term "Secretary" means the Secretary of the Interior or his duly authorized representative.

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Sec. 3. Each mine the products of which regularly enter commerce, or the operations of which substantially affect commerce, shall be subject to this Act.

Sec. 4. The Secretary of the Interior is authorized at any time to cause to be made such inspections and investigations as he shall deem necessary in mines which are subject to this Act (1) for the purpose of obtaining, utilizing, and disseminating information relating to health and safety conditions in such mines, the causes of accidents involving bodily injury or loss of life, or the causes of occupational diseases originating therein, (2) for the purpose of determining whether or not there is compliance with a health and safety standard or order issued under this Act, or (3) for the purpose of evaluating the manner in which a State plan approved under section 13(b) is being carried out. At least once each calendar year the Secretary shall inspect each underground mine which is subject to this Act, except mines located in States having in effect State plans approved under section 13(b).

Sec. 5. For the purpose of making any inspection or investigation authorized by this Act, authorized representatives of the Secretary shall be entitled to admission to, and shall have the right of entry to, upon, or through, any mine which is subject to this Act.

Sec. 6. (a) The Secretary shall develop, and from time to time revise, after consultation with advisory committees appointed pursuant to section 7 of this Act, and promulgate health and safety standards for the purpose of the protection of life, the promotion of health and safety, and the prevention of accidents in mines which are subject to this Act.

(b) After consultation with an appropriate advisory committee established pursuant to section 7 of this Act, the Secretary, by a notice published in the Federal Register, shall designate as mandatory standards those standards promulgated pursuant to subsection (a) of this section which deal with conditions or practices which could cause death or serious physical harm, and the operators of mines to which such standards are applicable shall comply with such mandatory standards pursuant to the provisions of section 8 and section 9 of this Act.

(c) The provisions of section 4 of the Administrative Procedure Act (5 U.S.C., sec. 1003) shall be applicable with respect to the promulgation of health and safety standards, and to the designation of any standard as a mandatory standard.

Sec. 7. (a) The Secretary is authorized to establish advisory committees to assist him in the development of health and safety standards for mines which are subject to this Act, and to advise him on other matters relating to health and safety in such mines. Each such advisory committee shall include among

its members an equal number of persons qualified by experience and affiliation to present the viewpoint of operators of such mines, and of persons similarly qualified to present the viewpoint of workers in such mines as well as one or more representatives of mine inspection or safety agencies of the States.

(b) Members appointed to such a committee from private life shall, while serving on business of the committee, be entitled to receive compensation at rates fixed by the Secretary, but not exceeding \$100 per day, including travel time; and while so serving away from their homes or regular places of business, they may be paid travel expenses and per diem in lieu of subsistence at the rates authorized by section 5 of the Administrative Expenses Act of 1946 (5 U.S.C. sec. 73b-2)

Sec. 8. (a) If, upon any inspection or investigation of a mine which is subject to this Act an authorized representative of the Secretary finds that conditions or practices in such mine are such that a danger exists which could cause death or serious physical harm immediately or before the imminence of such danger can be eliminated, such representative shall determine the extent of the area of such mine throughout which the danger exists, and thereupon issue an order requiring the operator of such mine to cause all persons, except those persons whose presence in such area is necessary to eliminate the danger described in such order, to be withdrawn from, and to be debarred from, entering such area.

(b) If, upon any such inspection or investigation, an authorized representative finds that there has been a failure to comply with a mandatory standard which is applicable to such mine, but that such failure to comply has not created a danger that could cause death or serious physical harm in such mine immediately or before the imminence of such danger can be eliminated, he shall find what would be a reasonable period of time within which such violation should be totally abated and thereupon issue a notice fixing a reasonable time for the abatement of the violation. If, upon the expiration of such period of time as originally fixed or extended, the authorized representative finds that such violation has not been totally abated, and if he also finds that such period of time should not be further extended, he shall also find the extent of the area which is affected by such violation. Thereupon, he shall promptly make an order requiring the operator of such mine to cause all persons in such area, excepting such persons whose presence in such area is necessary to eliminate the danger described in the order to be withdrawn from, and to be debarred from, entering such area.

(c) Findings and orders issued pursuant to this section shall contain a detailed description of the conditions or practices which cause and constitute a situation of imminent danger or a violation of a mandatory standard, and a description of the area of the mine throughout which persons must be withdrawn and debarred.

(continued)

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Sec. 9. (a) Each finding made and notice or order issued under section 8 of this Act shall be given promptly to the operator of the mine to which it pertains by the person making such finding or order, and all such findings, orders, and notices shall be in writing, and shall be signed by the person making them. A notice or order issued pursuant to section 8 of this Act may be annulled, cancelled, or revised by an authorized representative of the Secretary.

(b) An operator notified of an order may appeal to the Secretary for annulment or revision of such order, and the Secretary shall issue regulations providing for such appeals which shall include due notice and opportunity for a hearing.

(c) Any final order made by the Secretary on appeal shall be subject to judicial review by the United States court of appeals for the circuit in which the mine affected is located, upon the filing in such court of a notice of appeal by the operator aggrieved by such final order within twenty days from the date of the making of such final order.

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

(e) The court shall hear such appeal on the record made before the Secretary, and shall permit argument, oral or written, or both, by both parties.

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

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

Sec. 10. The Secretary shall require operators of mines which are subject to this Act to submit, at least annually and at such other times as he deems necessary, and in such form as he may prescribe, reports of accidents

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injuries, and occupational diseases, and related data, and the Secretary shall compile, analyze, and publish, either in summary or detailed form, the information obtained; and all information, reports, orders or findings, obtained or issued under this Act may be published and released to any interested person, and shall be made available for public inspection.

Sec. 11. (a) Whenever any operator (1) violates or fails or refuses to comply with any order of withdrawal and debarment issued under section 8 or section 9 of this Act, or (2) interferes with, hinders, or delays the Secretary, or his duly authorized representative, in carrying out his duties under this Act, or (3) refuses to admit an authorized representative of the Secretary to any mine which is subject to this Act, or (4) refuses to permit the inspection or investigation of any mine which is subject to this Act, or of an accident, injury, or occupational disease occurring in or connected with such a mine or (5) being subject to the provisions of section 10 of this Act, refuses to furnish any information or report requested by the Secretary, a civil action for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order, may be instituted by the Secretary in the district court of the United States for the district in which the mine in question is located or in which the mine operator has its principal office.

(b) Whoever violates or fails or refuses to comply with an order of withdrawal and debarment issued (1) under subsection (a) of section 8 or (2) under subsection (b) of section 8 if the failure to comply with an order of abatement has created a danger that could cause death or serious physical harm in such mine immediately or before the imminence of such danger can be eliminated, shall upon conviction thereof be punished for each such offense by a fine of not less than \$100, or more than \$3,000, or by imprisonment not to exceed sixty days, or both. In any instance in which such offense is committed by a corporation, the officer or authorized representative of such corporation who knowingly permits such offense to be committed shall, upon conviction, be subject to the same fine or imprisonment, or both.

Sec. 12. The Secretary shall develop expanded programs for the education and training of employers and employees in the recognition, avoidance, and prevention of accidents or unsafe or unhealthful working conditions in mines which are subject to this Act.

Sec. 13. (a) Any State which, at any time, desires to assume responsibility for development and enforcement of health and safety standards in mines located in the State which are subject to this Act shall submit, through a State mine inspection or safety agency, a State plan for the development of such standards and their enforcement.

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(b) The Secretary shall approve the plan submitted by a State under subsection (a), or any modification thereof, if such plan-

(1) designates the State agency submitting such plan as the sole agency responsible for administering the plan throughout the State.

(2) provides for the development and enforcement of health and safety standards for the purpose of the protection of life, the promotion of health and safety, and the prevention of accidents in mines in the State which are subject to this Act, which are or will be substantially as effective for such purposes as the mandatory standards designated under section 6 (b) and which provide for inspection at least annually of all such mines, other than quarries and sand and gravel pits,

(3) contains assurances that such agency has, or will have, the legal authority and qualified personnel necessary for the enforcement of such standards,

(4) gives assurances that such State will devote adequate funds to the administration and enforcement of such standards,

(5) contains reasonable safeguards against loss of life or property arising from mines which are closed or abandoned after the effective date of this Act,

(6) provides that the State agency will make such reports to the Secretary, in such form and containing such information, as the Secretary shall from time to time require.

(c) The Secretary shall, on the basis of reports submitted by the State agency and his own inspection of mines, make a continuing evaluation of the manner in which each State having a plan approved under this section is carrying out such plan. Whenever the Secretary finds, after affording due notice and opportunity for a hearing, that in the administration of the State plan there is a failure to comply substantially with any provision of the State plan (or any assurance contained therein), he shall notify the State agency of his withdrawal of approval of such plan and upon receipt of such notice such plan shall cease to be in effect.

(d) (1) If any State is dissatisfied with the Secretary's final action with respect to the approval of its State plan submitted under subsection (a) or with his final action under the second sentence of subsection (c), such State may, within sixty days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for

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review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which he based his action, as provided in section 2112 of title 28, United States Code.

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

(3) The court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(e) The provisions of sections 8 and 9, and of subsection (b) and paragraph (1) of subsection (a) of section 11 of this Act shall not be applicable in any State in which there is in effect a State plan approved under subsection (b).

Sec. 14. The Secretary shall provide that the major responsibility for administering the provisions of this Act shall be vested in the agency of the Department of the Interior which has the major responsibility for carrying out the Federal Coal Mine Safety Act. The Secretary acting through this agency, shall have authority to appoint, subject to the civil service laws, such officers and employees as he may deem requisite for the administration of this Act; and to prescribe powers, duties and responsibilities of all officers and employees engaged in the administration of this Act: Provided, however, That, to the maximum extent feasible, in the selection of persons for appointment as mine inspectors, no person shall be so selected unless he has the basic qualification of at least five years practical mining experience and in assigning mine inspectors to the inspection and investigation of individual mines, due consideration shall be given to their previous practical experience in the State, district, or region, where such inspections are to be made.

Sec. 15. Except as provided in subsection (c) of section 6 of this Act the Administrative Procedure Act shall not apply to the making of any finding, order, or notice pursuant to this Act, or to any proceeding for the annulment or revision of any such finding, order, or notice.

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Sec. 16. There are authorized to be appropriated out of any moneys in the Treasury, not otherwise appropriated, such sums as may be necessary to carry out the provisions of this Act.

Sec. 17. This Act shall become effective on the date of its enactment, except that sections 8 and 9, and subsection (b) and paragraph (1) of subsection (a) of section 11 shall become effective one year after the date of publication of notice in the Federal Register of the designation of mandatory standards as provided for in section 6 (b) of this Act: Provided, however, That sections 8 and 9, and subsection (b) and paragraph (1) of subsection (a) of section 11 shall not become effective with respect to any State sooner than ninety days following adjournment of the next regular session of the legislature of such State convening after the date of publication of notice in the Federal Register of the designation of mandatory standards as provided for in section 6 (b) of this Act.

Passed the House of Representatives September 2, 1965.

Attest: RALPH R. ROBERTS,
 Clerk

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