The original documents are located in Box 48, folder "7/3/76 S391 Federal Coal Leasing Act of 1975 (vetoed) (2)" of the White House Records Office: Legislation Case Files at the Gerald R. Ford Presidential Library.

THE WHITE HOUSE

WASHINGTON

July 2, 1976

MEMORANDUM FOR: JIM CAVANAUGH

FROM: MAX L. FRIEDERSDORF

SUBJECT: S. 391 - Federal Coal Leasing Amendments Act of 1975

The Office of Legislative Affairs concurs with the agencies that the

I recommend S. 391 be vetoed. House passage was by 344-51; Senate passage by 84-12. It appears unlikely a veto can be sustained.

Attachments

Judy Johnston

THE WHITE HOUSE

WASHINGTON

July 3, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: JIM CANNON

SUBJECT: S. 391

The Domestic Council recommends veto.

The administrative procedures and regulations set up by Interior on January 29 provide the incentives, proper controls and necessary flexibility to produce coal.

The rigidity and arbitrary nature of the procedures and rules of S. 391 would create vast paperwork, more Federal bureaucracy, and unnecessary delays in leasing.

S. 391 is more big government. It should not become law.

cc: James T. Lynn

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.:

Date: July 2 Time: 430pm

FOR ACTION: Jack Marsh
Robert Hartmann
Phil Buchen
Glenn Schleede
George Humphreys
Max Friedersdorf

cc (for information): Jim Cavanaugh
Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: July 2 Time: as soon as possible today since Saturday, July 3 is last day for action

SUBJECT:

S. 391 - Federal Coal Leasing

ACTION REQUESTED:

____ For Necessary Action ____ For Your Recommendations

____ Prepare Agenda and Brief ____ Draft Reply

x
____ For Your Comments ____ Draft Remarks

REMARKS:

please return to Judy Johnston, Ground Floor West Wing

DISAPPROVE
G.H.

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon
For the President

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.:

Date: July 2 Time: 430pm

FOR ACTION: Jack Marsh
Robert Hartmann
Phil Buchen
Glenn Schleede
George Humphreys
Max Friedersdorf

cc (for information): Jim Cavanaugh
Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: July 2 Time: as soon as possible

SUBJECT: ~~today since Saturday~~, July 3 is last day for action

S. 391 - Federal Coal Leasing Amendments of 1975

ACTION REQUESTED:

____ For Necessary Action ____ For Your Recommendations

____ Prepare Agenda and Brief ____ Draft Reply

x
____ For Your Comments ____ Draft Remarks

REMARKS:

please return to Judy Johnston, Ground Floor West Wing

Recommend Veto

Ed Schmults 7/2/76

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon
For the President

OFFICE OF MANAGEMENT AND BUDGET

ASSOCIATE DIRECTOR
FOR NATURAL RESOURCES, ENERGY AND SCIENCE

July 2, 1976

TO : Bob Linder

FROM: James L. Mitchell

Attached are draft outlines for signing message and veto message of the Mineral Leasing Bill. Jim Lynn will be reviewing these also.

Approval Message -- Outline

- o I have approved S. 391 -- but reluctantly.
- o Coal is vital to the Nation's energy future and a great deal of it is owned by the Federal Government.
- o Accordingly, an effective and fair policy of leasing these Federal assets is vital to the Nation's future.
- o On two prior occasions the Administration sent up legislation to modernize the 1899 and 1920 Acts by
    - requiring competitive leasing
    - eliminating preference right leases
    - requiring diligent development
    - assuring payments of fair market price for Federal coal
- o S. 391, as enrolled, also seeks to accomplish the above reforms but does so in a manner that could create serious impediment to optimal recovery of these resources.
- o The 12 1/2% minimum royalty provision is unduly rigid.
- o However, I have been advised by key congressional sponsors of the bill that the Secretary of the Interior is authorized to agree to reduce that amount automatically under certain conditions before leases are entered into.
- o A wide ranging and comprehensive Federal coal exploration program would be expensive and of what minimal benefit.
- o However, I have been advised by the sponsors of the bill that what the Congress has in mind is essentially continuation of the more modest current program.
- o Automatic termination of leases under which commercial quantities of coal are not produced in 10 years may produce serious problems for synthetic fuel plants.
- o However, I have been assured by the sponsors of this bill that an exception will be made for these plants in they synthetic fuel legislation now pending before the Congress.

- I do not believe the increase from 37 1/2% to 50% of the States' share of leasing revenues will meet the need for impact assistance; I would have preferred that the inland States follow the lead of the coastal States in embracing the loan and guarantee program that I proposed last January.

- However, I will abide by the judgment of the Congress that the increase in the State share will meet the needs of the inland States -- but, at the same time, I do not expect that the Congress, having granted this assistance, would offer the inland States the same benefits as will become available to the coastal States.

- Other provisions of the bill will result in delays which we would be better off without, and restrictions which may mean that less coal is available than otherwise would be the case.

- However, in the interest of achieving a national consensus on a single policy covering the leasing of these Federal resources and meeting the needs for impact assistance -- and in the belief that no better bill will be available for my signature -- I have chosen, on balance, to sign the bill.

Disapproval Message -- Outline:

- o Returning S. 391 without approval.
- o Coal is vital to the Nation's energy future and a great deal of it is owned by the Federal Government.
- o Accordingly, an effective and fair leasing policy of these Federal assets is vital to the Nation's future.

I. LEASING PROVISIONS

- o On two prior occasions, the Administration set up legislation to modernize the 1899 and 1920 Acts by
  - requiring competitive leasing
  - eliminating preference right leases
  - requiring diligent development
  - assuring payments of fair market price for Federal coal.
- o By last January, over _____ months had gone by without any Congressional action.
- o Accordingly, the Department of the Interior -- using existing authority -- published comprehensive regulations which met all of the above objectives
  - to achieve competitive leasing, the Department's regulations _____
  - the regulations eliminate preference right leases
  - to achieve diligent development, the regulations _____
  - to assure fair market price, the regulations _____ _____.
- o Accordingly, the currently operating coal leasing program provides an effective balance of resource development, environmental sensitivity and public participation.

- o Unfortunately, while some of the provisions of the enrolled bill that seek to achieve the above objectives are not unreasonable, many seek to achieve the objectives in an unreasonable manner.

- o A number of provisions unduly limit the needed flexibility in the Secretary to optimize resource recovery and Federal revenues

    - mandated 12 1/2% minimum royalty
    - mandated deferred bonus payments on 50% of acreage
    - mandated termination of leases not producing coal within 10 years
    - mandated limit of 25,000 acres of logical mining units.

- o Other provisions will unduly delay the coal leasing program without any substantial benefit to the public by

    - mandating anti-trust review
    - mandating excessive number of public hearings
    - authorizing State delay of national forest leasing.

- o Still other provisions are simply unnecessary

    - Federal exploration program
    - reserving tracts for public bodies
    - mandating approval of operating and reclamation plan within 3 years of lease issuance.

- o Option 1 -- Simply declare legislative authorities in enrolled bill unnecessary

- o Option 2 -- Recommend changes in legislative authorities to fix them up

    - 12 1/2% minimum royalty, except Secretary can go down to 5% to achieve economic recovery

- deferred bonus payments on no less than 50%, except Secretary can waive on findings of economic conditions and degree of interest in leasing

- require extensive exploration data to be obtained and made available to the Federal Government by bidders

- require commercial production within 10 years except for a 5-year extension for justifiable operating reasons

- limit logical mining units to 25,000 acres with the exception for larger units when necessary to achieve full economies of scale or realization of full value of equipment.

II. IMPACT ASSISTANCE

o S. 391 correctly recognizes the need for assistance to alleviate impacts caused by the economic development associated with the development of Federal coal resources.

o Unfortunately, the manner by which this problem is attacked neither recognizes the nature of the problem nor provides sufficient resources to solve it.

o In contrast, the Federal Energy Impact Assistance Act which I proposed last January would provide adequate resources when they are needed, where they are needed in a manner that would to the maximum extent possible require the ultimate users of Federal minerals to pay for the public facilities needed in development of them.

o Gratified that coastal States have essentially adopted this approach in a bill I expect to sign later this month.

o Option 1 -- Again encourage inclusion of inland States in Administration proposal.

o Option 2 -- Give the Congress the option of either including inland States in Administration proposal or increasing share of mineral leasing revenues for States -- but not both -- or perhaps give individual Governors the option of electing one program or the other.

OFFICE OF MANAGEMENT AND BUDGET

ASSOCIATE DIRECTOR
FOR NATURAL RESOURCES, ENERGY AND SCIENCE

July 2, 1976

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FROM: James L. Mitchell

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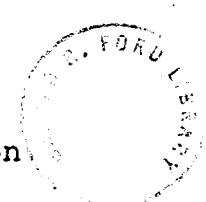

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7/6

Ken-

another piece for

the file,

Katie

TO THE SENATE OF THE UNITED STATES:

I am returning to the Congress today without my approval S. 391, the Federal Coal Leasing Amendments Act of 1975.

This bill addresses two essential issues: the form of Federal assistance for communities affected by Federal coal development, and the way that Federal procedures for the leasing of coal should be modernized.

On the first of these issues, I am in total agreement with the Congress that the Federal Government should provide assistance, and I Concur in the form of assistance adopted by the Congress in S. 391. Specifically, I pledge my support for increasing the State share of Federal leasing revenues from 37 1/2 percent to 50 percent.

Last January I proposed to the Congress the Federal Energy Impact Assistance Act to meet the same assistance problem, but in a different way. My proposal called for a program of grants, loans and loan guarantees for communities in coastal States affected by its development of Federal energy resources such as gas and oil as well as for communities in inland States affected by development of energy resources such as coal.

The Congress has agreed with me that such impact assistance should be provided for coastal States, and I ~~expect~~ Hope to be Able to ~~signing~~ appropriate legislation in the near future.

In the case of inland States, however, the Congress -- by overwhelming majority -- has voted in S. 391 to expand the more traditional sharing of Federal leasing revenues, raising the State share of those revenues by approximately one third. ~~On this issue, I am prepared to respect the will of the Congress, and were~~ If were S. 391 limited to that provision, I would sign it.

Unfortunately, however, S. 391 is also littered with many other provisions which would insert so many rigidities, complications, and burdensome regulations into Federal leasing procedures that it would inhibit coal production on Federal lands, Possibly raise prices for consumers, and ultimately delay our achievement of energy independence.

APPROVED

JUL 1 - 1976

I object in particular to the way that S. 391 restricts the flexibility of the Secretary of the Interior in setting the terms of individual leases so that a variety of conditions -- physical, environmental and economic -- can be taken into account. S. 391 would require a minimum royalty of 12-1/2 percent, more than is necessary in all cases. S. 391 would also defer bonus payments -- payments by the lessee to the Government usually made at the front end of the lease -- on 50 percent of the acreage, an unnecessarily stringent provision. This bill would also require production within 10 years, with no additional flexibility. It would arbitrarily restrict any single mining unit from controlling and mining tracts in excess of 25,000 acres, even though that may be uneconomic and increase coal production costs. Furthermore it would require approval of operating and reclamation plans within three years of lease issuance. While such terms may be appropriate in many lease transactions -- or perhaps most of them -- such rigid requirements will nevertheless serve to setback efforts to accelerate coal production.

Other provisions of S. 391 will unduly delay the development of our coal reserves by setting up new administrative roadblocks. In particular, S. 391 requires detailed anti-trust review of all leases, no matter how small; it requires four sets of public hearings where one or two would suffice; and it authorizes States to delay the process where National forests -- a Federal responsibility -- are concerned.

Still other provisions of the bill are simply unnecessary. For instance, one provision requires comprehensive Federal exploration of coal resources. This provision is not needed because the Secretary of the Interior has already has the authority to require prospective bidders to furnish the Department with all of their exploration data so that the Secretary, in dealing with them, will do so knowing as much about the coal resources covered as the prospective lessees.

For all of these reasons, I believe that S. 391 would have an adverse impact on our domestic coal production. On the other hand, I agree with the sponsors of this legislation that there are sound reasons for providing in Federal law -- not simply in Federal regulations -- a new Federal coal policy that will assure a fair and effective mechanism for future leasing.

Accordingly, I ask the Congress to work with me in developing legislation that would meet the objections I have outlined and would also increase the State share of Federal leasing revenues.

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I am returning to the Congress today without my approval S. 391, the Federal Coal Leasing Amendments Act of 1975.

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The Congress has agreed with me that impact assistance in the form I proposed should be provided for coastal States, and I hope to be able to sign appropriate legislation in the near future.

However, in the case of States affected by S. 391 -- most of which are inland, the Congress by overwhelming majority has voted to expand the more traditional sharing of Federal leasing revenues, raising the State share of those revenues by one third. If S. 391 were limited to that provision, I would sign it.

Unfortunately, however, S. 391 is also littered with many other provisions which would insert so many rigidities, complications, and burdensome regulations into Federal leasing procedures that it would inhibit coal production on Federal lands, probably raise prices for consumers, and ultimately delay our achievement of energy independence.

I object in particular to the way that S. 391 restricts the flexibility of the Secretary of the Interior in setting the terms of individual leases so that a variety of conditions -- physical, environmental and economic -- can be taken into account. S. 391 would require a minimum royalty of 12-1/2 percent, more than is necessary in all cases. S. 391 would also defer bonus payments -- payments by the lessee to the Government usually made at the front end of the lease -- on 50 percent of the acreage, an unnecessarily stringent provision. This bill would also require production within 10 years, with no additional flexibility. Furthermore it would require approval of operating and reclamation plans within three years of lease issuance. While such terms may be appropriate in many lease transactions -- or perhaps most of them -- such rigid requirements will nevertheless serve to setback efforts to accelerate coal production.

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Accordingly, I ask the Congress to work with me in developing legislation that would meet the objections I have outlined and would also increase the State share of Federal leasing revenues.

THE WHITE HOUSE,

Calendar No. 288

94TH CONGRESS
1st Session

SENATE

REPORT
No. 94-296

FEDERAL COAL LEASING AMENDMENTS ACT OF 1975

JULY 23 (Legislative day July 21), 1975.—Ordered to be printed

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

REPORT

together with

MINORITY AND ADDITIONAL VIEWS

[To accompany S. 391]

The Committee on Interior and Insular Affairs, to which was referred the bill (S. 391) to amend the Mineral Leasing Act of 1920, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

The amendment to the text strikes all after the enacting clause and inserts a complete new text which is printed in italic type in the reported bill.

I. PURPOSE

S. 391 has two broad purposes. Title I makes a number of badly needed changes in the law governing leasing of Federal coal. Title II would make the basic surface coal mining and reclamation standards of the recently-vetoed "Federal Surface Mining Control and Reclamation Act of 1975" (H.R. 25) applicable to Federal coal development.

TITLE I—FEDERAL COAL LEASING AMENDMENTS ACT OF 1975

This title would make seven basic changes in the provisions of the Mineral Leasing Act of 1920 relating to development of Federal coal resources:

1. All leasing would be done under a five-year program designed to meet national needs for Federal coal in a manner consistent with
   (a) timely and orderly development of Federal coal resources;
   (b) environmental protection; and
   (c) receipt of fair market value for public resources.

57-010 O—75——1

2. Coal leases would be issued by competitive bidding only.
3. Leases would be issued after adoption of comprehensive land use plans prepared in consultation with State and local governments and with ample opportunity for public review.
4. Prospecting permits and preference right leases would be eliminated.
5. Coal leases would be for a specified term of 20 years and so ongl thereafter as coal is produced.
6. Within three years after obtaining a coal lease, the lessee would have to submit a development plan. When the plan is approved, it would have to be followed, unless it was amended.
7. The revenue sharing provision of the Mineral Leasing Act of 1920 would be amended to broaden the purposes for which the States can use their share of coal leasing revenues. In addition, the States' share would be increased from 37½% to 60%.

Title II.—Federal Lands Surface Mining Control and Reclamation Act of 1975.

This title would apply to Federal lands and Federal coal, the basic surface coal mining and reclamation standards of the recently-vetoed strip mining bill (H.R. 25). The amendment does not apply to private lands and does not include the reclamation fee which was included in H.R. 25.

The Federal Government owns about half of the recoverable coal reserves in the United States. In the past, production of these resources has been limited. Now, however, there is great interest in development of these Federal coal deposits, which are located primarily in the Western States. In response to this interest, the Secretary of the Interior is developing a new coal leasing program.

The Committee is convinced that the changes in the basic coal leasing law, which would be made by S. 391, should precede any large-scale Federal coal leasing program. Otherwise, billions of tons of coal may be placed into private hands under the provisions of a law which the Committee, the Administration, citizens of the area involved, the General Accounting Office, and other independent analysts all agree is outmoded and not in the public interest.

The Committee is also convinced that Congress must establish statutory standards governing surface mining of Federal coal if we are to fulfill our Constitutional responsibilities to protect the great resource values of the public lands which would be impacted by strip mining of Federal coal.

II. Background and Need

Federal coal resources—present and potential development

Coal is one of America's most abundant energy resources. It makes up almost 75% of the nation's fossil fuel reserves. The Federal Government owns almost 50% of the recoverable coal reserves in the United States. This Federal coal is found primarily in eight States. See tables 1 and 2 following. The value of Federal coal reserves in table 2 is calculated as of 1972; the committee staff was unable to obtain comparable current estimates.

TABLE 1.—STATES WITH MAJOR FEDERAL COAL ACREAGES

[Acres in millions]

State	Federal coal [1 2]		Non-Federal coal		Total [2 3] acres
	Acres	Percent	Acres	Percent	
Alaska	23.4	97	0.8	3	24.2
Colorado	8.7	53	7.9	47	16.6
Montana	24.6	75	8.2	25	32.8
New Mexico	5.5	59	3.9	41	9.4
North Dakota	5.6	25	16.8	75	22.4
Oklahoma	.4	4	8.9	96	9.3
Utah	4.1	82	.9	18	5.0
Wyoming	12.3	48	13.3	52	25.6
Total	84.6		60.7		147.3

[1] Southwestern Energy Study, app. J. p. 48, 1972.
[2] BLM State office estimates.
[3] Averitt, Paul; Coal Resources of the United States, Jan. 1, 1967: U.S. Geological Survey Bulletin 1275, p. 32, 1969.

Source: U.S. Department of the Interior.

TABLE 2.—ESTIMATE OF FEDERAL COAL RESERVES [1] AND VALUES IN PRINCIPAL LEASING STATES FOR SURFACE AND UNDERGROUND DEPOSITS

	Million short tons		Total value of Federal reserve [6 7] (millions)
	Total reserve [2 3]	Federal reserve [3 4]	
Alaska:			
Surface	4,411	4,279	$466,228
Underground	60,629	58,810	
Colorado:			
Surface	500	265	125,050
Underground	39,829	21,111	
Montana:			
Surface	6,897	1,700	
Underground	103,940		
New Mexico:			
Surface	2,457	1,450	53,123
Underground	28,239	16,661	
North Dakota			
Surface	2,075	519	344,167
Underground	173,240	43,310	
Oklahoma:			
Surface	111	4	410
Underground	1,529	61	
Utah:			
Surface	150	123	70,820
Underground	11,714	9,605	
Wyoming:			
Surface	13,971	6,706	87,480
Underground	46,357	22,251	

[1] Refers to coal that can be recovered with existing technology and equipment or that may be available in the foreseeable future. Only those coals less than 3,000 ft in depth are included. Strippable coal reserves are adjusted to conform to the stripping ratio which varies by area. Coal that cannot be mined because of proximity to natural or manmade features is excluded.
[2] U.S. Bureau of Mines, I.C. 8531: Strippable Reserves of Bituminous Coal, and Lignite in the United States, p. 23, 1971.
[3] Averitt, Paul; Summary of U.S. Mineral Resources, U.S. Geological Survey, p. 820, 1972.
[4] Computed from estimated ownerships ratios given in table 30.
[5] Synthetic fuels, Cameron Engineering, vol. 9, No. 2, June 1972, pp. 4–31.
[6] 1972 Keystone Coal Industry Manual, McGraw-Hill, p. 429.
[7] Bituminous Coal Facts, 1972, National Coal Association, p. 68.

Source: U.S. Department of the Interior.

There has been relatively little production of Federal coal in the past. For example, in 1974, total coal production in the United States amounted to 601 million tons. Production under Federal leases amounted to 22.3 million tons or almost 3 percent of the total. The minemouth sale price received by the Federal lessees was $121 million.

However, the Department of the Interior expected in 1974 that by the year 2000, "the nationwide need for coal will increase threefold, but that it will be necessary for production of Federal coal to be increased 17 times the 1972 level."

The Department explains this projection as follows: [1]

> The projected increase in Federal coal production can in part be attributed to two valuable characteristics of major coal deposits. Most Federal coal can be classed as low in sulfur content, and most is recoverable by surface mining methods. These factors make Federal coal preferred for power generation, gasification, and liquefaction. Federal coal in Wyoming and Montana, for example, is competitive with locally produced private coal in the Midwest for use in population centers around Chicago and St. Louis.
>
> Plans are being formulated to build new gasification and liquefaction plants, using Federal coal primarily, to produce gaseous and liquid fuels.
>
> These products can be substituted for natural gas and oil used in some powerplants.
>
> Powerplants without coal-burning equipment can be converted to use coal, and new powerplants can be designed to burn coal as well as oil or gas.
>
> To the extent that coal is substituted for oil and gas, imports of those products from other countries can be reduced, with a subsequent improvement in the United States' balance of payments.
>
> The abundance of and accessibility of Federal coal makes it an important fuel reserve for national security. The fact that most Federal coal can be mined by surface methods, which can be operational more quickly and with smaller investments and less personnel than underground mining, enhances its value for defense purposes. [*Committee Note.*—This last sentence is inconsistent with current industry and Federal Energy Administration estimates that the lead time for opening large surface and underground mines is the same.]
>
> The steel industry of Utah and California uses coking coal of high unit value mined in the Uinta region of Utah and Colorado. The role of coking coal is important in the Western States' economies, even though the reserves are small in comparison with other supplies that can be used for power generation or direct conversion to other forms of energy. The deposits of privately owned coking coal are being rapidly depleted, so future supplies will be almost totally from Federal lands.

More recently, there has been a great emphasis on the need for increasing coal production and, in particular, the production of Federal coal, and plans are to double coal production for 1985, according to the Federal Energy Administration, the Energy Research and Development Administration and the National Petroleum Council. There

[1] See Draft Environmental Impact Statement—Proposed Federal Coal Leasing Program. U.S. Department of the Interior, section VI, May 7, 1974.

are also measures now pending before the Congress to require substitution of coal for other fossil fuels, which would further increase the need for greater coal output.

PRESENT FEDERAL COAL LEASING LAW

Coal deposits in most Federal lands are made available for development under the Mineral Leasing Act of 1920 (41 Stat. 437) as amended and supplemented (30 U.S.C. 181–287). This 1920 Act applies to the public domain, lands acquired before enactment of the Act, and to coal deposits retained by the United States when it transferred lands to non-Federal ownership. Furthermore, the provisions of the 1920 Act are applicable to leases of lands subject to the Acquired Lands Leasing Act of 1947 (61 Stat. 913, 30 U.S.C. 351–359).

Sections 2 through 8 of the Mineral Leasing Act of 1920 authorize the Secretary of the Interior to (1) divide coal lands and coal deposits owned by the United States into leasing units and award leases thereon, (2) issue permits to prospect unclaimed and undeveloped areas of coal lands and coal deposits, and (3) issue limited licenses or permits to prospect for, mine, and take for use coal from public lands. Where lands included in a permit, lease, or license have been disposed of with a reservation of coal deposits, a permittee, lessee, or licensee must make full compliance with the law under which such reservation was made. Where any part of the lands embraced in an application for a coal lease, permit, or license is within a withdrawal that does not preclude disposition of the coal deposits, the head of the Government agency having jurisdiction over the lands will be called upon for a report as to whether there is any objection to the granting of a coal lease, permit, or license.

The issuance of competitive coal leases and prospecting permits is entirely discretionary with the Secretary of the Interior.

Coal Prospecting Permits.—Where prospecting or exploratory work is necessary to determine the existence or workability of coal deposits in an area, the Secretary of the Interior is authorized to issue prospecting permits for a term of two years. The permit entitles the permittee to the exclusive right to prospect for coal on the land described therein. A rental of $.25 per year per acre is required for a coal prospecting permit and the application therefor must be accompanied by a $10 filing fee.

A coal prospecting permit may be extended for a period of two years if the authorized official of the Interior Department finds that the permittee has been unable, with the exercise of reasonable diligence, to determine the existence or workability of coal deposits in the area covered in the permit. Such a coal prospecting permit is a prerequisite to the issuance of a preference-right lease.

Limited Coal Licenses.—Section 8 of the Mineral Leasing Act of 1920 authorizes the Secretary of the Interior, under such rules and regulations as he may describe, to issue limited licenses or permits for a period of two years to individuals or associations of individuals to prospect for, mine, and take for their use, but not for barter or sale, coal in the public lands without payment of rent or royalty. Such licenses or permits may also be issued to municipalities to mine and dispose of coal, without profit, to their residents for household use.

Preference Right Leases.—A holder of a coal prospecting permit who shows, before the expiration of his permit, that the land included in the permit contains coal in commercial quantities, is entitled to a preference right lease for all or part of the land, the area to be taken in a reasonably compact form.

Competitive Leases.—Section 2 of the Mineral Leasing Act of 1920, authorizes the Secretary of the Interior, upon the petition of any qualified applicant, to divide any of the coal lands or the deposits of coal owned by the United States into leasing tracts of 40 acres each, or multiples thereof, in such form as, in his opinion, will permit the most economical mining of the coal in such tracts. Thereafter, the Secretary, in his discretion, upon the request of any qualified applicant or on his own motion may offer such lands or deposits of coal for lease, awarding such leases by competitive bidding or by such other methods as he may by general regulations adopt. These leasing tracts or units may be established either as a result of an application or when it is deemed advisable by the Interior Department that additional coal units be established.

Section 7 of the Mineral Leasing Act of 1920 provides that the royalty for the privilege of mining or extracting coal in lands covered by the lease shall be fixed in advance of the lease offer; this same section also prescribes an annual rental payable at the date of such lease and annually thereafter, at such rate as may be fixed by the Secretary of the Interior.

Modifications and Leasing of Additional Lands or Coal Deposits.—Under Section 3 of the Act, a lessee may secure a modification of his lease to include contiguous coal lands or deposits if the authorized officer determines that such will be to the advantage of the lessee and the United States.

Under Section 4 of the Act, when the lessee shows that all the workable coal in a tract covered by the lease will be removed within 3 years, an additional tract of land or coal may be leased. If such tract is found to constitute an acceptable leasing unit it will be offered for leasing as provided in the Department's regulation (43 CFR subpart 3520). If the applicant is the successful bidder and the tract can be practicably operated with the applicant's leasehold as a single mine or unit the tract may be included in a modified lease.

PRESENT SITUATION

There are currently outstanding coal leases covering over 780,000 acres of Federal land. These leases include over 16 billion tons of recoverable coal reserves. In addition, applications for preference right leases have been filed for 496,000 acres of Federal land estimated to contain almost 12 billion tons of coal. Outstanding prospecting permits cover almost 100,000 acres and additional pending lease applications cover over 500,000 acres. (See Tables 3 and 4.)

TABLE 3.—RECOVERABLE COAL RESERVES HELD UNDER FEDERAL LEASES

State	Surface minable		Million tons		Total acres leased
	Acres	Million tons	Underground minable	Total reserves	
Alaska	870	2	37	39	2,593
Colorado	13,251	236	1,259	1,495	122,078
Montana	21,777	1,120	0	1,120	36,232
New Mexico	13,829	281	121	402	40,958
North Dakota	11,571	285	0	285	16,436
Oklahoma	1,790	6	169	175	86,798
Utah	11,500	200	3,000	3,200	266,709
Wyoming	106,276	7,801	952	8,393	199,933
Other States [1]	397	6	20	26	7,430
Total	181,261	9,937	5,198	15,135	779,367

[1] Other States are Alabama, California, Kentucky, Ohio, Oregon, and Washington.

Source: Geological survey (Conservation Division) and Bureau of Land Management.

TABLE 4.—RECOVERABLE COAL RESERVES HELD UNDER FEDERAL PREFERENCE RIGHT COAL LEASE APPLICATION[1]

State	Number of PRLA's	Number of applicants	Number of PRLA's where applicant has adjacent acres	Acres	Private surface acres	Estimated reserves 10⁶ tons		Type of mine		Age of PRLA's (years)			MFP progress
						S	U	S	U	1 to 3	3 to 6	6	
Colorado	41	12	7	94,118.0	66,062.06	893.0	1,225.0	15	21	28	10	3	
Utah	38	9	2	112,887.5	1,284.62	100.0	1,227.0	3	35	0	1	37	
Wyoming	72	12		170,849.0	117,982.0	6,770.0	170.0		72	26	45	1	
New Mexico	28	6		77,589.64	30,316.0	760.36		23		10	18	0	
Montana	8	3		26,305.7	13,000.0	500.0			8		8		
Oklahoma	5	3		9,518.04	9,518.04	0.10	59.75	1	4	3	1	1	
North Dakota	0			0.0									
Total	192	45	9	491,267.88	238,163.0	8,896.46	2,831.75	39	143	67	83	42	

Comments: 25,574.79 acres in national forests.

Historically, and until the late 1960's, the Department of the Interior played a reactive role in leasing Federally owned coal, responding to industry applications for coal leases on a case-by-case basis. Subsequent to a coal lease study by BLM in 1970 (*Holdings and Development of Federal Coal Leases*, Division of Minerals, Bureau of Land Management, November 1970), the Department of the Interior halted the issuance of coal leases and prospecting permits to reassess coal leasing policies. The study showed that the acreage of coal under lease on public domain was skyrocketing while production from Federal leases had declined since a wartime high in 1945. Acreage under lease had increased from about 80,000 acres in 1945 to about 778,000 acres in 1970. Production during this period had declined from about 10 million tons in 1945 to 7.2 million tons in 1970. Ninety-one and a half percent of the total acreage under coal lease was within non-productive leases. It was also determined that 761,000 acres of public and acquired lands included within outstanding coal prospecting permits were held principally by coal brokers—not coal producers

From May 1971 until February 1973, no additional coal leases were issued by the Bureau of Land Management.

On February 13, 1973, the Secretary of the Interior, using his discretionary authority over Federal coal leasing, suspended further issuance of coal prospecting permits. On February 17, 1973, he announced a broader moratorium on Federal coal leasing, with no new leasing (except under certain short-term relief criteria) until development of a planning system to determine the size, timing and location of future coal leases to meet energy needs most effectively. In March, 1973, the Secretary sent to Congress a proposal for reform of the Federal mineral development laws. This proposal would have, among other things, made a number of significant changes in the present law governing coal leasing.

Concurrently, Department of the Interior has taken the lead in setting up an inter-agency study of the impact of coal development in Montana, Wyoming, and North Dakota. The Northern Great Plains Resources Program has helped to identify potential problems and needs for additional planning and data gathering. The Department, through the Bureau of Land Management, has also been developing a system for competitive coal leasing called Energy Minerals Allocation Recommendation System (EMARS). This system is described in some detail in the Draft Environmental Impact Statement on Proposed Federal Coal Leasing Program released on May 7, 1974. Former Secretary of the Interior Rogers C. B. Morton has stated that the "overriding goals" of Federal coal leasing should be:

> * * * to assure environmental protection and the reclamation of mined land.
>
> To provide for orderly and timely resource development based on comprehensive land use planning.
>
> To assure a fair market value return for the resources sold.

The Committee agrees with these goals.

Former Secretary of the Interior Morton informed the Committee on March 27, 1974 that "The Department is holding in abeyance any decision to embark on a coal leasing program until completion of coal programmatic environmental impact statement, the interim

report on the Northern Great Plains resource program and information from the Bureau of Land Management's energy minerals allocation recommendation system."

It should be noted that despite the current moratorium on issuance of new coal leases the recoverable coal reserves on Federal lands already committed to development are equal to 540 years of production at the estimated rate in 1975. (See Table 5.) This appears adequate to allow time for Congress to make needed changes in the law before leasing is resumed.

The Committee understands that the Department of the Interior expects to publish very soon the Final Environmental Impact Statement on the Proposed Federal Coal Leasing Program, and proposed regulations revising the rules relating to surface mining. These actions are the obvious prelude to resumption of general coal leasing and underscore the urgent need for enactment of S. 391.

TABLE 5.—RECOVERABLE COAL RESERVES ON FEDERAL LANDS COMMITTED TO LEASING AND PROJECTED PRODUCTION FROM FEDERAL COAL LEASE LANDS FOR 1975 THROUGH 2000

State	Total recoverable tons committed to lease (million tons)	Production 1975 estimated (million tons per year)	Life of reserves[1] at 1975 rate years	Estimated million tons per year			Life of reserves[1] at 2000 rate years
				Production 1980	Production 1985	Production 2000	
Alaska	39	0.1	390	0.1	0.2	0.2	195
Colorado	1,495	4.3	625	7.3	10.3	16.3	165
Montana	1,120	6.0	253	9.0	15.0	20.0	76
New Mexico	402	1.1	830	4.8	7.0	15.0	61
North Dakota	285	3.0	95	6.0	10.0	20.0	14
Oklahoma	175	1.0	190	1.5	2.0	3.0	63
Utah	3,200	3.0	1,210	6.9	20.0	30.0	121
Wyoming	8,393	18.9	670	34.2	46.5	70.8	179
Other States[2]	26	1.5	21	.5	.5	.5	60
Total	15,135	38.9	540	70.3	111.5	175.8	118

[1] Represents total of surface and underground minable recoverable coal under Federal coal leases and preference right lease applications for which coal reserves have been cacluated, Includes no reserves from the 336,769 acres of committed prospecting permit and preference right coal lease lands for which reserve data is not available.
[2] Other States include Alabama, California, Kentucky, Ohio, Oregon, Washington, and West Virginia.

Source: U.S.G.S., Conservation Division.

S. 391 is based on extensive hearings held by the Subcommittee on Minerals, Materials and Fuels and on a number of independent studies of Federal coal leasing policies. These include the General Accounting Office's 1972 report entitled "Improvements Needed in Administration of Federal Coal-Leasing Program" (B–169124) and GAO's April 1975 report: "Further Action Needed on Recommendations For Improving the Administration of Federal Coal Leasing Program." Also, the Council on Economic Priorities has made a comprehensive study of existing Federal coal leases which identifies the same problems with existing law. Their report released on May 20, 1974 is entitled "Leased and Lost."

The Committee recognizes that there may be other changes in the law relating to coal leasing which should be considered. In fact, the whole system of law relating to development of Federally-owned minerals needs to be carefully reviewed and revised. At the same time, the Committee is convinced that there is a critical need to make the changes provided by S. 391 before the Department of the Interior embarks on any large-scale leasing program. Otherwise, billions of

tons of coal may be placed into private hands under a law which the Administration, citizens of the area involved, the General Accounting Office, and other independent analysts all agree is outmoded and not in the public interest.

These changes will help to assure that any future Federal coal leasing program gives the public a fair market return for its resources and provides the maximum amount of protection to the environment.

Even more important, S. 391 will help to assure orderly and timely coal development based on comprehensive land use planning. This requirement is particularly critical in light of the anticipated Federal coal leasing program in the Northern Great Plains. The Committee is concerned about the possibility that the current energy situation will lead to premature decisions to proceed with large-scale coal leasing when the impacts of such action are not fully understood. The issuance of such leases could, for all practical purposes, commit the land, water, and air resources of the area to development of surface mines, electric generating plants, coal gasification and liquefaction plants, water impoundments and new communities without adequate consideration of other alternatives and environmental, social, and economic impacts, and without adequate opportunity for advance planning by the communities involved.

The Committee agrees with the Department of the Interior's statement that "The key to achieving desired amenities in expanding communities is early and foresighted planning by coal companies, municipal leaders, officials of State and Federal agencies, and the residents themselves." (Draft Environmental Impact Statement, page VI–5.)

The Committee believes that enactment of S. 391 is a necessary and significant step toward development of a rational Federal coal leasing policy and program.

Need for Statutory Guidelines for Strip Mining of Federal Coal.—This Committee, and its sister committee in the House of Representatives, labored long and hard to develop what we believed and continue to believe was a strong but fair set of mining and reclamation standards.

The Committee is deeply disappointed that the President has seen fit twice to veto the comprehensive Federal surface coal mining legislation.

According to President Ford, there is no need for Federal surface mining legislation, since 21 States have recently upgraded their State mining laws. He implies that the nation can afford to rely on State reclamation laws to protect its land and water. But lack of enforcement of State laws has been a major reason for enactment of Federal minimum standards. More importantly, this argument totally ignores the fact that State laws do not apply to the 50 percent of the nation's recoverable coal reserves which are owned by the Federal Government.

What the administration is really saying is that these vast resources will be turned over to the energy industry without adequate protection for the other values of public land and water. This is the prelude to national tragedy in the name of "energy independence" and the Congress cannot let it happen.

Many Senators from Eastern and Midwestern coal States have expressed fears about a shift of the coal industry away from their States to the public lands of the West. Vast increases in Western coal pro-

duction have become a cornerstone of every energy policy and supply projection for the next 10–15 years. President Ford's veto will give great impetus to such a shift because, in large measure, State laws will not be applicable to Western coal mining.

It is imperative that careful environmental protection standards be established for our Federal lands before they are entirely ravaged.

The Constitution gives to the Congress a special responsibility to protect the Federal lands. We cannot rely on the States, or much less the current administration to fulfill this obligation for us.

We cannot shirk this responsibility, particularly at a time when protection and careful development of the Federal lands is so crucially needed.

For this reason, the Committee adopted Title II, which contains the basic mining and reclamation standards of H.R. 25 as vetoed. It assures that no coal leasing will take place on Federal lands until these standards are enforced on those lands. The amendment makes these provisions applicable only to Federal lands; it does not apply to private lands. As unsatisfactory as this situation may be, mining on private lands apparently must, for the moment, be left in the hands of the States. It would assure that mining on Federal lands at least is carefully regulated and our national resources protected.

The Committee is aware that some of our colleagues who have fought with us so long and so hard for a Federal law regulating surface coal mining on all lands may feel that enactment of a law applicable only to Federal lands and Federal coal will diminish the chances for a comprehensive law.

We do not agree. If the Congress enacts the Committee's amendment now, 2 years from now we will prove that it contains a workable set of reclamation rules. This will make it easier to pass a more comprehensive measure.

The Committee believes that we cannot in good conscience pass up an opportunity to give the kind of protection we believe appropriate to one-third of the nation's land. In this case, a third of a loaf is better than none.

III. Committee Recommendation

The Committee on Interior and Insular Affairs in open business meeting on July 17 recommended that S. 391, as amended, be approved by the Senate.

IV. Legislative History

As introduced, S. 391 was virtually identical to S. 3528, 93rd Congress, which the Interior Committee reported and the Senate passed by unanimous vote in 1974.

S. 3528 was the result of extensive hearings on Federal coal leasing policy conducted by the Subcommittee on Minerals, Materials and Fuels and hearings on coal policy issues and Federal mineral leasing and disposal policies conducted during the last 2 years by the National Fuels and Energy Policy study. It drew heavily on the proposals made by the administration for changes in the Federal mineral development laws.

The Committee held hearings on S. 391 on May 7 and 8.

V. Section-by-Section Analysis

Section 1. This section designates the official citation of Title I of the Act as the "Federal Coal Leasing Amendments Act of 1974."

Section 101(a) amends Subsection 2(a) of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 201(a)). Subsection 2(a) presently authorizes the Secretary of the Interior to issue coal leases by competitive bidding "or by such other methods as he may by general regulation adopt," in tracts of 40 acres or multiples thereof.

Paragraph (1) would provide that leases could be issued only by competitive bidding on either a royalty or bonus bidding basis. If bonus bidding is used payments will be on either deferred or installment basis. This requirement is designed to permit a wider opportunity for competition for Federal coal leases.

The Committee feels strongly that the Federal Government should receive fair market value for public resources being used by private parties. Awarding leases by competitive bidding should help assure that this goal is achieved. The changes in the rental and royalty rates provided by Section 103 of S. 391 will be another significant step toward fair return.

This paragraph also provides that a reasonable number of leasing tracts shall be reserved and offered for lease to public bodies, including Federal agencies, rural electric cooperatives, or nonprofit corporations controlled by any of such entities. It provides that any coal leased shall be for use by such entity or entities in implementing a definite plan to produce energy for their own use or for sale to their members or customers (except for short-term sales to others).

The Committee believes it is desirable to establish a program to grant leases on a preferential basis to consumer owned utilities or organizations controlled by them. Such a program would stimulate competition in the coal industry by allowing new organizations to obtain and develop coal leases.

The major precedent for disposal of national resources in this manner is in the Federal hydrolectric program. State and local governments and non-profit electric cooperatives have the first opportunity to obtain power generated at Federal projects. This anti-monopoly feature has supported competition in the utility industry and has prevented private profit-making entities from totally controlling a resource owned by the public.

Any organization eligible for preferential treatment will, of course, be required to pay royalties to the Federal Treasury and to use the coal itself or sell it to other organizations eligible for preferential treatment. The lessee would also be subject to the same terms of development as other lessees.

Paragraph (2) provides that no lease sale shall be held for land where the United States owns both the surface and subsurface unless the lands containing the coal deposits have been included in a comprehensive land use plan prepared by the Secretary or, in the case of lands within the National Forest System, the Secretary of Agriculture, and such sale is consistent with such plan.

Where the surface is not in Federal ownership, no lease sale shall be held if the Secretary determines that development of such coal

deposits would be inconsistent with any applicable State or local land use plan, except where the Secretary finds that such coal development would be in the national interest.

The Committee does not want to give the States a veto over Federal coal development. This provision puts some "teeth" into the coordination requirement but allows Federal coal leasing which would be inconsistent with State and local plans.

Paragraph (3) provides for consultation among Federal, State and local governments on preparation of land use plans and directs that a public hearing be held if requested by an interested person.

The Committee believes that decisions to issue Federal coal leases and thus permit development of the coal resource must be made after full consideration of all the resource values of the lands involved and impacted by such development, the present and potential uses of these lands and the anticipated impact of coal development on these resources and uses. The National Resource Lands Management Act of 1974 (S. 424) which was passed by the Senate on July 8, 1974, directs the Secretary of the Interior to prepare comprehensive land use plans for management of all the national resource lands under principles of multiple use and sustained yield. A similar bill (S. 507) will be reported by the Committee soon. This is the kind of land use plan contemplated by the amendment.

New subsection 2(b) provides limited authority for noncompetitive additions to existing leases of not to exceed 160 acres. This would replace the existing provisions for non-competitive issuance of coal leases. These are Section 3 which allows modification of existing leases to include contiguous coal deposits (30 U.S.C. 203) and Section 4 which permits issuance of a new lease where coal deposits under existing law will be exhausted within three years (30 U.S.C. 204). These sections are repealed in Section 105 of S. 391.

Subsection 101(b) specifies that the changes made in existing law by Subsection 101(a) are subject to any valid existing right to a lease established pursuant to a prospecting permit issued under section 2(b) of the Mineral Leasing Act of 1920 (41 Stat. 438) as amended (30 U.S.C. 201(b)) prior to the date of enactment of S. 391.

The Committee intends to maintain the status quo with respect to any such rights, and not to enlarge or diminish them in any way. Each permittee will have to assert any claim of right which can be judged on its merits by the Secretary and the courts without regard to the provisions of Subsection 101(a).

Section 102 would repeal, subject to valid existing rights, Subsection 2(b) of the 1920 Act which authorizes the issuance of coal prospecting permits and preference right leases.

Subsection 2(b) now provides that where prospecting or exploratory work is necessary to determine the existence or workability of coal deposits in an area, the Secretary of the Interior is authorized to issue prospecting permits for a term of two years. The permit entitles the permittee to the exclusive right to prospect for coal on the land described therein. A holder of a coal prospecting permit who shows, before the expiration of his permit, that the land included in the permit contains coal in commercial quantities, is entitled to a preference right lease for all or part of the land included in the prospecting permits.

The Administration has recommended repeal of this provision of the law. The Committee agrees with the Administration that the prospecting permit-preference right lease method of allocating Federal coal resources is no longer appropriate or necessary. The preference right lease is inconsistent with the fair market value principle discussed above. The Federal government has since 1920 accumulated considerable information about Federal coal resources. This information, which should be continually improved, provides an adequate base for leasing decisions.

Section 102 also adds a new subsection 2(c) to the 1920 Act which gives express authority for coal exploration permits.

The Committee wishes to stress that the repeal of Subsection 2(b) is expressly "subject to valid existing rights" and thus is not intended to affect any valid prospecting permit outstanding at the time of enactment of the amendments. Any applications for preference right leases based on such permits could be adjudicated on their merits and preference right leases issued if the requirements of Subsection 2(b) of the 1920 Act and other applicable law, such as the National Environmental Policy Act of 1969, were met.

Section 103 amends Section 7 of the 1920 Act which deals with term of leases and lease rentals and royalties.

First, it provides that coal leases would be for a specified term of 20 years and so long thereafter as coal is produced. The existing law provides that leases "shall be for indeterminant periods upon condition of diligent development." No federal coal lease has ever been cancelled for lack of diligent development. This is despite the fact that a study done by the Council on Economic Priorities showed that of 474 coal leases there had been no production at all from 321 leases. This provision has been criticized by the General Accounting Office and the Administration has recommended its repeal.

The Committee believes that the purpose of leasing Federal coal is to have that coal produced to meet the nation's energy needs. The existing law has been interpreted to allow lessees to hold leases without production for as long as they see fit. The amendment would prevent this from happening under future leases.

The Committee expects that the Secretary will define by regulation "production" to assure that leases are maintained only by bona fide commercial development and not by token production.

Second, this section increases the minimum annual rental to $1.00 per acre per year. The present law provides for a minimum annual rental per acre of 25¢ in the first year, 50¢ in the second, third, and fourth, and fifth years and $1.00 thereafter.

Third, royalties would be based on the value of the coal and be set at not less than 5% of such value.

The present minimum royalty is five cents per ton. It has been the general practice of the Secretary to set the royalty at a flat rate per ton. The Committee believes that in the future the royalty should be a percentage of the value of the coal produced on the lease. This is essential if the people are to receive a fair return for their coal, particularly when coal values are increasing rapidly.

Rentals and royalties could be adjusted at the end of the first 20 years and at the end of each ten-year period thereafter.

The Secretary could establish minimum annual royalties at the time of issuance of the lease so as to encourage diligent development and production.

New Subsections 7(b) and 7(c) provide specific authority for the Secretary to consolidate leases into logical mining units so that production within a unit rather than on a single lease would satisfy renewal and diligence requirements. Authority to unitize leases would give the Secretary and lessees greater flexibility in planning the development of leases so that there is a maximum recovery of coal with a minimum impact on the environment. The authority would be particularly valuable in planning for the development of lands where some tracts are federally owned and some privately owned. Mining units could then be designated to encompass private lands, thus ensuring the development of isolated Federal tracts which ordinarily might not be developed.

New Subsection (d) authorizes the Secretary to provide for a minimum royalty payment in lieu of production, if production is prevented by strikes or other circumstances not the fault of the lessee. The Committee believes that this limited exception to the production requirement is needed to be fair to lessees.

New Subsection 7(e) requires that within three years after obtaining a lease and before significant environmental disturbance, the lessee would have to submit a development plan to the Secretary for approval. This plan would have to set out specific work to be performed, the manner in which coal extraction would be conducted and applicable environmental and health and safety standards would be met and a time schedule for performance. No such plans are required under existing law. However, there are Department of the Interior regulations which call for such plans.

If the surface of the lands involved are under the jurisdiction of another Federal agency, that agency would have to consent to the plan. When the surface of the land involved is in non-Federal ownership the Secretary is directed to consult with the surface owner before approving the plan.

Development plans may be revised if the Secretary determines that revision will lead to greater recovery of the mineral or protection of the environment, improve the efficiency of the recovery operation, or is the only means available to avoid severe economic hardship on the lessee.

This plan would have to be consistent with the reclamation requirements of Title II.

New Subsection 7(f) provides that leases will be subject to termination for failure to develop the lease with due diligence. At the time a tract is offered for lease the Secretary shall publish a proposed time schedule for development of the lease. Unless releived of the obligation by the Secretary for good cause, failure to develop the lease according to the schedule would be prima facie evidence of failure to develop with due diligence. The time schedule shall provide for development within seven years except for good cause which shall be stated by the Secretary.

The Committee believes that this requirement will help to assure diligent development of leased coal deposits rather than holding them for speculative purposes. At the same time, it gives some administrative discretion to the Secretary to make adjustments where circumstances warrant.

Section 104 would amend the revenue sharing provisions of the Mineral Leasing Act of 1920 to broaden the purposes for which the 37½% share of coal leasing revenues paid to the states can be used. Under existing law these funds can be used only for roads and schools. The amendment provides that the funds may be used for (1) planning, (2) construction and maintenance of public facilities, and (3) provision of public services. Thus, in addition to roads and schools, the money could be used to help relieve the heavy burden that rapid large-scale development would place on state and local governments for other public services such as police and fire protection and water and sewer facilities. Testimony at the Committee's hearings, particularly those held in Montana and Wyoming, clearly indicated that state and local officials are deeply concerned about the impact of coal development on their ability to provide such services. The amendment is similar to S. 834 dealing with oil shale leasing revenues which was passed by the Senate on April 22.

Section 105 repeals Subsection 2(c), and Sections 3 and 4 of the 1920 Act. The purposes of Sections 3 and 4 are described under Subsection 101 above.

Section 2(c) of the Mineral Leasing Act prohibits any railroad company from obtaining federal coal leases, other than "for its own use for railroad purposes". Since all commercial railroads have converted from coal to diesel fuel the result is that no meaningful use of coal from federal leases is now possible for them. Section 2(c) also imposes restrictive acreage limitations on railroads which are not applicable to other lessees. The reason for these restrictions has long ceased to exist. They were placed on railroads because of the unfair advantage it was believed they might have over other coal producers because they owned their own transportation capability. However, there are other existing regulatory controls intended to prevent any possible transportation advantage of railroads. The "commodities clause" of the Interstate Commerce Act (49 U.S.C. §1. (8)) clearly prohibits any railroad company from transporting in interstate commerce coal "mined or produced by it, or under its authority, or which it may own in whole or in part, or in which it may have any interest, direct or indirect."

Three times in the period 1957–1966 the Senate has passed legislation repealing section 2(c). (S. 2069, 85th Cong.; S. 1192, 87th Cong.; S. 3070, 89th Cong.)

After careful consideration of the 2(c) issue, the Public Land Law Review Commission in its 1970 report, *One Third of the Nation's Land*, recommended its repeal. In general it recommended that "restrictions on public land mineral activity that are no longer relevant to existing conditions should be eliminated so as to encourage mineral exploration and development". (PLLRC Rept., p. 135). Specifically with respect to section 2(c), it recommended that "restrictions upon the leasing of public land coal deposits to railroad companies should be removed", reasoning as follows (*Id.* at 136):

> The fears of monopolistic control which led to the enactment of the existing restrictions no longer are applicable. The importance of pipelines and truck transportation and the growing use of minemouth generation have materially reduced any competitive advantages railroads may once

57-006 O - 75 - 3

the Federal Register regulations for the establishment of a Federal program for the implementation of this Act. Such program shall subsequently be incorporated into all Federal leases, permits and contracts.

Section 202(c) provides that the requirements of any State law regulating surface coal mining shall also be incorporated into the Federal lease, if the Secretary finds that the requirements of the State law meet the requirements of Title II and the Secretary's regulations. This provision, together with the authority for cooperative programs under Section 202(e), will lead to uniformity of reclamation requirements on mining units. This provision is applicable only where a State is regulating surface mining—*not* where a State law prohibits it entirely. The Committee does *not* intent to give the States veto power over Federal coal development.

SECTION 203. PERMITS

Subsection 203(a) requires that, after the date of enactment of this Act, no person shall conduct any surface mining operations on Federal lands without a permit from the Secretary.

Subsection (b) provides that the term of permits or permit renewals or extensions issued under this program 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.

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.

Under Subsection (d), a valid permit includes the right to successive renewals if the permittee has complied with all the requirements of the Federal program and has notified the Secretary 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.

SECTION 204. APPLICATION REQUIREMENTS

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.

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:

(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;

(2) names and addresses of adjacent surface owners;

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

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

(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;

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

(7) 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

(8) 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 Secretary 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).

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.

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

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

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.

SECTION 205. RECLAMATION PLAN REQUIREMENTS

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 section 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 Secretary 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.

205(a)(1). A description of the condition of the land area which will be affected 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 capabilty 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.

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.

205(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 205(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.

205(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 212(b) and any regulations promulgated pursuant to that subsection can be complied with.

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.

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.

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.

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

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 Secretary with information on the prospective long-term plans of the applicant in the immediate vicinity.

A disclosure to the Secretary 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 Secretary and the interested public. Because of its proprietory nature. information about the mineral (but not the overburden) will be kept confidential if requested by the applicant.

SECTION 206. PERFORMANCE BONDS

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.

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.

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

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.

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

Subsection (e) 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.

SECTION 207. PERMIT APPROVAL OR DENIAL

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

(a) all conditions of this Act have been met;
(b) reclamation will be accomplished according to this Act;
(c) all hydrology requirements have been adhered to;
(d) the area is not incorporated in an area designated unsuitable for mining;

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

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.

Section 207(c) 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 207(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 207(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 207(c).

SECTION 208. REVISION OF PERMITS

This section establishes a process for the revision of a permit during its term.

An operator may submit an application for a permit revision to the Secretary and within a period of time established by that agency, the application shall be approved or disapproved. The Secretary 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.

The Secretary may require revision of a permit during its term provided that he follows the Federal program's notice and hearing requirements.

SECTION 209. COAL EXPLORATION PERMITS

This section requires that all coal exploration operations be subject to regulation under this title 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.

SECTION 210. PUBLIC NOTICE AND PUBLIC HEARINGS

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

The applicant is required to—

(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;

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

(c) cooperate with the Secretary concerning the inspection of the proposed mine area;

(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 title).

The Secretary must:

(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;

(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;

(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;

(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 secretary'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;

(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.

For the purpose of such hearings, the secretary 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.

Interested citizens may—

(a) review mining applications at specific locaticns;

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

(c) request inspection of the proposed mining area relative to the hearing and accompany the inspection tour;

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

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

SECTION 211. DECISIONS OF THE SECRETARY AND APPEALS

Under the administrative procedure established in this section, if hearings on the mining application have been held within 30 days after their completion, the Secretary 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.

In instances where no hearings have been held, the Secretary is to notify the applicant in writing of this 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 acccunt the time needed for appropriate field investigations of the site, the complexity cf the permit applications, whether or not written objections have been filed, and the fulfillment of other administrative responsibilities by the regulatory authority under this Act.

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 Secretary will hold the hearing within 30 days, notifying all interested parties and following the procedure outlined above.

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.

SECTION 212. ENVIRONMENTAL PROTECTION PERFORMANCE STANDARDS

This section sets forth the minimum criteria which must be required by the Federal program regulating surface mining and reclamation operations for coal on Federal Lands.

These criteria are as follows:

(1) maximize coal utilization;
(2) restore the land to a condition at least fully capable of supporting prior-to-mining land uses;
(3) restore all mined lands to approximate original contour;
(4) stabilize all spoil piles;
(5) segregate topsoil for ultimate replacement;
(6) restore topsoil;
(7) prevent offsite damages;
(8) create, if necessary, appropriate impoundments, within the definitions of this Act, if authorized in the approved permit;
(9) fill all auger holes;
(10) minimize the disturbances to the prevailing hydrologic balance of the minesite and associated offsite areas;
(11) stabilize all waste piles;
(12) refrain from mining within 500 feet of an underground mine;
(13) provide for safe mine waste impoundments with respect to both engineering specifications and location;
(14) prevention of hazards to waters from acid-forming materials or fire hazards;

(15) insure that the use of explosives be done only with proper notice and precautions;
(16) assure that reclamation efforts proceed as contemporaneously as possible with the mining operation;
(17) insure that the maintenance of haul roads will prevent erosion and siltation;
(18) no alteration of water flow;
(19) revegetation of natural species following mining;
(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;
(21) any other criterion which the Secretary deems necessary for the implementation of this Act.

Subsection of (c) 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.

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 revegatation, 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.

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:

(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;
(2) the site must be returned to the approximate original contour by covering highwalls completely and limiting disturbance above the highwall;
(3) "steep slope" is defined as any slope above 20 degrees or a lesser slope as determined by the Secretary after due consideration of the soil, climate and other environmental characteristics of a region or State.

One of the key environmental protection standards of this title 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.

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.

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 this requirement to return to approximate original contour makes western thick seam coal surface mining physically and/or economically impossible. This, however, is an erroneous interpretation of the concept of approximate original contour and ignores the plain words of the statute.

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 regraded 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.

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.

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

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.

SECTION 213. SURFACE EFFECTS OF UNDERGROUND COAL MINING OPERATIONS

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:

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.

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.

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

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.

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

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.

Subsection (d) provides that all other provisions of the Act and regulations pertaining to this program, 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.

SECTION 214. INSPECTIONS AND MONITORING

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

57-006 O - 75 - 4

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.

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

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

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

(2) occurring without prior notice to the operator;

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

(4) rotating inspectors at adequate intervals.

After each inspection, the inspector shall notify the operator and the Secretary 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.

SECTION 215. PENALTIES

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.

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

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

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 $10,000, or imprisoned for not longer than one year, or both.

Subsections (e) and (g) provides that the same penalities apply to the officers of a corporation which violates the provisions of this Act, as to an individual.

Under subsection (f), 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 $10,000, or imprisoned for not longer than one year, or both.

SECTION 216. RELEASE OF PERFORMANCE BONDS OR DEPOSITS

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 Secretary. Sixty percent of the bond may be released when backfilling, regrading 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.

Under subsection (d), if an application for bond release is denied, the permittee is to be notified in writing of the reasons therefor.

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.

SECTION 217. CITIZEN SUITS

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

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)).

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. If the Secretary 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.

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.

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.

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.

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 ruling. Nor does it limit any person's right under Federal or State law to seek legal or equitable relief.

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."

SECTION 218. ENFORCEMENT

This section sets forth a number of specific characteristics for the enforcement of this title.

(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.

(2) 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.

(3) 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 this title requires the Secretary to order the permittee to show cause why his permit should not be suspended or revoked.

(4) 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.

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.

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.

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.

SECTION 219. DESIGNATING AREAS UNSUITABLE FOR SURFACE COAL MINING

The Secretary is required 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 section.

This title requests the survey of Federal lands to determine the unsuitability of such lands for all or any type of surface coal mining, but not for exploration.

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

Upon petition, such lands shall be viewed and, after public hearings, 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.

Each study for designation is made only on a case by case basis upon specific petition. In addition, this title 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 September 1, 1974.

Under subsection (b), 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.

In addition, prior to the designation of any area as unsuitable for mining, the Secretary 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.

In addition to the prohibition of surface mining which may result from the operation of the designation process, subsection (c) 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.

All of these bans 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 is in no way intended to affect or abrogate any previous state court decisions.

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.

SECTION 220. PUBLIC AGENCIES, PUBLIC UTILITIES, AND PUBLIC CORPORATIONS

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.

SECTION 221. REVIEW BY SECRETARY

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.

SECTION 222. JUDICIAL REVIEW

Any decision of the Secretary issued pursuant to this title may be reviewed in an appropriate United States Court of Appeals by a petition of such decision by a person who participated in the administrative proceedings and who was aggrieved by such decision according to this section.

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.

SECTION 223. SPECIAL BITUMINOUS COAL MINES

Section 223 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 on Federal lands 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.

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 of the title and met several other criteria. Such mines are not exempted from the provisions of this title, but the Secretary is authorized to allow appropriate variation from certain requirements dealing with spoil handling, regrading 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.

The language of this section has been carefully drawn to apply to pits which were operational prior to January 1, 1972. 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 this title, 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.

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.

SECTION 224. DEFINITIONS

This section contains 19 definitions: Secretary; commerce; surface coal mining operations; surface mining and reclamation operations; lands within any State; Federal lands; Indian lands; Indian tribe; reclamation plan; State regulatory authority; regulatory authority; person; permit; permit applicant; permittee; other minerals; approximate original contour; operator; permit area; unwarranted failure to comply; alluvial valley floors; and imminent danger to health and safety of the public.

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

"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 16⅔ 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.

"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.

"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.

"Other minerals" is defined to include clay, stone, sand, gravel, metalliferous and nonmetalliferous ores, and any other solid material or substace 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.

"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.

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

SECTION 225. OTHER FEDERAL LAWS

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.

Specifically, it disclaims any conflict between this title or any 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.

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.

SECTION 226. EMPLOYEE PROTECTION

Section 226 makes unlawful the discharge or discrimination against any person who has filed a suit or testified under provisions of this title, and gives such person recourse to review by the Secretary of Labor. 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.

SECTION 227. PROTECTION OF GOVERNMENT EMPLOYEES

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

SECTION 228. ALASKAN SURFACE COAL MINE STUDY

Section 228 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.

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.

SECTION 229. STUDY OF RECLAMATION STANDARDS FOR SURFACE MINING OF OTHER MINERALS

Section 229 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 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.

The Committee's decision to limit the scope of this title 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.

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 229(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 and for the mining of oil shale and tar sands is to be submitted within one year.

SECTION 230. INDIAN LANDS

Section 230 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.

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.

SECTION 231. SURFACE OWNER PROTECTION

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.

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.

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.

In order to give Congress and the Administration an opportunity to assess the impact of this provision, Section 231 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 haye already entered into agreements with coal companies which intend to attempt to obtain Federal coal lease. Section 231 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.

The requirement that coal deposits subject to Section 231 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 this section which provides that nothing in this section enlarges or diminishes any property rights held by the United States or any other land owner.

Section 231 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."

SECTION 232. FEDERAL LESSEE PROTECTION

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.

SECTION 233.—ALASKA COAL

This provision applies to those lands which, as a result of the Alaska Statehood Act or the Alaska Native Claims Settlement Act, were conveyed from Federal to state or private ownership. Its purpose is to assure that nothing in this Act shall be construed as changing existing property rights with respect to lands so conveyed. The provision applies to any coal conveyed out of Federal ownership under these two laws regardless of its current ownership.

SECTION 234. WATER RIGHTS

This section reaffirms existing State law with regard to water rights affected by a surface coal mine operation subject to this title.

SECTION 235. AUTHORIZATION OF APPROPRIATIONS

This title appropriates such sums as are necessary for the purposes of this title.

VI. Tabulation of Votes Cast in Committee

Pursuant to Section 133(b) of the Legislative Reorganization Act of 1946, amended, the following is a tabulation of votes of the Committee during consideration of S. 391:

1. During the Committee's consideration of S. 391 a number of voice votes and formal roll call votes were taken on amendments. These votes were taken in open business meeting 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.

2. S. 391 was ordered favorably reported to the Senate on a roll call vote of 12 yeas and 2 nays. The vote was as follows:

Jackson–Yea	Fannin–Nay
Church–Yea	Hansen–Yea
Metcalf–Yea	Hatfield–Yea
Johnston–Yea	McClure–Yea
Abourezk–Yea	Bartlett–Nay
Haskell–Yea	
Glenn–Yea	
Stone–Yea	
Bumpers–Yea	

VII. Cost Estimates

In accordance with Section 252(a) of the Legislative Reorganization Act of 1970 the Committee provides the following estimates of cost:

1. *Administrative Costs*—Enactment of S. 391 will not require any significant administrative action not already provided for at existing budgetary levels other than implementation and enforcement of the surface coal mining regulations under Title II. Section 204(a) provides that the application fees should pay the cost of reviewing, administering and enforcing surface coal mining permits. Administrative costs connected with processing of prospecting permits and preference right lease applications would be reduced since these would be eliminated.

2. *Impact on Federal Revenues*—If enacted, S. 391 should increase Federal revenues from coal leasing. However, enactment of Section 111 of S. 391 will significantly reduce Federal revenues from mineral leasing under the Mineral Leasing Act of 1920. This section increases the share of revenues paid to the states from 37½% to 60%. Based on estimated revenues in Fiscal Year 1975 of $311,000,000, this change would reduce Federal revenues for the year by $70,000,000. Revenues in every future year would, of course, be reduced by the same proportion.

VIII. Executive Communications

U.S. Department of the Interior,
Office of the Secretary,
Washington, D.C., May 5, 1975.

Hon. Henry M. Jackson,
Chairman, Committee on Interior and Insular Affairs,
U.S. Senate, Washington, D.C.

Dear Mr. Chairman: This responds to your request for this Department's views on S. 391, a bill "To amend the Mineral Leasing Act of 1920, and for other purposes."

S. 391 is similar to S. 3528 in the 93d Congress as passed by the Senate. It would amend the Mineral Leasing Act of 1920 (30 U.S.C. §§ 181–287) to require that coal leases be issued by competitive bidding with limited exceptions, repeal authority to issue prospecting permits and provide for issuance of exploration licenses after approval of an exploration plan, prohibit leasing of lands unless they are included in a land use plan, limit lease terms to 10 years and so long thereafter as coal is produced annually in paying quantities, require a minimum royalty, and allow States greater discretion in spending their shares of Federal coal leasing revenues.

In the previous Congress it was the position of this Department that total revision of the Mineral Leasing Act was preferable to the piecemeal approach of coal leasing amendments. However, we stated that the Department would not object to such coal leasing provisions if amended to conform to the general approach of the Department's proposed "Mineral Leasing Act of 1973". While we still prefer adoption of a comprehensive revision of the mineral leasing laws to include all presently leasable mineral resources, and intend to submit such legislation on this matter in the future, we would approve enactment if the subject bill is amended in accordance with the following comments:

(1) *Forty-Acre Leasing Tracts,* subsection 2(a)(1) on page 1 and 2. The requirement that leasing units be in tracts of 40 acres or multiples thereof was established during a period when average leaseholds and leasing operations were relatively small and 40 acres was a meaningful size for a lease. Today however, there is no special significance to tracts of 40 acres or multiples thereof. Indeed, there may be tracts of leasable lands which are not in multiples of 40. More leeway should be given to the Secretary to offer leases in tracts that he deems appropriate in the public interest. We recommend, therefore, that section 2(a)(1) be amended to read:

> The Secretary of the Interior is authorized to divide any lands subject to this Act into coal leasing tracts of such size as he deems appropriate and in the public interest, and thereafter he shall, in his discretion, upon the request of any qualified applicant or on his own motion, from time to time, offer such lands for leasing, and shall award leases thereon by competitive bidding.

(2) *Noncompetitive Modifications of Leases.* Sections 3 and 4 of the Mineral Leasing Act (30 U.S.C. §§ 203, 204) provide for modifications and additions to leases without competition of not more than 2,560 acres. S. 391 would not affect these sections. As a general rule most modifications or additions do not warrant competitive authorization. However, such authorized modifications or additions to leaseholds should not be used to circumvent the intention of a competitive system. Therefore, we recommend that sections 3 and 4 be repealed, and S. 391 be amended to add, as subsection 2(b) the following language:

> (b) Any person, association, or corporation holding a lease of coal lands or coal deposits under the provisions of this Act shall with the approval of the Secretary of the Interior, upon a finding by him that it would be in the interest of the United States, secure modifications of the original coal lease by including additional coal lands or coal deposits contiguous to those embraced in such lease, but in no event shall the total area added by such modifications to an existing coal lease exceed one hundred and sixty (160) acres, or add acreage larger than that in the original lease. The Secretary may prescribe new terms and conditions which shall be consistent and applicable to all of the acreage in such modified lease.

(3) *Land Use Planning on National Forest Lands,* on page 2. As subsection (2)(a)(2) lines 7 through 16 on page 2, is drafted, the Secretary of Agriculture is given the authority to develop comprehensive land use plans for the land within the National Forest System and to determine whether lease sales within the National Forest System are

consistent with such plans. This provision would divide the authority between the Secretary of Agriculture and the Secretary of the Interior who handles lease sales in nearly all other areas to be considered for mining. We therefore suggest that subsection (2)(a)(2) be amended to read:

(2)(a)(2). After identifying the areas where there is substantial development interest in coal leasing, the Secretary of the Interior shall prepare comprehensive land-use plans for lands under his responsibility where plans have not already been prepared. The Secretary of the Interior shall inform the Secretary of Agriculture of substantial development interest in coal leasing on lands within the National Forest System. Upon receipt of such notification from the Secretary of the Interior, the Secretary of Agriculture shall prepare, where such plans have not already been prepared, a comprehensive land-use plan for such areas, taking into consideration the proposed mineral resource development interest. In preparing such land-use plans, the Secretary of the Interior, or in the case of lands within the National Forest System, the Secretary of Agriculture, shall consult with State and local governments and the general public.

To provide that the issuance of leases on National Forest System lands would be subject to the consent of the Department of Agriculture and subject to such conditions as that Department might prescribe with respect to the use and protection of nonmineral interests, we suggest adding a new subsection (2)(a)(3) as follows:

(2)(a)(3). Leases covering lands the surface of which is under the jurisdiction of any Federal agency other than the Department of the Interior may be issued only upon consent of the other Federal agency and upon such conditions as it may prescribe with respect to the use and protection of the nonmineral interests in those lands.

It will be necessary now to renumber old subsection 2(a)(3), on page 2, as subsection 2(a)(4).

(4). *Exploration and License Plan*, on page 3. We favor the concept of exploration licenses set out in S. 391 with the specific requirement for submission to the Secretary of an exploration plan. In order to assure that the Government has the right to initiate the leasing process and to lease at any time, section 3 of S. 391 should be amended. On page 3, delete the sentence beginning on line 4 and ending on line 5, and insert instead: "Each exploration license shall be for a term of not more than two years and be subject to a reasonable fee. The issuance of exploration licenses shall not preclude the Secretary from issuing coal leases at such times and locations as he deems appropriate. No exploration license will be issued for any land on which a coal lease has been issued."

We also recommend adding the following language to the end of proposed subsection 3(b)(2), page 3, line 20, to conform to present practices on National Forest System's lands.

Exploration licenses covering lands the surface of which is under the jurisdiction of any Federal agency other than the Department of the Interior may be issued only upon such conditions as it may prescribe with respect to the use and protection of the nonmineral interests in those lands.

(5) *Penalties*, on page 4. We believe that the language in S. 391 dealing with the assessment of fines, subsection 3(b)(5), page 4, lines 19–22, should be amended. There is some confusion as to whether disclosure of data would be required only upon conviction. In order to avoid a "due process" question under the Constitution, we recommend that the following new sentence be added at the end of line 22 on page 4 of the bill:

No penalty shall be assessed under this subsection without proper notice and an opportunity for a hearing.

(6) *Paying Quantities*, on page 5. We recommend that the term "paying quantities" in subsection 7(a)(1), line 3 and its definition in subsection 7(a)(2), lines 14 through 17, be deleted and that the following language be adopted as the first sentence of 7(a)(1):

A coal lease shall be for a term of twenty years and for so long thereafter as coal is continuously produced in quantities which, in the judgment of the Secretary, would justify the continued operation of the mine or mines.

The use of profitability as the yardstick for continuation of a lease is administratively cumbersome and ultimately may be more costly. Based on our experiences with the term "paying quantities" in oil and gas leasing, we now foresee great difficulty in applying this term to non-oil and gas leasing. The purpose of the provision is to ensure sufficient development of Federal coal leases to justify continuation. Contrary to this intent, however, the definition as stated in S. 391 may have the effect of terminating leases which are temporarily shut down, in the early nonprofitable stages of production, or are producing at levels which cover only part of production costs, or are being developed as part of a larger mining unit containing several Federal or non-Federal lease units.

There may well be times in the production of coal from a particular lease or leases where continued production would be in the public interest in satisfying economic and energy needs, even though it would not be paying a profit to the lessee.

(7) *Logical Mining Units*. S. 391 does not contain specific authority for the Secretary to consolidate leases into logical mining units so that production within a unit rather than on a single lease would satisfy renewal and diligence requirements. Authority to unitize leases would give the Secretary and lessees greater flexibility in planning the development of leases so that there is a maximum recovery of coal with a minimum impact on the environment. The authority would be particularly valuable in planning for the development of lands where some tracts are federally owned and some privately owned. Mining units could then be designated to encompass private lands, thus ensuring the development of isolated Federal tracts which ordinarily might not be developed.

We therefore recommend that in order to authorize unitization, the following new subsection 7(b) be added on page 5 to read as follows and that the subsequent subsections be renumbered accordingly:

7(b). Subject to valid existing rights, subsection 2(c) and (d) of the Act of August 31, 1964, 78 Stat. 710, 30 U.S.C. § 201–1, is amended to read as follows:

(c) At the discretion of the Secretary, leases issued under this section may, in the interest of conservation or otherwise in the

public interest, be consolidated into logical mining units. The Secretary may require among other things that (1) production on any lease in a logical mining unit will be construed as production on all leases in that unit, (2) the rentals and royalties for all Federal leases in a logical mining unit may be combined, and advanced royalties paid for any lease within a logical mining unit may be credited against such combined royalties, and (3) leases issued before the date of enactment of this Act may be included with the consent of all lessees in such logical mining unit, and, if so included, shall be subject to the provisions of this section.

(d) By regulation the Secretary may require a lessee under this Act to form a logical mining unit, and may provide for the determination of participating acreage within a unit.

(8) *Advance Royalty Payments,* on page 5. We do not feel that paragraph (b) properly revises certain portions of section 7 of the Mineral Leasing Act of 1920 (30 U.S.C. § 207). It does not appear to authorize the Secretary to charge advance royalties, as section 7 presently does, and it does not accurately reenact either the diligence requirements or the *force majeure* provisions of the Act. We therefore suggest that paragraph (b) be rewritten to read as follows:

(b) Each lease shall be subject to the conditions of diligent development and continued operation of the mine or mines, except when lease operations shall be interrupted by strikes, the elements or casualties not attributable to the lessee. The Secretary of the Interior may, if he determines that it is in the public interest, provide for the payment at his discretion of an advance royalty in lieu of the requirements of continued operation of the mine or mines.

(9) *Development and Reclamation Plan Approval Within One Year,* subsection 7(c) on page 5 and 6. S. 391 requires approval of a development and reclamation plan within 1 year of issuance of a lease. This deadline may be impractical. A meaningful plan requires extensive knowledge of the terrain, hydrology, geology, soil characteristics, baseline environmental data, reclamation and mining controls to be imposed by Federal, State and local laws and regulations, and standards to be imposed by stipulation. These last two items must be known and understood by both the lessee and the lessor in order to make subsequent administration of the lease efficient and effective. The lessee would not always be in a position to submit development plans within 1 year.

Sufficient time prior to formulating a development plan must be available to the operator so as to learn more explicitly of deposit characteristics upon which will depend the plans for mining, handling and marketing. Such information would include such physical aspects as continuity and thickness of the coal seams, the Btu heat value, moisture, ash, sulfur and trace elements and other characteristics such as coking quality, ash fusion temperature, grindability, and burning characteristics.

It could take a number of years to collect this data. We therefore recommend that the bill require submission of a plan within three years of issuance of a lease and before operations are commenced which

may cause significant environmental distubrance. Accordingly, we recommend that on page 5, line 24 be revised to read as follows:

(c) Within three years of issuance of a lease and before development operations begins which may cause a significant environmental distrubance, the * * *.

(10) *Delegation of Authority to the Secretary of Agriculture* subsection 7(c) on page 6. Approval or disapproval of mineral development is clearly the responsibility of the Secretary of the Interior under the Mineral Leasing Act, even in the National Forest System except that in acquired lands the Secretary of Agriculture has authority to prohibit leasing or to impose conditions to protect the primary use of the forests. Adoption of the proviso in subsection (7c) on page 6, line 11–18 might result in an inconsistency within the law; and would also appear to require the Forest Service to duplicate, at least in part, an organizational element and function which presently exists in the Conservation Division of the Geological Survey. Therefore, we recommend that the proviso, on lines 11 to 18, be deleted.

(11) *Revision of Development Plans,* subsection 7(c) on page 6. In this same section, lines 21 through 25, additional reasons for revision of plans should include needs for: protection of the environment, improved reclamation, a higher land use, or when it is in the public interest.

(12) *Restriction in State Spending of Coal Revenue,* on page 7. Section 5 of S. 391 would give States greater flexibility in using their share of moneys received under section 35 of the Mineral Leasing Act of 1920 (30 U.S.C. § 191). We view the restrictions in section 35 of the Act as no longer necessary. The Department has strongly endorsed the repeal of the restrictions on state use of its share of funds from all mineral leasing activities and has objected to previous proposals which were unnecessarily restrictive. We therefore recommend that instead of only relaxing the spending restrictions as S. 391 would do, that they be repealed from section 35 of the Act. The repeal may be accomplished in S. 391 by amending lines 3 through 10 on page 7 to read as follows: "* * * amended by deleting the words for the construction and maintenance of public roads or for the support of public schools or other public educational institutions." This amendment would give states complete discretion as to their expenditure of coal and other mineral leasing receipts from Federal lands.

(13) *Rental Credits.* As an added incentive to produce, provisions should be included to allow annual rentals to be credited against royalties. We therefore recommend that S. 391 be amended by adding the following new sentence after "thereof" on page 5, line 5: "Rentals paid for any one year shall be credited against royalties accruing for that year."

(14) *Discovery of New Deposits.* The Department is analyzing alternative means of stimulating private exploration for leasable minerals other than coal, and intends to deal with these issues in the Administration's proposal for a total revision of the Mineral Leasing Act.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

JACK HORTON,
Assistant Secretary of the Interior.

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, D.C., May 6, 1975.

Hon. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs,
U.S. Senate.

DEAR MR. CHAIRMAN: As you requested, here is the report of the Department of Agriculture on S. 391, a bill "To amend the Mineral Leasing Act of 1920, and for other purposes."

The Department of Agriculture believes S. 391 would provide beneficial changes in the system of leasing Federally-owned coal. Similar attention should be given to the laws governing the leasing and disposal of other minerals, and we would prefer that broader legislation be enacted. However, we would approve enactment of S. 391 if amended in accordance with amendments offered by the Department of the Interior in its report on the bill. Because of our particular concern that mineral development on National Forest System lands be accomplished in a manner that will minimize its impact on surface resources and uses, we would like to expand upon the purpose of three of the amendments offered by the Department of the Interior.

S. 391 would amend the Mineral Leasing Act of 1920 (41 Stat. 437), as amended (30 U.S.C. 181 *et seq.*) as it applies to the leasing of Federal-owned coal. The bill would change present law governing exploration for coal deposits and issuance of coal leases. The responsibility for administration of the Mineral Leasing Act rests with the Secretary of the Interior.

Our interest in this bill relates to the fact that the Department of Agriculture through the Forest Service is responsible for the administration of 187 million acres of Federal land within the National Forest System. The Mineral Leasing Act of 1920 applies directly to National Forest lands reserved from the public domain—approximately 140 million acres. Mineral leasing on 47 million acres of acquired National Forest lands is governed by the Mineral Leasing Act for Acquired Lands. That Act incorporates the leasing provisions of the Mineral Leasing Act of 1920 by reference. Approximately 6½ million acres of land within the National Forest System are known to be underlain with coal.

National Forests are Federal lands that are dedicated to specific uses and purposes. These are best expressed in the Multiple Use-Sustained Yield Act of 1960. We believe the decision as to whether a particular coal development lease should be issued on National Forest System lands should rest with this Department on a consent basis. We have the responsibility to administer the various surface resources and uses to which the lands are dedicated. We have a longstanding familiarity with these lands and the related expectations of people who have an interest in those resources and uses. We are therefore in the best position to evaluate the merits of a mineral development proposal in relationship to its impacts on other resources and uses, and also to evaluate how such development might be accommodated in conjunction with those uses. The Mineral Leasing Act for Acquired Lands recognizes this principle and provides that no mineral deposits covered by that Act shall be leased except with the consent of the

head of the department having jurisdiction over the lands and subject to such conditions as he may prescribe to insure the adequate utilization of the lands for the primary purposes for which they were acquired or are being administered. We believe a comparable provision should be added to S. 391, thereby establishing a uniform approach to leasing on all of the National Forest System lands. In its report on S. 391 the Department of the Interior has suggested an amendment to section 2 of the bill that contains such a provision. The pertinent part of the amendment read as follows:

> Leases covering lands the surface of which is under the jurisdiction of any Federal agency other than the Department of the Interior may be issued only upon consent of the other Federal agency and upon such conditions as it may prescribe with respect to the use and protection of the nonmineral interests in those lands.

In recognition of the responsibility of the Federal agency having jurisdiction over the surface of lands, section 3 of the bill appropriately provides that a person holding an exploration license must comply with that agency's rules and regulations. Exploration activities may result in significant surface disturbance and have considerable impact on surface resources and uses. Control of such activities can best be handled under the terms of the license. Therefore, we believe it should be a requirement that licenses contain such conditions as the Federal land administering agency deems necessary to protect surface resources and uses. In its report on S. 391 the Department of the Interior recommends amendments to section 3 of the bill relating to exploration licenses. One of these amendments provides for this requirement and reads as follows:

> Exploration licenses covering lands the surface of which is under the jurisdiction of any Federal agency other than the Department of the Interior may be issued only upon such conditions as it may prescribe with respect to the use and protection of the nonmineral interest in those lands.

Section 4 of S. 391 would revise section 7 of the Mineral Leasing Act and add a new subsection 7(c) to require lessees to submit development and reclamation plans to the Secretary of the Interior for approval, except when the plans involve National Forest System lands. In the latter situation, the Secretary would be required to delegate authority to the Secretary of Agriculture to approve such plans. The plans would pertain to all development and reclamation activities including subsurface mining. Such a broad delegation would result in some duplication in this Department of responsibilities and expertise which now exist in the Department of the Interior. While it is important to us that we be involved in the approval process, we believe National Forest System interests can be adequately protected under the provision contained in lines 9 through 11, on page 6 of S. 391, which would afford this Department an opportunity to review and consent to plans without the delegation of the total review and approval responsibility. The Department of the Interior's report on S. 391 offers an amendment which would retain the consent provision, but delete the proviso on delegation of authority to approve plans. We concur with that amendment.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

J. PHIL CAMPBELL,
Under Secretary.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., July 17, 1975.

Hon. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs, U.S. Senate
Washington, D.C.

DEAR MR. CHAIRMAN: Your Committee now has under consideration for markup a bill, S. 391, the "Federal Coal Leasing Amendments Act of 1975," The Department submitted, on May 5, 1975, a report on the bill which set forth our views and proposed certain amendments. Since that time, other amendments have been proposed on which we have not formally commented in writing. We would like to address three amendments which have been offered and were not covered in our prior report.

10-YEAR PRODUCTION REQUIREMENT

This amendment would cause a lease to terminate if a leased tract were not being produced after 10 years.

The Administration and the Department are strongly opposed to this requirement and urge that this amendment not be adopted. Although we favor early production, there can be valid reasons for holding reserves under a Federal lease for more than 10 years without development. See Attachment #1, Current Departmental Policy on Diligence.

1. This is particularly true if the lease is part of a logical mining unit which is being developed. Ownership patterns of land and coal geology often necessitate the leasing of land that will not be developed for over 10 years because it is only profitable for a lessee if he can develop the adjacent lands first.

2. The start-up period for a new mine may be as long as five to seven years. This provision might force an uneconomic and perhaps more environmentally costly technique of mining in order to avoid the limitation it would impose. Manufacturers of mining equipment cannot meet orders within six years. Steel shortages are causing increasing delays. These unavoidable delays would seriously impede the ability of lessees to meet production requirements within 10 years.

3. Periods between the time when decisions to build coal consuming plants are made and the time when coal deliveries are needed are at least eight or 10 years, and delivery commitments are necessary before the construction of plants can begin. The lead times are longer for gasification plants.

4. 80 percent of all coal is sold pursuant to long-term contracts which do not call for deliveries for 10 to 15 years.

5. A very significant advantage to long-term reserves is that they minimize demand-supply lags and thus improve our resource allocation and our ability to avoid fuel shortages.

6. It should also be noted that the penalty for not producing within 10 years would not only be cancellation of the lease, but cancellation of any other lease issued under the Mineral Leasing Act that the person, association, or corporation holds. We can find absolutely no justification for this unusually onerous provision.

FEDERAL LANDS SURFACE MINING CONTROL AND RECLAMATION ACT OF 1975

This is an undesirable amendment to the coal leasing bill.

It is extensive, highly substantive and controversial legislation in its own right which should be considered separately and should not be appended summarily to this leasing bill.

The amendment proposed contains seriously objectionable provisions, similar or identical to those contained in surface mining legislation which was considered this past spring and which was vetoed by the President.

SECTION 9, REGARDING A FEDERAL COAL LEASING SCHEDULE

This section appears similar to intent and effect to the EMARS program now underway in the Department. Inasmuch as there is already such a program underway, we believe there is no need for this amendment. Moreover the provisions as written may well create conflicts, confusion, and possible legal difficulties. We urge this amendment not be adopted.

Thank you for your consideration of these matters.

Sincerely yours,

ROYSTON C. HUGHES,
Assistant Secretary of the Interior.

CURRENT DEPARTMENTAL POLICY ON DILIGENCE

ATTACHMENT 1

Advance royalty requirements—to encourage diligent development and continuous production—will be imposed on the lease at the time of lease renewal. These will include required annual production schedules and a standard royalty rate of 8 percent but not less than 5 percent of the gross value of the coal at the mine. Advance royalties will be based on an assumed schedule of production which should exhaust the leased deposit in 40 years. Advance royalties, at the production royalty rate, will commence in the sixth lease year and will rise annually in amount until they are at the full level from the tenth year onward. The lessee will pay the advance royalty or the production royalty depending upon which is greater. Advance royalty payments may be credited against royalty.

IX. 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. 391, as ordered 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):

1. Section 101 of S. 391 would amend subsection 2(a) of the Mineral Leasing Act of 1920 (41 Stat. 438), as amended (30 U.S.C. 201(a)), as follows:

[Sec. 2(a) The Secretary of the Interior is authorized to divide any of the coal lands or the deposits of coal, classified and unclassified, owned by the United States, into leasing tracts of forty acres each, or multiples thereof, and in such form as, in his opinion, will permit the most economical mining of the coal in such tracts, and thereafter he shall, in his discretion, upon the request of any qualified applicant or on his own motion, from time to time, offer such lands or deposits of coal for leasing, and shall award leases thereon by competitive bidding or by such other methods as he may by general regulations adopt, to any qualified applicant. He is authorized, in awarding leases for coal lands improved and occupied or claimed in good faith, prior to February 25, 1920, to consider and recognize equitable rights of such occupants or claimants. No competitive lease of coal shall be approved or issued until after the notice of the proposed offering for lease has been given in a newspaper of general circulation in the county in which the lands are situated in accordance with regulations prescribed by the Secretary.]

SEC. 2. (a)(1) The Secretary of the Interior is authorized to divide any lands subject to this Act into coal leasing tracts of such size as he deems appropriate and thereafter he shall, in his discretion, upon the request of any qualified applicant or on his own motion, from time to time, offer such lands or deposits of coal for leasing, and shall award leases thereon by competitive bidding on either a royalty or bonus bidding basis, and if on a bonus bidding basis with either deferred or installment payments of the bonus which shall be specified in the notice of sale. A reasonable number of leasing tracts shall be reserved and offered for lease in accordance with this section to public bodies, including Federal agencies, rural electric cooperatives, or nonprofit corporations controlled by any of such entities: Provided, That the coal so offered for lease shall be for use by such entity or entities in implementing a definite plan to produce energy for their own use or for sale to their members or customers (except for short-term sales to others).

(2) No lease sale shall be held for land where the United States owns the surface and subsurface unless the lands containing the coal deposits have been included in a comprehensive land use plan prepared by the Secretary or, in the case of lands within the National Forest System, the Secretary of Agriculture and such sale is consistent with such plan. No lease sale shall be held for coal deposits underlying lands not owned by the United States if the Secretary determines that development of such coal deposits would be inconsistent with any applicable State or local land use plan, except where the Secretary finds that such coal development would be in the national interest.

(3) In preparing such land use plans, the Secretary of the Interior or, in the case of lands within the National Forest System, the Secretary of Agriculture, or in the case of a finding by the Secretary of the Interior that because of non-Federal interest in the surface or insufficient Federal coal, no Federal comprehensive land-use plans can be appropriately prepared, the responsible State entity, shall consult with appropriate State agencies and local governments and general public and shall provide

an opportunity for a public hearing on proposed plans prior to their adoption, if requested by any person having an interest which is, or may be, adversely affected by the adoption of such plans.

(4) Leases covering lands the surface of which is under the jurisdiction of any Federal agency other than the Department of the Interior may be issued only upon consent of the other Federal agency and upon such conditions as it may prescribe with respect to the use and protection of the non-mineral interests in those lands.

(5) No competitive lease of coal shall be approved or issued until after the notice of the proposed offering for lease has been given in a newspaper of general circulation in the county in which the lands are situated in accordance with regulations prescribed by the Secretary.

"(b) Any person, association, or corporation holding a lease of coal lands or coal deposits under the provisions of this Act shall, with the approval of the Secretary of the Interior, upon a finding by him that it would be in the interest of the United States, secure modifications of the original coal lease by including additional coal lands or coal deposits contiguous to those embraced in such lease, but in no event shall the total area added by such modifications to an existing coal lease exceed one hundred and sixty acres, or add acreage larger than that in the original lease, whichever is less. The Secretary may prescribe new terms and conditions which shall be consistent and applicable to all of the acreage in such modified lease."

2. Section 102 of S. 391 would redesignate subsection 2(b) of the Mineral Leasing Act of 1920 (41 Stat. 438), as amended (30 U.S.C. 201(b)), as subsection 2(c) and would amend the redesignated subsection as follows:

[Sec. 2(b) Where prospecting or exploratory work is necessary to determine the existence or workability of coal deposits in any unclaimed, undeveloped area, the Secretary of the Interior may issue, to applicants qualified under this Act, prospecting permits for a term of two years, for not exceeding five thousand one hundred and twenty acres; and if within said periods of two years thereafter the permittee shows to the Secretary that the land contains coal in commercial quantities, the permittee shall be entitled to a lease under this Act for all or part of the land in his permit.

Any coal prospecting permit issued under this section and section 202 of this Act may be extended by the Secretary for a period of two years, if he shall find that the permittee has been unable, with the exercise of reasonable diligence, to determine the existence or workability of coal deposits in the area covered by the permit and desires to prosecute further prospecting or exploration, or for other reasons in the opinion of the Secretary warranting such extension.]

(c)(1) The Secretary may, under such regulations as he may prescribe, issue to any person an exploration license. No person may conduct coal exploration for commercial purposes for any coal on lands subject to this Act without such an exploration license. Each exploration license shall be for a term of not more than two years and be subject to a reasonable fee. The issuance of exploration licenses shall not preclude the Secretary from issuing coal leases at such times and locations as he deems appropriate. No exploration license will be issued for any land on which a coal lease has been issued. Each exploration license shall contain such reasonable conditions as the Secretary may require, including conditions to insure the protection of the environment, and shall be subject to all applicable

Federal, State, and local laws and regulations. Upon violation of any such conditions or laws the Secretary may revoke the exploration license. An exploration license shall confer no right to a lease under this Act.

(2) A licensee may not remove any coal for sale but may remove a reasonable amount of coal from the lands subject to this Act included under his license for analysis and study. A licensee must comply with any rules and regulations of the Federal agency having jurisdiction over the surface of the lands subject to this Act. Exploration licenses covering lands the surface of which is under the jurisdiction of any Federal agency other than the Department of the Interior may be issued only upon such conditions as it may prescribe with respect to the use and protection of the nonmineral interests in those lands.

(3) An applicant for an exploration license shall submit to the Secretary an exploration plan. The exploration plan will set forth, in the degree of detail established in regulations issued by the Secretary, specific work to be performed, the manner in which it will be performed and compliance with environmental, health and safety standards of all Federal, State, and local laws and regulations. As promptly as possible after submittal of the plan, the Secretary shall approve or disapprove the plan or require that it be modified. No exploration license shall be issued prior to approval of the exploration plan by the Secretary.

(4) The licensee shall furnish to the Secretary copies of all data (including, but not limited to, geological, geophysical, and core drilling analysis) obtained during such exploration. The Secretary shall maintain the confidentiality of all data so obtained until after the areas involved have been leased or until such time as he determines that making the data available to the public would not damage the competitive position of the licensee, whichever comes first.

(5) Any person who willfully conducts coal exploration for commercial purposes on lands subject to this Act without an exploration license issued hereunder shall be subject to a fine of not more than $1,000 for each day of violation. All data collected by said person on any Federal lands as a result of such violation shall be made immediately available to the Secretary, who shall make the data available to the public as soon as it is practicable. No penalty shall be assessed under this subsection without proper notice and an opportunity for a hearing.".

3. Section 103 of S. 391 would amend section 7 of the Mineral Leasing Act of 1920 (41 Stat. 439; 30 U.S.C. 207) as follows:

[Sec. 7. For the privilege of mining or extracting the coal in the lands covered by the lease the lessee shall pay to the United States such royalties as may be specified in the lease, which shall be fixed in advance of offering the same, and which shall not be less than 5 cents per ton of two thousand pounds, due and payable at the end of each third month succeeding that of the extraction of the coal from the mine, and an annual rental, payable at the date of such lease and annually thereafter, on the lands or coal deposits covered by such lease, at such rate as may be fixed by the Secretary of the Interior prior to offering the same, which shall not be less than 25 cents per acre for the first year thereafter, not less than 50 cents per acre for the second, third, fourth, and fifth years, respectively, and not less than $1 per acre for each and every year thereafter during the continuance of the lease, except that such rental for any year shall be credited against the royalties as they accrue for that year. Leases shall be for indeterminate periods upon

condition of diligent development and continued operation of the mine or mines, except when such operation shall be interrupted by strikes, the elements, or casualties not attributable to the lessee, and upon the further condition that at the end of each twenty-year period succeeding the date of the lease such readjustment of terms and conditions may be made as the Secretary of the Interior may determine, unless otherwise provided by law at the time of the expiration of such periods. The Secretary of the Interior may, if in his judgment the public interest will be subserved thereby, in lieu of the provision herein contained requiring continuous operation of the mine or mines, provide in the lease for the payment of an annual advance royalty upon a minimum number of tons of coal, which in no case shall aggregate less than the amount of rentals herein provided for. He may permit suspension of operation under such lease for not to exceed six months at any one time when market conditions are such that the lease cannot be operated except at a loss.]

SEC. 7. (a) A coal lease shall be for a term of twenty years and for so long thereafter as coal is continuously produced in quantities which, in the judgment of the Secretary, would justify the continued operation of the mine or mines. The Secretary shall, by regulation, prescribe annual rentals on leases of not less than $1 per acre or fractions thereof. A lease shall require payment of a royalty based on the value of the coal produced in such amount as the Secretary shall determine, but not less than 5 per centum of the value of the coal. The lease shall include such other terms and conditions as the Secretary shall determine. Such rents, royalties, and other terms and conditions of the lease will be subject to readjustment at the end of its primary term of twenty years and at the end of each ten-year period thereafter if the lease is extended by production.

(b) At the discretion of the Secretary, leases issued under this Act may, upon the application of the leaseholder, in the interest of conservation or otherwise in the public interest, be consolidated into logical mining units which may include land not owned by the United States. The Secretary may require among other things that (1) production on any lease in a logical mining unit will be construed as production on all leases in that unit, (2) the rentals and royalties for all Federal leases in a logical mining unit may be combined, and advanced royalties paid for any lease within a logical mining unit may be credited against such combined royalties, and (3) leases issued before the date of enactment of this Act may be included with the consent of all lessees in such logical mining unit, and, if so included, shall be subject to the provisions of this section.

(c) By regulation the Secretary may require a lessee under this Act to form a logical mining unit, and may provide for the determination of participating acreage within a unit: Provided, That, if the terms and conditions of participation in such a unit cannot be agreed upon they should be determined by the Secretary after a notice of hearing to the participants and such a hearing.

(d) Where production is prevented by strikes or other circumstances neither caused by nor attributable to the lessee, the Secretary may, if in his judgment the public interest will be served thereby, provide in the lease for payment in advance of a minimum royalty in lieu of continuous production under the lease.

(e) Within three years of issuance of a lease and before development operations begin which may cause a significant environmental disturbance, the lessee shall submit to the Secretary a development plan. The develop-

ment plan will set forth, in the degree of detail established in regulations issued by the Secretary, specific work to be performed, the manner in which coal extraction will be conducted and applicable environmental and health and safety standards will be met, and a time schedule for performance As promptly as possible after the lessee submits a plan, the Secretary shall approve or disapprove the plan or require that it be modified. Where the land involved is under the surface jurisdiction of another Federal agency. that other agency must consent to the terms of such approval. Where the surface of the land involved is in non-Federal ownership, the Secretary shall consult with the surface owner before approving or revising the plan. The Secretary may approve revisions of development plans if he determines that revision will lead to greater recovery of the mineral or protection of the environment, improve the efficiency of the recovery operation, or is the only means available to avoid severe economic hardship on the lessee.

(f) Each lease issued under this Act shall provide that such lease is subject to termination for failure to develop the lease with due diligence. At the time a tract is offered for lease the Secretary shall publish a proposed time schedule for development of the lease. Unless relieved of the obligation by the Secretary for good cause, failure to develop the lease according to said schedule shall be prima facie evidence of failure to develop with due diligence. The time schedule shall provide for development within seven years except for good cause which shall be stated by the Secretary.".

4. Section 104 and Section 111 of S. 391 would amend Section 35 of the Mineral Leasing Act of 1920 (41 Stat. 450), as amended (30 U.S.C. 191, as follows:

Sec. 35. All money received from sales, bonuses, royalties, and rentals of public lands under the provisions of this chapter shall be paid into the Treasury of the United States; 37½ per centum thereof shall be paid by the Secretary of the Treausry as soon as practicable after December 31 and June 30 of each year to the State within the boundaries of which the leased lands or deposits are or were located; said moneys to be used by such State or subdivisions thereof for the construction and maintenance of public roads or for the support of public schools or other public educational institutions, as the legislature of the State may direct; and, excepting those from Alaska, [52½ per centum thereof shall be paid into, reserved] *30 per centum thereof shall be paid into, reserved* and appropriated, as a part of the reclamation fund created by the Act of Congress known as the Reclamation Act, approved June 17, 1902, and of those from Alaska 52½ per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof: *Provided,* That all moneys which may accrue to the United States under this chapter from lands within the naval petroleum reserves shall be deposited in the Treasury as "miscellaneous receipts", as provided by the Act of June 4, 1920 (41 Stat. 813), as amended June 30, 1938 (52 Stat. 1252). All moneys received under the provisions of this chapter not otherwise, disposed of by this section shall be credited to miscellaneous receipts[.] : *And provided further, That all moneys paid to any State from sales, bonuses, royalties, and rentals of coal deposits in public lands may be used by such State and its subdivisions, giving priority to those subdivisions of the State socially or economically impacted by development of Federal coal, for (1) planning, (2) construction and maintenance of public facilities, and (3) provision of public services, as the legislature of the*

State may direct: And provided further, That an additional 22½ per centum of all moneys received from sales, bonuses, royalties, and rentals of public lands under the provisions of this chapter shall be paid by the Secretary of the Treasury as soon as practicable after December 31 and June 30 of each year to the State within the boundaries of which the leased lands or deposits are or were located; said additional 22½ per centum of all moneys paid to any State on or after January 1, 1976, shall be used by such State and its subdivisions as the legislature of the State may direct giving priority to those subdivisions of the State socially or economically impacted by development of minerals leased under this Act for (1) planning, (2) construction and maintenance of public facilities, and (3) provisions of public services.

5. Section 105 of S. 391 would repeal subsection 2(c), section 3, and section 4 of the Mineral Leasing Act of 1920 (41 Stat. 438–439) as amended (30 U.S.C. 202):

Sec. 2. [(c) No company or corporation operating a common-carrier railroad shall be given or hold a permit or lease under the provisions of this Act for any coal deposits except for its own use for railroad purposes; and such limitations of use shall be expressed in all permits and leases issued to such companies or corporations; and no such company or corporation shall receive or hold under permit or lease more than ten thousand two hundred and forty acres in the aggregate nor more than one permit or lease for each two hundred miles of its railroad lines served or to be served from such coal deposits exclusive of spurs or switches and exclusive of branch lines built to connect the leased coal with the railroad, and also exclusive of parts of the railroad operated mainly by power produced otherwise than by steam.

Nothing in this subsection and subsections (a) and (b) of this section shall preclude such a railroad of less than two hundred miles in length from securing one permit or lease thereunder but no railroad shall hold a permit or lease for lands in any State in which it does not operate main or branch lines.]

[Sec. 3. Any person, association, or corporation holding a lease of coal lands or coal deposits under this Act may, with the approval of the Secretary of the Interior, upon a finding by him that it will be for the advantage of the lessee and the United States, secure modifications of his or its original lease by including additional coal lands or coal deposits contiguous to those embraced in such lease, but in no event shall the total area embraced in such modified lease exceed in the aggregate two thousand five hundred and sixty acres.]

[Sec. 4. Upon satisfactory showing by any lessee to the Secretary of the Interior that all of the workable deposits of coal within a tract covered by his or its lease will be exhausted, worked out, or removed within three years thereafter, the Secretary of the Interior may, within his discretion, lease to such lessee an additional tract of land or coal deposits, which, including the coal area remaining in the existing lease, shall not exceed two thousand five hundred and sixty acres, through the same procedure and under the same conditions as in case of an original lease.]

6. Section 106 of S. 391 would amend Section 27(a)(1) of the Mineral Leasing Act of 1920 (41 Stat. 448), as amended (30 U.S.C. 184(a)(1)), as follows:

Sec. 27. (a)(1) No person, association, [or] corporation, *or any subsidiary, affiliate, or persons, controlled by or under common control with such person, association, or corporation* shall take, hold, own, or control at one time, whether acquired directly from the Secretary under this Act or otherwise, coal leases or permits on an aggregate of more than forty-six thousand and eighty acres in any one State[.], *but in no case greater than an aggregate of one hundred and fifty thousand acres in the United States: Provided, That any person, association, or corporation currently holding, owning, or controlling more than an aggregate of one hundred and fifty thousand acres in the United States on the date of enactment of this Act shall not be required on account of this subsection to relinquish said leases or permits: Provided, however, That in no case shall such person, association, or corporation be permitted to take, hold, own, or control any further Federal coal leases or permits until such time as their holdings, ownership, or control of Federal leases or permits has been reduced below an aggregate of one hundred and fifty thousand acres within the United States.*

7. Section 107 of S. 391 would amend section 3 of the Mineral Leasing Act for Acquired Lands of 1947 (61 Stat. 914; 30 U.S.C. 352) as follows:

Sec. 3. Except where lands have been acquired by the United States for the development of the mineral deposits, by foreclosure or otherwise for resale, or reported as surplus pursuant to the provisions of the Surplus Property Act of 1944, all deposits of coal, phosphate, oil, oil shale, gas, sodium, potassium, and sulfur which are owned or may hereafter be acquired by the United States and which are within the lands acquired by the United States (exclusive of such deposits in such acquired lands as are (a) situated within incorporated cities, towns and villages, national parks or monuments, [(b) set apart for military or naval purposes, or (c)] *or* (*b*) tidelands or submerged lands) may be leased by the Secretary under the same conditions as contained in the leasing provisions of the mineral leasing laws, subject to the provisions hereof. The provisions of the Act of April 17, 1926 shall apply to deposits of sulfur covered by this Act wherever situated. No mineral deposit covered by this section shall be leased except with the consent of the head of the executive department, independent establishment, or instrumentality having jurisdiction over the lands containing such deposit, or holding a mortgage or deed of trust secured by such lands which is unsatisfied of record, and subject to such conditions as that official may prescribe to insure the adequate utilization of the lands for the primary purposes for which they have been acquired or are being administered: *Provided,* That nothing in this Act is intended, or shall be construed, to apply to or in any manner affect any mineral rights, exploration permits, leases or conveyances nor minerals that are or may be in any tidelands; or submerged lands; or in lands underlying the three mile zone or belt involved in the case of the United States of America against the State of California now pending on application for rehearing in the Supreme Court of the United States; or in lands underlying such three mile zone or belt, or the continental shelf, adjacent or littoral to any part of the land within the jurisdiction of the United States of America.

8. Section 109 of S. 391 would amend section 1 of the Mineral Leasing Act of 1920 (41 Stat. 437), as amended (30 U.S.C. 181), as follows:

Sec. 1. Deposits of coal, phosphate, sodium, potassium, oil, oil shale, native asphalt, solid and semisolid bitumen, and bituminous rock (including oil-impregnated rock or sands from which oil is recoverable only by special treatment after the deposit is mined or quarried) or gas, and lands containing such deposits owned by the United States, including those in national forests, but excluding lands acquired under the Appalachian Forest Act, and those in incorporated cities, towns, and villages and in national parks and monuments, those acquired under other Acts subsequent to February 25, 1920, and lands within the naval petroleum and oil-shale reserves, except as hereinafter provided, shall be subject to disposition in the form and manner provided by this Act to citizens of the United States, or to associations of such citizens, or to any corporation organized under the laws of the United States, or of any State or Territory thereof, or in the case of coal, oil, oil shale, or gas, to municipalities. *Coal or lignite may be leased to a governmental entity (including any corporation primarily acting as an agency or instrumentality of a State) which produces electrical energy for sale to the public if such governmental entity is located in the State in which such lands are located.* Citizens of another country, the laws, customs, or regulations of which deny similar or like privileges to citizens or corporations of this country, shall not by stock ownership, stock holding, or stock control, own any interest in any lease acquired under the provisions of this Act.

The United States reserves the ownership of and the right to extract helium from all gas produced from lands leased or otherwise granted under the provisions of this Act, under such rules and regulations as shall be prescribed by the Secretary of the Interior: *Provided further,* That in the extraction of helium from gas produced from such lands it shall be so extracted as to cause no substantial delay in the delivery of gas produced from the well to the purchaser thereof.

9. Section 110 of S. 391 would repeal subsections 2(c) and 2(d) of the Act of August 31, 1964 (78 Stat. 710; 30 U.S.C. 291–1):

[(c) For the purpose of more properly conserving the natural resources of any coalfield or prospective coal area, or any part or zone thereof, lessees and permittees and their representatives may enter into a contract with each other or others for collective prospecting, development, or operation of such field or prospective coal area, or any part or zone thereof, whenever determined and certified by the Secretary of the Interior to be in the public interest. A contract approved hereunder shall not provide for an apportionment of production or royalties among the separate tracts comprising the contract area, but may provide for the commingling of production with appropriate allocation to the tracts from which produced. Notwithstanding any provision of this section to the contrary, the Secretary may, with the consent of the lessees or permittees involved, establish, alter, change, or revoke mining, producing, rental, minimum royalty, and royalty requirements of such leases or permits, and issue regulations that are

applicable to such leases or permits or contracts. The Secretary is authorized to enter into a contract with a single lessee or permittee embracing his leases or permits. The Secretary may authorize the consolidation of separate Federal permits or leases into a lesser number of permits or leases, or into a single permit or lease.

(d) Coal leases and permits operated under a contract approved or executed by the Secretary pursuant to subsection (c) of this section may be excepted from limitations on maximum holdings or control imposed by this Act if the Secretary finds that such exception is required to permit economic development of the coal resources and is otherwise consistent with the public interest.]

ADDITIONAL VIEWS OF SENATOR JACKSON

I strongly support S. 391 except Section 111. This section increases the Federal payments to public lands States based on the total Federal revenues under the Mineral Leasing Act of 1920 from 37½ to 60%. These revenues derive from the leasing of federal coal, gas, phosphate, sodium, potassium, oil, oil shale, native asphalt, and solid and semi-solid bitumen. The additional 22.5 per cent would be earmarked specifically for (1) planning, (2) construction and maintenance of public facilities, and (3) provision of public services, in those areas suffering impact problems as a result of energy development. Thirty per cent of the payments would remain in the Reclamation Fund.

I am strongly sympathetic with the problems faced by state and local government in meeting increased demands for public services because of Federal resource development. I support the provisions of Section 104 which would broaden the purpose for which the present Federal payments can be used. However, I believe that the present revenue sharing formula provides adequate aid. For example, based on estimated revenues in Fiscal Year 1975 of $311,000,000. the public land states will be receiving almost $117,000,000. Under Section 111 this payment will be increased by $70,000,000.

The Committee has received no evidence that the existing level of Federal payments to the States is insufficient to meet legitimate needs. Furthermore, the Department of the Interior expects these payments to increase rapidly in future years as Federal coal development expands and coal, oil, and gas prices increase. Therefore, I oppose any increase in the payments formula at this time.

HENRY M. JACKSON.

ADDITIONAL VIEWS OF SENATOR HANSEN

I voted with the majority to report S. 391 from Committee because it contains several needed revisions of the Mineral Leasing Act of 1920.

I am particularly pleased that the Committee agreed to incorporate in Section 111 an amendment of mine which would amend 30 USC 191 to return to the State of origin an additional 22.5 per cent of the revenues which are paid by mining companies to the Federal Government from leasable minerals extracted within the borders of the state involved. The Additional 22.5 per cent would reduce the 52.5 per cent which now is designated for the Reclamation Fund to 30 per cent. This 22.5 per cent would be earmarked for (1) planning, (2) construction and maintenance of public facilities, and (3) provision of public services, in those areas suffering impact problems as a result of energy development. The increased return to the predominately rural Western States is needed to provide front-end money to deal with the sudden population increases and other problems accompanying rapid development of energy to meet national energy requirements

Title II of the bill as reported from Committee contains reclamation standards which were incorporated in H.R. 25. Although I feel reclamation of mined lands is necessary and the restoration of mined land to agricultural production or to other prior or better uses has my full support, I have strong reservations about Section 231, the Surface Owner Protection Section. 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 231, 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 in view of such things as the surface owners' payments of the taxes over the years on their lands. The result of this limitation will probably be a refusal to lease by the surface owners and a lock-up of Federal coal, which would be regretable at a time when domestic energy is so clearly needed to reduce our dependence on foreign energy sources. As an alternative, some surface owners may choose to sell their lands to coal companies to circumvent the strict limit on compensation for leasing. Such a sale would probably take such lands out of agricultural production, a use which the Committee in other sections has attempted to retain.

The bill provides for the consolidation of leases into logical mining units so that, among other things, production on one lease may be considered production on all leases. However, one surface owner, who is denied what he may consider compensation adequate to justify granting the right to surface mine, could withhold his consent and by doing so could render infeasible the surface mining of an area many, many times the size of his surface owned lands if his lands were strategically situated within the greater mining unit.

My concern is also directed to Section 207, which requires that a surface coal mining applicant must affirmatively demonstrate that:

> . . . the proposed surface coal mining operation, if located west of the one hundredth meridian west longitude, would not have a substantial adverse effect on alluvial valley floors underlain by unconsolidated stream laid deposits where farming can be practiced in the form of flood irrigated hay meadows or other crop lands, excluding undeveloped range lands, where such valley floors are significant to the practice of farming or ranching operations, including potential farming or ranching operations if such operations are significant and economically feasible.

While the objectiye of the concept is commendable it is not practicable to impose such a restriction. If lands can be reclaimed, and I think it has been persuasively demonstrated that they have been and are being reclaimed in the West, it makes sense not in exclude these lands. Those surface owners who own the land over Federal coal should be given the opportunity to grant or deny the mining on their lands just as other surface owners are given the right.

One amendment which was incorporated in Section 103(f) which concerns me is the practicality of requiring development of the lease within seven years subject to termination if development is not made in that time period. Although the Committee's intent was to prohibit speculation through this diligence requirement, and I would concur with this intent, practice often has shown because of long lead times and capital requirements a definite time requirement for development may be unrealistic. This time limit would require mining when mining during that time may be uneconomic and unnecessarily disruptive. It is both economically and environmentally unacceptable to require mining on all leases within the seven years when one tract could be completely mined out and reclaimed before another is initiated. This progressive mining would have the advantage of retaining more land in agricultural production and yet would give the coal purchaser a secure source through a long-term contract from several coal leases. Because of these particularities, which are only indicative of various other drawbacks originating from a set time limit, the Committee modified the seven year requirement if good cause is shown.

I am hopeful other revisions will provide the flexibility and reform needed to update the Mineral Leasing Act of 1920 and so accommo date current needs.

CLIFFORD P. HANSEN.

MINORITY VIEWS OF SENATORS FANNIN AND BARTLETT

We regret the need to file minority views on S. 391. The Committee, before adopting the bill, voted to accept an amendment cited as the Federal Land Surface Mining Control and Reclamation Act of 1975. This amendment is virtually the same Surface Mining Bill which President Ford vetoed on two earlier occasions except it now would apply only to federal lands. For this reason we are compelled to express our views.

The amendment was adopted with less than a minute of discussion and is just another series of efforts to force the President to accept a Strip Mining Bill. On an earlier occasion, the authors of this amendment also introduced S. 1703, an Act to Suspend the Secretary of Interior's authority to lease federal coal lands until a federal statute regulating surface coal mining on *all* lands in the United States had been enacted. Obviously the majority party members felt a federal lands surface mining amendment attached to a coal leasing bill would better serve their purposes. This Committee continues to act to frustrate Presidential and Congressional efforts to resolve a comprehensive energy policy. It is ironic that only back in February the Democrats recommended in their "Congressional Program for Economic Recovery and Energy Sufficiency" that coal production be more than doubled by 1985 and yet they vote to curtail or slow down western low sulphur coal production by an amendment such as this.

For some time now we have suspected that the actual goal of many who advocated unreasonable surface mining requirements was to preclude western strip mining. Our experience with the lengthy debate over this issue has sharpened this suspicion. Eastern Appala- Strip Mining has taken place for years and its constituency is vocal and regulating it out of existence is impossible. The early years of wanton degradation to our lands gave rise to the current concern over the infant western surface mining industry. We share in that concern but to ignore current corporate practices and revised and updated state laws which insure adequate reclamation is foolish in this era of growing dependence on foreign sources of energy. Reclamation of our lands is an absolute necessity and those companies involved have incorporated the "reclamation ethic" in their cost of doing business and we the consumers are willing to pay the reasonable costs associated with it. What we are not willing to do is adopt a policy that makes it virtually impossible to utilize our most abundant domestic energy resource. With the advent of the Clean Air Act, the pressures caused by foreign dominance of oil and our energy demands, western coal has found a market. This nation has committed itself to a policy of clean air and in order to accomplish it, we must have a secure source which necessarily includes western federal coal. The environmentalist can't have it both ways—clean air and no western surface mining.

Because of the checkerboard pattern of land ownership in the west, the actions which the Federal Government takes will dictate uses on much of the private and state lands. Such complex coal and surface ownership patterns will prevent the formation of logical mining units. Obviously coal is not located in accordance with property lines and negotiation between property owners is essential to form logical mining units that make the mining of that coal an economic reality.

The surface mining restrictions imposed on the federal lands alone will potentially foreclose the creation of these mining units. Thus, isolated reserves of coal will not get mined, to the detriment of both the federal treasury in the way of lease and royalty receipts, and the public by higher coal costs.

Approximately 57% of all U.S. coal reserves lie in the west but this is 85% of the total low sulfur reserves. Therefore, the greatest potential for expanded production of low sulfur coal is in the West. The Bureau of Land Management and the Bureau of Mines estimate that low sulfur strippable reserves in the west are ten times more abundant than those in the eastern part of the nation. Most of this coal lies close to the surface and can only be economically recovered by strip mining methods. Further, because of the geologic structure in this area, much of the coal cannot be recovered by current underground methods.

The long litany of disastrous ramifications with the vetoed surface mining bill are readily available and we cite you to the following: President Ford's veto message on the Surface Mining Control and Reclamation Act of 1975 dated May 20, 1975; the Minority Views in Senate Report No. 28, 94th Congress 1st Session on S. 425, the Surface Mining Control and Reclamation Act of 1975 dated March 5, 1975; and House Report No. 94–45 on H.R. 25 dated March 6, 1975. In the aggregate, this surface mining amendment to S. 391 will reduce our annual production, frustrate expansion of low sulfur coal production, lockup reserves, enhance our dependence on foreign imported crude, ship abroad billions of American dollars and jobs, force small and marginal miners out of business, and create additional delays in resolving energy policy.

This rush to confront the President with another Strip Mining Bill is fatal in other respects. This Committee never held any hearings nor requested the Department of the Interior to comment on this Title II provision introduced June 16, 1975. It was not tailor-made to the specific circumstances of the west. The provisions of this amendment were formed in the competitive climate of a House-Senate Conference which never contemplated its application solely to federal lands. Applying this bill only to the west is akin to a tailor making a suit for a man 5′ tall and 125 lbs. and then forcing a man 6′5″ and 220 lbs. to wear it—it just won't fit and we in this Committee haven't made necessary alterations. We calculate that should this become law, that much western coal will not be mined not only because of the reclamation restrictions, but because it will raise the cost of coal and thus be uneconomic in the marketplace. The desired goal of bringing coal from federal lands into the marketplace at reasonable costs while fostering competition in the coal industry will be lost.

In order to understand the need for changes in the Mineral Leasing Act of 1920 as it relates to coal, the existing chaotic picture needs to be painted. We worked to reform the 1920 Act because we felt some changes were necessary to pin down a federal policy which has wandered and has been haphazard. We commend the subcommittee Chairman, Senator Metcalf on his diligence and effort to formulate policy which would allow coal leasing to go forward and insure that the Federal Government receive a fair return on its sale of resources. We fear those needed changes will never become law however, because the embattled strip mining issue has now been tacked to those changes.

Since 1970 there has been a virtual standstill in the leasing of federal lands for coal development. The Department halted the issuance of coal leases and prospecting permits in order to reassess its leasing policy after acreage increased but production decreased. The environmental issues of the day also played a key role in the Department's decision. In 1973, a broad moratorium on Federal Coal leasing was announced with no new leasing except for a short term intended to insure that current coal production levels could continue. The Secretary's criteria for issuing these coal leases was as follows:

1. When coal is needed now to maintain an existing mining operation; or

2. When coal is needed as a reserve for production in the near future; and

3. When the land to be mined will, in all cases, be reclaimed in accordance with lease stipulations that will provide for environmental protection and land reclamation; and

4. When an environmental impact statement, covering the proposed lease, has been prepared—when required under the National Environmental Policy Act.

This leasing moratorium is still in effect and in fact only seven short term leases have been issued since February, 1973. The June 16, 1975, decision of the District of Columbia Court of Appeals in *Sierra Club* v. *Morton*, 515 F.2d 856 (1975), has even suspended the short term policy at least in the Northern Great Plains of Wyoming, Montana, and North Dakota which hold 48% of the nation's total coal reserves.

The passage of S. 391 will not end this moratorium but will merely make things worse. Western coal has in the past been used primarily for the generation of electricity in thermal electric plants, and it is anticipated that this and its use for the manufacture of synthetic natural gas and oil will comprise the primary market in the future. Coal companies have been criticized for sitting on leases for a long time without developing them. We are always cited to the 16 billion tons of federal coal already under lease as the reason why there is no need to renew leasing at this time. This Committee has heard on numerous occasions the explanation of the statis of these 16.1 billion tons, but we will again explain by the following chart that only 0.00 billion tons to 4.01 billion tons of the 16 billion tons is uncommitted from the amount already under lease to meet existing and future coal demands.

Federal coal leases in six major States [1] October 1974

	Billion tons
Total leases	462
Total acreage (acres)	681, 180
Uneconomic reserves	0. 55
Environmentally unacceptable reserves	2. 01
Committed reserves under contract	8. 40
Uncommitted reserves	5. 15
Total recoverable reserves	16. 11
Reserves in less than logical mining units	1. 14
Potential for development in logical mining units	4. 01

[1] Colorado, Montana, New Mexico, North Dakota, Utah, and Wyoming.

NOTE.—Range of coal reserves under lease available to meet future energy needs: 0–4.01 billion tons.

Source: Bureau of Land Management.

Each coal mining project today must relate to a particular need of a potential customer and be put together specifically to meet his requirements over the projected life of a consuming plant. The acquisition of the coal lease is the primary first step and is the foundation upon which the whole project is built. Without a secure coal reserve sufficient to insure large production over a period of up to thirty years, the necessary project will not be built. Capital cannot be acquired or justified for undertaking a new mine unless there is a known market, sufficient reserves in a logical mining unit and a delivery capability. Holding of a lease becomes crucial.

The arguments that Federal coal leases are being held for speculative purposes just don't hold water when one recognizes the long lead times necessary to plan, construct and utilize energy facilities. If long term leasing continues to lag, the electric utility consumers of this nation will suffer even higher prices because the coal needed to meet their electrical demands in the 1980's will not be available. Coal needed to meet those needs must be committed to lease now. Uncertainty of Federal action has also dampened investment and clouded planning. One need but look at history to understand why leases have been held for so long a period without development. For almost twenty years after World War II the coal industry tried but failed to compete with cheap natural gas and oil in most of its traditional northeastern markets. Government policy then did not encourage the development of western coal; in addition, there were no rail facilities available to transport it to market. As a consequence today, 80% of our energy uses are in gaseous or liquid form, and the domestic reserves of these two sources is estimated to be only 17% of our total available energy resource. We all now know these domestic resources are declining each year. In contrast, coal represents about 80% of the nation's total energy resource but is supplying only about 17% of current requirements. Thus a renewed demand for additional coal production did not start until the late '60's; no one sat on coal reserves prior to 1970 because he wanted to, but only because there was no market for coal, especially low-BTU western coal. These facts, rather than speculative motives on the part of lessees or dilatory action on the part of the Department of the Interior, are the major reasons why many outstanding federal leases presently have no coal production.

Some would have us believe that Federal lands are totally unprotected from the ravages of surface mining, and that there is no reclamation of federal lands. The Department of the Interior has written strong reclamation standards into every federal lease. Even now, the Department of the Interior is preparing new draft regulations on federal coal mining reclamation. The Department, of its own volition, has patterned much of the draft regulations after the standards set out in the vetoed strip mining bill. The Department, however, tailored those standards to fit federal lands and weeded out those unreasonable and impossible requirements that led to the President's veto, while still insisting on the highest standards of reclamation. We believe this to be a better method by which to formulate reclamation standards on federal lands. The Congress, in drafting the vetoed strip mining bill, did not trust the Secretary of the Interior and his experts in the department, so they denied him discretion in the formulation of specific standards. Once the Congress sets itself up as an expert in the field of reclamation, the country—much less the industry—is in trouble. Casting them in legislative concrete only removes flexibility to deal with changes in technology and site specific conditions. Recall that today in the West those states where strip mining occurs have very strong and stringent reclamation standards. In the States of Wyoming and Montana, for example, federal lessees must comply with both state and federal law and file reclamation plans with both. We see no reason therefore to invalidate these proven state laws with an inflexible federal law.

We applaud many of the changes which the Committee adopted, particularly the revenue sharing provision which would amend and broaden the purposes for which the states can use their share of the coal leasing revenues. We fear, however, because of the attachment of the strip mining amendment, that S. 391 will not become law. The managers of this bill have jeopardized the hard work and effort that have gone to update the Mineral Leasing Act. We predict that should this bill go to the President's desk that he will be forced to once again veto an unreasonable surface mining bill.

PAUL J. FANNIN.
DEWEY F. BARTLETT.

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94TH CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REPORT
No. 94-681

FEDERAL COAL LEASING AMENDMENTS ACT OF 1975

REPORT

OF THE

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS HOUSE OF REPRESENTATIVES

TOGETHER WITH

ADDITIONAL VIEWS

TO ACCOMPANY

H.R. 6721

NOVEMBER 21, 1975.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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CONTENTS

94TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 94-681

AMENDING THE MINERAL LEASING ACT OF 1920, AND FOR OTHER PURPOSES

NOVEMBER 21, 1975.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 6721]

The Committee on Interior and Insular Affairs, to whom was referred the bill (H.R. 6721) to amend the Mineral Leasing Act of 1920, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Page 1, following line 2, strike out all after the enacting clause and insert in lieu thereof the following:

That (a) this Act may be cited as the "Federal Coal Leasing Amendment Act of 1975".

(b) Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision of the Mineral Lands Leasing Act, the reference shall be considered to be made to a section or other provision of the Act of February 25, 1920, entitled "An Act to promote the mining of coal, phosphate, oil, oil shale, gas and sodium on the public domain" (41 Stat. 437).

SEC. 2. The first sentence of section 2(a) of the Mineral Lands Leasing Act (30 U.S.C. 201(a)) is amended to read as follows:

"(1) The Secretary of the Interior is authorized to divide any lands subject to this Act which have been classified for coal leasing into leasing tracts of such size as he finds appropriate and in the public interest and which will permit the mining of all coal which can be economically extracted in such tract and thereafter he shall, in his discretion, upon the request of any qualified applicant or on his own motion, from time to time, offer such lands for leasing and shall award leases thereon by competitive bidding. No less than 50 per centum of the total acreage offered for lease by the Secretary in any one year shall be leased under a system of deferred bonus payment. Upon default or cancellation of any coal lease for which bonus payments are due, any unpaid remainder of the bid shall be immediately payable to the United States. A reasonable number of leasing

tracts shall be reserved and offered for lease in accordance with this section to public bodies, including Federal agencies, rural electric cooperatives, or nonprofit corporations controlled by any of such entities: *Provided*, That the coal so offered for lease shall be for use by such entity or entities in implementing a definite plan to produce energy for their own use or for sale to their members or customers (except for short-term sales to others). No bid shall be accepted which is less than the fair market value, as determined by the Secretary, of the coal subject to the lease. Prior to his determination of the fair market value of the coal subject to the lease, the Secretary shall give opportunity for and consideration to public comments on the fair market value. Nothing in this section shall be construed to require the Secretary to make public his judgment as to the fair market value of the coal to be leased, or the comments he receives thereon prior to the issuance of the lease.".

SEC. 3. The last sentence of section 2(a) of the Mineral Lands Leasing Act (30 U.S.C. 201(a)) is amended to read as follows:

"(2) The Secretary shall not issue a lease or leases under the terms of this Act to any person, association, corporation, or any subsidiary, affiliate, or persons controlled by or under common control with such person, association, or corporation, where any such entity holds a lease or leases issued by the United States to coal deposits and has held such lease or leases for a period of fifteen year when coal deposits and has held such lease or leases for a period of fifteen years when such entity is not, except as provided for in section 7(b) of this Act, producing coal from the lease deposits in commercial quantities. In computing the fifteen-year period referred to in the preceding sentence, periods of time prior to the date of enactment of the Federal Coal Leasing Amendments Act of 1975 shall not be counted.

"(3)(A)(i) No lease sale shall be held unless the lands containing the coal deposits have been included in a comprehensive land-use plan and such sale is compatible with such plan. The Secretary of the Interior shall prepare such land-use plans on lands under his responsibility where such plans have not been previously prepared. The Secretary of the Interior shall inform the Secretary of Agriculture of substantial development interest in coal leasing on lands within the National Forest System. Upon receipt of such notification from the Secretary of the Interior, the Secretary of Agriculture shall prepare a comprehensive land-use plan for such areas where such plans have not been previously prepared. The plan of the Secretary of Agriculture shall take into consideration the proposed coal development in these lands: *Provided*, That where the Secretary of the Interior finds that because of non-Federal interest in the surface or because the coal resources are insufficient to justify the preparation cost of a Federal comprehensive land-use plan, the lease sale can be held if the lands containing the coal deposits have been included in either a comprehensive land-use plan prepared by the State within which the lands are located or a land use analysis prepared by the Secretary of the Interior.

"(ii) In preparing such land-use plans, the Secretary of the Interior or, in the case of lands within the National Forest System, the Secretary of Agriculture, or in the case of a finding by the Secretary of the Interior that because of non-Federal interests in the surface or insufficient Federal coal, no Federal comprehensive land-use plans can be appropriately prepared, the responsible State entity shall consult with appropriate State agencies and local governments and the general public and shall provide an opportunity for public hearing on proposed plans prior to their adoption, if requested by any person having an interest which is, or may be, adversely affected by the adoption of such plans.

"(iii) Leases covering lands the surface of which is under the jurisdiction of any Federal agency other than the Department of the Interior may be issued only upon consent of the other Federal agency and upon such conditions as it may prescribe with respect to the use and protection of the nonmineral interests in those lands.

"(B) Each land-use plan prepared by the Secretary (or in the case of lands within the National Forest System, the Secretary of Agriculture pursuant to subparagraph (A)(i)) shall include an assessment of the amount of coal deposits in such land, identifying the amount of such coal which is recoverable by deep mining operations and the amount of such coal which is recoverable by surface mining operations.

"(C) Prior to issuance of any coal lease, the Secretary shall consider effects which mining of the proposed lease might have on an impacted community or area, including, but not limited to, impacts on the environment, on agricultural

and other economic activities, and on public services. Prior to issuance of a lease, the Secretary shall evaluate and compare the effects of recovering coal by deep mining, by surface mining, and by any other method to determine which method or methods or sequence of methods achieves the maximum economic recovery of the coal within the proposed leasing tract. This evaluation and comparison by the Secretary shall be in writing but shall not prohibit the issuance of a lease; however, no mining operating plan shall be approved which is not found to achieve the maximum economic recovery of the coal within the tract. Adequate public hearings in the area shall be held by the Secretary prior to approval of the lease.

"(D) No competitive lease of coal shall be approved or issued until after the notice of the proposed offering for lease has been given once a week for three consecutive weeks in a newspaper of general circulation in the county in which the lands are situated in accordance with regulations prescribed by the Secretary.

"(E) Each coal lease shall contain provisions requiring compliance with the Federal Water Pollution Control Act (33 U.S.C. 1151–1175) and the Clean Air Act (42 U.S.C. 1857 and following.".

SEC. 4. Subject to valid existing rights, section 2(b) of the Mineral Lands Leasing Act (30 U.S.C. 201(b)) is amended to read as follows:

"(b)(1) The Secretary may, under such regulations as he may prescribe, issue to any person an exploration license. No person may conduct coal exploration for commercial purposes for any coal on lands subject to this Act without such an exploration license. Each exploration license shall be for a term of not more than two years and shall be subject to a reasonable fee. An exploration license shall confer no right to a lease under this Act. The issuance of exploration licenses shall not preclude the Secretary from issuing coal leases at such times and locations and to such persons as he deems appropriate. No exploration license will be issued for any land on which a coal lease has been issued. A separate exploration license will be required for exploration in each State. An application for an exploration license shall identify general areas and probable methods of exploration. Each exploration license shall contain such reasonable conditions as the Secretary may require, including conditions to insure the protection of the environment, and shall be subject to all applicable Federal, State, and local laws and regulations. Upon violation of any such conditions or laws the Secretary may revoke the exploration license.

"(2) A licensee may not cause substantial disturbance to the natural land surface. He may not remove any coal for sale but may remove a reasonable amount of coal from the lands subject to this Act included under his license for analysis and study. A licensee must comply with all applicable rules and regulations of the Federal agency having jurisdiction over the surface of the lands subject to this Act. Exploitation licenses covering lands the surface of which is under the jurisdiction of any Federal agency other than the Department of the Interior may be issued only upon such conditions as it may prescribe with respect to the use and protection of the nonmineral interests in those lands.

"(3) The licensee shall furnish to the Secretary copies of all data (including but not limited to, geological, geophysical, and core drilling analyses) obtained during such exploration. The Secretary shall maintain the confidentiality of all data so obtained until after the areas involved have been leased or until such time as he determines that making the data available to the public would not damage the competitive position of the licensee, whichever comes first.

"(4) Any person who willfully conducts coal exploration for commercial purposes on lands subject to this Act without an exploration license issued hereunder shall be subject to a fine of not more than $1,000 for each day of violation. All data collected by said person on any Federal lands as a result of such violation shall be made immediately available to the Secretary, who shall make the data available to the public as soon as it is practicable. No penalty under this subsection shall be assessed unless such person is given notice and opportunity for a hearing with respect to such violation.".

SEC. 5. (a) Subject to valid existing rights, subsections 2(c) and 2(d) of the Act of August 31, 1964 (78 Stat. 710) (30 U.S.C. 201–1) are hereby repealed.

(b) Section 2 of the Mineral Lands Leasing Act is amended by the addition of the following new subsection at the end thereof:

"(d)(1) The Secretary, upon determining that maximum economic recovery of the coal deposit or deposits is served thereby, may approve the consolidation of coal leases into a logical mining unit. Such consolidation may only take place after a public hearing, if requested by any person whose interest is or may be

adversely affected. A logical mining unit is an area of land in which the coal resources can be developed in an efficient, economical, and orderly manner as a unit with due regard to conservation of coal reserves and other resources. A logical mining unit may consist of one or more Federal leaseholds, and may include intervening or adjacent lands in which the United States does not own the coal resources, but all the lands in a logical mining unit must be under the effective control of a single operator, be able to be developed and operated as a single operation and be contiguous.

"(2) After the Secretary has approved the estalishment of a logical mining unit, any mining plan approved for that unit must require such diligent development, operation, and production that the reserves of the entire unit will be mined within a period established by the Secretary which shall not be more than forty years.

"(3) In approving a logical mining unit, the Secretary may provide, among other things, that (i) diligent development, continuous operation, and production on any Federal lease or non-Federal land in the logical mining unit shall be construed as occurring on all Federal leases in that logical mining unit, and (ii) the rentals and royalties for all Federal leases in a logical mining unit may be combined, and advanced royalties paid for any lease within a logical mining unit may be credited against such combined royalties.

"(4) The Secretary may amend the provisions of any lease included in a logical mining unit so that mining under that lease will be consistent with the requirements imposed on that logical mining unit.

"(5) Leases issued before the date of enactment of this Act may be included with the consent of all lessees in such logical mining unit, and, if so included, shall be subject to the provisions of this section.

"(6) By regulation the Secretary may require a lessee under this Act to form a logical mining unit, and may provide for determination of participating acreage within a unit.

"(7) No logical mining unit shall be approved by the Secretary if the total acreage (both Federal and non-Federal) of the unit would exceed twenty-five thousand acres.

"(8) Nothing in this section shall be construed to waive the acreage limitations for coal leases contained in section 27(a) of the Mineral Lands Leasing Act (30 U.S.C. 184 (a)).".

SEC. 6. Section 7 of the Mineral Lands Leasing Act (30 U.S.C. 207) is amended to read as follows:

"SEC. 7. (a) A coal lease shall be for a term of twenty years and for so long thereafter as coal is produced annually in commercial quantities from that lease. Any lease which is not producing in commercial quantities at the end of fifteen years shall be terminated. The Secretary shall by regulation prescribe annual rentals on leases. A lease shall require payment of a royalty in such amount as the Secretary shall determine of not less than 12½ per centum of the value of coal as defined by regulation, except the Secretary may determine a lesser amount in the case of coal recovered by underground mining operations. The lease shall include such other terms and conditions as the Secretary shall determine. Such rentals and royalties and other terms and conditions of the lease will be subject to readjustment at the end of its primary term of twenty years and at the end of each ten-year period thereafter if the lease is extended.

"(b) Each lease shall be subject to the conditions of diligent development and continued operation of the mine or mines, except where operations under the lease are interrupted by strikes, the elements, or casualties not attributable to the lessee. The Secretary of the Interior, upon determining that the public interest will be served thereby, may suspend the condition of continued operation upon the payment of advance royalties. Such advance royalties shall be no less than the production royalty which would otherwise be paid and shall be computed on a fixed reserve to production ratio (determined by the Secretary). The aggregate number of years during the period of any lease for which advance royalties may be accepted in lieu of the condition of continued operation shall not exceed fifteen. The amount of any production royalty paid for any year shall be reduced (but not below 0) by the amount of any advance royalties paid under such lease to the extent that such advance royalties have not been used to reduce production royalties for a prior year. No advance royalty paid during the initial twenty-year term of a lease shall be used to reduce a production royalty after the twentieth year of a lease. The Secretary may, upon six months' notification to the lessee cease to accept advance royalties in lieu of

the requirement of continued operation. Nothing in this subsection shall be construed to affect the requirement contained in the second sentence of subsection (a) relating to commencement of production at the end of fifteen years.

"(c) Prior to taking any action on a leasehold which might cause a significant disturbance of the environment, and not later than three years after a lease is issued, the lessee shall submit for the Secretary's approval an operation and reclamation plan. The Secretary shall approve or disapprove the plan or require that it be modified. Where the land involved is under the surface jurisdiction of another Federal agency, that other agency must consent to the terms of such approval.".

SEC. 7. The Mineral Lands Leasing Act is amended by inserting after section 8 the following new section 8A:

"SEC. 8A. (a) The Secretary is authorized and directed to conduct a comprehensive exploratory program designed to obtain sufficient data and information to evaluate the extent, location, and potential for developing the known recoverable coal resources within the coal lands subject to this Act. This program shall be designed to obtain the resource information necessary for determining whether commercial quantities of coal are present and the geographical extent of the coal fields and for estimating the amount of such coal which is recoverable by deep mining operations and the amount of such coal which is recoverable by surface mining operations in order to provide a basis for—

"(1) developing a comprehensive land use plan pursuant to section 2;

"(2) improving the information regarding the value of public resources and revenues which should be expected from leasing;

"(3) increasing competition among producers of coal, or products derived from the conversion of coal, by providing data and information to all potential bidders equally and equitably;

"(4) providing the public with information on the nature of the coal deposits and the associated stratum and the value of the public resources being offered for sale; and

"(5) providing the basis for the assessment of the amount of coal deposits in those lands subject to this Act under subparagraph (B) of section 2(a)(3).

"(b) The Secretary, through the United States Geological Survey, is authorized to conduct seismic, geophysical, geochemical, or statigraphic drilling, or to contract for or purchase the results of such exploratory activities from commercial or other sources which may be needed to implement the provisions of this section.

"(c) Nothing in this section shall limit any person from conducting exploratory geophysical surveys including seismic geophysical, chemical surveys to the extent permitted by section 2(b). The information obtained from the exploratory drilling carried out by a person not under contract with the United States Government for such drilling prior to award of a lease shall be provided the confidentiality pursuant to subsection (d).

"(d) The Secretary shall make available to the public by appropriate means all data, information, maps, interpretations, and surveys which are obtained directly by the Department of the Interior or under a service contract pursuant to subsection (b). The Secretary shall maintain a confidentiality of all proprietary data or information purchased from commercial sources while not under contract with the United States Government until after the areas involved have been leased.

"(e) All Federal departments or agencies are authorized and directed to provide the Secretary with any information or data that may be deemed necessary to assist the Secretary in implementing the exploratory program pursuant to this section. Proprietary information or data provided to the Secretary under the provisions of this subsection shall remain confidential for such period of time as agreed to by the head of the department or agency from whom the information is requested. In addition, the Secretary is authorized and directed to utilize the existing capabilities and resources of other Federal departments and agencies by appropriate agreement.

"(f) The Secretary is directed to prepare, publish, and keep current a series of detailed geological, and geophysical maps of, and reports concerning, all coal lands to be offered for leasing under this Act, based on data and information compiled pursuant to this section. Such maps and reports shall be prepared and revised at reasonable intervals beginning eighteen months after the date of

enactment of this Act. Such maps and reports shall be made available on a continuing basis to any person on request.

"(g) Within six months after the date of enactment of this Act, the Secretary shall develop and transmit to Congress an implementation plan for the coal lands exploration program authorized by this section, including procedures for making the data and information available to the public pursuant to subsection (d), and maps and reports pursuant to subsection (f). The implementation plan shall include a projected schedule of exploratory activities and identification of the regions and areas which will be explored under the coal lands exploration program during the first five years following the enactment of this section. In addition, the implementation plan shall include estimates of the appropriations and staffing required to implement the coal lands exploration program.

"(h) The stratigraphic drilling authorized in subsection (b) shall be carried out in such a manner as to obtain information pertaining to all recoverable reserves. For the purpose of complying with subsection (a), the Secretary shall require all those authorized to conduct stratigraphic drilling pursuant to subsection (b) to supply a statement of the results of test boring of core sampling including logs of the drill holes; the thickness of the coal seams found; an analysis of the chemical properties of such coal; and an anaylsis of the strata layers lying above all the seams of coal. All drilling activities shall be conducted using the best current technology and practices.".

SEC. 8. The Mineral Lands Leasing Act is further amended by adding after section 8A the following new section 8B:

"SEC. 8B. Within six months after the end of each fiscal year, the Secretary shall submit to the Congress a report on the leasing and production of coal lands subject to this Act during such fiscal year; a summary of management, supervision, and enforcement activities; and recommendations to the Congress for improvements in management, environmental safeguards, and amount of production in leasing and mining operations on coal lands subject to this Act. Each submission shall also contain a report by the Attorney General of the United States on competition in the coal and energy industries, including an analysis of whether the antitrust provisions of this Act and the antitrust laws are effective in preserving or promoting competition in the coal or energy industry.".

SEC. 9. (a) Section 35 of the Mineral Lands Leasing Act, as amended (30 U.S.C. 191) is further amended by deleting "52½ per centum thereof shall be paid into, reserved" and inserting in lieu thereof: "40 per centum thereof shall be paid into, reserved", and is further amended by striking the period at the end of the proviso and inserting in lieu thereof the following language: ": *Provided further*, That an additional 12½ per centum of all moneys received from sales, bonuses, royalties, and rentals of public lands under the provisions of this Act and the Geothermal Steam Act of 1970 shall be paid by the Secretary of the Treasury as soon as practicable after December 31 and June 30 of each year to the State within the boundaries of which the leased lands or deposits are or were located; said additional 12½ per centum of all moneys paid to any State on or after January 1, 1976, shall be used by such State and its subdivisions as the legislature of the State may direct giving priority to those subdivisions of the State socially or economically impacted by development of minerals leased under this Act for (1) planning, (2) construction and maintenance of public facilities, and (3) provision of public services.".

(b) In the first sentence of section 35 of the Mineral Lands Leasing Act, before the words "shall be paid into the Treasury of the United States" insert "and the Geothermal Steam Act of 1970, notwithstanding the provisions of section 20 thereof,"; before the words "from lands within the naval petroleum reserves" insert "and the Geothermal Steam Act of 1970"; and, in the second sentence, before the words "not otherwise disposed of" insert "and the Geothermal Steam Act of 1970".

SEC. 10. The Director of the Office of Technology Assessment is authorized and directed to conduct a complete study of coal leases entered into by the United States under section 2 of the Act of February 25, 1920 (commonly known as the Mineral Lands Leasing Act). Such study shall include an analysis of all mining activities, present and potential value of said coal leases, receipts of the Federal Government from said leases, and recommendations as to the feasibility of the use of deep mining technology in said leased area. The Director shall submit the results of his study to the Congress within one year after the date of enactment of this Act.

SEC. 11. (a) Section 27(a)(1) of the Mineral Lands Leasing Act (30 U.S.C. 184(a)(1)), is amended to read as follows:

"(1) No person, association, or corporation, or any subsidiary, affiliate, or persons controlled by or under common control with such person, association, or corporation shall take, hold, own or control at one time, whether acquired directly from the Secretary under this Act of otherwise, coal leases or permits on an aggregate of more than forty-six thousand and eighty acres in any one State and in no case greater than an aggregate of one hundred thousand acres in the United States: *Provided*, That any person, association, or corporation currently holding, owning, or controlling more than an aggregate of one hundred thousand acres in the United States on the date of enactment of this section shall not be required on account of this section to relinquish said leases or permits: *Provided, further*, That in no case shall such person, association, or corporation be permitted to take, hold, own, or control any further Federal coal leases or permits until such time as their holdings, ownership, or control of Federal leases or permits has been reduced below an aggregate of one hundred thousand acres within the United States.".

(b) Subject to valid existing rights, section 27(a)(2) of the Mineral Lands Leasing Act (30 U.S.C. 184(a)(2)) is hereby repealed.

SEC. 12. (a) Section 3 of the Mineral Leasing Act for Acquired Lands (30 U.S.C. 352) is amended by striking out "(b) set apart for military or naval purposes, or (c)" and insert in lieu thereof "or (b)".

(b) Such section 3 is further amended by inserting the following after the first sentence thereof: "Coal or lignite under acquired lands set apart for military or naval purposes may be leased by the Secretary, with the concurrence of the Secretary of Defense, to a governmental entity (including any corporation primarily acting as an agency or instrumentality of a State) which produces electrical energy for sale to the public if such governmental entity is located in the State in which such lands are located.".

SEC. 13. (a) Subject to valid existing rights, section 4 of the Mineral Lands Leasing Act (30 U.S.C. 204) is hereby repealed.

(b) Subject to valid existing rights, section 3 of the Mineral Lands Leasing Act (30 U.S.C. 203) is amended to read as follows:

"SEC. 3. Any person, association, or corporation holding a lease of coal lands or coal deposits under the provisions of this Act may with the approval of the Secretary of the Interior, upon a finding by him that it would be in the interest of the United States, secure modifications of the original coal lease by including additional coal lands or coal deposits contiguous to those embraced in such lease, but in no event shall the total area added by such modifications to an existing coal lease exceed one hundred sixty acres, or add acreage larger than that in the original lease. The Secretary shall prescribe terms and conditions which shall be consistent with this Act and applicable to all of the acreage in such modified lease.".

SEC. 14. Section 39 of the Mineral Lands Leasing Act (30 U.S.C. 209) is amended by adding the following sentence at the end thereof: "Nothing in this section shall be construed as granting to the Secretary the authority to waive, suspend, or reduce advance royalties.".

SEC. 15. Section 27 of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 184) is amended by adding at the end thereof the following new subsection:

"(l)(1) At each stage in the formulation and promulgation of rules and regulations concerning coal leasing pursuant to this Act, and at each stage in the issuance, renewal, and readjustment of coal leases under this Act, the Secretary of the Interior shall consult with and give due consideration to the views and advice of the Attorney General of the United States.

"(2) No coal lease may be issued, renewed, or readjusted under this Act until at least thirty days after the Secretary of the Interior notifies the Attorney General of the proposed issuance, renewal, or readjustment. Such notification shall contain such information as the Attorney General may require in order to advise the Secretary of the Interior as to whether such lease would create or maintain a situation inconsistent with the antitrust laws. If the Attorney General advises the Secretary of the Interior that a lease would create or maintain such a situation, the Secretary of the Interior may not issue such lease, nor may he renew or readjust such lease for a period not to exceed one year, as the case may be, unless he thereafter conducts a public hearing on the record in accordance with the Administrative Procedures Act and finds therein that such issuance, renewal, or readjustment is necessary to effectuate the purposes of this Act, that it is consistent with the public interest, and that there are no reasonable alternatives consistent with this Act, the antitrust laws, and the public interest.

"(3) Nothing in this Act shall be deemed to convey to any person, association, corporation, or other business organization immunity from civil or criminal liability, or to create defenses to actions, under any antitrust law.

"(4) As used in this subsection, the term 'antitrust law' means—

"(A) the Act entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies', approved July 2, 1890 (15 U.S.C. 1 et seq.), as amended;

"(B) the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes', approved October 15, 1914 (15 U.S.C. 12 et seq.), as amended;

"(C) the Federal Trade Commission Act (15 U.S.C. 41 et seq.), as amended;

"(D) sections 73 and 74 of the Act entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes', approved August 27, 1894 (15 U.S.C. 8 and 9), as amended; or

"(E) the Act of June 19, 1936, chapter 592 (15 U.S.C. 13, 13a, 13b, and 21a).".

Purpose

The basic purpose of H.R. 6421, by Representatives Mink, Ruppe, Bingham, Eckhardt, Howe, Seiberling, Steelman, Udall, and Vigorito, is to provide a more orderly procedure for the leasing and development of coal presently owned by the United States or in lands owned by the United States and to assure its development in a manner compatible with the public interest.[1] At the same time, H.R. 6721, as recommended, provides environmental safeguards which are essential to the long-term interests of the nation and the regions involved.

Background and Need

The oil embargo by the Organization of Petroleum Exporting Countries (OPEC) in October 1973 served the useful purpose of focusing attention on the problem of U.S. energy supplies. Since that time, numerous proposals have been made as to how best to deal with the energy crisis.

The most abundant domestic source of energy is coal. The U.S. Geological Survey has identified coal deposits containing an estimated 1.6 trillion tons. It is hypothesized that an additional 1.6 trillion tons exists. The Bureau of Mines currently estimates that, of this total, approximately 434 billion tons fall within the measured and indicated reserve base category.

The current rate of domestic consumption of coal is approximately 550 million tons per annum. Exports in 1974 amounted to 60 million tons. Total coal production in 1974 is estimated at 601 million tons.

At the current rate of production, the U.S. has sufficient coal reserves to last about 725 years. As technologies improve, the cost of fuel rises and further knowledge is gained with respect to our coal resources, an ever greater portion of our coal resources will become available as recoverable reserves.

[1] A similar bill, S. 391, passed the Senate on July 31, 1975.

Since coal represents some 88 percent of our total domestic recoverable hydrocarbon reserves, it is clear that it is likely to prove a major energy source in the near term. (See Table 1.)

TABLE 1.—TOTAL U.S. HYDROCARBON RECOVERABLE RESERVES

	Number	Times 10 [12]	Percent
Coal (billion tons)	182.0	4,136	88.4
Oil (billion barrels)	48.3	270	5.8
Natural gas (trillion cubic feet)	266.0	274	5.8

Source: Bureau of Mines.

The Federal Energy Administration has projected an increasing need for coal. In "Project Independence Blueprint; Final Task Force Report: Coal," FEA projects a supply of 895 million tons by 1980, (assuming a business as usual approach) and 1.376 billion tons, (assuming accelerated development). The Department of Interior has estimated 13,825 trillion Btu's [2] in 1975 to 31,360 trillion Btu's in the year 2000. (See Table 2.)

TABLE 2.—*Projected demand for coal*

Actual:	*Trillion Btu's*
1971	12,560
1975	13,825
1980	16,140
1985	21,470
2000	31,360

Source: Draft Environmental Impact Statement—Proposed Coal Leasing Program, U.S. Dept. of the Interior, P. 1–30, May 7, 1974.

Federal Coal Development (Current Situation)

It is estimated that the Federal government owns 50% of the total coal reserves of the nation. In the Western States this figure approaches 60% and because of ownership patterns, Federal leasing policy may affect over 80% of all known reserves (see Table 3). A sizable portion of these reserves have already been made available to private industry for development. According to testimony received by the Subcommittee on Mines and Mining, there are presently 533 active Federal coal leases. These leases cover some 782,878 acres and include reserves estimated at over 16 billion tons (see Table 4). The overwhelming majority of these leases lie in the Western United States.

Although all but 19 of the existing leases are more than 5 years old, some are more than 40 years old and many were entered over 20 years ago. Notwithstanding this fact, it is reported by the U.S. Geological Survey that only 59 of the 533 leases are currently producing coal!

In 1974, the active Federal coal leases produced 20.6 million tons of coal, or slightly more than 3 per cent of the national total. Given the fact that these leases contain 16 billion tons of reserves and have been available for development since 1970, it would seem that their contribution to the nation's energy supply should be far greater than 3 per cent of the total if leaseholders are developing this valuable resource at the most effective and efficient rate possible.

[2] A British thermal unit (Btu) is the amount of heat necessary to raise one pound of water one degree Fahrenheit.

TABLE 3.—FEDERAL COAL IN 6 WESTERN COAL STATES

	Coal resources (coal in place) (billion tons)	Precent Federal ownership (acreage)
Colorado	14.87	53
Montana	107.73	41
New Mexico	4.39	40
North Dakota	16.00	40
Utah	8.9	66
Wyoming	51.23	50
Total	203.12	[1] 54

[1] 60 percent tonnage.

TABLE 4.—FEDERAL COAL UNDER LEASE

State	Number of leases	Acreage	Tonnage
Alabama	2	2,588.24	NA
Alaska	4	2,593.14	100,000
California	1	80.00	480,000
Colorado	113	122,400.00	1,600,000,000
Kentucky	1	1,282.00	260,000
Montana	17	36,232.00	1,180,000,000
New Mexico	28	40,958.00	332,500,000
North Dakota	19	16,235.00	264,700,000
Oklahoma	53	87,013.56	536,000,000
Oregon	3	5,403.18	50,000,000
Pennsylvania	1	29.66	NA
Utah	197	267,460.00	3,610,000,000
Washington	2	521.09	21,000,000
Wyoming	91	199,944.00	9,090,000,000
Total	533	782,878.12	16,100,000,000

In addition to the coal already under lease, there is an estimated 12 billion tons underlying 478,400 acres of land in preference right lease applications. Thus, a total of 28 billion tons of Federal coal are committed, in one manner or another, to private concerns (see Table 5).

TABLE 5.—*Federal acreage committed to coal mining, 1975*

	Acres
Active leases	782,876
Preference right lease applications	478,400
Active prospecting permits	10,878
Total	1,272,156

Source: U.S.G.S.

The current status of Federally leased coal lands has not gone unnoticed. In a 1972 report entitled "Improvements Needed in Administration of Federal Coal-Leasing Program" (B–169124), the General Accounting Office states:

> There has been relatively little mining of Federal coal deposits, and most lessees apparently have no immediate plans to begin coal-mining operations.

A follow-up GAO report, entitled "Further Action Needed on Recommendations for Improving The Administration of Federal Coal Leasing Program" (B–169124), published in April, 1975 states:

> (The actions taken by the Department since the 1972 report) do not require coal production within a specific time nor a justification as to why development or operations should be deferred or suspended as we recommended in our 1972 report.

The Council on Economic Priorities has issued a report entitled "Leased and Lost: A Study of Public and Indian Coal Leasing in the West". This report concludes that the Department of the Interior "* * * has leased coal rights far ahead of market demand for coal at prices too low to profit the public."

In a review of the Draft Environmental Impact Statement for the Proposed Federal Coal Leasing Program of the Bureau of Land Management, Department of the Interior, the Institute of Ecology's Environmental Impact Assessment Project states:

> Despite the conclusion of the EIS that renewed Federal coal leasing is necessary to meet the nation's energy needs, this review demonstrates that more Federal coal is already committed through lease and preference right lease application than could feasibly be mined in many decades.

The Ford Energy Policy Project finds that:

> The coal leasing program presents a clear picture of private speculation at the public expense. In the past decades, but particularly during the 1960's, vast amounts of Federal coal passed freely to private ownership under situations of little or no competition and extremely low payments.[3]

The Department of the Interior has recognized the inadequacies of its coal leasing program. Until the late 1960's, the Departmental role in the issuance of leases was based upon response to industry applications for coal leases. Rather than initiating a leasing program based on knowledge of existing Federal coal reserves, national energy needs and environmental considerations, the Department normally leased those portions of Federal coal lands for which industry interest was expressed.

A Bureau of Land Management report issued in November 1970, entitled "Holdings and Development of Federal Coal Leases" showed that while the acreage under lease was increasing dramatically, production from Federal lands was falling. The study pointed out that 91.5% of all active leases in existence at the time of the study were not producing coal.

In response to these findings, the Bureau of Land Management issued no leases during the period from May 1971 to February 1973. In February 1973, the Secretary of the Interior both suspended further issuance of coal prospecting permits and halted all Federal coal leasing (except under short term relief criteria). This moratorium is still in effect.

In March 1973, the Department sent to Congress a proposal for revision of the laws governing development of all minerals on Federal lands. Included in the proposal were a number of recommended changes in the law governing coal leasing. This proposal is presently under review.

The Department also initiated an inter-agency study of the impact of coal development in Montana, Wyoming and North Dakota. This helped to identify potential problems and needs for additional plan-effort, entitled the Northern Great Plains Resources Program, has

[3] "A Time to Choose: America's Energy Future," Energy Policy Project of the Ford Foundation, 1974.

ning and data gathering. The Department has also been developing in the Bureau of Land Management a system for competitive coal leasing called Energy Minerals Activity Recommendation System (EMARS). According to testimony received from Jack Horton, Assistant Secretary of the Interior for Land and Water Resources, this program consists of three phases:

(1) Leasing goals for Federal energy resources will be established by analyzing current coal ownership, resource value, industry nominations and applications, national and regional energy and coal demands, and State policies and goals;

(2) tracts are selected at the field level, (that is State BLM districts), in response to leasing goals established for each BLM State office in consideration of resource trade-offs through use of the Bureau's planning system, including information gained through public meetings; and

(3) leasing is initiated beginning when selected tracts are combined into a leasing schedule.

Assistant Secretary Horton went on to state that the successful implementation of EMARS requires the completion of six tasks:

(1) Identification of areas of particular interest for coal leasing and those areas which are thought to be undesirable for coal development.

(2) Incorporation into EMARS of data from the Northern Great Plains Resource Program study. Data from this study will be integrated into the first phase of EMARS and will help in establishing leasing goals.

(3) Preparation of surface and mineral ownership management maps.

(4) Complete analysis of current leases.

(5) Possible changes in regulations and lease stipulations requiring diligent development and continuous operation on existing and new leases to prevent speculative holding of coal resources.

(6) Completion of the final coal programmatic environmental impact statement.

The Draft Environmental Impact Statement-Proposed Federal Coal Leasing Pogram designated as task No. 6 was released by the Department on May 7, 1974. The final EIS was published in September 1975.

On December 11, 1974, the Department of the Interior published proposed regulations the purpose of which were to remedy both the problem of speculative holding of leases and that of adequately sized leases for mining development. Because of their importance to this legislation, they are reprinted here.

BUREAU OF LAND MANAGEMENT

(43 CFR Parts 3500, 3520)

COAL LEASES

DILIGENT DEVELOPMENT AND CONTINUOUS OPERATIONS

Basis and purpose.—Notice is hereby given that the Department of the Interior proposes to revise the regulations relating to coal leases by

including a definition of a "logical mining unit" and the terms "diligent development" and "continuous operation". The Mineral Leasing Act of 1920, as amended (30 U.S.C. 207), authorizes the issuance of coal leases for an indeterminate period upon condition of diligent development and continued operation of the mine. The present regulations do not define what constitutes diligent development or continuous operations. In addition, a definition is proposed which will permit establishment of a logical mining unit for the operation of several leases under the control of a single operator. These new regulations will be applicable to coal leases issued after the effective date of these regulations and to the extent possible to existing coal leases.

Interested persons are invited to submit their comments in writing to the Director, Bureau of Land Management, Department of the Interior, Washington, D.C. 20240, on or before January 10, 1975.

It is proposed to amend Chapter II of Title 43, Code of Federal Regulations, as set forth below.

1. Section 3500.0–5 is amended by adding definitions (d), (e), and (f) to read as follows:

3500.0–50 *Definitions*

(d) *Logical Mining Unit* (LMU).—An LMU is a compact area of coal land that can be developed and mined in an efficient, economical and orderly manner with due regard to conservation of coal reserves and other resources and in accordance with an approved Mining Plan. An LMU may consist of one or more Federal leaseholds, and may include intervening or adjacent non-Federal lands, insofar as all lands are under the effective control of a single operator. It may also consist of lands committed to a contract for collective prospecting, development or operations approved by the Secretary pursuant to 30 U.S.C. 201–1. The Mining Supervisor is authorized to approve or establish an LMU.

(e) *Diligent development.*—Diligent development means preparing to extract coal from an LMU in a manner and at a rate consistent with a Mining Plan approved by the Mining Supervisor. Activities that may be approved as constituting diligent development of an LMU include: environmental studies, including gathering base-line environmental data and design and operation of monitoring systems; on-the-ground geological studies, including drilling, trenching, sampling, geophysical investigation, and mapping, engineering, feasibility studies, including mine and plant design, mining method survey studies; and research on mining methods, contracting for purchase or lease of operating equipment and development and construction work necessary to bring the LMU into production. The work performed and the expenditure of monies may take place on or for the benefit of leased land, or on other lands within the LMU, or at a location remote from the land so long as they are undertaken for the purpose of obtaining production from the LMU.

(f) *Continuous operation.*—Continuous operation means, extraction, processing, and marketing of coal in commercial quantities from the LMU without interruptions totaling more than six months in any calendar year, subject to the exceptions contained in 30 U.S.C. 207 and in the lease, if any.

3522.1–2 *Terms*

(d) *Exception.*—(1).

(2) *Coal.*—A coal lease will be maintained only upon the condition of diligent development and, when required by the lease or the Mining Supervisor, continuous operation of the mine or mines in the logical mining unit of which the leasehold is a part. A lessee must have his lease included within an LMU within two years after the effective date of this regulation or by the second anniversary date of that lease, whichever is later. Where the holder of a lease on the effective date of this regulation can demonstrate to the satisfaction of the Mining Supervisor that he has in good faith been unable to form such an LMU within the specified time, his lease will be treated as an LMU for the purpose of this regulation. The lessee is responsible for diligent development of the LMU and must report such work and expenditures within thirty days after each anniversay date of the LMU falling within years ending with the digits 2, 4, 6, 8, or 0. The Mining Supervisor is responsible for determining whether the lease has been or is being diligently developed. In addition, on each such anniversary date, the lessee shall advise the Mining Supervisor in advance of how he plans to diligently develop the LMU for the coming two years.

Dated: December 5, 1974.

JACK HORTON,
Secretary of the Interior.

[FR Doc.74-28839 Filed 12-10-74; 8:45 am]

MAJOR ISSUES

The problems associated with the current Federal coal leasing program can be traced in part to deficiencies in the coal provisions of the Mineral Lands Leasing Act of 1920, and in part to the interpretation and enforcement of this Act by the Department of the Interior. For the purpose of analysis and discussion these problems are identified in this report as seven major issues as follows: speculation; concentration of holdings; fair return to the public; environmental protection, planning and public participation; social and economic impacts; need for information; maximum economic recovery of the resource; and military lands.

1. SPECULATION

Under existing law, any coal lease issued by the Secretary is effective virtually forever. Although Section 7 permits revision of leasing terms every 20 years and a lease can be terminated for lack of compliance with the terms of the Act through lengthy court proceedings, no Federal coal lease has ever been cancelled in this manner.

The current law also specifies that a coal lease shall be subject to the conditions of "diligent development" and "continued operation". Although an effort is now underway (see Proposed Regulations), these terms had never been defined by the Department of the Interior before December 1974. The condition of continued operation can be waived at the direction of the Secretary if he determines that it is in the public interest to do so. Payment of a minimum royalty may be accepted instead. Since these terms had never been defined, cancellation of a lease for lack of compliance with the law under Section 31 of the

Mineral Leasing Act of 1920 would have been very difficult had any proceeding ever been initiated. According to testimony received by the Subcommittee on Mines and Mining, except for the 59 leases currently in production, all of the remaining 474 Federal leases are being held under a waiver of the condition of continued operation issued by the Secretary of the Interior.

In addition to the lack of development of existing leases, the provision of the existing law which allows issuance of preference rights associated with coal prospecting permits (Section 2(b)) has contributed to speculative holding of leases by making it possible to gain control of public resources at virtually no cost. According to the study "Leased and Lost," 45 percent of all Federal leases have been issued on a preference right basis, with no competitive bidding involved. Consequently, holding companies and energy resource speculators have entered the market for Federal coal in large numbers. An unpublished Department of Interior working paper concludes that:

> By far the dominant force in the acquisition of coal prospecting permits is the "lease broker". Of the top 20 coal permit holders, on an acreage basis, only four are actively engaged in production of coal . . . Suffice it to say that brokers—not coal producers or users—are the predominant holders of Federal coal prospecting permits.

The problems of speculation are addressed directly by H.R. 6721, which requires termination of any lease which is not producing in commercial quantities at the end of 15 years. Old leases (those existing on the date of enactment of the 1975 Act) would be exempt from this provision, except to the extent it might be made applicable upon readjustment of lease terms, but the lessees would be prohibited from acquiring any new Federal leases should they continue to hold old leases 15 years after enactment without producing therefrom. Additionally each lease will be subject to diligent development and continued operation. As under current law, the condition of continued operation may be suspended in favor of an advanced royalty payment. However, the new advanced royalty must be no less than the production royalty which would otherwise have been due under a fixed reserve to production ratio schedule. Therefore, should the production royalty based on the value of coal in the year of actual production exceed the advance royalty paid on a given amount of coal, (i.e. the value of the coal on which the advanced royalty was based has risen), the advance royalty will be credited toward the production royalty due, with the excess paid by the operator. In the event the advance royalty paid exceeds the production royalty due, no rebates will be given, but the excess payment may be carried forward. Advance royalties may be substituted for continued operation for a total of 15 years only, and may be terminated by the Secretary in favor of resumption of continued operation requirements upon six months notice to the lessee.

H.R. 6721 further discourages speculative holding of leases by terminating the preference right prospecting permit.

2. CONCENTRATION OF HOLDINGS

Approximately 66 percent of the Federal and Indian acreage under lease is held by 15 leaseholders, although there are a total of 144

lessees (see Table 6). This data reflects the trend of dominance in the energy field by a handful of major corporations which is evident in virtually every resource area.

TABLE 6.—THE TOP 15 LEASEHOLDERS

	Federal	Indian	Total
Kennecott Copper Co.:			
Peabody Coal Co	81,981.29	100,345	
Kenn. Coal Co	2,736.14		
Total	84,717.43		185,062.43
2. Continental Oil Co.:			
Consolidation Coal	45,452.12		
½ of Consol and Kemmerer	9,372.97		
½ of Consol and El Paso		20,143.5	
Total	54,825.09		74,968.59
3. Utah International	24,229.61	31,416	55,645.61
4. Pacific Power & Light:			
Pacific Power & Light	35,078.15		
Decker	13,610.31		
Total	48,688.46		48,688.46
5. El Paso Natural Gas:			
El Paso	27,018.72		
½ Consol-El Paso		20,143.5	47,162.22
6. Garland Coal Co	40,559.40		40,559.40
7. Arizona Public Service and San Diego Gas & Electric Resources Co. et al	39,355.19		39,355.19
8. Lincoln Corp.			
Kemmerer Coal Co	22,854.73		
Consol-Kemmerer	9,372.97		
Gunn Quealy	1,751.54		
Total	33,979.24		33,979.24
9. Westmoreland Resources		30,876	30,876
10. Shell Oil Co		30,248	30,248
11. Gulf Oil Corp.:			
Gulf	2,560.00		
Pittsburg & Midway	6,871.72	13,237	
Total	9,431.72		22,668.72
12. Sun Oil Co.:			
Sun			
Colorado Mining Co			
Total	21,239.97		21,239.97
13. Bass	20,700.71		20,700.71
14. Amax:			
Amax		14,237	
Meadowlark Farms	5,960.31		20,197.31
15. ARCO	19,185.98		19,185.98
Total	429,871.83	260,646	690,517.83

This dominance is due in part to the system of cash bonus bidding which is used when leases are offered on a competitive bidding basis. Such a bidding system requires substantial "front end" capital (*i.e.* a larger initial investment in the bonus bid). Smaller companies do not have the financial resources to compete with the giants in the energy and mining industries.

A second factor contributing to the accumulation of Federal leases by a limited number of companies has been the revision of the Mineral Leasing Act which restricts the total amount of leased land which any one company can hold. In 1964, P.L. 88–526 increased the total acreage which can be controlled by any one entity in any one State from 10,240 to 46,080 acres by amendment to Sec. 27(a)(1) of the Mineral Leasing Act of 1920.

H.R. 6721 attacks the concentration of holdings problem in the following manner: A tighter definition of corporate entities in Section 11(a) of the bill is aimed at preventing an evasion of the bill's acreage holding limitations through the formation of holding companies or other such corporate organizational devices. While retaining the present limit of 46,080 acres on which an entity can hold leases or permits in any one state, a new national limit of 100,000 acres is imposed. Section 27(a)(2) of the 1920 Act permitting the leasing of an additional 5,120 acres in a state is repealed. Enforcement of these limitation provisions may in some cases require the piercing of the corporate veil to determine the nature and extent of control being exercised by parent corporations.

H.R. 6721 facilitates competition in bidding for leases by requiring that 50 percent of all acreage leased in any one year be on a system of deferred bonus bidding. This reduces the front end capital outlay, enabling smaller corporations to compete. Similarly a provision increasing production royalties to not less than 12.5% of the value of the coal should reduce the front end bonus paid, thus minimizing the required initial investment.

To prevent concentration of leases in the private sector a "reasonable number" of leasing tracts are required to be reserved and offered for lease to public entities which produce energy.

3. FAIR RETURN TO THE PUBLIC

Several aspects of the current law have contributed to a situation in which the public is being paid a pittance for its coal resources. The first such provision is that which establishes a prospecting system for lands in which the resource is not known to the Department of the Interior. Such permits are issued for specific plots of land and carry with them the right of a "preference lease". That is, if a holder of a prospecting permit demonstrates the existence of coal in commercial quantities in the permit area, he is entitled to a preference right lease. No competitive sale is held and the lessee is subject only to the minimum royalty and rental provisions of Section 7 of the Mineral Leasing Act of 1920, or such other rates of royalty and rental as the Secretary may determine.

Additionally, although more than 50 percent of all leases have been offered for competitive bid, 72 percent of these "competitive" sales had less than two bidders, not really reflective of a competitive environment. Since the bid is related to the number of bidders, those tracts which attract only one bid are not likely to result in payment of a fair return to the public. (See Table 7.)

TABLE 7.—NUMBER OF COMPETITORS AND AVERAGE BID, FEDERAL COAL LEASES

Number of bidders	Number of such leases	Average bid per acre
0	25	$0.08
1	145	3.31
2	37	36.43
3	14	25.61
4 or more	15	112.18
Total	[1] 236	16.90

[1] For the other 11 competitive leases information is not available for a listing.

Source: "Leased and Lost: A Study of Public and Indian Coal Leasing in the West;" Council on Economic Priorities.

The fact that the minimum royalty and rental established in the law (royalty-5 cents/ton; rental-$.25/acre-1st yr, $.50/acre for the 2nd to 5th years and $1.00/acre thereafter) also contributes to the lack of fair return to the public. According to the Council on Economic Priorities, the Federal government has collected a total of $23,373,920 in royalty payments in the last 54 years, from a total production of 189,099,653 tons of coal. This total represents an average royalty of 12.5¢ per ton. The study points out that although royalty rates have increased 75 percent in the last half century, the price of a ton of coal has more than doubled. Thus, the actual royalty being paid is a smaller percentage of the value of the coal now than it was in 1920.

The 1972 GAO study on coal leasing policy concludes: "We believe that royalty payments have not been established on a fair basis."

The GAO report goes on to recommend that the Secretary of the Interior initiate a study to determine the desirability of seeking a change in the law that would permit the adjustment of royalty rates and other lease terms more frequently than at 20-year intervals.

A fourth factor affecting the amount received by the Government for sale of its coal resource may result from basing the determination of the payment on an estimate as to extent and value of the coal by the U.S. Geological Survey. These estimates are not always correct and the extent to which the estimate varies from the actual coal produced often results in an unrealistic return to the public.

H.R. 6721 contains many provisions designed to insure a fair return to the public from Federal leases. First, all leases are to be awarded by competitive bidding only and not by "such other methods as he (the Secretary) may be regulations adopt" as in the present law. Second, a bid is not acceptable unless it is at least as high as fair market value, as determined by the Secretary. Third, a minimum royalty of 12.5 percent of the value of the coal is placed on all new leases except for underground mines. Fourth, readjustment of the terms of the lease will occur every ten years to allow the Secretary to adjust the terms to more closely reflect changing market conditions than the present 20-year readjustment period permits. Finally, preference right leases for holders of prospecting permits are abolished. Henceforth, holders of prospecting permits must complete with all other interested parties in bidding on a leasing tract, their sole advantage being that any data they may have obtained on a tract up for lease shall be held confidential by the Secretary until after the lease sale.

4. ENVIRONMENTAL PROTECTION, PLANNING, AND PUBLIC PARTICIPATION

Heretofore, there has been very little control exercised by the Department of the Interior over the effects that a mining operation on the Federal lands has upon the environment.

Until recently the Department issued leases on a reactive basis, answering the stated needs of industry. As discussed earlier, this situation is rapidly changing. Initiation of the Northern Great Plains Resources Program, the Energy Minerals Allocation Recommendation System (EMARS) and the requirements of the National Environmental Policy Act have all contributed to a planned approach to coal leasing. It is important that the effort initiated by the Department in this direction be supported by legislation.

H.R. 6721 prohibits the leasing of any lands containing coal deposits unless the lands have been included in a comprehensive land

use plan prepared by the Secretary. Land use planning requires consultation with state and local goverments, an opportunity for a public hearing on the plan, and an assessment of the amount of coal in the land coupled with an estimate of the amount of coal in the land coupled with an estimate of the amount recoverable via surface and/or deep mining methods. Prior to leasing any tract, the Secretary must further hold a hearing (separate from the land use plan hearing) on the lease in the impacted area, and consider the effects which the issuance of the lease might have on the area as it pertains to environmental disruption, community services, economic impacts and the like. Further, any lease issued must contain provisions requiring compliance with the Federal Water Pollution Control Act (33 U.S.C. 1151–1175) and the Clean Air Act (42 U.S.C. 1857 et seq.). Exploration activity is restricted to holders of exploration licenses. The bill provides that a licensee must refrain from activities that cause a "substantial" disturbance to the natural land surface, a provision aimed at curbing present exploration practices that often lead to severe erosion and environmetnal pollution.

5. SOCIAL AND ECONOMIC IMPACTS

The current restrictions on the manner in which monies return to the States from the sale of Federal leases within their borders are onerous. When an area is newly opened to large scale mining, local governmental, entities must assume the responsibility of providing public services needed for new communities, including schools, roads, hospitals, sewers, police protection, and other public facilities, as well as adequate local planning for the development of the community. Since Section 35 of the Mineral Leasing Act of 1920 currently provides that the monies returned to the states be available only for schools and roads, it is difficult for affected areas to meet the needs of their new inhabitants. This situation exists both with respect to coal and geothermal development, as well as other mineral resources.

For example, the Council on Economic Priorities report states:

> The sudden jump in population growth, the emergence of urban centers, and the possible "boom-bust" economic cycle will cause many social and cultural changes. The Bureau of Reclamation predicts that coal development in the Northern Great Plains could result in "the sevenfold increase in the present population." Because 200,000 and 400,000 people are expected to migrate into eastern Montana.

An effort must be made to alleviate these problems by making funds available for the various aspects of community development.

As shown below, H.R. 6721 will add 12.5 percent of the moneys received under section 35 of the Mineral Lands Leasing Act to the 37.5 percent share currently returned to the states.

[In percent]

	Existing law	H.R. 6721
Reclamation fund	52½	40
States	[1] 37½	[2] 50
General Treasury	10	10

[1] All earmarked for schools and roads.
[2] 37½ percent of which is earmarked for schools and roads.

The additional 12½ percent that will go to the states is not earmarked for schools and roads, and may be spent by the states for planning, public facilities and public services, giving priority to those communities impacted by the mineral development. The remaining 37½ percent of the states' 50 percent share continues to be earmarked for schools and roads under existing law. H.R. 6721 would increase total receipts under section 35 of the Mineral Lands Leasing Act by adding thereto revenues from the Geothermal Steam Act of 1970. At present, geothermal receipts are treated as if received from the sale of public lands (only 5% are returned to the states).

6. NEED FOR INFORMATION

In light of the projections for rapid growth in coal production, especially with respect to disposition of Federal coal in the West, and the fact that the overwhelming majority of domestic coal reserves are recoverable through deep mining only, it is necessary for Congress to obtain an independent assessment of the existing situation with respect to outstanding Federal coal leases and the feasibility of the use of deep mining technology in these areas. H.R. 6721 directs such a study be undertaken by the Office of Technology Assessment with results to be submitted within one year of enactment of the 1975 amendments.

The bill also directs the Secretary of Interior to undertake a comprehensive exploratory program to reveal the existence and location of viable coal deposits on the public lands and to provide a basis for formulating land use plans, developing accurate maps of resources, and upgrading information on the value of public resources. Finally, the Secretary is directed to submit a yearly summary of Federal lands leasing and production together with his suggestions for improvements in the program.

7. MAXIMUM ECONOMY RECOVERY OF THE RESOURCE

A primary concern of any future coal leasing program on public lands should be the maximum economic recovery of the available coal resources. At present, easily reached surface deposits which yield the highest profits are often the only resources developed in an area that contains vast amounts of coal not so easily or profitably extracted. This results in the waste of valuable resources, and the creation of severe environmental impacts. H.R. 6721 seeks to prevent such waste by requiring the Secretary to form leasing tracts which "permit the mining of all coal which can be economically extracted". In addition, the Secretary is prohibited from approving any mining plan which he finds does not achieve the maximum economic recovery of the coal within the tract.

To further enable the maximum economic recovery from coal deposits, the Secretary's concept of a "logical mining unit" is adopted in Section 5 of H.R. 6721. Under current ownership and leasing patterns, a coal deposit or seam often underlies lands embracing a combination of Federal leases which may be individually too small, remote or subject to differing lease terms, time requirements or the like, to be developed in an efficient and economical manner.

Federal tracts are often interspersed with state, Indian, and private lands. In such cases, a coal deposit may be physically and economically

less attractive for development than if it could be mined as a unit. Accordingly, H.R. 6721 authorizes the Secretary to approve, or by regulation to require, the consolidation of Federal coal leases (including leases in existence at the time of enactment) with other Federal coal leases, with state leases, or with private holdings so as to form a "logical mining unit." Within such a logical mining unit, the mandate of section 6 requiring production within 15 years would be modified so that commercial production from any part of the unit within the 15-year period would satisfy the requirement. In any event, all of the coal resources of a logical mining unit must be developed within 40 years.

Under further provisions of section 5, a logical mining unit must be under the effective control of one operator, must require diligent development, operation and production and may not exceed 25,000 acres in size. The logical mining unit concept replaces the more limited consolidation authority granted the Secretary under the provisions of 30 U.S.C. 201–1.

8. MILITARY LANDS

Present law does not permit the Secretary to lease the minerals underlying acquired military property, thus precluding the development of significant reserves known to exist under Camp Swift in Texas. These reserves are desired for electric power generation by the city of Austin, Texas. Section 12 of the 1975 amendments would amend the Mineral Leasing Act for Acquired Lands (30 U.S.C. 352) to permit leasing to a government entity of coal or lignite under acquired lands, provided the Secretary of Defense concurs.

SECTION-BY-SECTION ANALYSIS

Section 1 designates the official citation of the Act as the "Federal Coal Leasing Amendments Act of 1975". It also clarifies the reference to the Mineral Lands Leasing Act (30 U.S.C. 181 *et seq.*) within the body of the bill.

Section 2 amends the first sentence of section 2(a) of the Mineral Lands Leasing Act (30 U.S.C. 201(a)). The first sentence of section 2(a) presently authorizes the Secretary of the Interior to divide classified or unclassified coal lands into 40 acre tracts, or multiples thereof and to lease these tracts by competitive bidding "or by such other methods as he may by general regulation adopt." This amendment removes the reference to "40 acre tracts," permits leasing of classified lands only, and requires that all leasing be by competitive bidding. It specifies that the size of a leasing tract be such that it will permit the mining of all coal which can be economically extracted. The purpose of this provision is to insure that coal, which might yield a lower profit than that which lies in the most readily available deposits, will not be left in the ground. The amendment provides that at least 50 per centum of all lands leased within any year be on the basis of a deferred bonus bidding system. A reasonable number of leasing tracts are to be set aside by the Secretary and made available for leasing only to public bodies, including Federal agencies, rural electric cooperatives or nonprofit corporations controlled by any of such entities. Finally, the amendment would prohibit the Secretary from accepting any bid for less than the fair market value of the coal subject

to lease. In determining such fair market value, the Secretary shall give consideration to public comments, provided that he shall not be required to reveal either his judgment as to the value, or the comments he receives prior to issuance of a lease. The Committee felt that this information should be available for public scrutiny after leasing of the tract in question occurs.

Section 3 amends the last sentence of section 2(a) of the Mineral Lands Leasing Act (30 U.S.C. 201(a)). This sentence requires the Secretary to issue notices prior to a competitive lease sale. This amendment would bar the issuance of new leases to any individual or corporations that have held a lease for a period of 15 years, beginning on the date of enactment of the Federal Coal Leasing Amendments Act of 1975, without producing coal therefrom. It would require that no lease sale be held unless it were compatible with a comprehensive land use plan prepared by the Secretary or, in the case of lands in the National Forest System, by the Secretary of Agriculture. On lands where the surface is under the jurisdiction of a Federal agency other than the Department of the Interior, leasing may occur only with the consent of that agency.

Where the Federal interest in the lands or coal deposits is nominal, either a comprehensive land use plan prepared by the State in which the lease is to be offered, or a land use analysis prepared by the Secretary would be required. In the latter instance, a land use analysis, prepared in the case of a minor Federal interest in the lands or coal deposits, need not be detailed as the comprehensive land use plan which is required in all other instances.

In preparation of the land use plan, consultation with State and local entities is mandated and an opportunity for a public hearing must be granted if requested by a person having an interest which is or may be adversely affected. In addition, prior to issuance of any lease, the Secretary is to consider the social, economic and other impacts on the communities affected and give opportunity for a public hearing.

Each land use plan is to contain an assessment of the amount of coal deposits in the land, including underground and surface recoverable reserves. The Secretary is also required to evaluate and compare the effects of recovering coal by underground mining, surface mining and by other methods to determine which methods will assure maximum economic recovery of the coal. No mining plan may be approved which is not found to achieve the maximum economic recovery of coal and no competitive lease shall be approved until notice has been given in a local newspaper.

All coal leases shall contain provisions requiring compliance with the Federal Water Pollution Control Act (33 U.S.C. 1151–1175) and the Clean Air Act (42 U.S.C. 1857 et seq.).

Section 4 would repeal, subject to valid existing rights, section 2(b) of the Mineral Lands Leasing Act (30 U.S.C. 201(b)) which authorizes the issuance of coal prospecting permits and preference right leases.

Under present law, section 2(b) provides that prospecting or exploratory work may be permitted to determine the existence and workability of coal deposits and the Secretary is authorized to issue prospecting permits which entitle the permittee to the exclusive right to

prospect for coal on the land described therein for a term of two years. A holder of a coal prospecting permit who shows, before the expiration of his permit, that the land included in the permit contains coal in commercial quantities, is entitled to a preference right lease for all or part of the land included in the prospecting permit.

In repealing present section 2(b), H.R. 6721 would replace it with a system of non-exclusive exploratory licenses. Such exploratory licenses would be for periods of not more than two years and would carry no preferential right to a lease if H.R. 6721 is enacted in its present form. An application for an exploration license is required to identify the general areas and probable methods of exploration and the Secretary is authorized to impose such conditions as he deems reasonable before issuing a license. Where the surface is under the jurisdiction of a Federal agency other than the Department of the Interior, exploration licenses may be issued only under the conditions prescribed by such agency. Furthermore, when the exploration area involves more than one State, separate licenses are required for each of the States so involved. In no event may a licensee be permitted to cause substantial disturbance to the natural land surface in conducting his exploration operations.

All data collected by the licensee is to be furnished to the Secretary, who shall maintain the confidentiality of the data until the lands in question are leased or until the Secretary determines that making the data available to the public would not damage the competitive position of the licensee.

Any person who willfully conducts exploration without a license is subject to a fine of $1,000/day and the surrender of all data collected to the Secretary, which data is to be made public.

Section 5 repeals, subject to valid existing rights, subsections 2(c) and 2(d) of the Act of August 31, 1964 (30 U.S.C. 201–1). These subsections permitted lessees of a coalfield to enter into contracts for collective prospecting, development or operation of the coal resources. They also enabled the Secretary to combine, alter, or revoke leases, royalty agreements and the like in furtherance of collective contracts.

This lew language eliminates collective contracts in favor of the concept of the logical mining unit (LMU). A logical mining unit is a contiguous track of land, under the control of a single operator, which is designed to promote the "efficient, economical and orderly" recovery of the resources contained therein. The new language enables the consolidation by the Secretary of several tracks (be they Federal, State or private) into a single tract not exceeding 25,000 acres so that they may be mined in the most economically efficient manner. All the reserves within the entire LMU must be mined in a period not to exceed forty years, and the unit as a whole is subject to the requirements of diligent development and continuous operation. The new language also permits the Secretary to require a lessee to form an LMU.

Section 6 amends section 7 (30 U.S.C. 207) of the Mineral Lands Leasing Act which deals with the term of leases and lease rentals and royalties.

First, it provides that leases shall be for terms of 20 years and for so long thereafter as coal is being produced in commercial quantities. Any lease not producing in commercial quantities at the end of the 15th year of the lease will be terminated. The existing law provides

that leases "shall be for indeterminate periods upon condition of diligent development."

Second, the revised language changes the minimum royalty from $.05 per ton to twelve and one half per centum of the value of the coal, except that the Secretary may determine a lesser amount for underground mining operations.

Third, H.R. 6721 provides for a readjustment in the terms of the lease at the end of the 20th year and every ten years thereafter instead of a readjustment every 20 years as provided in the present law.

Fourth, leases remain (as they are under existing law) subject to the conditions of diligent development and continued operation, except where interrupted by strikes, elements or casualties not attributable to the lessee.

Fifth, H.R. 6721 permits the Secretary to waive the requirement for continued operation for a period not to exceed 15 years and accept in lieu thereof an advanced royalty. Advanced royalties must be no less per year than production royalties that would otherwise be paid for actual production, and will be computed on a fixed reserve to production ratio. Should the value of the coal mined in the year of actual production exceed the value upon which the advanced royalty was based, the difference shall be paid by the operator. However, should the advance royalty exceed the production royalty, no rebates will be granted, but the credit may be carried forward. In no case can advanced royalty payments be used to waive the absolute requirement of production from a lease within 15 years. While existing law permits in lieu royalty payments and provides that they shall not be less than the annual rental paid, it does not make reference to a fixed reserve to production ratio. Where the surface is under the control of another agency, such agency must consent to the plan.

Finally, this section eliminates a provision of current law which permits the credit of rentals against royalties; and it eliminates the provision permitting the suspension of operations for six months when, in the judgment of the Secretary, market conditions warrant such suspension.

Section 7 adds a new section 8A to the Mineral Lands Leasing Act which provides for a comprehensive Federal exploration program for lands to be offered for leasing. Under it, the U.S. Geological Survey is authorized to conduct or to contract for exploration activities, including seismic, geophysical, geochemical, or stratigraphic drilling, but it does not limit the right of any party to carry out such activities under Section 4 of H.R. 6721.

All data, maps, interpretations and surveys resulting from activities under this section are required to be made public by the Secretary. All Federal departments and agencies are directed to cooperate in providing the Secretary with pertinent information.

On the basis of the information so collected, the Secretary is to prepare and maintain a series of detailed geological and geophysical maps of the coal lands to be offered for leasing under the terms of this legislation.

Pursuant to this section, the Secretary is directed to develop and transmit to Congress within six months after enactment, a plan for implementation of the exploration program, including procedures for making the data available to the public.

Stratigraphic drilling must be carried out so or in such a manner that information pertaining to all recoverable reserves is obtained. All information regarding results of test borings is to be supplied to the Secretary. The purpose of this requirement is to assure that lands are not leased for surface mining development when greater amounts of coal could be recovered through deep mining operations.

Section 8 adds a new section 8B to the Mineral Lands Leasing Act, requiring the Secretary to submit an annual report to Congress on leasing and production of coal lands subject to the Act. The report is to include information on management, supervision, and enforcement activities and recommendations for improvements in management and environmental safeguards, as well as a report by the Attorney General on competition in the coal and energy industries, including an analysis of whether the antitrust laws are effective in preserving or promoting competition in the coal or energy industry.

Section 9 amends Section 35 (30 U.S.C. 191) of the Mineral Lands Leasing Act by reducing the percentage of revenues from mineral leasing deposited in the reclamation fund from 52.5% to 40% and raising the percentage of the revenues going to the States from 37.5% to 50%. The 37.5% of the funds which is currently returned to the States under the law would remain available only for use in construction and maintenance of schools and roads. The additional 12.5% returned to the States would be available for use in planning, construction and maintenance of public facilities, with priority to be given to those areas impacted by the development of the resource involved.

Subsection (b) would further amend Section 35 of the Mineral Lands Leasing Act by providing that all moneys received from Geothermal leasing under the Geothermal Steam Act of 1970 be disposed of under the above provisions of Section 35. Existing law treats such moneys as if they were received from the sale of public lands, with about five percent going to the States and the reminder dispersed in the same manner as other receipts from public lands.

Section 10 provides for a study by the Office of Technology Assessment which is to include a review of existing Federal coal leases and recommendations as to the feasibility of using deep mining technology in such lease areas.

Section 11 amends Section 27(a)(1) of the Mineral Lands Leasing Act (30 U.S.C. 184(a)(1)) to provide that no corporation, person or association may control more than 100,000 acres of Federal coal lands in the United States at any one time. The 100,000 national acreage limitation is added to any existing limit of 46,080 acres per State. Subsection (a)(2) which presently permits the Secretary to lease an additional 5,120 acres over and above any acreage restrictions contained in subsection (a)(1) is repealed.

This amendment to Section 27 of the Mineral Lands Leasing Act also has the effect of broadening the definition of the entity to which the acreage limits are applicable. Under existing law, reference is made to "person, association or corporation". The amendment language reads: "person, association, or corporation, or any subsidiary, affiliate, or persons controlled by or under common control with such person, association, or corporation". The purpose of broadening this language is to assure that the restrictions on leaseholdings are not circumvented by the formation of holding companies, or other devices of corporate organization. Henceforth, no one entity, under whatever corporate or other form, will be permitted to take, hold, own or control coal leases

on more than 100,000 acres in the United States or more than 46,080 acres in any one State if H.R. 6721 is enacted.

Section 12 amends section 3 of the Mineral Leasing Act for Acquired Lands (30 U.S.C. 352) by providing that coal in lands set aside for military or naval purposes may be leased to a governmental entity if the Secretary of Defense agrees to such leasing.

Section 13 repeals, subject to valid existing rights, Section 4 (30 U.S.C. 204) which presently permits the Secretary to issue a new lease, not to exceed 2,560 acres, through the same procedure as used in the original lease, where coal deposits under the existing lease will be exhausted within three years. In addition, it amends section 3 to allow modification of existing leases, not to exceed 2,560 acres, to include contiguous coal deposits. Under the recommended amendment this practice may continue, but the size of such modification would be limited to 160 acres or an acreage no greater than the original lease.

Section 14 amends Section 39 of the Mineral Lands Leasing Act (30 U.S.C. 209) to insure that nothing in Section 39 can be construed as giving the Secretary the right to waive, suspend or reduce the advance royalties payable upon suspension of the normal requirement of continued operation.

Section 15 adds a new subsection to Section 27 of the Mineral Lands Leasing Act. It requires the Secretary to consult with the Attorney General before drafting rules and regulations, or issuing, renewing and readjusting leases under the Act to prevent a situation that would be in contravention of the antitrust laws. This amendment is designed to reduce the chance of lengthy and costly antitrust litigation.

Committee Consideration

The Federal Coal Leasing Amendments Act of 1975 was first considered by the Subcommittee on Mines and Mining in the 93rd Congress. A Senate-passed bill, S. 3528, the "Federal Coal Leasing Amendments Act of 1974," was the subject of Subcommittee hearings on August 13 and 15, 1974. A committee print incorporating several changes to the Senate bill was considered in Subcommittee markup on September 19, 24, and October 8, 1974, but no recommendations were made at that time.

The committee print was introduced as H.R. 3265 by Representative Patsy T. Mink in the 94th Congress on February 19, 1975. Hearings were held on March 14, 1975. After considering the measure on April 22 and May 2, 1975, the bill was revised and unanimously recommended by voice vote on May 2, 1975. The revised text was then introduced as H.R. 6721 by Mrs. Mink, Mr. Ruppe, Mr. Bingham, Mr. Eckhardt, Mr. Howe, Mr. Seiberling, Mr. Steelman, Mr. Udall, and Mr. Vigorito on May 6, 1975, and it was this measure which was considered by the Committee on Interior and Insular Affairs on July 23, 30, September 18, 24, October 1, 7, 22, November 5 and 12, 1975. At the November 12 meeting, the bill was ordered reported favorably in amended form by a voice vote.

Inflationary Impact

Pursuant to Rule XI, clause 2(l)(4), of the House of Representatives, the Committee believes that enactment of H.R. 2761 will have virtually no inflationary impact on the U.S. economy; however, as development of these coal resources occurs, there may be some regional

impact arising from increasing demands on limited facilities and services. On the other hand, any failure to make reasonable and orderly progress on the development of these valuable energy resources will result in increased demand for substitute sources of energy and could result in a significant adverse impact on the economy.

Cost and Budgetary Impact

Although the administrative burden on the Secretary might result in some increased costs, it is unlikely that they will constitute a significant burden on the national budget. In fact, if H.R. 6721 is enacted in its present form and Federal coal leasing is revived, the provisions of the legislation will produce revenues to the United States which should more than offset the administrative costs envisioned. No appropriations are specifically authorized by the legislation.

Oversight Statement

In developing the legislation, the Subcommittee on Mines and Mining reviewed the existing program and took this background into consideration in developing the terms of the bill which it has recommended. No recommendations were submitted to the Committee pursuant to Rule X, clause 2(b)(2).

Committee Amendment

The Committee amendment deletes all after the enacting clause and inserts a substitute text which is fully explained in the text of this report.

Committee Recommendation

The Committee on Interior and Insular Affairs recommends the enactment of H.R. 6721, as amended. The motion ordering the bill reported favorably was adopted by voice vote on November 12, 1975.

Departmental Reports

Both the Department of the Interior and the Department of Agriculture commented on the proposed coal leasing act amendments, generally favoring enactment of the legislation but suggesting amendments which were considered in the course of subcommittee and committee consideration. They reported first on H.R. 3265, the basic bill on which hearings were held, and the Department of the Interior also reviewed H.R. 6721 as it emerged from the subcommittee markup. These reports are as follows:

U.S. Department of the Interior,
Office of the Secretary,
Washington, D.C., March 13, 1975.

Hon. James A. Haley,
Chairman, Committee on Interior and Insular Affairs,
House of Representatives,

Dear Mr. Chairman: This responds to your request for this Department's views on H.R. 3265, a bill "To amend the Mineral Leasing Act of 1920, and for other purposes."

H.R. 3265 is similar to the Committee Print of S. 3528 in the 93rd Congress as issued by the House Committee on Interior and Insular Affairs, Subcommittee on Mines and Mining. It would amend the Mineral Leasing Act of 1920 (30 U.S.C. §§ 181–287) to require that coal leases be issued by competitive bidding with limited exceptions, repeal authority to issue prospecting permits and provide for issuance of exploration licenses after approval of an exploraton plan, prohibit leasing lands unless they are included in a land use plan, limit lease terms to 10 years and so long thereafter as coal is produced annually in paying quantities, requiring a minimum royalty, and allow States greater discretion in spending their shares of Federal coal leasing revenues.

In the previous Congress it was the position of this Department that total revision of the Mineral Leasing Act was preferable to the piecemeal approach of coal leasing amendments. However, we stated that the Department would not object to such coal leasing provisions if amended to conform to the general approach of the Department's proposed "Mineral Leasing Act of 1973". While we still prefer adoption of a comprehensive revision of the mineral leasing laws to include all presently leasable mineral resources, and intend to submit such legislation on this matter in the future, we would not object to the subject bill if amended in accordance with the following comments:

(1) *Forty-Acre Leasing Tracts.*—Sec. 2(a)(1) on page 1. The requirement that leasing units be in tracts of 40 acres or multiples thereof was established during a period when average leaseholds and leasing operations were relatively small and 40 acres was a meaningful size for a lease. There is no special significance to tracts of 40 acres or multiples thereof. Indeed, there may be tracts of leasable lands which are not in multiples of 40. More leeway should be given to the Secretary to offer leases in tracts that he deems appropriate in the public interest. We recommend, therefore, that section 2(a)(1) be amended so that the first sentence reads:

"The Secretary of the Interior is authorized to divide any lands subject to this Act into leasing tracts of such size as he deems appropriate and in the public interest, and thereafter he shall, in his discretion, upon the request of any qualified applicant or on his own motion, from time to time, offer such lands or deposits of coal for leasing, and shall award leases thereon by competitive bidding."

(2) *Bidding Restrictions.*—On page 2, the italicized words beginning on line 8 and ending with the word "basis" on line 18, would seriously constrain the Department's flexibility in holding competitive coal lease sales. They would require sealed bidding, they would prohibit royalty bidding, and they would impose a 10 year bonus payback system for at least 50 percent of the acres covered by each lease. We recommend that these restrictions be deleted.

Our experience is that sealed bidding does not always attract the highest bids. Generally, when there is little competition, sealed bidding is preferable since it introduces a degree of uncertainty and induces higher bids. However, when there is significant competition, sealed bidding followed by oral bidding has proven to be more satisfactory since bidders are then influenced by other bidders and the competitive spirit of the sale. The success of each auction therefore depends largely on the Secretary's ability to call for sealed or oral bids.

As we reported to you earlier, the Department of the Interior is presently studying whether bonus bidding is preferable to royalty bidding. Under the authority granted the Secretary in the Outer Continental Shelf Lands Act on October 1974, the Department auctioned leases for land on the Outer Continental Shelf for oil and gas development. Several of the leases were awarded through bonus bidding and a few through royalty bidding. We expect a thorough examination of operations under these leases will help us determine whether a system of royalty bidding or bonus bidding will assure the highest monetary return to the public and maximum mineral recovery, while assuring that qualified bidders are not restricted from bidding because of large "front-end" costs. Data is now available to help us make this determination and to implement the best bidding methods, we urge that H.R. 3265 permit the Secretary the same flexibility for determining bidding methods as he has under the Outer Continental Shelf Lands Act.

Finally, we know of no information indicating that a 10 year bonus payback system for collecting bonus payments on all or part of a lease is the most satisfactory method for collecting such payments.

In short, these restrictions seem to be arbitrary. It is not in the public interest to impose a single, rigid method in legislation for auctioning leases and collecting royalties until there is firm evidence to indicate that the method is and will continue to be the best one.

(3) *Public Comments.*—H.R. 3265 contains three provisions pertaining to public comments. On page 2, the sentence beginning on line 21 and ending on line 24 would require public comments on the assessment of coal lands before leasing lands; on page 3, line 12, the words beginning with "and the general public" and ending on line 16 with "such plans", provide for consultation with the public and public hearings before the implementation of land use plans; and on page 4, the sentence beginning on line 12 and ending on line 14 would require "adequate" public hearings before issuing coal leases.

Public involvement is very important in the devolpment of land use plans. Any future leasing of Federal coal lands in the West will be based on the vast amount of information in land use plans presently being prepared. The plans include an assessment of the coal in the land. The public is invited to comment throughout the planning process.

While public participation is important, H.R. 3265 does not establish clear and coordinated procedures for allowing people to express their views. We therefore recommend that the three provisions for public participation be deleted and that the following single subsection providing for public involvement be included in the bill by adding a new paragraph (3) on page 4 and by renumbering the subsequent paragraphs accordingly:

"(3) During the preparation of land use plans and before a planning unit is opened to leasing under this section, the Secretary of the Interior, or in the case of lands within the National Forest the Secretary of Agriculture, shall provide opportunity for public comment."

(4) *Land Use Planning on National Forest Lands.*—On page 3, as subsection (2)(A) lines 4 through 9 on page 3 is drafted, the Secretary of Agriculture is given the authority to develop comprehensive land use plans for the land within the National Forest System and to deter-

mine whether lease sales within the National Forest System are consistent with such plans. This provision would divide the authority between the Secretary of Agriculture and the Secretary of the Interior who handles lease sales in nearly all other areas to be considered for mining. We therefore suggest that subsection (2) (A) be amended to read:

"(2) (A) (1). After identifying the areas where there is substantial development interest in coal leasing, the Secretary of the Interior shall prepare comprehensive land-use plans on lands under his responsibility where this has not already been done. The Secretary of the Interior shall inform the Secretary of Agriculture of substantial development interest in coal leasing on lands within the National Forest System. Upon receipt of such notification from the Secretary of the Interior, the Secretary of Agriculture shall prepare a comprehensive land-use plan for such areas which takes into consideration the proposed mineral resource development interest in these lands where they have not done so. In preparing such land-use plans, the Secretary of the Interior, or in the case of lands within the National Forest System, the Secretary of Agriculture, shall consult with State and local governments and the general public."

To provide that the issuance of leases on National Forest System lands would be subject to the consent of the Department of Agriculture and subject to such conditions as that Department might prescribe with respect to the use and protection of nonmineral interests, we suggest adding new subsection (2) (A) (2) as follows:

"(2) (A) (2). Leases covering lands the surface of which is under the jurisdiction of any Federal agency other than the Department of the Interior may be issued only upon consent of the other Federal agency and upon such conditions as it may prescribe with respect to the use and protection of the nonmineral interests in those lands."

(5) *Concurrence of EPA.*—On page 3, the phrase beginning "and shall obtain" on line 16 and ending on line 21, requires the Secretary, before adopting land use plans for areas to be leased, to obtain the written concurrence of the Administrator of the Environmental Protection Agency with respect to air or water quality standards promulgated under the Federal Water Pollution Control Act or the Clean Air Act. We recommend that the phrase be deleted since the Secretary is already bound by the requirements of both laws. The written concurrence from the Administrator for each plan would only serve to add an unnecessary administrative step and to delay leasing programs.

(6) *Land Use Plans.*—The sentence beginning on page 4, line 4 and ending on page 4, line 7, appears to provide that the Secretary shall include in land use plans a statement of the effects of one method of mining on the recovery of other beds of coal in the land by other mining methods. As a matter of course the Secretary already makes this determination, but he does not include this information in land use plans. Land use plans are diagrams for management of the resources in lands and it is not appropriate to indicate mining methods in the plans. The Secretary makes a determination of the proper mining methods after land use plans are completed and before leases are issued. In order that the provision identified above does not complicate our present procedures, we recommend that it be deleted from its present position in the bill, that it be inserted after the word "services"

on page 4, line 12, and that it be amended to read as follows: "The Secretary shall also consider the effects of each method of mining on the recovery of any other beds of coal in the land by other mining methods."

(7) *Surface Mining Legislation.*—Paragraph (4) on page 4, lines 21 through 24, would require "satisfactory assurances" of compliance with the Surface Mining Control and Reclamation Act of 1974 before a lease is issued. We recommend that the paragraph be deleted. The surface mining legislation was not enacted. If surface mining legislation is enacted, it will naturally control activities under leases issued pursuant to H.R. 3265. In the event the Committee finds it necessary to make reference to the surface mining legislation if it is enacted, it would suffice simply to specify in H.R. 3265 that leases shall be in accordance with the requirements of that Act.

(8) *Logical Mining Units.*—H.R. 3265 does not contain specific authority for the Secretary to consolidate leases into logical mining units so that production within a unit rather than on a single lease would satisfy the renewal and diligence requirements. Authority to unitize leases would give the Secretary and lessees greater flexibility in planning the development of leases so that there is a maximum recovery of coal with a minimum impact on the environment. The authority would be particularly valuable in planning for the development of lands where some tracts are federally owned and some privately owned. Mining units could then be designated to encompass private lands, thus ensuring the development of isolated Federal tracts which ordinarily might not be developed.

We therefore recommend that in order to authorize unitization, the following new section 4 be added on page 5 to read as follows and that the subsequent sections be renumbered accordingly:

"Subject to valid existing rights, subsection 2 (c) and (d) of the Act of August 31, 1964, 78 Stat. 710, 30 U.S.C. § 201–1, is amended to read as follows:

"(c) At the discretion of the Secretary, leases issued under this section may, in the interest of conservation or in the public interest, be consolidated into logical mining units. The Secretary may require among other things that (1) production on any lease in a logical mining unit will be construed as production on all leases in that unit, (2) the rentals and royalties for all Federal leases in a logical mining unit may be combined, and advanced royalties paid for any lease within a logical mining unit may be credited against such combined royalties, and (3) leases issued before the date of enactment of this Act may be included with the consent of all leassees in such logical mining unit, and, if so included, shall be subject to the provisions of this section.

"(d) By regulation the Secretary may require a lessee under this Act to form a logical mining unit, and may provide for the determination of participating acreage within a unit."

(9) *Exploration and License Plan*, on page 5.—We favor the concept of exploration licenses set out in H.R. 3265 with the specific requirement for submission to the Secretary of an exploration plan. In order to assure the Government has the right to initiate the leasing process and to lease at any time, section 4 of H.R. 3265 should be amended. On page 5, delete the sentence beginning on line 8 and ending on line 9, and insert instead: "Each exploration license shall be for a term of not more than two years. The issuance of exploration

licenses shall not preclude the Secretary from issuing coal licenses shall not preclude the Secretary from issuing coal leases at such times and locations as he deems appropriate. No exploration license will be issued for any land on which a coal lease has been issued."

We also recommend adding the following language to the end of proposed section 4(b)(2), page 5, line 24, to conform to present practices on National Forest System's lands.

"Exploration licenses covering lands the surface of which is under the jurisdiction of any Federal agency other than the Department of the Interior may be issued only upon such conditions as it may prescribe with respect to the use and protection of the nonmineral interests in those lands."

(10) *Discovery of New Deposits.*—The Department is analyzing alternative means of stimulating private exploration for leasable minerals other than coal, and intends to deal with these issues in the Administration's proposal for a total revision of the Mineral Leasing Act.

(11) *Penalties.*—On page 5 and 6. We believe that the language in H.R. 3265 dealing with the assessment of fines, section 4, page 5 lines 24–25 and page 6 lines 1 and 2, should be amended. As presently drafted the language is worded in terms of what appears essentially to be a criminal violation subject to payment of a fine. Confusion and litigation may result over the provisions dealing with data collected by a violator. We would recommend that lines 24–25 on page 6 and lines 1–2 on page 7 of the existing bill be revised to read:

"Any person convicted of violating this section shall be required to make available immediately to the Secretary all data collected by said person on any Federal lands as a result of such violation. The Secretary shall make any such data available to the public as soon as it is practicable."

(12) *Length of Lease Terms.*—Section 5 of H.R. 3265 would require a primary term of 10 years for each lease with readjustments of lease terms every 5 years thereafter. If after 10 years coal is not produced from lands under a lease, the lease would be terminated. There is also a reference to the 10-year primary term on page 2, line 10. We strongly recommend that the primary term be increased to 20 years.

All available information indicates that 10-year primary terms would not increase coal development. On the contrary, they would discourage development in many instances and could cause waste of coal reserves. Ownership patterns of land and coal geology often necessitate the leasing of land that will not be developed for over 10 years because it is only profitable for a lessee if he can develop the adjacent lands first. If primary terms are too short, coal development on Federal lands in these cases would be discouraged and recoverable reserves may be lost forever.

There are other problems with 10-year primary terms. First, manufacturers of mining equipment cannot meet orders within 6 years. Steel shortages are causing increasing delays. These unavoidable delays would seriously impede the ability of lessees to meet production requirements within 10 years. Second, periods between the time when decisions to build coal consuming plants are made and the time when coal deliveries are needed are at least 8 to 10 years, and delivery commitments are necessary before the construction of plants can begin.

The lead times are longer for gasification plants. Third, 80 percent of all coal is sold pursuant to long-term contracts which do not call for deliveries for 10 to 15 years. Finally, a very significant advantage to long-term reserves is that they minimize demand-supply lags and thus improve our resource allocation and our ability to avoid fuel shortages.

In addition, we feel that readjustment of lease terms should be every 10 years. More frequent readjustment would only create an unnecessary administrative burden.

We therefore urge that primary terms for coal leases be increased to 20 years and readjustment of lease terms be increased to 10 years. We favor provisions which reasonably encourage production, but we do not favor attempts to encourage production by imposing primary terms of 10 years. All indications are that 10-year terms would only serve to reduce production.

(13) *Royalty and Rental Payments.*—On page 7, the language in lines 12 through 15 would impose a minimum royalty based on a percent of the sale price of coal. We recommend deletion of this provision. Royalties are usually based on a percent of the "value" of the coal rather than the "sale price" of the coal because coal that is produced is often not actually sold and because the sale price, for one reason or another, may be less than fair market value. The bill should give the Secretary authority to set a minimum royalty rate, rather than setting a minimum royalty.

The provision on page 7 and the failure to include in line 17 the word "rents" before "royalties" appears to eliminate the Secretary's authority to charge rentals. We oppose eliminating that authority, and we recommend that subsection 7(a)(1) be amended to include (a) prior to the sentence beginning at line 10, the following new sentence: "The Secretary shall by regulation prescribe annual rentals on leases of not less than $1 per acre or fraction thereof." and (b) the addition of "rents," prior to the word "royalties" in line 17.

(14) *Paying Quantities*, on page 7.—We recommend that the term "paying quantities" in subsection 7(a)(1), lines 8 and 9, and its definition in subsection 7(a)(2), lines 21 through 24, be deleted and that the following language be adopted in place of the first two sentences of 7(a)(1):

"A coal lease shall be for a term of twenty years and for so long thereafter as coal is continuously produced in quantities which, in the judgment of the Secretary, would justify the continued operation of the mine or mines."

The use of profitability as the yardstick for continuation of a lease is administratively cumbersome and ultimately may be more costly. Based on our experiences with the term "paying quantities" in oil and gas leasing, we now foresee great difficulty in applying this term to non-oil and gas leasing. The purpose of the provision is to ensure sufficient development of Federal coal leases to justify continuation. Contrary to this intent, however, the definition as stated in H.R. 3265 may have the effect of terminating leases which are temporarily shut down, in the early nonprofitable stages of production, or are producing at levels which cover only part of production costs, or are being developed as part of a larger mining unit containing several Federal or non-Federal lease units.

There may well be times in the production of coal from a particular lease or leases where continued production would be in the public interest in satisfying economic and energy needs, even though not paying a profit to the lessee.

(15) *Advance Royalty Payments*, on pags 8.—The language of the proviso beginning with "that" on line 6 and ending with "leessee," on line 8, in subsection 7(b) would appear to limit the Secretary's authority to seek or require advance royalty payments to limited circumstances outside of the control of the leasees. While it would be in the public interest for the Secretary to permit advance royalties under these limited circumstances, it is also in the public interest to allow the Secretary discretion to accept advance royalties in lieu of continuous production. The inclusion of this concept is critical.

(16) *Restriction in State Spending of Coal Revenue.*—Section 6 of H.R. 3265 would give States greater flexibility in using their share of moneys received under section 35 of the Mineral Leasing Act of 1920 (30 U.S.C. 191). We view the restrictions in section 35 of the Act as no longer necessary. The Department has strongly endorsed the concept of complete relaxation of the restrictions on State use of its share of funds from mineral leasing activities and has objected to previous proposals which were unnecessarily restrictive. Consistent with this position, we therefore recommend that the spending restrictions on the States be repealed by deleting from section 35 of the Act the words "for the construction and maintenance of public roads or for the support of public schools or other public educational institutions." This would give States complete discretion as to the expenditure of coal and other mineral leasing receipts from Federal lands.

(17) *Noncompetitive Modifications of Leases.*—Section 3 and 4 of the Mineral Leasing Act (30 U.S.C. §§ 203, 204) provide for modification and additions to leases without competition of not more than 2,560 acres. H.R. 3265 would not affect these sections. As a general rule most modifications or additions do not warrant competitive authorization. However, such authorized modifications or additions to leaseholds should not be used to circumvent the intention of a competitive system. Therefore, we recommend that sections 3 and 4 be repealed, and H.R. 3265 be amended to add, as section 9, the following language:

"(b) Any person, association, or corporation holding a lease of coal lands on coal deposits under the provisions of this Act may with the approval of the Secretary of the Interior, upon a finding by him that it would be in the interest of the United States, secure modifications of the original coal lease by including additional coal lands or coal deposits contiguous to those embraced in such lease, but in no event shall the total area added by such modifications to an existing coal lease exceed one hundred and sixty acres (160), or add acreage larger than that in the original lease upon such terms and conditions as the Secretary may prescribe."

(18) As an added incentive to produce, provisions should be included to allow annual rentals to be credited against royalties. We recommend that H.R. 3265 be amended to add a section 10 as follows: "10. All leases may be conditioned upon payment each year of an annual rental in advance. Rentals paid for any one year shall be credited against royalties accruing for that year."

(19) Although H.R. 3265 requires an exploration plan it does not require an operation and reclamation plan. There is a real need for

such a plan before the commencement of any activities under a lease if those activities will significantly affect the environment. We recommend that another subsection be added to section 7 of the Act of February 25, 1920, as it would be amended by section 5 of H.R. 3265. The new subsection should be placed on page 8 of H.R. 3265 before line 12, and should read as follows:

"(c) Prior to taking any action on a leasehold which might cause a significant disturbance of the environment, and not later than three years after a lease is issued, the lessee shall submit for the Secretary's approval an operation and reclamation plan describing the manner in which his activity will be conducted in a manner consistent with environmental regulations issued by the Secretary. As promptly as possible after the lessee submits a plan, the Secretary shall approve or disapprove the plan or require that it be modified. Where the land involved is under the surface jurisdiction of another Federal agency, that other agency must consent to the terms of such approval. No action that would significantly disturb the environment shall be taken by the lessee until he has received appropriate Secretarial approval of the operation and reclamation plan."

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

JACK HORTON,
Assistant Secretary of the Interior.

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, D.C., April 21, 1975.

Hon. JAMES A. HALEY,
Chairman, Committee on Interior and Insular Affairs,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: The Department of Agriculture would like to offer its views on H.R. 3265, a bill "To amend the Mineral Leasing Act of 1920, and for other purposes."

The Department of Agriculture believes H.R. 3265 would provide beneficial changes in the system of leasing Federally-owned coal. Similar attention should be given to the laws governing the leasing and disposal of other minerals, and we would prefer that broader legislation be enacted. However, we have no objections to enactment of H.R. 3265 if amended in accordance with amendments offered by the Department of the Interior in its report of March 13, 1975, on the bill. Because of our particular concern that mineral development on National Forest System lands be accomplished in a manner that will minimize its impact on surface resources and uses, we would like to expand upon the purpose of two of the amendments offered by the Department of the Interior.

H.R. 3265 would amend the Mineral Leasing Act of 1920 (41 Stat. 437), as amended (30 U.S.C. 181 *et seq.*) as it applies to the leasing of Federal-owned coal. The bill would change present law governing exploration for coal deposits and issuance of coal leases. The re-

sponsibility for administration of the Mineral Leasing Act rests with the Secretary of the Interior.

Our interest in this bill relates to the fact that the Department of Agriculture through the Forest Service is responsible for the administration of 187 million acres of Federal land within the National Forest System. The Mineral Leasing Act of 1920 applies directly to National Forest lands reserved from the public domain—approximately 140 million acres. Mineral leasing on 47 million acres of acquired National Forest lands is governed by the Mineral Leasing Act for Acquired Lands. That Act incorporates the leasing provisions of the Mineral Leasing Act of 1920 by reference. Approximately 6½ million acres of land within the National Forest System are known to be underlain with coal.

National Forests are Federal lands that are dedicated to specific uses and purposes. These are best expressed in Multiple Use-Sustained Yield Act of 1960. We believe the decision as to whether a particular coal development lease should be issued on National Forest System lands should rest with this Department on a consent basis. We have the responsibility to administer the various surface resources and uses to which the lands are dedicated. We have a longstanding familiarity with these lands and the related expectations of people who have an interest in those resources and uses. We are therefore in the best position to evaluate the merits of a mineral development proposal in relationship to its impacts on other resources and uses, and also to evaluate how such development might be accommodated in conjunction with those uses. The Mineral Leasing Act for Acquired Lands recognizes this principle and provides that no mineral deposits covered by that Act shall be leased except with the consent of the head of the department having jurisdiction over the lands and subject to such conditions as he may prescribe to insure the adequate utilization of the lands for the primary purposes for which they were acquired or are being administered. We believe a comparable provision should be added to H.R. 3265, thereby establishing a uniform approach to leasing on all of the National Forest System lands. To provide for such authority, we recommend that a new subsection (2)(A)(2) be added on page 3 of the bill as suggested in comment (4) of the report of the Department of the Interior. It would read as follows:

"(2)(A)(2). Leases covering lands the surface of which is under the jurisdiction of any Federal agency other than the Department of the Interior may be issued only upon consent of the other Federal agency and upon such conditions as it may prescribe with respect to the use and protection of the non-mineral interests in those lands."

In recognition of the responsibility of the Federal agency having jurisdiction over the surface of lands, section 4 of the bill appropriately provides that a person holding an exploration license must comply with that agency's rules and regulations. Exploration activities may result in significant surface disturbance and have considerable impact on surface resources and uses. Control of such activities can best be handled under the terms of the license. Therefore, we believe it should be a requirement that licenses contain such conditions as the Federal land administering agency deems necessary to protect surface resources and uses. To provide for this requirement, we recommend that language be added at the end of proposed section (2)(b)(2), on

page 5, line 24, as suggested in comment (9) of the report of the Department of the Interior. I would read as follows:

"Exploration licenses covering lands the surface of which is under the jurisdiction of any Federal agency other than the Department of the Interior may be issued only upon such conditions as it may prescribe with respect to the use and protection of the nonmineral interests in those lands."

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

RICHARD A. ASHWORTH,
Deputy Under Secretary.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., July 22, 1975.

Hon. JAMES A. HALEY,
Chairman, Committee on Interior and Insular Affairs, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: H.R. 6721, formerly H.R. 3265, a bill "To amend the Mineral Leasing Act of 1920, and for other purposes", was reported by the House Subcommittee on Mines and Mining on May 22, 1975. We wish to comment on H.R. 6721 and also on other proposed amendments to the bill.

While we still prefer adoption of a comprehensive revision of the mineral leasing laws to include all presently leasable mineral resources, and intend to submit such legislation on this matter in the future, we would approve of enactment of the subject bill, if amended in accordance with the following comments:

1. *Leasing Tracts*, page 2, line 10: H.R. 6721 would authorize the Secretary to divide lands into leasing tracts which would "permit the most economical mining of all coal" in such lands. In most instances, *all* the coal in a tract will not be mined. Accordingly, we recommend that the word "all" on line 13 be deleted in order to avoid a literal interpretation of the word.

2. *Deferred Bonus Payments*, page 2, line 14–19: H.R. 6721 would amend the first sentence of section 2(a) of the Mineral Leasing Act, as amended. It would require that not less than 50 percent of the total acreage offered for lease by the Secretary in any one year shall be leased under a system of deferred bonus payment. We agree that it is desirable that the Secretary have the option to lease under a system of deferred bonus payments. However, since the Department has never sold coal with a deferred bonus payment, we have no experience with such arrangement and do not know whether such a procedure will be advantageous. Therefore, we believe the Secretary should not be constrained by the requirement that 50 percent of all acreage offered be subject to deferred bonus payment. Rather the Secretary should be given the discretion to offer leases under any competitive system which he believes to be necessary to achieve the goals of timely development and production and receipt of fair market value, or otherwise in the public interest.

The sentence, beginning on line 17 and continuing through line 19, requires that if a lessee cancels his lease and if a portion of the bonus

is still due, it shall become payable immediately. This sentence should be revised so that any unpaid bonus would become payable whether the lessee or the Secretary cancels the lease. We suggest the following revision of this sentence: "Upon default or cancellation of any coal lease for which bonus payments are deferred, any unpaid remainder of the bid shall be immediately payable to the United States."

3. *Primary Terms*, page 2, lines 22–25 and page 3, lines 1–11: Section 3 of H.R. 6721 would amend the last sentence of section 2(a) of the Mineral Leasing Act to prevent any person who holds or has held for 10 years a Federal coal lease which is not producing in commercial quantities, from taking, holding, owning or controlling any lease under this Act, and would prohibit the Secretary from issuing a lease to such person.

This section should be deleted. Although we favor early production, there can be valid reasons for holding reserves under a Federal lease for more than 10 years without development. This is particularly true if the lease is part of a logical mining unit which is being developed. Lead time for power plants is now generally approaching 10 years; in many cases it now exceeds 10 years. The start-up period for a new mine may be as long as 5 to 7 years. This provision might force an uneconomic and perhaps more environmentally costly technique of mining in order to avoid the limitation it would impose.

It should also be noted that the penalty for not producing within 10 years would not only be cancellation of the lease, but cancellation of any other lease issued under the Mineral Leasing Act that the person, association, or corporation holds. We recommend that this unusually onerous subsection be deleted from the bill.

4. *Land-Use Plan:* Section 3 of H.R. 6721 would also amend section 3(A)(i) and (ii) of the Mineral Leasing Act to allow the Secretary to hold a lease sale in an area where the State has prepared a comprehensive land use plan where, because of non-Federal interest in the surface or because the coal resources are insufficient, the cost of preparation of a Federal comprehensive land use plan cannot be justified. Guidelines relating to public participation are provided for development of such State comprehensive plans.

We believe that it is undesirable to require that no lease can be issued if it is located in an area not covered by a comprehensive land use plan. In the event that a lease was proposed in an area where a Federal land use plan was considered infeasible and a State plan did not exist, a comprehensive environmental analysis would be prepared and, if necessary, an environmental impact statement would be completed. Therefore, although the area was not covered by a land use plan, the environmental impacts of such a lease would have been adequately considered in the leasing decision.

The Department continues to urge adoption of the provisions it has recommended on land-use plans in previous reports. The land-use planning provisions proposed by the Department would not require the preparation of land-use plans in every instance. For example, under those provisions the Department would not be required to prepare plans for several tracts of coal land in Alabama which are either isolated or of limited value. If plans are required for those lands, whether they are prepared by the Secretary or the State, the cost

might discourage the development of the coal when development would benefit the local area.

As a purely editorial note, we bring to your attention that the bill does not explain how the series of paragraphs relating to land-use plans on pages 3, 4, 5 and 6 fit into section 2(a) of the Mineral Leasing Act of 1920. Furthermore, pages 1 through 4 of the bill would amend the first and last sentences of section 2(a) of the Mineral Leasing Act, but they make no reference to the middle sentence of section 2(a). It is not clear how that middle sentence would appear in the Act in relation to the preceding and succeeding sentences which would be divided into several subsections.

5. *Public Hearings*, page 4, lines 14–19 and page 5, lines 21–23: Lines 14–19 on page 4 would require a public hearing before a proposed land-use plan was adopted, and the last sentence in paragraph (C) on page 5 would require public hearings before the issuance of each lease. We recommend that a public hearing be required only once, as specified in the Department's report on H.R. 3265 as the bill was introduced.

6. *Study of Discovery Methods:* Section 3 of H.R. 6721 would provide in section 2(a)(3)(C) of the Mineral Leasing Act that prior to the issuance of any coal lease the Secretary shall consider the impacts of the proposed mining on an impacted community or area, including impacts on the environment, and evaluate and compare "the effects of deep coal mining and surface mining on the recovery of coal by other methods so as to achieve maximum recovery of coal within the proposed leasing tract." We are uncertain of the meaning of the second sentence of the subsection and specifically of the wording, "on the recovery of coal by other methods," in the context of the sentence.

Additionally, we are bothered by the term "maximum recovery of coal" which may be intended to mean the complete expoitation, regardless of practical or economic considerations, of all coal within a particular lease. We would suggest that this language be amended to read "maximum economic recovery of coal."

7. *Maximum Economic Recovery of Coal*, page 6, lines 10–15: New subsection 3(f) requires that before issuing a lease, the Secretary must make an affirmative finding that the proposed methods of mining the coal will insure maximum economic recovery. On page 1 of the bill, the Secretary would be required to lease tracts in sizes that would permit the most economical mining of coal. The latter requirement is reasonable. However, the Secretary would usually not be in a position at the time of issuance of a lease to determine which method of extraction would insure maximum economic recovery of coal, as subsection 3(f) would require. A lease is generally issued before detailed information is available. The Secretary would be better able to make the determination after issuance when the lessee submitted his mining plan and when more complete environmental, as well as geologic and geophysical information would be available. The approval of an operating plan after a lease, as required in subsection 7(c) on pages 9 and 10, is granted would, in effect, accomplish the intent of this subsection. At that time, the Secretary would evaluate the proposed methods of extraction in the mining plan and, if necessary, require

alternative methods. Therefore, we recommend deletion of this subsection. Approval under subsection 7(c) would, we believe, constitute such an "affirmative finding."

8. *Exploration Licenses*, pages 6 and 7: Regarding this section we have a number of technical suggestions. First, the sentence appearing on lines 13–14 of page 7 which reads: "An exploration license shall confer no right to a lease under this Act", would be more appropriate after the word "fee" on line 25 of page 6. Second, on line 2 of page 7, we suggest the addition of the words "and to such persons" after the word "locations". Third, we suggest that the sentence on line 5 of page 7, beginning with the words "Each exploration license . . .", be divided into two sentences and revised to read as follows:

"An application for an exploration license shall identify general areas and probable methods of exploration. Each exploration license shall contain such reasonable conditions as the Secretary may require, including conditions to insure the protection of the environment, and shall be subject to all applicable Federal, State, and local laws and regulations."

We suggest this change because it is more appropriate that the proposed methods of exploration and areas of exploration be specified in the exploration application rather than on the exploration license.

9. *Length of Readjustment Period:* Subsection 7(a) of the Mineral Leasing Act, as amended by section 5 of H.R. 6721, would require a primary term of 20 years for each lease with readjustments of lease terms every five years thereafter. We believe that readjustment of lease terms should be every 10 years. More frequent readjustment would only create an unnecessary administrative burden. We strongly recommend that the readjustment term be increased to 10 years.

10. *Royalty Payments*, page 9, lines 6–10: Section 5 of H.R. 6721 would amend section 7 of the Mineral Leasing Act. It would require royalty in the amount of not less than 10 percent of the value of the coal, except that the Secretary would be authorized to determine a lesser amount in "unusual circumstances."

Ten percent is presently about the highest rate charged on either Federal or non-Federal lands.

Additionally, a fixed minimum rate of 10 percent could make Federal leases uncompetitive in certain instances, forcing development of private, Indian and State lands with possibly higher environmental costs. Such a provision does not take into account different conditions in different areas which should affect royalty rates and this could have an adverse effect on small operations.

We strongly urge, therefore, that the minimum royalties of 10 percent be eliminated.

Furthermore, the exception allowed for "unusual circumstances" is vague and would be apt to invite litigation whenever the Secretary imposed a royalty rate less than 10 percent. In previous drafts the exception was for underground mining. Under the present draft, it would appear to be difficult to justify a royalty rate for underground mining of less than 10 percent, since underground mining would probably not be "an unusual circumstance." We also recommend that this provision be deleted.

The Secretary should have the a uthority, after a lease has been issued, to either accept or reject advanced royalties in lieu of production. Accordingly on line 22 of page 9 after the word "payments" add the words "subject to his annual approval."

11. *Federal Exploration Program*, pages 10–15: New section 8A would direct the Secretary of the Interior to conduct a comprehensive exploratory program to obtain sufficient data and information to evaluate the extent, location and potential for developing the coal resources in the public domain lands.

The program, as proposed, would be costly and time-consuming and its benefits would not appear to justify the cost and effort. The Geological Survey already knows the location of practically all coal deposits on the public lands. These known coal deposits are sufficient to meet the demands for coal leasing on public lands for many, many years.

We are strongly opposed to enactment of this provision.

We offer, only as examples of the other problems which we have with this provision, the following comments:

"*Subsection 8A(f)*": It is not possible to prepare "detailed geological and geophysical maps and reports of the coal lands subject to this Act" within one year after the date of enactment of the Act, particularly if the word "detailed" is interpreted to mean maps prepared as the customary scale of 1:24,000. On the average, it requires six man-months to prepare a geologic map and resource report on one 1:24,000 quadrangle in the western coal lands. Equally, it is unreasonable to anticipate that all such maps and reports could or should be revised every six months. We suggest that the second sentence of this section be deleted and the following language substituted: "Exploratory activities leading to the preparation of such maps and reports shall begin one year after the date of enactment of this Act."

"*Subsection 8A(g)*": This subsection requires that plans for a coal lands exploration program be developed and submitted to Congress within six months after the date of enacement of the Act. This requirement is reasonable, but it appears incongruous in light of the requirement in "Section 8A(f)" that coal lands maps and reports be prepared within one year. See comment above.

"*Subsection 8A(h)*": The Branch of Coal Resources drills many holes to obtain stratigraphic information. In some cases it is not necessary or desirable to drill to the depth of the deepest known recoverable coal bed. The present language in this section could lead to a waste of time and money through unnecessary deep drilling or to the elimination of shallow test holes that could provide valuable stratigraphic information at low cost. We suggest that any reference to a required depth for such test holes be eliminated.

"*Section 8A(h)(2)*": If the language in this Section includes the type of stratigraphic drilling done by the Branch of Coal Resources, it is unreasonable to expect that the location of all such holes can be identified four months in advance of drilling operations. Stratigraphic drilling is done to augment information obtained from surface mapping; and it may occur within one month after surface mapping is completed or, indeed, while surface mapping is still in progress. The problem here is to distinguish between drilling done to obtain geologic

maps and reports ("scientific drilling") and drilling done to evaluate coal lands for leasing purposes ("exploratory drilling"). Furthermore, the public announcement of the locations of drill holes in advance of drilling could very well lead to "well sitters" obtaining valuable resource information prior to its release to the public at large.

"*Subsection 8A (h) (3)*": "Scientific drilling," as described above, is done at specific locations, perhaps only one per quadrangle, rather than on a grid basis. Such drilling is not now considered a "major Federal action" so far as the National Environmental Policy Act of 1969 is concerned. Considering the randomness of this type of drilling and the need to coordinate it with surface mapping, it should not be considered as a major Federal action.

"*Subsection 8A (i) (3)*": This subsection requires that the selection and determination of areas for exploratory drilling and potential leasing shall be considered a "major Federal action" for the purpose of compliance with section 102(2) (c) of the National Environmental Policy Act of 1969. We believe that each such action should be examined on its own merits to determine whether or not it will result in impacts which will significantly affect the quality of the human environment and, therefore, be considered a "major Federal action." Departmental procedures require such case-by-case analysis of Federal action.

12. *Restrictions on Use of Moneys Paid to States:* We recommend that all restrictions on State use of funds paid to the State from receipts under the Mineral Leasing Act be eliminated. Therefore section 7, lines 8–17, page 15, should be changed to read:

"Section 7. Section 35 of the Mineral Lands Leasing Act (30 U.S.C. 191) is amended by striking out: 'for the construction and maintenance of public roads or for the support of public schools or other public educational institutions'."

13. *Public Utilities Preference on Military Lands*, page 17, lines 3–15) : Section 10 of H.R. 6721 would amend section 3 of the Mineral Leasing Act for Acquired Lands to permit a governmental entity which produces electricity for sale to the public to lease lands set apart for military or naval purposes if such governmental entity is located in the State in which such lands are located. We believe that Federal coal resources should be leased on a competitive basis in all cases without preferential treatment for a selected consumer. This section should be deleted.

14. *Logical Mining Units:* H.R. 6721 does not contain specific authority for the Secretary to consolidate leases into logical mining units so that production within a unit rather than on a single lease would satisfy diligence requirements. Authority to unitize leases would give the Secretary and lessees greater flexibility in planning the development of leases so that there is the greatest recovery of coal with a minimum impact on the environment. This authority would be particularly valuable in planning for the development of lands where some tracts are federally owned and some privately owned. Mining units could then be designated to encompass private lands, thus ensuring the development of isolated Federal tracts which ordinarily might not be developed.

We therefore recommend that in order to authorize unitization, the following new section 4 be added on page 6 to read as follows and that the subsequent sections be renumbered accordingly:

"Subject to valid rights, subsection 2(c) and (d) of the Act of August 31, 1964, 78 Stat. 710, 30 U.S.C. § 201–1, is amended to read as follows:

"(c) At the discretion of the Secretary, leases issued under this section may, in the interest of conservation or in the public interest, be consolidated into logical mining units. The Secretary may require among things that (1) production on any lease in a logical mining unit will be construed as production on all leases in that unit, (2) the rentals and royalties for all Federal leases in a logical mining unit may be combined, and advanced royalties paid for any lease within a logical mining unit may be credited against such combined royalties, and (3) leases issued before the date of enactment of this Act may be included with the consent of all leasees in such logical mining unit, and, if so included, shall be subject to the provisions of this section.

"(d) By regulation the Secretary may require a lessee under this Act to form a logical mining unit, and may provide for the determination of participating acreage within a unit."

15. *Antitrust Amendment:* As to the proposed new amendment captioned "antitrust provisions—new section 27(1) :" the Secretary presently and continually examines antitrust questions in coordination with the Federal Trade Commission. Leases are not "renewed" according to the Mineral Leasing Act of 1920 but their terms are subject to readjustment after the primary term. The use of the word "renewal" in the proposed amendment implies that the Secretary does not have to grant a lease after the expiration of the primary term. This is a significant variation from readjustment of terms after expiration of the primary term, and is not in keeping with the provisions of the Mineral Leasing Act. In addition, this proposed amendment would precipitate cumbersome procedures to resolve issues presently being examined by the Department of the Interior.

We do not favor this amendment.

16. *Railroad Amendment:* The proposed new amendment to repeal subsection 2(c) of the Mineral Leasing Act of 1920 (30 U.S.C. 202) would remove the restriction which prevents railroads from obtaining or holding a permit or lease for any coal deposit. Presently they can hold such leases only for their own use for railroad purposes.

We do not believe that there is a sound reason to prohibit railroads from leasing coal today; therefore we would support this amendment if amended to include a proviso that such lessees could not give preferential treatment to the hauling of coal from such lease over its railroad lines.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

JACK HORTON,
Assistant Secretary of the Interior.

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman) :

MINERAL LANDS LEASING ACT

(41 Stat. 437; 30 U.S.C. 181, et seq.)

* * * * * * *

COAL

SEC. 2. (a) [The Secretary of the Interior is authorized to divide any of the coal lands or the deposits of coal, classified and unclassified, owned by the United States, into leasing tracts of forty acres each, or multiples thereof, and in such form as, in his opinion, will permit, the most economical mining of the coal in such tracts, and thereafter he shall, in his discretion, upon the request of any qualified applicant or on his own motion, from time to time, offer such lands or deposits of coal for leasing, and shall award leases thereon by competitive bidding or by such other methods as he may by general regulations adopt, to any qualified applicant.] *(1) The Secretary of the Interior is authorized to divide any lands subject to this Act which have been classified for coal leasing into leasing tracts of such size as he finds appropriate and in the public interest and which will permit the mining of all coal which can be economically extracted in such tract and thereafter he shall, in his discretion, upon the request if any qualified applicant or on his own motion, from time to time, offer such lands for leasing and shall award leases thereon by competitive bidding. No less than 50 per centum of the total acreage offered for lease by the Secretary in any one year shall be leased under a system of deferred bonus payment. Upon default or cancellation of any coal lease for which bonus payments are due, any unpaid remainder of the bid shall be immediately payable to the United States. A reasonable number of leasing tracts shall be reserved and offered for lease in accordance with this section to public bodies, including Federal agencies, rural electric cooperatives, or nonprofit corporations controlled by any of such entities: Provided, That the coal so offered for lease shall be for use by such entity or entities in implementing a definite plan to produce energy for their own use or for sale to their members or customers (except for short-term sales to others). No bid shall be accepted which is less than the fair market value, as determined by the Secretary, of the coal subject to the lease. Prior to his determination of the fair market value of the coal subject to the lease, the Secretary shall give opportunity for and consideration to public comments on the fair market value. Nothing in this section shall be construed to require the Secretary to make public his judgment as to the fair market value of the coal to be leased, or the comments he receives thereon prior to the issuance of the lease.* He is hereby authorized, in awarding leases for coal lands improved and occupied or claimed in good faith, prior

to February 25, 1920, to consider and recognize equitable rights of such occupants or claimants. [No competitive lease of coal shall be approved or issued until after the notice of the proposed offering for lease has been given in a newspaer of general circulation in the county in which the lands are situated in accordance with regulations prescribed by the Secretary.]

(2) The Secretary shall not issue a lease or leases under the terms of this Act to any person, association, corporation, or any subsidiary, affiliate, or persons controlled by or under common control with such person, association, or corporation, where any such entity holds a lease or leases issued by the United States to coal deposits and has held such lease or leases for a period of fifteen years when such entity is not, except as provided for in section 7(b) of this Act, producing coal from the lease deposits in commercial quantities. In computing the fifteen-year period referred to in the preceding sentence, periods of time prior to the date of enactment of the Federal Coal Leasing Amendments Act of 1975 shall not be counted.

(3)(A)(i) No lease sale shall be held unless the lands containing the coal deposits have been included in a comprehensive land-use plan and such sale is compatible with such plan. The Secretary of the Interior shall prepare such land-use plans on lands under his responsibility where such plans have not been previously prepared. The Secretary of the Interior shall inform the Secretary of Agriculture of substantial development interest in coal leasing on lands within the National Forest System. Upon receipt of such notification from the Secretary of the Interior, the Secretary of Agriculture shall prepare a comprehensive land-use plan for such areas where such plans have not been previously prepared. The plan of the Secretary of Agriculture shall take into consideration the proposed coal development in these lands: Provided, That where the Secretary of the Interior finds that because of non-Federal interest in the surface or because the coal resources are insufficient to justify the preparation cost of a Federal comprehensive land-use plan, the lease sale can be held if the lands containing the coal deposits have been included in either a comprehensive land-use plan prepared by the State within which the lands are located or a land use analysis prepared by the Secretary of the Interior.

(ii) In preparing such land-use plans, the Secretary of the Interior or, in the case of lands within the National Forest System, the Secretary of Agriculture, or in the case of a finding by the Secretary of the Interior that because of non-Federal interests in the surface or insufficient Federal coal, no Federal comprehensive land-use plans can be appropriately prepared, the responsible State entity shall consult with appropriate State agencies and local governments and the general public and shall provide an opportunity for public hearing on proposed plans prior to their adoption, if requested by any person having an interest which is, or may be, adversely affected by the adoption of such plans.

(iii) Leases covering lands the surface of which is under the jurisdiction of any Federal agency other than the Department of the Interior may be issued only upon consent of the other Federal agency and upon such conditions as it may prescribe with respect to the use and protection of the nonmineral interests in those lands.

(B) Each land-use plan prepared by the Secretary (or in the case of lands within the National Forest System, the Secretary of Agriculture pursuant to subparagraph (A)(i)) shall include an assessment of the amount of coal deposits in such land, identifying the amount of such coal which is recoverable by deep mining operations and the amount of such coal which is recoverable by surface mining operations.

(C) Prior to issuance of any coal lease, the Secretary shall consider effects which mining of the proposed lease might have on an impacted community or area, including, but not limited to, impacts on the environment, on agricultural and other economic activities, and on public services. Prior to issuance of a lease, the Secretary shall evaluate and compare the effects of recovering coal by deep mining, by surface mining, and by any other method to determine which method or methords or sequence of methods achieves the maximum economic recovery of the coal within the proposed leasing tract. This evaluation and comparison by the Secretary shall be in writing but shall not prohibit the issuance of a lease; however, no mining operating plan shall be approved which is not found to achieve the maximum economic recovery of the coal within the tract. Adequate public hearings in the area shall be held by the Secretary prior to approval of the lease.

(D) No competitive lease of coal shall be approved or issued until after the notice of the proposed offering for lease has been given once a week for three consecutive weeks in a newspaper of general circulation in the county in which the lands are situated in accordance with regulations prescribed by the Secretary.

(E) Each coal lease shall contain provisions requiring compliance with the Federal Water Pollution Control Act (33 U.S.C. 1151–1175) and the Clean Air Act (42 U.S.C. 1857 and following).

[(b) Where prospecting or exploratory work is necessary to determine the existence or workability of coal deposits in any unclaimed, undeveloped area, the Secretary of the Interior may issue, to applicants qualified under this Act, prospecting permits for a term of two years, for not exceeding five thousand one hundred and twenty acres; and if within said period of two years thereafter the permittee shows to the Secretary that the land contains coal in commercial quantities, the permittee shall be entitled to a lease under this Act for all or part of the land in his permit.

Any coal prospecting permit issued under this section may be extended by the Secretary for a period of two years, if he shall find that the permittee has been unable, with the exercise of reasonable diligence, to determine the existence or workability of coal deposits in the area covered by the permit and desires to prosecute further prospecting or exploration, or for other reasons in the opinion of the Secretary warranting such extension.]

(b)(1) The Secretary may, under such regulations as he may prescribe, issue to any person an exploration license. No person may conduct coal exploration for commercial purposes for any coal on lands subject to this Act without such an exploration license. Each exploration license shall be for a term of not more than two years and shall be subject to a reasonable fee. An exploration license shall confer no right to a lease under this Act. The issuance of exploration licenses shall not preclude the Secretary from issuing coal leases at such times and locations and to such persons as he deems appropriate. No exploration

license will be issued for any land on which a coal lease has been issued. A separate exploration license will be required for exploration in each State. An application for an exploration license shall identify general areas and probable methods of exploration. Each exploration license shall contain such reasonable conditions as the Secretary may require, including conditions to insure the protection of the environment, and shall be subject to all applicable Federal, State, and local laws and regulations. Upon violation of any such conditions or laws the Secretary may revoke the exploration license.

(2) A licensee may not cause substantial disturbance to the natural land surface. He may not remove any coal for sale but may remove a reasonable amount of coal from the lands subject to this Act included under his license for analysis and study. A licensee must comply with all applicable rules and regulations of the Federal agency having jurisdiction over the surface of the lands subject to this Act. Exploration licenses covering lands the surface of which is under the jurisdiction of any Federal agency other than the Department of the Interior may be issued only upon such conditions as it may prescribe with respect to the use and protection of the nonmineral interests in those lands.

(3) The licensee shall furnish to the Secretary copies of all data (including, but not limited to, geological, geophysical, and core drilling analyses) obtained during such exploration. The Secretary shall maintain the confidentiality of all data so obtained until after the areas involved have been leased or until such time as he determines that making the data available to the public would not damage the competitive position of the licensee, whichever comes first.

(4) Any person who willfully conducts coal exploration for commercial purposes on lands subject to this Act without an exploration license issued hereunder shall be subject to a fine of not more than $1,000 for each day of violation. All data collected by said person on any Federal lands as a result of such violation shall be made immediately available to the Secretary, who shall make the data available to the public as soon as it is practicable. No penalty under this subsection shall be assessed unless such person is given notice and opportunity for a hearing with respect to such violation.

* * * * * * *

(d)(1) The Secretary, upon determining that maximum economic recovery of the coal deposit or deposits is served thereby, may approve the consolidation of coal leases into a logical mining unit. Such consolidation may only take place after a public hearing, if requested by any person whose interest is or may be adversely affected. A logical mining unit is an area of land in which the coal resources can be developed in an efficient, economical, and orderly manner as a unit with due regard to conservation of coal reserves and other resources. A logical mining unit may consist of one or more Federal leaseholds, and may include intervening or adjacent lands in which the United States does not own the coal resources, but all the lands in a logical mining unit must be under the effective control of a single operator, be able to be developed and operated as a single operation and be contiguous.

(2) After the Secretary has approved the establishment of a logical mining unit, any mining plan approved for that unit must require such diligent development, operation, and production that the re-

serves of the entire unit will be mined within a period established by the Secretary which shall not be more than forty years.

(3) In approving a logical mining unit, the Secretary may provide, among other things, that (i) diligent development, continuous operation, and production on any Federal lease or non-Federal land in the logical mining unit shall be construed as occurring on all Federal leases in that logical mining unit, and (ii) the rentals and royalties for all Federal leases in a logical mining unit may be combined, and advanced royalties paid for any lease within a logical mining unit may be credited against such combined royalties.

(4) The Secretary may amend the provisions of any lease included in a logical mining unit so that mining under that lease will be consistent with the requirements imposed on that logical mining unit.

(5) Leases issued before the date of enactment of this Act may be included with the consent of all lessees in such logical mining unit, and, if so included, shall be subject to the provisions of this section.

(6) By regulation the Secretary may require a lessee under this Act to form a logical mining unit, and may provide for determination of participating acreage within a unit.

(7) No logical mining unit shall be approved by the Secretary if the total acreage (both Federal and non-Federal) of the unit would exceed twenty-five thousand acres.

(8) Nothing in this section shall be construed to waive the acreage limitations for coal leases contained in section 27(a) of the Mineral Lands Leasing Act (30 U.S.C. 184(a)).[1]

SEC. 3. [That any] *Any* person, association, or corporation holding a lease of coal lands or coal deposits under *the provisions of* this Act may[,] with the approval of the Secretary of the Interior, upon a finding by him that it [will be for the advantage of the lessee and] *would be in the interest of* the United States, secure modifications of [his or its] *the* original *coal* lease by including additional coal lands or coal deposits contiguous to those embraced in such lease, but in no event shall the total area [embraced in such modified lease exceed in the aggregate two thousand five hundred and sixty acres.] *added by such modifications to an existing coal lease exceed one hundred sixty acres, or add acreage larger than that in the original lease. The Secretary shall prescribe terms and conditions which shall be consistent with this Act and applicable to all of the acreage in such modified lease.*[2]

[SEC. 4. That upon satisfactory showing by any lessee to the Secretary of the Interior that all of the workable deposits of coal within a tract covered by his or its lease will be exhausted, worked out, or removed within three years thereafter, the Secretary of the Interior may, within his discretion, lease to such lessee an additional tract of land or coal deposits, which, including the coal area remaining in the existing lease, shall not exceed two thousand five hundred and sixty acres, through the same procedure and under the same conditions as in case of an original lease.][3]

* * * * * * *

[SEC. 7. That for the privilege of mining or extracting the coal in the lands covered by the lease the lessee shall pay to the United States

[1] This amendment is made "subject to valid existing rights".
[2] This amendment is made "subject to valid existing rights".
[3] The repeal of section 4 is made "subject to valid existing rights".

such royalties as may be specified in the lease, which shall be fixed in advance of offering the same, and which shall not be less than 5 cents per ton of two thousand pounds, due and payable at the end of each third month succeeding that of the extraction of the coal from the mine, and an annual rental, payable at the date of such lease and annually thereafter, on the lands or coal deposits covered by such lease, at such rate as may be fixed by the Secretary of the Interior prior to offering the same, which shall not be less than 25 cents per acre for the first year thereafter, not less than 50 cents per acre for the second, third, fourth, and fifth years, respectively, and not less than $1 per acre for each and every year thereafter during the continuance of the lease, except that such rental for any year shall be credited against the royalties as they accrue for that year. Leases shall be for indeterminate periods upon condition of diligent development and continued operation of the mine or mines, except when such operation shall be interrupted by strikes, the elements, or casualties not attributable to the lessee, and upon the further condition that at the end of each twenty-year period succeeding the date of the lease such readjustment of terms and conditions may be made as the Secretary of the Interior may determine, unless otherwise provided by law at the time of the expiration of such periods: *Provided*, That the Secretary of the Interior may, if in his judgment the public interest will be subserved thereby, in lieu of the provision herein contained requiring continuous operation of the mine or mines, provide in the lease for the payment of an annual advance royalty upon a minimum number of tons of coal, which in no case shall aggregate less than the amount of rentals herein provided for: *Provided further*, That the Secretary of the Interior may permit suspension of operation under such lease for not to exceed six months at any one time when market conditions are such that the lease can not be operated except at a loss.]

SEC. 7. (a) A coal lease shall be for a term of twenty years and for so long thereafter as coal is produced annually in commercial quantities from that lease. Any lease which is not producing in commercial quantities at the end of fifteen years shall be terminated. The Secretary shall by regulation prescribe annual rentals on leases. A lease shall require payment of a royalty in such amount as the Secretary shall determine of not less than 12½ per centum of the value of coal as defined by regulation, except the Secretary may determine a lesser amount in the case of coal recovered by underground mining operations. The lease shall include such other terms and conditions as the Secretary shall determine. Such rentals and royalties and other terms and conditions of the lease will be subject to readjustment at the end of its primary term of twenty years and at the end of each ten-year period thereafter if the lease is extended.

(b) Each lease shall be subject to the conditions of diligent development and continued operation of the mine or mines, except where operations under the lease are interrupted by strikes, the elements, or casualties not attributable to the lessee. The Secretary of the Interior, upon determining that the public interest will be served thereby, may suspend the condition of continued operation upon the payment of advance royalties. Such advance royalties shall be no less than the production royalty which would otherwise be paid and shall be computed on a fixed reserve to production ratio (determined by the Secre-

tary). The aggregate number of years during the period of any lease for which advance royalties may be accepted in lieu of the condition of continued operation shall not exceed fifteen. The amount of any production royalty paid for any year shall be reduced (but not below 0) by the amount of any advance royalties paid under such lease to the extent that such advance royalties have not been used to reduce production royalties for a prior year. No advance royalty paid during the initial twenty-year term of a lease shall be used to reduce a production royalty after the twentieth year of a lease. The Secretary may, upon six months' notification to the lessee cease to accept advance royalties in lieu of the requirement of continued operation. Nothing in this subsection shall be construed to affect the requirement contained in the second sentence of subsection (a) relating to commencement of production at the end of fifteen years.

(c) Prior to taking any action on a leasehold which might cause a significant disturbance of the environment, and not later than three years after a lease is issued, the lessee shall submit for the Secretary's approval an operation and reclamation plan. The Secretary shall approve or disapprove the plan or require that it be modified. Where the land involved is under the surface jurisdiction of another Federal agency, that other agency must consent to the terms of such approval.

* * * * * * *

SEC. 8A. (a) The Secretary is authorized and directed to conduct a comprehensive exploratory program designed to obtain sufficient data and information to evaluate the extent, location, and potential for developing the known recoverable coal resources within the coal lands subject to this Act. This program shall be designed to obtain the resource information necessary for determining whether commercial quantities of coal are present and the geographical extent of the coal fields and for estimating the amount of such coal which is recoverable by deep mining operations and the amount of such coal which is recoverable by surface mining operations in order to provide a basis for—

(1) developing a comprehensive land use plan pursuant to section 2;

(2) improving the information regarding the value of public resources and revenues which should be expected from leasing;

(3) increasing competition among producers of coal, or products derived from the conversion of coal, by providing data and information to all potential bidders equally and equitably;

(4) providing the public with information on the nature of the coal deposits and the associated stratum and the value of the public resources being offered for sale; and

(5) providing the basis for the assessment of the amount of coal deposits in those lands subject to this Act under subparagraph (B) of section 2(a)(3).

(b) The Secretary, through the United States Geological Survey, is authorized to conduct seismic, geophysical, geochemical, or stratigraphic drilling, or to contract for or purchase the results of such exploratory activities from commercial or other sources which may be needed to implement the provisions of this section.

(c) Nothing in this section shall limit any person from conducting exploratory geophysical surveys including seismic, geophysical, chemical surveys to the extent permitted by section 2(b). The information

obtained from the exploratory drilling carried out by a person not under contract with the United States Government for such drilling prior to award of a lease shall be provided the confidentiality pursuant to subsection (d).

(d) The Secretary shall make available to the public by appropriate means all data, information, maps, interpretations, and surveys which are obtained directly by the Department of the Interior or under a service contract pursuant to subsection (b). The Secretary shall maintain a confidentiality of all proprietary data or information purchased from commercial sources while not under contract with the United States Government until after the areas involved have been leased.

(e) All Federal departments or agencies are authorized and directed to provide the Secretary with any information or data that may be deemed necessary to assist the Secretary in implementing the exploratory program pursuant to this section. Proprietary information or data provided to the Secretary under the provisions of this subsection shall remain confidential for such period of time as agreed to by the head of the department or agency from whom the information is requested. In addition, the Secretary is authorized and directed to utilize the existing capabilities and resources of other Federal departments and agencies by appropriate agreement.

(f) The Secretary is directed to prepare, publish, and keep current a series of detailed geological, and geophysical maps of, and reports concerning, all coal lands to be offered for leasing under this Act, based on data and information compiled pursuant to this section. Such maps and reports shall be prepared and revised at reasonable intervals beginning eighteen months after the date of enactment of this Act. Such maps and reports shall be made available on a continuing basis to any person on request.

(g) Within six months after the date of enactment of this Act, the Secretary shall develop and transmit to Congress an implementation plan for the coal lands exploration program authorized by this section, including procedures for making the data and information available to the public pursuant to subsection (d), and maps and reports pursuant to subsection (f). The implementation plan shall include a projected schedule of exploratory activities and identification of the regions and areas which will be explored under the coal lands exploration program during the first five years following the enactment of this section. In addition, the implementation plan shall include estimates of the appropriations and staffing required to implement the coal lands exploration program.

(h) The stratigraphic drilling authorized in subsection (b) shall be carried out in such a manner as to obtain information pertaining to all recoverable reserves. For the purpose of complying with subsection (a), the Secretary shall require all those authorized to conduct stratigraphic drilling pursuant to subsection (b) to supply a statement of the results of test boring of core sampling including logs of the drill holes; the thickness of the coal seams found; an analysis of the chemical properties of such coal; and an analysis of the strata layers lying above all the seams of coal. All drilling activities shall be conducted using the best current technology and practices.

SEC. 8B. Within six months after the end of each fiscal year, the Secretary shall submit to the Congress a report on the leasing and production of coal lands subject to this Act during such fiscal year; a summary of management, supervision, and enforcement activities; and recommendations to the Congress for improvements in management, environmental safeguards, and amount of production in leasing and mining operations on coal lands subject to this Act. Each submission shall also contain a report by the Attorney General of the United States on competition in the coal and energy industries, including an analysis of whether the antitrust provisions of this Act and the antitrust laws are effective in preserving or promoting competition in the coal or energy industry.

* * * * * * *

SEC. 27. (a)(1) No person, association, or corporation [shall take, hold, own, or control at one time, whether acquired directly from the Secretary under this Act or otherwise, coal leases or permits on an aggregate of more than forty-six thousand and eighty acres in any one State.], *or any subsidiary, affiliate, or persons controlled by or under common control with such person, association, or corporation shall take, hold, own or control at one time, whether acquired directly from the Secretary under this Act or otherwise, coal leases or permits on an aggregate of more than forty-six thousand and eighty acres in any one State and in no case greater than an aggregate of one hundred thousand acres in the United States: Provided, That any person, association, or corporation currently holding, owning, or controlling more than an aggregate of one hundred thousand acres in the United States on the date of enactment of this section shall not be required on account of this section to relinquish said leases or permits: Provided, further, That in no case shall such person, association, or corporation be permitted to take, hold, own, or control any further Federal coal leases or permits until such time as their holdings, ownership, or control of Federal leases or permits has been reduced below an aggregate of one hundred thousand acres within the United States.*

[(2) A person, association, or corporation may apply for coal leases or permits for acreage in addition to that which is permissible under paragraph (1) of this subsection, but the additional acreage shall not exceed five thousand one hundred and twenty acres in any one State. Each application shall be for forty acres or a multiple thereof and shall contain a statement that the granting of a lease or permit for the additional lands is necessary to enable the applicant to carry on business enconomically and that it is believed to be in the public interest. On the filing of such an application, the coal deposits in the lands covered by it shall be temporarily set aside and withdrawn from all forms of disposal under this Act. The Secretary shall, after posting notice of the pending application in the local land office, conduct public hearings on it. After such hearings the Secretary may, under such regulations as he may prescribe and to such extent as he finds to be in the public interest and necessary to enable the applicant to carry on business economically, permit the applicant to take and hold coal leases or permits for additional acreage as hereinbefore provided. The Secretary may, in his own discretion or whenever sufficient public interest is manifested, reevaluate a lessee's or permittee's need for all or any part of the additional acreage and may cancel any lease or permit

covering all or any part of such acreage if he finds that cancellation is in the public interest or that the coal deposits in said acreage are no longer necessary for the lessee or permittee to carry on business economically or that the lessee or permittee has divested himself of all or any part of his first ten thousand two hundred and forty acres or no longer has facilities which, in the Secretary's opinion, enable him to exploit the deposits under lease or permit. No assignment, transfer, or sale of any part of the additional acreage may be made without the approval of the Secretary.][4]

* * * * * * *

(l)(1) At each stage in the formulation and promulgation of rules and regulations concerning coal leasing pursuant to this Act, and at each stage in the issuance, renewal, and readjustment of coal leases under this Act, the Secretary of the Interior shall consult with and give due consideration to the views and advice of the Attorney General of the United States.

(2) No coal lease may be issued, renewed, or readjusted under this Act until at least thirty days after the Secretary of the Interior notifies the Attorney General of the proposed issuance, renewal, or readjustment. Such notification shall contain such information as the Attorney General may require in order to advise the Secretary of the Interior as to whether such lease would create or maintain a situation inconsistent with the antitrust laws. If the Attorney General advises the Secretary of the Interior that a lease would create or maintain such a situation, the Secretary of the Interior may not issue such lease, nor may he renew or readjust such lease for a period not to exceed one year, as the case may be, unless he thereafter conducts a public hearing on the record in accordance with the Administrative Procedures Act and finds therein that such issuance, renewal, or readjustment is necessary to effectuate the purposes of this Act, that it is consistent with the public interest, and that there are no reasonable alternatives consistent with this Act, the antitrust laws, and the public interest.

(3) Nothing in this Act shall be deemed to convey to any person, association, corporation, or other business organization immunity from civil or criminal liability, or to create defenses to actions, under any antitrust law.

(4) As used in this subsection, the term "antitrust law" means—

(A) the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July 2, 1890 (15 U.S.C. 1 et seq.), as amended;

(B) the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914 (15 U.S.C. 12 et seq.), as amended;

(C) the Federal Trade Commission Act (15 U.S.C. 41 et seq.), as amended;

(D) sections 73 and 74 of the Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes", approved August 27, 1894 (15 U.S.C. 8 and 9), as amended; or

[4] The repeal of subsection 27(a)(2) is made "subject to valid existing rights".

(E) the Act of June 19, 1936, chapter 592 (15 U.S.C. 13, 13a, 13b, and 21a).

* * * * * * *

SEC. 35. All money received from sales, bonuses, royalties, and rentals of public lands under the provisions of this Act *and the Geothermal Steam Act of 1970, notwithstanding the provisions of section 20 thereof*, shall be paid into the Treasury of the United States; 37½ per centum thereof shall be paid by the Secretary of the Treasury as soon as practicable after December 31 and June 30 of each year to the State or the Territory of Alaska within the boundaries of which the leased lands or deposits are or were located; said moneys to be used by such State, Territory, or subdivisions thereof for the construction and maintenance of public roads or for the support of public schools or other public educational institutions, as the legislature of the State or Territory may direct; and, excepting those from Alaska, [52½] *40* per centum thereof shall be paid into, reserved and appropriated, as a part of the reclamation fund created by the Act of Congress known as the Reclamation Act, approved June 17, 1902, and of those from Alaska 52½ per centum thereof shall be paid to the Territory of Alaska for disposition by the Legislature of the Territory of Alaska, and of those from Alaska 52½ per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof: *Provided*, That all moneys which may accrue to the United States under the provisions of this Act *and the Geothermal Steam Act of 1970* from lands within the naval petroleum reserves shall be deposited in the Treasury as "miscellaneous receipts", as provided by the Act of June 4, 1920 (41 Stat. 813), as amended June 30, 1938 (52 Stat. 1252, 34 U.S.C., sec. 524) [.] *: Provided further, That an additional 12½ per centum of all moneys received from sales, bonuses, royalties, and rentals of public lands under the provisions of this Act and the Geothermal Steam Act of 1970 shall be paid by the Secretary of the Treasury as soon as practicable after December 31 and June 30 of each year to the State within the boundaries of which the leased lands or deposits are or were located; said additional 12½ per centum of all moneys paid to any State on or after January 1, 1976, shall be used by such State and its subdivisions as the legislature of the State may direct giving priority to those subdivisions of the State socially or economically impacted by development of minerals leased under this Act for (1) planning, (2) construction and maintenance of public facilities, and (3) provision of public services.* All moneys received under the provisions of this Act *and the Geothermal Steam Act of 1970* not otherwise disposed of by this section shall be credited to miscellaneous receipts.

* * * * * * *

SEC. 39. The Secretary of the Interior, for the purpose of encouraging the greatest ultimate recovery of coal, oil, gas, oil shale, phosphate, sodium, potassium and sulfur, and in the interest of conservation of natural resources, is authorized to waive, suspend, or reduce the rental, or minimum royalty, or reduce the royalty on an entire leasehold, or on any tract or portion thereof segregated for royalty purposes, whenever in his judgment it is necessary to do so in order to promote development, or whenever in his judgment the leases cannot be successfully operated under the terms provided therein. In the event the Secretary

of the Interior, in the interest of conservation, shall direct or shall assent to the suspension of operations and production under any lease granted under the terms of this Act, any payments of acreage rental or of minimum royalty prescribed by such lease likewise shall be suspended during such period of suspension of operations and production; and the term of such lease shall be extended by adding any such suspension period thereto. The provisions of this section shall apply to all oil and gas leases issued under this Act, including those within an approved or prescribed plan for unit or cooperative development and operation. *Nothing in this section shall be construed as granting to the Secretary the authority to waive, suspend, or reduce advance royalties.*

* * * * * * *

SECTION 3 OF THE MINERAL LEASING ACT FOR ACQUIRED LANDS

(61 Stat. 914; 30 U.S.C. 352)

SEC. 3. Except where lands have been acquired by the United States for the development of the mineral deposits, by foreclosure or otherwise for resale, or reported as surplus pursuant to the provisions of the Surplus Property Act of October 3, 1944 (50 U.S.C., sec. 1611 and the following), all deposits of coal, phosphate, oil, oil shale, gas, sodium, potassium, and sulfur which are owned or may hereafter be acquired by the United States and which are within the lands acquired by the United States (exclusive of such deposits in such acquired lands as are (a) situated within incorporated cities, towns and villages, national parks or monuments, *or* (b) [set apart for military or naval purposes, or (c)] tidelands or submerged lands) may be leased by the Secretary under the same conditions as contained in the leasing provisions of the mineral leasing laws, subject to the provisions hereof. *Coal or lignite under acquired lands set apart for military or naval purposes may be leased by the Secretary, with the concurrence of the Secretary of Defense, to a governmental entity (including any corporation primarily acting as an agency or instrumentality of a State) which produces electrical energy for sale to the public if such governmental entity is located in the State in which such lands are located.* The provisions of the Act of April 17, 1926 (44 Stat. 301), as heretofore or hereafter amended, shall apply to deposits of sulfur covered by this Act wherever situated. No mineral deposit covered by this section shall be leased except with the consent of the head of the executive department, independent establishment, or instrumentality having jurisdiction over the lands containing such deposit, or holding a mortgage or deed of trust secured by such lands which is unsatisfied of record, and subject to such conditions as that official may prescribe to insure the adequate utilization of the lands for the primary purposes for which they have been acquired or are being administered: *Provided*, That nothing in this Act is intended, or shall be construed, to apply to or in any manner affect any mineral rights, exploration permits, leases or conveyances nor minerals that are or may be in any tidelands; or submerged lands; or in lands underlying the three mile zone or belt involved in the case of the United States of America against the State of California now pending on application for rehearing in the Supreme Court of the United States; or in lands underlying such

three mile zone or belt, or the continental shelf, adjacent or littoral to any part of the land within the jurisdiction of the United States of America.

ACT OF AUGUST 31, 1964

(78 Stat. 710; 30 U.S.C. 201–1)

SEC. 2. (a) * * *

* * * * * * *

[(c) For the purpose of more properly conserving the natural resources of any coalfield or prospective coal area, or any part or zone thereof, lessees and permittees and their representatives may enter into a contract with each other or others for collective prospecting, development, or operation of such field or prospective coal area, or any part or zone thereof, whenever determined and certified by the Secretary of the Interior to be in the public interest. A contract approved hereunder shall not provide for an apportionment of production or royalties among the separate tracts comprising the contract area, but may provide for the commingling of production with appropriate allocation to the tracts from which produced. Notwithstanding any provision of this section to the contrary, the Secretary may, with the consent of the lessees or permittees involved, establish, alter, change, or revoke mining, producing, rental, minimum royalty, and royalty requirements of such leases or permits, and issue regulations that are applicable to such leases or permits or contracts. The Secretary is authorized to enter into a contract with a single lessee or permittee embracing his leases or permits. The Secretary may authorize the consolidation of separate Federal permits or leases into a lesser number of permits or leases, or into a single permit or lease.

[(d) Coal leases and permits operated under a contract approved or executed by the Secretary pursuant to subsection (c) of this section may be excepted from limitations on maximum holdings or control imposed by this Act if the Secretary finds that such exception is required to permit economic development of the coal resources and is otherwise consistent with the public interest.] [5]

[5] The repeal of subsections 2(c) and 2(d) are made "subject to valid existing rights".

ADDITIONAL VIEWS ON H.R. 6721

H.R. 6721 was favorably reported out of Committee by voice vote only after the Committee decided, by a narrow margin, not to combine with this bill a Surface Mining bill applicable to all lands. The Committee was distracted throughout markup by the expectation that it would once again confront the Surface Mining issue.

The Committee rejected the marriage of the Surface Mining bill with H.R. 6721, in the final hour. The presence of this overriding issue prevented, in our judgment, the proper perfecting of the Coal Leasing Act Amendments.

Although several important amendments were adopted, serious issues remain that have not been adequately addressed. We strongly feel the following provisions of H.R. 6721 should be amended on the Floor.

Antitrust Provisions

The Committee adopted an amendment requiring the Secretary of the Interior to consult with and obtain the advice of the Attorney General with respect to each stage in the issuance, renewal and readjustment of every coal lease to determine whether such lease would create or maintain a situation inconsistent with the antitrust laws. We believe this language should be deleted. It amounts to regulatory overkill when viewed in light of existing and proposed acreage restrictions. The Secretary presently and continually examines antitrust questions in coordination with the Federal Trade Commission. This new "antitrust" language is administratively cumbersome and unnecessarily time consuming.

Comprehensive Exploratory Program

Section 7 of the bill directs the Secretary to conduct a comprehensive exploratory program designed to obtain sufficient data and information to evaluate the extent, location, and potential for developing the known recoverable coal resources in the public domain. While we recognize the potential value of inventorying public resources, we feel that such a program should be conducted only after a careful study of the cost of the program and a determination that the historical role of the private sector in the exploratory phase of development is no longer adequate.

12½ Percent Minimum Royalty

The Committee amended H.R. 6721 to require that a minimum royalty of not less than 12½% be charged on Federal coal leases. The Department of the Interior reports that 12½% is the current ceiling on coal leases. It is not realistic to set as a minimum the highest royalty rate presently charged by the Department. Such a rate could

very well have the effect of making large acreages of Federal coal lands uneconomical to mine. The bill should be amended either to give the Secretary authority to set a minimum royalty rate or to set a more realistic rate of 5%, such as is presently in S. 391. The 12½% minimum will only result in passing higher fuel costs on to the consumer.

Public Hearings

H.R. 6721 currently requires a public hearing or gives opportunity for public comments at four different stages in the leasing process. We believe that public participation would be preserved while at the same time making the leasing process administratively more workable if these opportunities for public hearings and comments were consolidated into one or two proceedings wherever possible.

Acreage Restrictions

Under the Logical Mining Unit section adopted by the Committee, no LMU may exceed 25,000 acres (including both Federal and non-Federal lands). We believe that this restriction is arbitrary and unnecessary in the face of the limitation of 46,080 Federal acres in any one State provided by current law and the total limitation of 100,000 Federal acres nationwide provided in the bill. Since approving H.R. 6721 in Full Committee, the Subcommittee on Mines and Mining has heard testimony from Departmental witnesses outlining LMU's in excess of 25,000 acres. The facts support LMU's of a larger size in order to economically and efficiently recover the resource. We feel the 25,000 acre limitation should be deleted.

Revenue Sharing With the States

Section 9a of H.R. 6721 amends Section 35 of the Mineral Leasing Act of 1920 by increasing the states share of the total Federal revenues derived from the leasing of Federal coal, gas, phosphate, sodium, potassium, oil, oil shale, native asphalt, and solid and semi-solid bitumen from 37½ to 50 percent. The additional 12½% would be earmarked specifically for (1) planning, (2) construction and maintenance of public facilities, and (3) provision of public services in those areas suffering social and economic impacts as a result of energy development. Current law restricts the 37½% to construction and maintenance of public roads or for support of public schools. The Committee bill leaves this restriction unchanged.

While we are strongly sympathetic with the problems faced by the state and local governments in meeting increased demands for public services because of expansion of the Federal mineral leasing program, we have received no evidence that the existing level of revenue sharing is insufficient to meet the adverse impacts. As the Federal Government embarks on a renewed leasing program, the states will realize a tremendous increase in Federal payments under the present 37½% share. Therefore, until further need is demonstrated, we are opposed to increasing the states percentage share of the formula at this time. However, we do support repealing the present roads and schools restriction in order to give the states complete discretion in the expenditure of mineral leasing revenues.

We are greatly encouraged by the bi-partisan spirit of debate and hard work that has marked this bill throughout the Committee process. H.R. 6721 currently contains several needed revisions of the Mineral Leasing Act of 1920. We are hopeful that the concerns discussed above will be adequately addressed by action on the floor so that we may support the passage of this bill without reservation.

PHILIP E. RUPPE.
J. SKUBITZ.
KEITH G. SEBELIUS.
ROBERT J. LAGOMARSINO.
VIRGINIA SMITH.
SHIRLEY N. PETTIS.
BOB BAUMAN.
SAM STEIGER.

○

S. 391

Ninety-fourth Congress of the United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Monday, the nineteenth day of January, one thousand nine hundred and seventy-six

An Act

To amend the Mineral Leasing Act of 1920, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) this Act may be cited as the "Federal Coal Leasing Amendments Act of 1975".

(b) Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision of the Mineral Lands Leasing Act, the reference shall be considered to be made to a section or other provision of the Act of February 25, 1920, entitled "An Act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain" (41 Stat. 437).

SEC. 2. The first sentence of section 2(a) of the Mineral Lands Leasing Act (30 U.S.C. 201(a)) is amended to read as follows:

"(1) The Secretary of the Interior is authorized to divide any lands subject to this Act which have been classified for coal leasing into leasing tracts of such size as he finds appropriate and in the public interest and which will permit the mining of all coal which can be economically extracted in such tract and thereafter he shall, in his discretion, upon the request of any qualified applicant or on his own motion, from time to time, offer such lands for leasing and shall award leases thereon by competitive bidding. No less than 50 per centum of the total acreage offered for lease by the Secretary in any one year shall be leased under a system of deferred bonus payment. Upon default or cancellation of any coal lease for which bonus payments are due, any unpaid remainder of the bid shall be immediately payable to the United States. A reasonable number of leasing tracts shall be reserved and offered for lease in accordance with this section to public bodies, including Federal agencies, rural electric cooperatives, or non-profit corporations controlled by any of such entities: *Provided*, That the coal so offered for lease shall be for use by such entity or entities in implementing a definite plan to produce energy for their own use or for sale to their members or customers (except for short-term sales to others). No bid shall be accepted which is less than the fair market value, as determined by the Secretary, of the coal subject to the lease. Prior to his determination of the fair market value of the coal subject to the lease, the Secretary shall give opportunity for and consideration to public comments on the fair market value. Nothing in this section shall be construed to require the Secretary to make public his judgment as to the fair market value of the coal to be leased, or the comments he receives thereon prior to the issuance of the lease.".

SEC. 3. The last sentence of section 2(a) of the Mineral Lands Leasing Act (30 U.S.C. 201(a)) is amended to read as follows:

"(2)(A) The Secretary shall not issue a lease or leases under the terms of this Act to any person, association, corporation, or any subsidiary, affiliate, or persons controlled by or under common control with such person, association, or corporation, where any such entity holds a lease or leases issued by the United States to coal deposits and has held such lease or leases for a period of ten years when such

entity is not, except as provided for in section 7(b) of this Act, producing coal from the lease deposits in commercial quantities. In computing the ten-year period referred to in the preceding sentence, periods of time prior to the date of enactment of the Federal Coal Leasing Amendments Act of 1975 shall not be counted.

"(B) Any lease proposal which permits surface coal mining within the boundaries of a National Forest which the Secretary proposes to issue under this Act shall be submitted to the Governor of each State within which the coal deposits subject to such lease are located. No such lease may be issued under this Act before the expiration of the sixty-day period beginning on the date of such submission. If any Governor to whom a proposed lease was submitted under this subparagraph objects to the issuance of such lease, such lease shall not be issued before the expiration of the six-month period beginning on the date the Secretary is notified by the Governor of such objection. During such six-month period, the Governor may submit to the Secretary a statement of reasons why such lease should not be issued and the Secretary shall, on the basis of such statement, reconsider the issuance of such lease.

"(3)(A)(i) No lease sale shall be held unless the lands containing the coal deposits have been included in a comprehensive land-use plan and such sale is compatible with such plan. The Secretary of the Interior shall prepare such land-use plans on lands under his responsibility where such plans have not been previously prepared. The Secretary of the Interior shall inform the Secretary of Agriculture of substantial development interest in coal leasing on lands within the National Forest System. Upon receipt of such notification from the Secretary of the Interior, the Secretary of Agriculture shall prepare a comprehensive land-use plan for such areas where such plans have not been previously prepared. The plan of the Secretary of Agriculture shall take into consideration the proposed coal development in these lands: *Provided*, That where the Secretary of the Interior finds that because of non-Federal interest in the surface or because the coal resources are insufficient to justify the preparation costs of a Federal comprehensive land-use plan, the lease sale can be held if the lands containing the coal deposits have been included in either a comprehensive land-use plan prepared by the State within which the lands are located or a land use analysis prepared by the Secretary of the Interior.

"(ii) In preparing such land-use plans, the Secretary of the Interior or, in the case of lands within the National Forest System, the Secretary of Agriculture, or in the case of a finding by the Secretary of the Interior that because of non-Federal interests in the surface or insufficient Federal coal, no Federal comprehensive land-use plans can be appropriately prepared, the responsible State entity shall consult with appropriate State agencies and local governments and the general public and shall provide an opportunity for public hearing on proposed plans prior to their adoption, if requested by any person having an interest which is, or may be, adversely affected by the adoption of such plans.

"(iii) Leases covering lands the surface of which is under the jurisdiction of any Federal agency other than the Department of the Interior may be issued only upon consent of the other Federal agency and upon such conditions as it may prescribe with respect to the use and protection of the nonmineral interests in those lands.

"(B) Each land-use plan prepared by the Secretary (or in the case of lands within the National Forest System, the Secretary of

Agriculture pursuant to subparagraph (A)(i)) shall include an assessment of the amount of coal deposits in such land, identifying the amount of such coal which is recoverable by deep mining operations and the amount of such coal which is recoverable by surface mining operations.

"(C) Prior to issuance of any coal lease, the Secretary shall consider effects which mining of the proposed lease might have on an impacted community or area, including, but not limited to, impacts on the environment, on agricultural and other economic activities, and on public services. Prior to issuance of a lease, the Secretary shall evaluate and compare the effects of recovering coal by deep mining, by surface mining, and by any other method to determine which method or methods or sequence of methods achieves the maximum economic recovery of the coal within the proposed leasing tract. This evaluation and comparison by the Secretary shall be in writing but shall not prohibit the issuance of a lease; however, no mining operating plan shall be approved which is not found to achieve the maximum economic recovery of the coal within the tract. Public hearings in the area shall be held by the Secretary prior to the lease sale.

"(D) No lease sale shall be held until after the notice of the proposed offering for lease has been given once a week for three consecutive weeks in a newspaper of general circulation in the county in which the lands are situated in accordance with regulations prescribed by the Secretary.

"(E) Each coal lease shall contain provisions requiring compliance with the Federal Water Pollution Control Act (33 U.S.C. 1151–1175) and the Clean Air Act (42 U.S.C. 1857 and following).".

SEC. 4. Subject to valid existing rights, section 2(b) of the Mineral Lands Leasing Act (30 U.S.C. 201(b)) is amended to read as follows:

"(b)(1) The Secretary may, under such regulations as he may prescribe, issue to any person an exploration license. No person may conduct coal exploration for commercial purposes for any coal on lands subject to this Act without such an exploration license. Each exploration license shall be for a term of not more than two years and shall be subject to a reasonable fee. An exploration license shall confer no right to a lease under this Act. The issuance of exploration licenses shall not preclude the Secretary from issuing coal leases at such times and locations and to such persons as he deems appropriate. No exploration license will be issued for any land on which a coal lease has been issued. A separate exploration license will be required for exploration in each State. An application for an exploration license shall identify general areas and probable methods of exploration. Each exploration license shall contain such reasonable conditions as the Secretary may require, including conditions to insure the protection of the environment, and shall be subject to all applicable Federal, State, and local laws and regulations. Upon violation of any such conditions or laws the Secretary may revoke the exploration license.

"(2) A licensee may not cause substantial disturbance to the natural land surface. He may not remove any coal for sale but may remove a reasonable amount of coal from the lands subject to this Act included under his license for analysis and study. A licensee must comply with all applicable rules and regulations of the Federal agency having jurisdiction over the surface of the lands subject to this Act. Exploration licenses covering lands the surface of which is under the jurisdiction of any Federal agency other than the Department of the Interior may be issued only upon such conditions as it may prescribe with respect to the use and protection of the nonmineral interests in those lands.

"(3) The licensee shall furnish to the Secretary copies of all data (including, but not limited to, geological, geophyscal, and core drilling analyses) obtained during such exploration. The Secretary shall maintain the confidentiality of all data so obtained until after the areas involved have been leased or until such time as he determines that making the data available to the public would not damage the competitive position of the licensee, whichever comes first.

"(4) Any person who willfully conducts coal exploration for commercial purposes on lands subject to this Act without an exploration license issued hereunder shall be subject to a fine of not more than $1,000 for each day of violation. All data collected by said person on any Federal lands as a result of such violation shall be made immediately available to the Secretary, who shall make the data available to the public as soon as it is practicable. No penalty under this subsection shall be assessed unless such person is given notice and opportunity for a hearing with respect to such violation.".

SEC. 5. (a) Subject to valid existing rights, subsections 2(c) and 2(d) of the Act of August 31, 1964 (78 Stat. 710; 30 U.S.C. 201–1) are hereby repealed.

(b) Section 2 of the Mineral Lands Leasing Act is amended by the addition of the following new subsection at the end thereof:

"(d) (1) The Secretary, upon determining that maximum economic recovery of the coal deposit or deposits is served thereby, may approve the consolidation of coal leases into a logical mining unit. Such consolidation may only take place after a public hearing, if requested by any person whose interest is or may be adversely affected. A logical mining unit is an area of land in which the coal resources can be developed in an efficient, economical, and orderly manner as a unit with due regard to conservation of coal reserves and other resources. A logical mining unit may consist of one or more Federal leaseholds, and may include intervening or adjacent lands in which the United States does not own the coal resources, but all the lands in a logical mining unit must be under the effective control of a single operator, be able to be developed and operated as a single operation and be contiguous.

"(2) After the Secretary has approved the establishment of a logical mining unit, any mining plan approved for that unit must require such diligent development, operation, and production that the reserves of the entire unit will be mined within a period established by the Secretary which shall not be more than forty years.

"(3) In approving a logical mining unit, the Secretary may provide, among other things, that (i) diligent development, continuous operation, and production on any Federal lease or non-Federal land in the logical mining unit shall be construed as occurring on all Federal leases in that logical mining unit, and (ii) the rentals and royalties for all Federal leases in a logical mining unit may be combined, and advanced royalties paid for any lease within a logical mining unit may be credited against such combined royalties.

"(4) The Secretary may amend the provisions of any lease included in a logical mining unit so that mining under that lease will be consistent with the requirements imposed on that logical mining unit.

"(5) Leases issued before the date of enactment of this Act may be included with the consent of all lessees in such logical mining unit, and, if so included, shall be subject to the provisions of this section.

"(6) By regulation the Secretary may require a lessee under this Act to form a logical mining unit, and may provide for determination of participating acreage within a unit.

"(7) No logical mining unit shall be approved by the Secretary if the total acreage (both Federal and non-Federal) of the unit would exceed twenty-five thousand acres.

"(8) Nothing in this section shall be construed to waive the acreage limitations for coal leases contained in section 27(a) of the Mineral Lands Leasing Act (30 U.S.C. 184(a)).".

SEC. 6. Section 7 of the Mineral Lands Leasing Act (30 U.S.C. 207) is amended to read as follows:

"SEC. 7. (a) A coal lease shall be for a term of twenty years and for so long thereafter as coal is produced annually in commercial quantities from that lease. Any lease which is not producing in commercial quantities at the end of ten years shall be terminated. The Secretary shall by regulation prescribe annual rentals on leases. A lease shall require payment of a royalty in such amount as the Secretary shall determine of not less than 12½ per centum of the value of coal as defined by regulation, except the Secretary may determine a lesser amount in the case of coal recovered by underground mining operations. The lease shall include such other terms and conditions as the Secretary shall determine. Such rentals and royalties and other terms and conditions of the lease will be subject to readjustment at the end of its primary term of twenty years and at the end of each ten-year period thereafter if the lease is extended.

"(b) Each lease shall be subject to the conditions of diligent development and continued operation of the mine or mines, except where operations under the lease are interrupted by strikes, the elements, or casualties not attributable to the lessee. The Secretary of the Interior, upon determining that the public interest will be served thereby, may suspend the condition of continued operation upon the payment of advance royalties. Such advance royalties shall be no less than the production royalty which would otherwise be paid and shall be computed on a fixed reserve to production ratio (determined by the Secretary). The aggregate number of years during the period of any lease for which advance royalties may be accepted in lieu of the condition of continued operation shall not exceed ten. The amount of any production royalty paid for any year shall be reduced (but not below 0) by the amount of any advance royalties paid under such lease to the extent that such advance royalties have not been used to reduce production royalties for a prior year. No advance royalty paid during the initial twenty-year term of a lease shall be used to reduce a production royalty after the twentieth year of a lease. The Secretary may, upon six months' notification to the lessee cease to accept advance royalties in lieu of the requirement of continued operation. Nothing in this subsection shall be construed to affect the requirement contained in the second sentence of subsection (a) relating to commencement of production at the end of ten years.

"(c) Prior to taking any action on a leasehold which might cause a significant disturbance of the environment, and not later than three years after a lease is issued, the lessee shall submit for the Secretary's approval an operation and reclamation plan. The Secretary shall approve or disapprove the plan or require that it be modified. Where the land involved is under the surface jurisdiction of another Federal agency, that other agency must consent to the terms of such approval.".

SEC. 7. The Mineral Lands Leasing Act is amended by inserting after section 8 the following new section 8A:

"SEC. 8A. (a) The Secretary is authorized and directed to conduct a comprehensive exploratory program designed to obtain sufficient data and information to evaluate the extent, location, and potential for developing the known recoverable coal resources within the coal lands

subject to this Act. This program shall be designed to obtain the resource information necessary for determining whether commercial quantities of coal are present and the geographical extent of the coal fields and for estimating the amount of such coal which is recoverable by deep mining operations and the amount of such coal which is recoverable by surface mining operations in order to provide a basis for—

"(1) developing a comprehensive land use plan pursuant to section 2;

"(2) improving the information regarding the value of public resources and revenues which should be expected from leasing;

"(3) increasing competition among producers of coal, or products derived from the conversion of coal, by providing data and information to all potential bidders equally and equitably;

"(4) providing the public with information on the nature of the coal deposits and the associated stratum and the value of the public resources being offered for sale; and

"(5) providing the basis for the assessment of the amount of coal deposits in those lands subject to this Act under subparagraph (B) of section 2(a)(3).

"(b) The Secretary, through the United States Geological Survey, is authorized to conduct seismic, geophysical, geochemical, or stratigraphic drilling, or to contract for or purchase the results of such exploratory activities from commercial or other sources which may be needed to implement the provisions of this section.

"(c) Nothing in this section shall limit any person from conducting exploratory geophysical surveys including seismic, geophysical, chemical surveys to the extent permitted by section 2(b). The information obtained from the exploratory drilling carried out by a person not under contract with the United States Government for such drilling prior to award of a lease shall be provided the confidentiality pursuant to subsection (d).

"(d) The Secretary shall make available to the public by appropriate means all data, information, maps, interpretations, and surveys which are obtained directly by the Department of the Interior or under a service contract pursuant to subsection (b). The Secretary shall maintain a confidentiality of all proprietary data or information purchased from commercial sources while not under contract with the United States Government until after the areas involved have been leased.

"(e) All Federal departments or agencies are authorized and directed to provide the Secretary with any information or data that may be deemed necessary to assist the Secretary in implementing the exploratory program pursuant to this section. Proprietary information or data provided to the Secretary under the provisions of this subsection shall remain confidential for such period of time as agreed to by the head of the department or agency from whom the information is requested. In addition, the Secretary is authorized and directed to utilize the existing capabilities and resources of other Federal departments and agencies by appropriate agreement.

"(f) The Secretary is directed to prepare, publish, and keep current a series of detailed geological, and geophysical maps of, and reports concerning, all coal lands to be offered for leasing under this Act, based on data and information compiled pursuant to this section. Such maps and reports shall be prepared and revised at reasonable intervals beginning eighteen months after the date of enactment of this Act. Such maps and reports shall be made available on a continuing basis to any person on request.

"(g) Within six months after the date of enactment of this Act, the Secretary shall develop and transmit to Congress an implementation plan for the coal lands exploration program authorized by this section, including procedures for making the data and information available to the public pursuant to subsection (d), and maps and reports pursuant to subsection (f). The implementation plan shall include a projected schedule of exploratory activities and identification of the regions and areas which will be explored under the coal lands exploration program during the first five years following the enactment of this section. In addition, the implementation plan shall include estimates of the appropriations and staffing required to implement the coal lands exploration program.

"(h) The stratigraphic drilling authorized in subsection (b) shall be carried out in such a manner as to obtain information pertaining to all recoverable reserves. For the purpose of complying with subsection (a), the Secretary shall require all those authorized to conduct stratigraphic drilling pursuant to subsection (b) to supply a statement of the results of test boring of core sampling including logs of the drill holes; the thickness of the coal seams found; an analysis of the chemical properties of such coal; and an analysis of the strata layers lying above all the seams of coal. All drilling activities shall be conducted using the best current technology and practices.".

SEC. 8. The Mineral Lands Leasing Act is further amended by adding after section 8A the following new section 8B:

"SEC. 8B. Within six months after the end of each fiscal year, the Secretary shall submit to the Congress a report on the leasing and production of coal lands subject to this Act during such fiscal year; a summary of management, supervision, and enforcement activities; and recommendations to the Congress for improvements in management, environmental safeguards, and amount of production in leasing and mining operations on coal lands subject to this Act. Each submission shall also contain a report by the Attorney General of the United States on competition in the coal and energy industries, including an analysis of whether the antitrust provisions of this Act and the antitrust laws are effective in preserving or promoting competition in the coal or energy industry.".

SEC. 9. (a) Section 35 of the Mineral Lands Leasing Act, as amended (30 U.S.C. 191) is further amended by deleting "52½ per centum thereof shall be paid into, reserved" and inserting in lieu thereof: "40 per centum thereof shall be paid into, reserved", and is further amended by striking the period at the end of the proviso and inserting in lieu thereof the following language: ": *Provided further*, That an additional 12½ per centum of all moneys received from sales, bonuses, royalties, and rentals of public lands under the provisions of this Act and the Geothermal Steam Act of 1970 shall be paid by the Secretary of the Treasury as soon as practicable after December 31 and June 30 of each year to the State within the boundaries of which the leased lands or deposits are or were located; said additional 12½ per centum of all moneys paid to any State on or after January 1, 1976, shall be used by such State and its subdivisions as the legislature of the State may direct giving priority to those subdivisions of the State socially or economically impacted by development of minerals leased under this Act for (1) planning, (2) construction and maintenance of public facilities, and (3) provision of public services: *Provided further*, That such funds now held or to be received, by the States of Colorado and Utah separately from the Department of the Interior oil shale test leases known as 'C–A'; 'C–B'; 'U–A' and 'U–B' shall be used by such States and subdivisions as the legislature of each State may direct

giving priority to those subdivisions socially or economically impacted by the development of minerals leased under this Act for (1) planning, (2) construction and maintenance of public facilities, and (3) provision of public services.".

(b) In the first sentence of section 35 of the Mineral Lands Leasing Act, before the words "shall be paid into the Treasury of the United States" insert "and the Geothermal Steam Act of 1970, notwithstanding the provisions of section 20 thereof,"; before the words "from lands within the naval petroleum reserves" insert "and the Geothermal Steam Act of 1970"; and, in the second sentence, before the words "not otherwise disposed of" insert "and the Geothermal Steam Act of 1970".

SEC. 10. The Director of the Office of Technology Assessment is authorized and directed to conduct a complete study of coal leases entered into by the United States under section 2 of the Act of February 25, 1920 (commonly known as the Mineral Lands Leasing Act). Such study shall include an analysis of all mining activities, present and potential value of said coal leases, receipts of the Federal Government from said leases, and recommendations as to the feasibility of the use of deep mining technology in said leased area. The Director shall submit the results of his study to the Congress within one year after the date of enactment of this Act.

SEC. 11. (a) Section 27(a)(1) of the Mineral Lands Leasing Act (30 U.S.C. 184(a)(1)), is amended to read as follows:

"(1) No person, association, or corporation, or any subsidiary, affiliate, or persons controlled by or under common control with such person, association, or corporation shall take, hold, own or control at one time, whether acquired directly from the Secretary under this Act or otherwise, coal leases or permits on an aggregate of more than forty-six thousand and eighty acres in any one State and in no case greater than an aggregate of one hundred thousand acres in the United States: *Provided*, That any person, association, or corporation currently holding, owning, or controlling more than an aggregate of one hundred thousand acres in the United States on the date of enactment of this section shall not be required on account of this section to relinquish said leases or permits: *Provided, further*, That in no case shall such person, association, or corporation be permitted to take, hold, own, or control any further Federal coal leases or permits until such time as their holdings, ownership, or control of Federal leases or permits has been reduced below an aggregate of one hundred thousand acres within the United States.".

(b) Subject to valid existing rights, section 27(a)(2) of the Mineral Lands Leasing Act (30 U.S.C. 184(a)(2)) is hereby repealed.

SEC. 12. (a) Section 3 of the Mineral Leasing Act for Acquired Lands (30 U.S.C. 352) is amended by striking out "(b) set apart for military or naval purposes, or (c)" and insert in lieu thereof "or (b)".

(b) Such section 3 is further amended by inserting the following after the first sentence thereof: "Coal or lignite under acquired lands set apart for military or naval purposes may be leased by the Secretary, with the concurrence of the Secretary of Defense, to a governmental entity (including any corporation primarily acting as an agency or instrumentality of a State) which produces electrical energy for sale to the public if such governmental entity is located in the State in which such lands are located.".

SEC. 13. (a) Subject to valid existing rights, section 4 of the Mineral Lands Leasing Act (30 U.S.C. 204) is hereby repealed.

(b) Subject to valid existing rights, section 3 of the Mineral Lands Leasing Act (30 U.S.C. 203) is amended to read as follows:

"SEC. 3. Any person, association, or corporation holding a lease of coal lands or coal deposits under the provisions of this Act may with the approval of the Secretary of the Interior, upon a finding by him that it would be in the interest of the United States, secure modifications of the original coal lease by including additional coal lands or coal deposits contiguous to those embraced in such lease, but in no event shall the total area added by such modifications to an existing coal lease exceed one hundred sixty acres, or add acreage larger than that in the original lease. The Secretary shall prescribe terms and conditions which shall be consistent with this Act and applicable to all of the acreage in such modified lease.".

SEC. 14. Section 39 of the Mineral Lands Leasing Act (30 U.S.C. 209) is amended by adding the following sentence at the end thereof: "Nothing in this section shall be construed as granting to the Secretary the authority to waive, suspend, or reduce advance royalties.".

SEC. 15. Section 27 of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 184) is amended by adding at the end thereof the following new subsection:

"(l) (1) At each stage in the formulation and promulgation of rules and regulations concerning coal leasing pursuant to this Act, and at each stage in the issuance, renewal, and readjustment of coal leases under this Act, the Secretary of the Interior shall consult with and give due consideration to the views and advice of the Attorney General of the United States.

"(2) No coal lease may be issued, renewed, or readjusted under this Act until at least thirty days after the Secretary of the Interior notifies the Attorney General of the proposed issuance, renewal, or readjustment. Such notification shall contain such information as the Attorney General may require in order to advise the Secretary of the Interior as to whether such lease would create or maintain a situation inconsistent with the antitrust laws. If the Attorney General advises the Secretary of the Interior that a lease would create or maintain such a situation, the Secretary of the Interior may not issue such lease, nor may he renew or readjust such lease for a period not to exceed one year, as the case may be, unless he thereafter conducts a public hearing on the record in accordance with the Administrative Procedures Act and finds therein that such issuance, renewal, or readjustment is necessary to effectuate the purposes of this Act, that it is consistent with the public interest, and that there are no reasonable alternatives consistent with this Act, the antitrust laws, and the public interest.

"(3) Nothing in this Act shall be deemed to convey to any person, association, corporation, or other business organization immunity from civil or criminal liability, or to create defenses to actions, under any antitrust law.

"(4) As used in this subsection, the term 'antitrust law' means—

"(A) the Act entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies', approved July 2, 1890 (15 U.S.C. 1 et seq.), as amended;

"(B) the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes', approved October 15, 1914 (15 U.S.C. 12 et seq.), as amended;

"(C) the Federal Trade Commission Act (15 U.S.C. 41 et seq.), as amended;

"(D) sections 73 and 74 of the Act entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes', approved August 27, 1894 (15 U.S.C. 8 and 9), as amended; or

"(E) the Act of June 19, 1936, chapter 592 (15 U.S.C. 13, 13a, 13b, and 21a).".

SEC. 16. Nothing in this Act, or the Mineral Lands Leasing Act and the Mineral Leasing Act for Acquired Lands which are amended by this Act, shall be construed as authorizing coal mining on any area of the National Park System, the National Wildlife Refuge System, the National Wilderness Preservation System, the National System of Trails, and the Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act.

Speaker of the House of Representatives.

Vice President of the United States and
President of the Senate.

FOR IMMEDIATE RELEASE JULY 3, 1976

Office of the White House Press Secretary

THE WHITE HOUSE

TO THE SENATE OF THE UNITED STATES:

I am returning to the Congress today without my approval S. 391, the Federal Coal Leasing Amendments Act of 1975.

This bill addresses two essential issues: the form of Federal assistance for communities affected by development of Federally-owned minerals, and the way that Federal procedures for the leasing of coal should be modernized.

On the first of these issues, I am in total agreement with the Congress that the Federal Government should provide assistance, and I concur in the form of assistance adopted by the Congress in S. 391. Specifically, I pledge my support for increasing the State share of Federal leasing revenues from 37-1/2 percent to 50 percent.

Last January I proposed to the Congress the Federal Energy Impact Assistance Act to meet the same assistance problem, but in a different way. My proposal called for a program of grants, loans and loan guarantees for communities in both coastal and inland States affected by development of Federal energy resources such as gas, oil and coal.

The Congress has agreed with me that impact assistance in the form I proposed should be provided for coastal States, and I hope to be able to sign appropriate legislation in the near future.

However, in the case of States affected by S. 391 -- most of which are inland, the Congress by overwhelming majority has voted to expand the more traditional sharing of Federal leasing revenues, raising the State share of those revenues by one third. If S. 391 were limited to that provision, I would sign it.

Unfortunately, however, S. 391 is also littered with many other provisions which would insert so many rigidities, complications, and burdensome regulations into Federal leasing procedures that it would inhibit coal production on Federal lands, probably raise prices for consumers, and ultimately delay our achievement of energy independence.

I object in particular to the way that S. 391 restricts the flexibility of the Secretary of the Interior in setting the terms of individual leases so that a variety of conditions -- physical, environmental and economic -- can be taken into account. S. 391 would require a minimum royalty of 12-1/2 percent, more than is necessary in all cases. S. 391 would also defer bonus payments -- payments by the lessee to the Government usually made at the front end of the lease - on 50 percent of the acreage, an

more

unnecessarily stringent provision. This bill would also require production within 10 years, with no additional flexibility. Furthermore it would require approval of operating and reclamation plans within three years of lease issuance. While such terms may be appropriate in many lease transactions -- or perhaps most of them -- such rigid requirements will nevertheless serve to setback efforts to accelerate coal production.

Other provisions of S. 391 will unduly delay the development of our coal reserves by setting up new administrative roadblocks. In particular, S. 391 requires detailed anti-trust review of all leases, no matter how small; it requires four sets of public hearings where one or two would suffice, and it authorizes States to delay the process where National forests -- a Federal responsibility -- are concerned.

Still other provisions of the bill are simply unnecessary. For instance, one provision requires comprehensive Federal exploration of coal resources. This provision is not needed because the Secretary of the Interior already has -- and is prepared to exercise -- the authority to require prospective bidders to furnish the Department with all of their exploration data so that the Secretary, in dealing with them, will do so knowing as much about the coal resources covered as the prospective lessees.

For all of these reasons, I believe that S. 391 would have an adverse impact on our domestic coal production. On the other hand, I agree with the sponsors of this legislation that there are sound reasons for providing in Federal law -- not simply in Federal regulations -- a new Federal coal policy that will assure a fair and effective mechanism for future leasing.

Accordingly, I ask the Congress to work with me in developing legislation that would meet the objections I have outlined and would also increase the State share of Federal leasing revenues.

GERALD R. FORD

THE WHITE HOUSE,

July 3, 1976.

# # # #

July 3, 1976

Received from the White House a sealed envelope said to contain S. 391, An Act to amend the Mineral Leasing Act of 1920, and for other purposes, and a veto message from the President thereon.

Asst Secretary of the Senate

11 31 p.m.
Time received

TO THE SENATE OF THE UNITED STATES:

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This bill addresses two essential issues: the form of Federal assistance for communities affected by development of Federally-owned minerals, and the way that Federal procedures for the leasing of coal should be modernized.

On the first of these issues, I am in total agreement with the Congress that the Federal Government should provide assistance, and I concur in the form of assistance adopted by the Congress in S. 391. Specifically, I pledge my support for increasing the State share of Federal leasing revenues from 37-1/2 percent to 50 percent.

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The Congress has agreed with me that impact assistance in the form I proposed should be provided for coastal States, and I hope to be able to sign appropriate legislation in the near future.

However, in the case of States affected by S. 391 -- most of which are inland, the Congress by overwhelming majority has voted to expand the more traditional sharing of Federal leasing revenues, raising the State share of those revenues by one third. If S. 391 were limited to that provision, I would sign it.

Delivered to Secretary of Senate: 7/3/76 (11:31 pm)

(stencilled)

Unfortunately, however, S. 391 is also littered with many other provisions which would insert so many rigidities, complications, and burdensome regulations into Federal leasing procedures that it would inhibit coal production on Federal lands, probably raise prices for consumers, and ultimately delay our achievement of energy independence.

I object in particular to the way that S. 391 restricts the flexibility of the Secretary of the Interior in setting the terms of individual leases so that a variety of conditions -- physical, environmental and economic -- can be taken into account. S. 391 would require a minimum royalty of 12-1/2 percent, more than is necessary in all cases. S. 391 would also defer bonus payments -- payments by the lessee to the Government usually made at the front end of the lease -- on 50 percent of the acreage, an unnecessarily stringent provision. This bill would also require production within 10 years, with no additional flexibility. Furthermore it would require approval of operating and reclamation plans within three years of lease issuance. While such terms may be appropriate in many lease transactions -- or perhaps most of them -- such rigid requirements will nevertheless serve to setback efforts to accelerate coal production.

Other provisions of S. 391 will unduly delay the development of our coal reserves by setting up new administrative roadblocks. In particular, S. 391 requires detailed anti-trust review of all leases, no matter how small; it requires four sets of public hearings where one or two would suffice; and it authorizes States to delay the process where National forests -- a Federal responsibility -- are concerned.

Still other provisions of the bill are simply unnecessary. For instance, one provision requires comprehensive Federal exploration of coal resources. This provision is not needed because the Secretary of the Interior already has -- and is prepared to exercise -- the authority to require prospective bidders to furnish the Department with all of their exploration data so that the Secretary, in dealing with them, will do so knowing as much about the coal resources covered as the prospective lessees.

For all of these reasons, I believe that S. 391 would have an adverse impact on our domestic coal production. On the other hand, I agree with the sponsors of this legislation that there are sound reasons for providing in Federal law -- not simply in Federal regulations -- a new Federal coal policy that will assure a fair and effective mechanism for future leasing.

Accordingly, I ask the Congress to work with me in developing legislation that would meet the objections I have outlined and would also increase the State share of Federal leasing revenues.

Gerald R. Ford

THE WHITE HOUSE,

July 3, 1976.

June 22, 1976

Dear Mr. Director:

The following bills were received at the White House on June 22nd:

S.J. Res. 203
S. 391
S. 2847

Please let the President have reports and recommendations as to the approval of these bills as soon as possible.

Sincerely,

Robert D. Linder
Chief Executive Clerk

The Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D.C.