

NEW MEXICO SCHOOL OF MINES

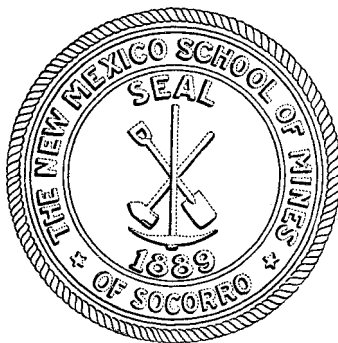
STATE BUREAU OF MINES AND
MINERAL RESOURCES

C. E. NEEDHAM
President and Director

BULLETIN NO. 16

**Mining, Oil, and Mineral Laws
of New Mexico**

by
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THE STATE BUREAU OF MINES AND MINERAL RESOURCES

The New Mexico State Bureau of Mines and Mineral Resources, designated as "a department of the New Mexico School of Mines and under the direction of its Board of Regents," was established by the New Mexico Legislature of 1927. Its chief functions are to compile and distribute information regarding mineral industries in the State, through field studies and collections, laboratory and library research, and the publication of the results of such investigations. A full list of the publications of the New Mexico Bureau of Mines is given on the last pages of this Bulletin, following the index.

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Mining, Oil, and Mineral Laws of New Mexico

By
CHARLES H. FOWLER AND STERLING B. TALMAGE

PART I—INTRODUCTION

In 1930 the State Bureau of Mines and Mineral Resources published its Bulletin No. 6 entitled "Mining and Mineral Laws of New Mexico." There was greater demand for this bulletin than for any previous publication of the Bureau, and the edition was soon exhausted. There is demand for a similar work, but in view of extensive new legislation a simple reprint of Bulletin No. 6 seems not justified, and it has been decided to bring out this present bulletin, No. 16, which supersedes No. 6 and covers its field but which is expanded in scope and treatment and brought up to date.

This work is not a treatise on the mining laws of New Mexico or of the United States, and it does not attempt to enable the reader to proceed unaided in the legal phases of or related to the varied activities of the mining industry. It is a compilation, under one convenient cover, of the statutes of New Mexico now (1940) in effect going to make up what is commonly referred to as the "mining law," and pertaining to the location, holding, possession, and operation under the general laws of properties valuable for their mineral content.

In furtherance of its primary objects of setting forth the state laws on the subject matter of mines and mining, oil and gas lands and operations, and directly related subjects, this bulletin also presents the text of federal mining and leasing statutes deemed basic and essential here but no attempt is made to include all matters of the federal laws affecting the mining or oil industries, or statutes of local and limited application not touching New Mexico.

The style and arrangement used by Charles H. Fowler in his first bulletin, No. 6, have been generally retained, and the selection of material to be included in this second publication on mineral laws has been made under his direction. Minor additions to the text, apart from the statutes compiled, detailed compilation of the statutory material, added footnotes and cross references, and a comprehensive index have been prepared by Sterling B. Talmage.

As in Bulletin No. 6, the chapter and section numbers and headings are given, by permission, as they appear in the New Mex-

ico Statutes Annotated, 1929 Compilation, and the 1938 Supplement thereto, compiled and published by the W. H. Courtright Publishing Company, of Denver, Colorado. The sequence of chapters used in this bulletin is believed to be logical for a work of this character. The sequence of the Courtright compilation is not followed strictly, as that work is arranged more especially for the use of the legal profession, and of course its valuable annotations are altogether omitted here. Naturally, there are some overlaps as to the subject matter compiled, due to legislative enactments pertaining to the same subjects but passed separately and at different sessions; cross references have been supplied in some instances where it appeared that they would be helpful. In the main, however, the statutes have been compiled and submitted with a minimum of explanation or commentary, except in a few instances where attention is called to some particular matter that seems to be especially pertinent to the sections immediately preceding the comment.

Much of the Introduction to the previous bulletin, No. 6, is equally applicable for presentation here, and appears below, revised by the addition of some timely and explanatory matter.

NEW MEXICO LANDS UNDER MINING LAWS

Perhaps no state in the Union has a more varied assortment of classes of land than New Mexico. To some of these classes the mining laws cannot apply; to others they have a modified application, to others they apply in full force. For convenience these lands may be divided into three groups, namely: (1) Government lands, (2) state lands, and (3) privately owned lands. The general mining laws affect only mineral lands and have no direct application to agriculture or other classes of land returned as non-mineral further than the possibility that such lands might become subject to mining laws should mineral be discovered in them.

Without attempting to list or mention every possible class of land as to use and ownership, the three groups given above can be subdivided for the purpose of pointing out and exemplifying the application of mining laws, as follows:

- I. Government lands.
 1. Public domain.
 2. Lands used for special or governmental purposes.
 - (a) Federal building sites, post offices, etc.
 - (b) National parks.
 - (c) Military, hospital or other special purpose reservations.
 - (d) National monuments,
 - (e) Indian reservations.
 - (f) National forests.
 - (g) Lands withdrawn by executive order.

- II. State lands.
 - 1. Public lands.
 - (a) School lands.
 - (b) Institutional lands.
 - (c) Other grant lands.
 - 2. Lands used for special or govern metal purposes.
- III. Privately owned lands.
 - 1. Lands owned by individuals.
 - 2. Railroad grant lands.
 - (a) Patented lands
 - (b) Unpatented lands within the grant.
 - (c) Lieu lands.
 - 3. Spanish and Mexican grant lands.
 - 4. Lands in which mineral is reserved.

RECORD OF OWNERSHIP

The record of ownership of a particular tract of land may be ascertained from the records of the district United States Land Office, the State Land Office and the county clerk's office in the county where the land lies. It may be necessary to examine successively the records of two or all of the offices. The district United States Land Offices at Santa Fe and Las Cruces will disclose whether the government is the owner, and, if it is not, then to whom patent to the land was issued. If they were once state lands, the State Land Office at Santa Fe will show the state's ownership, or the name of the person to whom the lands were sold. If title has passed to an individual, the records of the county clerk's office should be examined to ascertain the present ownership. Local abstractors and abstract companies usually can give valuable assistance in procuring such information and often may be able to answer such inquiries as to ownership from their own records within a small fraction of the time which would be required to obtain the answer otherwise.

GOVERNMENT LANDS

OUTLINE OF PROCEDURES TO GAIN TITLE TO MINERALS

Various procedures are specified in the laws in order to acquire the right to extract and own minerals found on government lands. "Veins or lodes of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits" may be appropriated and possessed by means of locating as mining claims the lands in which they are found. The maximum dimensions of such mining claims are 600 by 1500 feet. They may be held by possessory title or the lands may be purchased and patent therefor obtained from the government in accordance with definite provisions of the law.

Lands bearing alluvial deposits of mineral, or other deposits of mineral not occurring in veins or in place, are subject to loca-

tion and purchase as mining claims, this type being known as placer claims. Gold is the most common placer mineral. These claims should conform as closely as possible with the United States system of public land surveys. A placer claim cannot have an area of more than 20 acres for each individual claimant, or for each person of an association, and not more than 160 acres for any association of persons.

Title to mineral deposits, whether lode or placer, is acquired by location of the lands in which they are found as mining claims, Under the federal mining laws, excepting the leasing acts and cases of mining claims existing prior to May 10, 1872, and instances where the mineral is reserved upon sale of the surface, there seems to be no recognition of ownership of mineral deposits as apart from ownership of lands.

Since the passage of the Act of February 25, 1920 (41 Stat. L. 437), commonly referred to as the Federal Leasing Act, as amended and supplemented (and the Act of October 2, 1917, 40 Stat. L. 297, as to potash), deposits of coal, phosphate, sodium, potassium, oil, oil shale, and gas, and lands containing such deposits owned by the United States, are subject to disposition as and in the manner provided in such leasing acts, and the provisions of the general body of the mining laws are not applicable as to such deposits. The policy inaugurated by the leasing acts is markedly different from the policy of the general mining laws in regard to the possession and disposition of mineral deposits in the public lands of the government.

LAWS AND REGULATIONS PERTAINING TO MINERALS

The general mining laws of the United States relating to lode and placer mining claims are found in Title 30, Chapter 2, of the United States Code, Sections 21 to 53, as amended and supplemented by later congressional legislation. Circular No. 430, entitled "United States Mining Laws, and Regulations Thereunder," may be obtained from the Department of the Interior, General Land Office, Washington, D. C.; it contains the basic mining laws and the regulations.

Circulars giving the federal laws and the regulations controlling as to deposits subject to disposition under the leasing acts also may be obtained from the Department of the Interior, General Land Office. Usually the requests for the circulars are made to the Register of the local United States Land Office and, if they are on hand, the papers will be promptly furnished by him, while if they are not there available the Register will send the request on to the office which can supply the circulars asked for.

Regulations as to mineral deposits in state lands, and as to leases for the same, may be obtained from the Commissioner of Public Lands, Santa Fe, New Mexico.

RELATIONSHIP OF FEDERAL AND STATE MINERAL LAWS

It must be borne in mind that the United States statutes are controlling with reference to the mineral lands of the public domain and to minerals reserved to the United States, and that state legislation, as to such lands or mineral, is proper only insofar as it supplements the federal laws and is not in conflict therewith. However, state laws must be complied with where they merely supplement the federal laws and are not in conflict with them, and in such cases the provisions of both federal and state laws must be given due regard.

LOCATION OF MINING CLAIMS

In order to locate a claim on unappropriated government land the locator must substantially comply with all the requirements of the federal laws, the state laws and district regulations, if any, with reference to location or marking out mining claims. The state laws are shown in this compilation. Local or district regulations, where they exist, will be found recorded in the county clerk's office in the county where the land lies or, in rare instances, with the recorder of the mining district. The writer knows of no mining district in New Mexico which has a recorder or special rules governing locations therein at the present time, but the prospector or locator may ascertain by inquiry whether or not the particular district in which he operates has its local rules and officers.

In some instances state laws require more than the federal laws, but also the latter sometimes provide that where certain acts are to be done under state laws they shall be done in a specified way. In such cases both federal and state requirements must be fully met. To illustrate:

The federal statute says that the locator (1) must make discovery, and (2) must distinctly mark the claim upon the ground so that its boundaries may be readily traced. The federal laws do not require that record be made, but they provide that wherever a record is required by the state laws or local rules it must contain (a) the name of the locator; (b) the date of the location; (c) such a description of the claim, by reference to some natural object or permanent monument as will identify the same. A discovery shaft or similar working of that nature is not expressly required by the federal laws as an act of location.

The state laws do not expressly require a discovery as a prerequisite to location although it would seem that this is pre-supposed. They require that (1) the location shall be marked on the ground, as in the federal requirements; (2) a notice of location shall be posted in some conspicuous place upon the claim (3) a copy of such notice shall be recorded with the county clerk within three months (4) a discovery shaft, or other discovery work provided for, shall be done within three months from the date of location. The notice as posted and recorded must contain (a) the

name of the locator, (b) his intention to locate the mining claim, and (c) a description of the claim substantially as provided in the federal statute. It will be observed that the state law does not specify that such notice must contain the date of location but as the federal statute says every record required by state laws must contain such data, this item also becomes an essential part of the notice which must be recorded in this state.

A case involving mining claims is, like any other case, tested by the circumstances surrounding it. While locations of mining claims have been upheld in instances where it seemed that they were very carelessly made, yet the careful locator will see to it that every act required or enjoined by the law in the location of the claim is fully performed. In order to minimize the likelihood of having a location declared invalid through the failure to do any essential act, it is recommended that the locator in New Mexico substantially follow a procedure such as that indicated by the steps here summarized in order:

1. *The locator must make a valid discovery of mineral within the limits of the claim. (Federal requirement)*

The requirement of a "valid discovery" is not interpreted as necessitating the discovery or development of an ore deposit of demonstrated commercial grade or size. It is sufficient to find or expose a showing of mineral such as would justify an ordinarily prudent man in making further expenditure of time and money in exploring the possibilities of the deposit.

2. *The locator must distinctly mark the claim on the ground, so that its boundaries may be readily traced. (Federal and State requirement)*

This requirement does not necessitate a fencing of the claim, or staking its boundaries throughout. The statutory requirement calls for a stout post or substantial monument of stones, erected at each corner of the claim. It is advisable to take the added precaution of erecting a monument, either post or mound of stones, at the center of each side line and at the point of discovery..

3. *The locator must post, at some conspicuous place on the ground, a notice containing (a) the name of the locator, (b) his intention to locate the mining claim, (c) the date of location, and (d) a description of the claim by reference to some natural object or permanent monument sufficient to identify the claim. (State requirement, with Federal sanction)*

Customs in the carrying out of this requirement are varied. The notice may be fastened to a board nailed up near the discovery point; exposure to weather frequently renders such a posted notice illegible within a short time. A common custom is to fold up the location notice and protect it by a small tin can, which is wedged into the pile of stones that serves as a discovery monument; such a discovery monument is generally accepted as a "con-

spicuous place." As an added precaution, similar cans containing duplicate location notices or directions for finding the original notice, may be placed in or on the corner monuments. While not expressly required, a discovery monument, stake or mound of stones, is usually erected at or near the discovery point, and that practice is recommended.

4. *The locator must record a copy of the location notice with the county clerk within three months after the notice is posted on the claim. (State requirement)*

Although three months is allowed, it is advisable to record location notices as soon as practicable after the notice is posted and the claim is marked on the ground. In cases where the date of location is uncertain or disputed, and where proofs of such have been lost or destroyed, title may hinge on the date of recording.

5. *The locator must excavate to a depth of at least ten feet, by shaft, edit, tunnel, or open cut exposing mineral in place on the claim, within ninety days from the date of location. (State requirement)*

This requirement calls for an excavation extending at least ten feet below the "lowest part of the rim, at the surface." If an abandoned claim on which an excavation has been made, is relocated, the locator may at his election either extend the old excavation ten feet deeper, or make a new excavation to a depth of at least ten feet below the surface exposing mineral in place.

The foregoing statement of requirements deals primarily with lode claims, but the requirements for locating placer claims are similar in principle. A valid discovery, marking the location on the ground, posting location notice and recording, and apparently performance of discovery work, are required in making a placer location, substantially as in the case of a lode claim. But a placer location, if made upon surveyed lands, must conform to the legal subdivisions of the public lands. Whether the location be on surveyed or unsurveyed lands, each corner of the claim shall be marked by a post or monument. The notice of location shall contain a statement of the name of the claim, the purpose and the kind of material for which the claim is located, and the names of the locators and date of location. If the claim be on surveyed land, a description of the claim by the legal subdivision of the land must be given; if the claim be on unsurveyed land, then the description is by metes and bounds, with reference to some natural object or permanent monument. The statute provides that the notice must be posted at a designated corner.

Blanks for location notices for both lode and placer claims may be purchased at most newspaper and printing offices and stationery stores in the state, but caution should be exercised in selecting them, as well as afterwards in filling them in, for some

printed forms circulated in this state in the last few years apparently are defective.

UNUSUAL FEATURES OF AMERICAN MINING LAW

The difference in principles governing homestead entry and those pertaining to location of mining claims is pronounced and the procedure to obtain patent should not be confused in the two cases. Homestead laws are made with the object of enabling citizens to acquire homes, and to that end the government has made the procedure very simple. With regard to application for patent the steps are plainly indicated and, consist in little more than filling out of a few forms before a commissioner, the publication of a simple notice and the furnishing of a few affidavits. Of course there are requirements as to residence, use, improvements, the like that must be fulfilled, but the point here presented is that the procedure looking to such patent is simple.

With mineral lands the scenes are changed. Under a policy contrary to that of most nations, and which grew out of circumstances unique in world history, these lands are given by the government out of its bounty to the discoverer of mineral who will take them upon the conditions prescribed. The American mining law has been called a law unto itself. In some ways it actually runs counter to the rules of ordinary real property law. The mineral claimant is not a home builder as the homesteader is, but rather he is, to some extent, a speculator turning to his own account that which the government has offered in gratuity. He cannot do less than comply with the conditions on which the gift is offered. Comparatively these conditions are few and easy but whenever he makes his application for patent, which is the confirmation of the gift, no intendment favors him and he must show that he has fulfilled his obligations and is entitled thereby to take that which he asks for. Far from the simple method in cases of homestead entry, the procedure for patent to mineral lands is complicated and exacting. The application for mineral patent requires survey made under designated federal appointment, and numerous documents that should be prepared by a competent attorney. No applicant, unless he be trained in the law, should try to handle these patent proceedings by himself, as he can do in the matter of location making. His good judgment should require him at the outset to enlist the services of a competent attorney to carry through the work.

PUBLIC DOMAIN

The term "public domain" is used to designate those lands which are held by the United States or a state as subject to sale or disposal under general laws and which are not reserved for any special government or public purposes. By common usage in this state the term is applied almost exclusively to government lands, and as used in this introduction it is so intended.

. Government lands not used or reserved for special or governmental purposes are in general open to location, appropriation, and purchase under the general mining laws and to prospecting and lease under the federal leasing acts.

GOVERNMENT LANDS USED FOR SPECIAL OR GOVERNMENTAL PURPOSES

As a rule, government lands used or reserved for special or governmental purposes are not open to appropriation, purchase and lease under the general mining laws and the federal leasing act. The national forests are an exception to this rule, inasmuch as they were specifically made subject to such laws by Act of Congress, June 4, 1897 (30 Stat. L. 34).

Indian reservations and reservations for special purposes, such as for military posts, hospitals and the like, in general may not be entered nor located upon or appropriated under the mining laws so long as their status is maintained. Whenever the reservation is abandoned such lands become subject to the mining and leasing laws and open to location.

The President is empowered in certain cases to withdraw lands of the public domain from appropriation and entry. The naval oil reserves, for example, the famous Teapot Dome, are of this character. Such lands are withdrawn by executive order and may not be taken up under the mining laws or the general mineral leasing acts so long as such order stands unrevoked. When the order is revoked the lands are restored to the public domain and become open to appropriation, purchase and lease.

INDIAN LANDS

While the rule as to Indian reservations is as above stated, from time to time Congress has enacted laws under which such lands may be leased for mining purposes. By the act of June 30, 1919 (41 Stat. L. 4), the Secretary of the Interior is authorized to lease unallotted lands of Indian reservations in certain states, including New Mexico, for mining for "gold, silver, copper and other metalliferous minerals," and he is empowered to declare such lands open to exploration for discovery of deposits of such minerals. After such declaration, mining claims may be located on the lands in the same manner as on the public domain but duplicate copies of the location notice must be filed with the superintendent of the reservation within sixty days from the date of location. Thereafter the locator has a preference right to apply for a lease to the lands of his claim within one year from the date of location, but if he fails to apply for lease within that time he forfeits all right to the claim. The application for lease may be filed with the superintendent for transmission to the Secretary of the Interior. The leases, when granted, are for twenty years with preferential rights of renewal for successive periods of ten years. The conditions are as stipulated by the Secretary, within the limits fixed by statute. By the act of March 3, 1921 (Fed. Stat.

Ann. 2nd, Supp. 111), said act of June 30, 1919, was amended by extending the term "metalliferous" to include certain minerals not generally comprehended within it.

Also, the Secretary of the Interior is empowered, with the consent of the Indian council, to lease at public auction, for oil and gas mining purposes, unallotted lands on Indian reservations, (except certain lands with which we, of New Mexico, are not concerned). These leases are for a period of not to exceed ten years and as long thereafter as oil or gas is produced in paying quantities. (Act of May 29, 1924, 43 Stat. L. 244).

In the absence of specific provisions by Congress or declarations by the Secretary opening the lands to exploration, Indian reservations may not be invaded by prospectors and a claim located thereon is initiated in trespass and is void.

Information concerning the procedure to obtain leases on Indian lands may be had from the Department of the Interior, Washington, D. C.

STATE LANDS

GENERAL FEATURES

The term "public lands" may be applied to either government or state lands but locally by common usage it is generally applied only to lands owned by the state and as synonymous to the term "state lands"; that is to say, the open and unappropriated common lands belonging to the state. The term is so used in the statutes compiled in this volume and that is the meaning of it as used in this introduction.

These public lands were granted to the state by the government and are designated, according to the purpose for which they were granted, as school lands, institutional lands and other special grant lands. They are administered by the State Land Office of which the Commissioner of Public Lands is the head. So far as the state's title and interest therein are concerned, the state laws and the regulations of the State Land Office made there-under are controlling. The question of when the state does and does not acquire mineral lands under these grants from the government is an involved one and a discussion of it would carry this introduction far beyond its proper scope. Perhaps it would not be well here to go further than to make the generalization that where particular lands have been granted to the state and the same have been surveyed, and the survey has been approved and the lands listed in the General Land Office as belonging to the state, before the mineral character thereof was known, they belong to the state absolutely, and as to such lands the state mining laws apply exclusively.

State lands known to contain valuable minerals are not subject to sale but may be leased by the Commissioner of Public Lands for the development, mining and production of the minerals. Leases of state lands for grazing or agricultural purposes,

reserve to the state the mineral deposits in the lands, with the right to grant leases thereon and to use or grant the use of such of the surface as is necessary in operations under such, mineral leases. Sales of state lands are made with reservation or exception of the mineral deposits therein and with reservation of the right to use the surface necessary in the development and exploitation of such minerals.

Mineral leases of state lands, or mineral deposits owned by the state, are executed by the Commissioner of Public Lands on behalf of the state and contain such provisions and conditions as he may require, except that certain provisions, terms and conditions must be included and be within the scope fixed therefor by statute. The leases vary as to terms and provisions depending on the minerals covered by them and the conditions of their letting. The Commissioner has authority to make reasonable regulations concerning procedure in taking, transferring and holding leases and governing operations thereunder, and these are binding upon the lessee.

In the case of coal lands the Commissioner may grant a permit to prospect areas not less than 40 acres nor more than 640 acres for a period of not more than one year. At or before the end of the period, if he has developed coal and on his giving bond to comply with the provisions of the lease, the permittee may be granted a lease to work the lands for coal. The minimum rental and royalty is fixed by law, and the term may not exceed five years but a preferential renewal right is given to the lessee. Such improvements as can be removed without injury to the lands may be taken away at the end of the term. The statute also provides for the acquiring of other lands whenever necessary in the operation of the mine.

The New Mexico statute empowers the Commissioner to make oil and gas leases for the state. Such leases are for a primary term of five years and as long thereafter as oil or gas in paying quantities is produced from the leased lands. The form of lease is prescribed. A free use of oil, gas and casing-head gas produced from the leased premises is allowed in the operations thereon in furtherance of development. On all except such free use, a royalty is provided to be paid to the state of one-eighth part of the oil "produced and saved" or the cash value thereof, and one-eighth of the net proceeds of casing-head gas sold, and the market value of one-eighth part of all casing-head gas used by the lessee otherwise than in production operations on the premises, and one-eighth of the net proceeds derived from, the sale of gas from each "gas well." An annual rental of not less than five cents nor more than one dollar per acre, but not less than \$100.00 for the first year, is required. The lease may be granted on application in writing, under oath, which must be accompanied by the first year's rental and the amount of bonus, if any, offered by

the applicant. If a bonus is offered by an applicant, no lease on the land applied for may be issued for less than such bonus and the first year's rental. An appraisal may be required, and in such case the lease may not be issued for less than the appraised value. It is the duty of the Commissioner to classify and divide all state lands into "rental districts" and to prescribe the rental per acre to be paid under lease in each such district. Not more than 6,400 acres may be included in any one lease. If the lands of any lease lie part in one district and part in another, the lessee must pay on his whole lease at the rental prevailing in the one of such districts that has the highest rental.

Certain "restricted districts" have been created in parts of the state deemed especially favorable for oil and gas development. Lands in these districts may not be leased for oil and gas except upon competitive bidding by sealed bids or at public auction. The Commissioner is empowered to extend the limits of such restricted districts, and to create new districts, from time to time when the interests of the state require it.

The Commissioner is authorized to execute and issue on behalf of the state leases for the exploration, development and production of carbon dioxide from lands belonging to the state, or by it held in trust under grants from the United States, or from lands sold by the state with reservation of the minerals. The terms and conditions of such leases are defined by the statute.

Any lode or deposit of metals or minerals on state lands may be leased by the Commissioner but the manner in which the lessee initiates his right to acquire a lease strongly shows the influence of the laws governing mining on the public domain. The prospector is allowed to locate his claim on state land in the same manner that he would locate a mining claim on the public domain except that he must also file in the State Land Office a copy of the location notice. The location must be a rectangular parallelogram not more than 1500 feet in length by not more than 600 feet in width. It must be surveyed before a lease thereon will be granted. On the filing of notice of location in the land office the Commissioner issues a permit granting the prospector the exclusive right to explore said lands for minerals for a period of ninety days. If, by the end of that period, the locator has sunk a discovery shaft or done other discovery work on the lands, to the extent required by statute, and has discovered "ore" in rock in place, he may apply for and take a lease granting him the right to mine and extract ores from said location for a term, of not exceeding five years. The lease provides a yearly rental of \$25.00 and, in addition, a royalty of two per cent of "the cash returns from smelter, mill or other reduction process...less transportation and smelting or reduction charges," except, that a royalty of five per cent of the gross proceeds is exacted if the lease is for ore deposits of precious stones or semi-precious stones in rock in place.

Such location or lease has extralateral rights substantially as do lode mining locations on government lands.

Saline lands, lands valuable for shales or clays, and lands having deposits of potassium, sodium, phosphorus and other minerals of similar occurrence, are subject to lease by the Commissioner upon such terms and conditions as he deems for the best interest of the state if within the limits fixed by and unless repugnant to law.

All state leases are subject to forfeiture and cancellation for non-compliance with their terms and the laws and regulations under which they are granted. They are generally issued for a fixed period of years with preferential renewal privilege to the lessee and express the right of the Commissioner to inspect the workings on the lands and the records of the operator relating thereto whenever such inspection is deemed advisable. The rules and regulations in force and additional pertinent information concerning procedure to obtain a lease for mineral deposits of any kind in state lands may be had from the State Land Office, Santa Fe, New Mexico.

State lands which are used for special or governmental purposes are not subject to appropriation under the mining laws of the state.

PRIVATELY OWNED LANDS

LANDS OWNED BY INDIVIDUALS

Privately owned lands generally are not affected by the mining laws. Operations on them are carried on by agreement and contract with the owner. But in this regard see the provisions of § 88-701, page 95, in the following compilation. However, there, may be a severance in ownership of the surface and the minerals in the land. Homestead patents issued by the government under the acts of Congress prior to 1910 were supposed to cover only agricultural lands, but of course this meant only land not known at the time of patent to be mineral land. Patents are now granted by the United States, under what are commonly called the Enlarged Homestead Act and the Stockraising Homestead Act, which reserve to the government the minerals and the right to enter and work the same. As to such lands the mining laws pertaining to locating and patenting claims do not apply as fully as in the case of lands of the public domain but provision is made under which the mineral reserved to the government may be located and worked by persons other than the surface owner, and so much of the surface may be used as is necessary in working the mines.

RAILROAD LANDS

Railroad lands fall under the general title of privately owned lands but they require special consideration. The government made large grants of land to certain railroads to aid in and as an inducement to the construction of their lines. These grant lands

passed to the railroad upon the doing of certain specified acts and fixing the definite location of its road, thus establishing definite location of the lands, and with the issuance of patent. Known mineral lands were excluded from all such grants. Unpatented lands within the limits of the grant to the railroad may be taken up under the general mining laws if they are found to be mineral, the proceedings being substantially the same as in location upon open and unappropriated public domain. If patent has issued to the company covering lands which at the time of patent were known to be mineral in character there is yet a possibility, under some conditions, for a locator to acquire rights of possession under the mining laws. But the issuance of patent to the railroad indicates the determination by the government of the non-mineral character of the lands, and if, in fact, they were not known to be mineral lands at that time a subsequent discovery of mineral therein will not diminish the estate of the railroad in them..

Whenever lands within the limits of the grant to the railroad are excluded from the grant because they are found to be mineral in character or because prior rights of ownership thereto have been initiated under homestead laws, or otherwise, the railroad is entitled to take up an equal acreage of agricultural lands of the public domain elsewhere in the state. Lands so selected by the railroad, which are termed "lieu lands," must not be of known mineral character. These lieu lands are subject to the conditions applying to the original or primary grant lands, and location of mining claims may be made thereon under the same conditions and in the same manner as on the primary grant lands.

The foregoing statement quoted from the introduction to Bulletin No. 6, as to railroad lands, should be considered and perhaps somewhat modified in the light of recent legislation by Congress authorizing the Secretary of the Interior to lease deposits of oil and gas in lands of railroad or other rights of way, acquired under any law of the United States. (Tit. 30, §§ 301-306, USCA.)

SPANISH AND MEXICAN LAND GRANTS

Spanish and Mexican land grants present question peculiar to themselves. The original grants from Spain and Mexico did not pass title to the mineral unless they contained express provisions to that effect. Under its treaties with those nations the United States must recognize land titles subsisting in the territories acquired from them. It is not obliged to go any further than this nor to recognize any title or estate not inhering in the original grant. It follows, then, that mere confirmation of a grant made by Spain or Mexico does not necessarily carry with it the mineral which was reserved to the grantor. Our government, of course, can relinquish all claim to the lands, including the mineral, if it so desires and where patents have issued to such grantees from the government it is probably that this is the effect.

Where the title to the grant has been confirmed only, as by

decree of the Court of Private Land Claims, it has been a disputed question whether the grantee has acquired the surface rights only or the ownership of the minerals within the boundaries of the grant as well. Title to some of the land grants in this state has been so confirmed by decree. In 1926 Congress passed an act providing that all gold, silver and quicksilver deposits in lands within any land grant confirmed by decree of the Court of Private Land Claims, may be leased by the Secretary of the Interior, provided that the mineral rights were not conveyed to the grantee by the terms of the grant, or unless the grantee has become "otherwise entitled in law or equity" to such mineral rights.

ACKNOWLEDGMENTS

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The basic Federal mining law pertaining to mineral lands and mining resources is taken from Title XXXII, Chapter 6, Revised Statutes as published in Circular No. 430 issued by the General Land Office. This is the best known and most widely distributed circular dealing with the mining laws. Only minor changes have been made in incorporating this subject material in the United States Code.

PART II—BASIC FEDERAL STATUTES

TITLE XXXII, CHAPTER 6, REVISED STATUTES

MINERAL LANDS AND MINING RESOURCES

Mineral lands reserved.
4 July, 1866, c. 166, s. 5, v. 14, p. 86.

Sec. 2318. In all cases lands valuable for minerals shall be reserved from sale, except as otherwise expressly directed by law.

Mineral lands open to purchase by citizens.
10 May, 1872, c. 152, s. 1, v. 17, p. 91.

Sec. 2319. All valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase, by citizens of the United States and those who have declared their intention to become such, under regulations prescribed by law, and according to the local customs or rules of miners in the several mining districts, so far as the same are applicable and not inconsistent with the laws of the United States.

Length of mining claims upon veins or lodes.
10 May, 1872, c. 152, s. 2, v. 17, p. 91.

Sec. 2320. Mining claims upon veins or lodes of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits, heretofore located, shall be governed as to length along the vein or lode by the customs, regulations, and laws in force at the date of their location. A mining claim located after the tenth day of May, eighteen hundred and seventy-two, whether located by one or more persons, may equal, but not exceed, one thousand five hundred feet in length along the vein or lode but no location of a mining claim shall be made until the discovery of the vein or lode within the limits of the claim located. No claim shall extend more than three hundred feet on each side of the middle of the vein at the surface; nor shall any claim be limited by any mining regulation to less than twenty-five feet on each side of the middle of the vein at the surface, except where adverse rights existing on the tenth day of May, eighteen hundred and seventy-two, render such limitation necessary. The end lines of each claim shall be parallel to each other.

Proof of citizenship.
10 May, 1872, c. 152, s. 7, v. 17, p. 94.

Sec. 2321. Proof of citizenship, under this chapter, may consist, in the case of an individual, of his own affidavit thereof in the case of an association of persons unincorporated, of the affidavit of their authorized agent, made on his own knowledge or upon information and belief;

and in the case of a corporation organized under the laws of the United States, or of any State or Territory thereof, by the filing of a certified copy of their charter or certificate of incorporation.

Locators' rights of possession and enjoyment. Sec. 2322. The locators of all mining locations heretofore made or which shall hereafter be made, on any mineral vein, lode, or ledge, situated on the public domain, their heirs and assigns, where no adverse claim exists on the

10 May, 1872, c. 152, s. 3, v. 17 p. 91. tenth day of May, eighteen hundred and seventy-two, so long as they comply with the laws of the United States, and with State, Territorial, and local regulations not in conflict with the

laws of the United States governing their possessory title, shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations, and of all veins, lodes, and ledges throughout their entire depth, the top or apex of which lies inside of such surface lines extended downward vertically, although such veins, lodes, or ledges may so far depart from a perpendicular in their course downward as to extend outside the vertical side lines of such surface locations. But their right of possession to such outside parts of such veins or ledges shall be confined to such portions thereof as lie between vertical planes drawn downward as above described, through the end lines of their locations, so continued in their own direction that such planes will intersect such exterior parts of such veins or ledges. And nothing in this section shall authorize the locator or possessor of a vein or lode which extends in its downward course beyond the vertical lines of his claim to enter upon the surface of a claim owned or possessed by another.

Owners of tunnels, rights of. Sec. 2323. Where a tunnel is run for the development of a vein or lode, or for the discovery of mines, the owners of such tunnel shall have the right of possession of all veins or lodes within three thousand feet from the face of such tunnel

10 May, 1872, c. 152, s. 4, v. 17, p. 92. on the line thereof, not previously known to exist, discovered in such tunnel, to the same extent as if discovered from the surface, and locations on the line of such tunnel of veins or

lodes not appearing on the surface, made by other parties after the commencement of the tunnel, and while the same is being prosecuted with reasonable diligence, shall be invalid, but failure to prosecute the work on the tunnel for six months shall be considered as an abandonment of the right to all undiscovered veins on the line of such tunnel.

*Regulations made
by miners.*

*10 May, 1872,
c. 152, s. 5, v. 17,
p. 92.*

Sec. 2324. The miners of each mining district may make regulations not in conflict with the laws of the United States, or wit the laws of the State or Territory in which the district is situated, governing the location, manner of recording, amount of work necessary to hold possession of a mining claim, subject to the following requirements: The location must be distinctly marked on the ground so that its boundaries can be readily traced. All records of mining claims hereafter made shall contain the name or names of the locators, the date of the location, and such a description of the claim or claims located by reference to some natural object or permanent monument as will identify the claim On each claim located after the tenth day of May, eighteen hundred and seventy-two, and until a patent has been issued therefor, not less than one hundred dollars' worth of labor shall be performed or improvements made during each year. On all claims located prior to the tenth day of May, eighteen hundred and seventy-two, ten dollars' worth of labor shall be performed or improvements made by the tenth day of June, eighteen hundred and seventy-four, and each year thereafter, for each one hundred feet in length along the vein until a patent has been issued therefor; but where such claims are held in common, such expenditure may be made upon any one claim; and upon a failure to comply with these conditions the claim or mine upon which such failure occurred shall be open to relocation in the same manner as if no location of the same had ever been made, provided that the original locators, their heirs, assigns, or legal representatives, have not resumed work upon the claim after failure and before such location. Upon the failure of any one of several co-owners to contribute his proportion of the expenditures required hereby, the co-owners who have performed the labor or made the improvements may, at the expiration of the year, give such delinquent co-owner personal notice in writing or notice by publication in the newspaper published nearest the claim for at least once a week for ninety days, and if at the expiration of ninety days after such notice in writing or by publication such delinquent should fail or refuse to contribute his proportion of the expenditure required by this section his interest in the claim shall become the property of his co-owners who have made the required expenditures.

*Patents for
mineral lands,
how obtained.*

*10 May, 1872,
c. 152, s. 6, v. 17,
p. 92.*

Sec. 2325. ny land claimed and located for valuable deposits may be obtained in the following manner: Any person, association, or corporation authorized to locate a claim under this chapter, having claimed and located a piece of land for such purposes, who ha, or have, complied with the terms of this chapter, may file in the proper land office an application for a

patent, under oath, showing such compliance, together with a plat and field notes of the claim or claims in common, made by or under the direction of the United States surveyor-general, showing accurately the boundaries of the claim or claims, which shall be distinctly marked by monuments on the ground, and shall post a copy of such plat, together with a notice of such application for a patent, in a conspicuous place on the land embraced in such plat previous to the filing of the application for a patent, and shall file an affidavit of at least two persons that such notice has been duly posted, and shall file a copy of the notice in such land office, and shall thereupon be entitled to a patent for the land, in the manner following: The register of the land office, upon the filing of such application, plat, field notes, notices, and affidavits, shall publish a notice that such application has been made; for the period of sixty days, in a newspaper to be by him designated as published nearest to such claim; and he shall also post such notice in his office for the same period. The claimant at the time of filing this application, or at any time thereafter, within the sixty days of publication, shall file with the register a certificate of the United States surveyor-general that five hundred dollars' worth of labor has been expended or improvements made upon the claim by himself or grantors; that the plat is correct, with such further description by such reference to natural objects or permanent monuments as shall identify the claim, and furnish an accurate description to be incorporated in the patent. At the expiration of the sixty days of publication the claimant shall file his affidavit, showing that the plat and notice have been posted in a conspicuous place on the claim during such period of publication. If no adverse claim shall have been filed with the register and the receiver of the proper land office at the expiration of the sixty days of publication, it shall be assumed that the applicant is entitled to a patent, upon the payment to the proper officer of five dollars per acre, and that no adverse claim exists; and thereafter no objection from third parties to the issuance of a patent shall be heard, except it be shown that the applicant has failed to comply with the terms of this chapter.

*Adverse claim,
proceedings on.*

*10 May, 1872,
c. 152, s. 7, v. 17,
p. 93.*

· Sec. 2326. Where an adverse claim is filed during the period of publication, it shall be upon oath of the person or persons making the same, and shall show the nature, boundaries, and extent of such adverse claim, and all proceedings, except the publication of notice and making and filing of the affidavit thereof, shall be stayed until the controversy shall have been settled or decided by a court of competent jurisdiction, or the adverse claim waived. It shall be the duty of the adverse claimant, within thirty days after filing his claim, to commence proceedings in a court of competent jurisdiction, to determine the question of the right of possession, and prosecute

the same with reasonable diligence to final judgment; and a failure so to do shall be a waiver of his adverse claim. After such judgment shall have been rendered, the party entitled to the possession of the claim, or any portion thereof, may without giving further notice, file a certified copy of the judgment-roll with the register of the land office, together with the certificate of the surveyor-general that the requisite amount of labor has been expended or improvements made thereon, and the description required in other cases, and shall pay to the receiver five dollars per acre, for his claim, together with the proper fees, whereupon the whole proceedings and the judgment-roll shall be certified by the register to the Commissioner of the General Land Office, and a patent shall issue thereon for the claim, or such portion thereof as the applicant shall appear, from the decision of the court, to rightly possess. If it appears from the decision of the court that several parties are entitled to separate and different portions of the claim, each party may pay for his portion of the claim with the proper fees, and file the certificate and description by the surveyor-general, whereupon the register shall certify the proceedings and judgment-roll to the Commissioner of the General Land Office, as in the preceding case, and patents shall issue to the several parties according to their respective rights. Nothing herein contained shall be construed to prevent the alienation of a title conveyed by a patent for a mining claim to any person whatever.

*Description of
mining vein or
lode claims.*

*10 May, 1872,
c. 152, s. 8, v. 17,
p. 94.
Amended Apr. 28,
1904 (33 Stat.,
545).*

Sec. 2327. The description of vein or lode claims upon surveyed lands shall designate the location of the claims with reference to the lines of the public survey, but need not conform therewith; but where patents have been or shall be issued for claims upon unsurveyed lands, the surveyors-general, in extending the public survey, shall adjust the same to the boundaries of said patented claims so as in no case to interfere with or change the true location of such claims as they are officially established upon the ground. Where patents have issued for mineral lands, those lands only shall be segregated and shall be deemed to be patented which are bounded by the lines actually marked, defined, and established upon the ground by the monuments of the official survey upon which the patent grant is based, and surveyors-general in executing subsequent patent surveys, whether upon surveyed or unsurveyed lands, shall be governed accordingly. The said monuments shall at all times constitute the highest authority as to what land is patented, and in case of any conflict between to said monuments of such patented claims and the descriptions of said claims in the patents

*Monuments to
govern descrip-
tions.*

issued therefor the monuments on the ground shall govern, and erroneous or inconsistent descriptions or calls in the patent descriptions shall give way thereto.

Pending applica- Sec. 2328. Applications for patents for mining claims under
tions; existing former laws now pending may be prosecuted to a final decision
rights. in the General Land-Office; but in such cases where adverse
rights are not affected thereby, patents may issue in pursuance of the provisions of
this chapter; and all patents for mining claims upon veins or lodes heretofore issued
shall convey all the rights and privileges conferred by this chapter where no
adverse rights existed on the tenth day of May, eighteen hundred and seventy-two.

Conformity of Sec. 2329. Claims usually called "placers," including all
placer claims to forms of deposit, excepting veins of quartz, or other rock in
surveys, limit of. place, shall be subject to entry and patent, under like
circumstances and conditions, and upon similar proceedings,
9 July, 1870, as are provided for vein or lode claims; but where the lands
c. 235, s. 12, v. 16, have been previously surveyed by the United States, the entry
p. 217. in its exterior limits shall conform to the legal subdivisions of the public lands.

Subdivisions of Sec. 2330. Legal subdivisions of forty acres may be
ten-acre tracts; subdivided into ten-acre tracts; and two or more persons, or
maximum of placer associations of persons, having contiguous claims of any size,
locations. although such claims may be less than ten acres each, may
make joint entry thereof, but no location of a placer claim,
9 July, 1870, made after the ninth day of July, eighteen hundred and
c. 235, s. 12, v. 16, seventy, shall exceed one hundred and sixty acres for any one
p. 217. person or association of persons, which location shall conform to the United States
surveys; and nothing in this section contained shall defeat or impair any bona fide
preemption or homestead claim upon agricultural lands, or authorize the sale of the
improvements of any bona fide settler to any purchaser.

Conformity of Sec. 2331. Where placer claims are upon surveyed lands, and
placer claims to conform to legal subdivisions, no further survey or plat shall
surveys, limita- be required, and all placer-mining claims located after the
tion of claims. tenth day of May, eighteen hundred and seventy-two, shall
conform as near as practicable with the United States system
10 May, 1872, of public-land surveys, and the rectangular subdivisions of
c. 152, s. 10, v. 17, such surveys, and no such location shall include more than
p. 94. twenty acres for each individual claimant; but where placer claims can

not be conformed to legal subdivisions, survey and plat shall be made as on unsurveyed lands; and where by the segregation of mineral lands in any legal subdivision a quantity of agricultural land less than forty acres remains, such fractional portion of agricultural land may be entered by any party qualified by law, for homestead or preemption purposes.

What evidence of possession, etc., to establish a right to a patent. Sec. 2332. Where such person or association, they and their grantors, have held and worked their claims for a period equal to the time prescribed by the statute of limitations for mining claims of the State or Territory where the same may be situated, evidence of such possession and working of the claims for such period shall be sufficient to establish a right to a patent thereto under this chapter, in the absence of any adverse claim; but nothing in this chapter shall be deemed to impair any lien which may have attached in any way whatever to any mining claim or property thereto attached prior to the issuance of a patent.

9 July, 1870, c. 235, s. 13, v. 16, p. 217.

Proceedings for patent for placer claim, etc. Sec. 2333. Where the same person, association, or corporation is in possession of a placer claim, and also a vein or lode included within the boundaries thereof, application shall be made for a patent for the placer claim, with the statement that it includes such vein or lode, and in such case a patent shall issue for the placer claim, subject to the provisions of this chapter, including such vein or lode, upon the payment of five dollars per acre for such vein or lode claim and twenty-five feet of surface on each side thereof. The remainder of the placer claim or any placer claim not embracing any vein or lode claim shall be paid for at the rate of two dollars and fifty cents per acre, together with all costs of proceedings; and where a vein or lode, such as is described in section twenty-three hundred and twenty, is known to exist within the boundaries of a placer claim, an application for a patent for such placer claim which does not include an application for the vein or lode claim shall be construed as a conclusive declaration that the claimant of the placer claim has no right of possession of the vein or lode claim; but where the existence of a vein or lode in a placer claim is not known, a patent for the placer claim shall convey all valuable mineral and other deposits within the boundaries thereof.

10 May, 1872, c. 512, s. 11, v. 17, p. 94.

*Surveyor-general
to appoint sur-
veyors of mining
claims, etc.*

*10 May, 1872,
c. 152, s. 12, v. 17,
p. 95.*

Sec. 2334. The surveyor-general of the United States may appoint in each land district containing mineral lands as many competent surveyors as shall apply for appointment to survey mining claims. The expenses of the survey of vein or lode claims, and the survey and sub-division of placer claims into smaller quantities than one hundred and sixty acres, together with the cost of publication of notices, shall be paid by the applicants, and they shall be at liberty to obtain the same at the most reasonable rates, and they shall also be at liberty to employ any United States deputy surveyor to make the survey. The Commissioner of the General Land Office shall also have power to establish the maximum charges for surveys and publication of notices under this chapter and, in case of excessive charges for publication, he may designate any newspaper published in a land district where mines are situated for the publication of mining notices in such district, and fix the rates to be charged by such paper; and, to the end that the Commissioner may be fully informed on the subject, each applicant shall file with the register a sworn statement of all charges and fees paid by such applicant for publication and surveys, together with all fees and money paid the register and the receiver of the land office, which statement shall be transmitted, with the other papers in the case, to the Commissioner of the General Land Office.

*Verification of
affidavits, etc.*

*10 May, 1872,
c. 152, s. 13, v. 17,
p. 95.*

Sec. 2335. All affidavits required to be made under this chapter may be verified before any officer authorized to administer oaths within the land district where the claims may be situated, and all testimony and proofs may be taken before any such officer, and when duly certified by the officer taking the same, shall have the same force and effect as if taken before the register and receiver of the land office. In cases of contest as to the mineral or agricultural character of land, the testimony and proofs may be taken as herein provided on personal notice of at least ten days to the opposing party; or if such party can not be found, then by publication of at least once a week for thirty days in a newspaper, to be designated by the register of the land office as published nearest to the location of such land; and the register shall require proof that such notice has been given.

*Where veins
intersect, etc.*

*10 May, 1872,
c. 152, s. 14, v. 17,
p. 96.*

Sec. 2336. Where two or more veins intersect or cross each other, priority of title shall govern, and such prior location shall be entitled to all ore or mineral contained within the space of intersection; but the subsequent location shall have the right of way through the space

of intersection for the purposes of the convenient working of the mine. And where two or more veins unite, the oldest or prior location shall take the vein below the point of union, including all the space of intersection.

Patents for non-mineral lands, etc.

10 May, 1872,
c. 152, s. 15, v. 17,
p. 96.

Sec. 2337. Where nonmineral land not contiguous to the vein or lode is used or occupied by the proprietor of such vein or lode for mining or milling purposes, such nonadjacent surface ground may be embraced and included in an application for a patent for such vein or lode, and the same may be patented therewith, subject to the same preliminary requirements as to survey and notice as are applicable to veins or lodes but no location hereafter made of such nonadjacent land shall exceed five acres, and payment for the same must be made at the same rate as fixed by this chapter for the superficies of the lode. The owner of a quartz mill or reduction works, not owning a mine in connection therewith, may also receive a patent for his mill site, as provided in this section.

What conditions of sale may be made by local legislature.

26 July, 1866,
c. 262, s. 5, v. 14,
p. 252.

Sec. 2338. As a condition of sale, in the absence of necessary legislation by Congress, the local legislature of any State or Territory may provide rules for working mines, involving easements, drainage, and other necessary means to their complete development and those conditions shall be fully expressed in the patent.

Vested rights to use of water for mining, etc.; right of way for canals.

26 July, 1866,
c. 262, s. 9, v. 14,
p. 253.

Sec. 2339. Whenever, by priority of possession, rights to the use of water for mining, agricultural, manufacturing, or other purposes, have vested and accrued, and the same are recognized and acknowledged by the local customs, laws, and the decisions of courts, the possessors and owners of such vested rights shall be maintained and protected in the same; and the right of way for the construction of ditches and canals for the purposes herein specified is acknowledged and confirmed; but whenever any person, in the construction of any ditch or canal, injures or damages the possession of any settler on the public domain, the party committing such injury or damage shall be liable to the party injured for such injury or damage.

Patents, preemptions, and homesteads subject to vested and accrued water rights.

9 July, 1870,
c. 235, s. 17, v. 16,
p. 218.

Sec. 2340. All patents granted, or preemption or homesteads allowed, shall be subject to any vested and accrued water rights, or rights to ditches and reservoirs used in connection with such water rights, as may have been acquired under or recognized by the preceding section.

Mineral lands in which no valuable mines are discovered open to homesteads.

26 July, 1866,
c. 262, s. 10, v. 14,
p. 253.

Sec. 2341. Wherever, upon the lands heretofore designated as mineral lands, which have been excluded from survey and sale, there have been homesteads made by citizens of the United States, or persons who have declared their intention to become citizens, which homesteads have been made, improved, and used for agricultural purposes, and upon which there have been no valuable mines of gold, silver, cinnabar, or copper discovered, and which are properly agricultural lands, the settlers or owners of such homesteads

shall have a right of preemption thereto, and shall be entitled to purchase the same at the price of one dollar and twenty-five cents per acre, and in quantity not to exceed one hundred and sixty acres or they may avail themselves of the provisions of chapter five of this Title, relating to "Homesteads."

Mineral lands, how set apart as agricultural lands.

26 July, 1866,
c. 262, s. 11, v. 14,
p. 253.

Sec. 2342. Upon the survey of the lands described in the preceding section, the Secretary of the Interior may designate and set apart such portions of the same as are clearly agricultural lands, which lands shall thereafter be subject to preemption and sale as other public lands, and be subject to all the laws and regulations applicable to the same.

Additional land districts and officers, power of the President to provide.

26 July, 1866,
c. 262, s. 7, v. 14,
p. 252.

Sec. 2343. The President is authorized to establish additional land districts, and to appoint the necessary officers under existing laws, wherever he may deem the same necessary for the public convenience in executing the provisions of this chapter.

Provisions of this chapter not to affect certain rights.

10 May, 1872,
c. 152, s. 16, v. 17,
p. 96.
9 July, 1870,
c. 235, s. 17, v. 16,
p. 218.

Sec. 2344. Nothing contained in this chapter shall be construed to impair, in any way, rights or interests in mining property acquired under existing laws; nor to affect the provisions of the act entitled, "An act granting to A. Sutro the right of way and other privileges to aid in the construction of a draining and exploring tunnel to the Comstock lode, in the State of Nevada," approved July twenty-five, eighteen hundred and sixty-six.

Mineral lands in certain States excepted Sec. 2345. The provisions of the preceding sections of this chapter shall not apply to the mineral lands situated in the States of Michigan, Wisconsin, and Minnesota, which are declared free and open to exploration and purchase, according to legal subdivisions, in like manner as before the tenth day of May, eighteen hundred and seventy-two. And any bona fide entries of such lands within the States named since the tenth day of May, eighteen hundred and seventy-two, may be patented without reference to any of the foregoing provisions of this chapter. Such lands shall be offered for public sale in the same manner, at the same minimum price, and under the same rights of preemption as other public lands.

18 Feb., 1873, c. 159, v. 17, p. 465.

Grant of lands to States or corporations not to include mineral lands. Sec. 2346. No act passed at the first session of the Thirty-eighth Congress, granting lands to States or corporations to aid in the construction of roads or for other purposes, or to extend the time of grants made prior to the thirtieth day of January, eighteen hundred and sixty-five, shall be so construed as to embrace mineral lands, which in all cases are reserved exclusively to the United States, unless otherwise specially provided in the act or acts making the grant.

30 Jan., 1865, Res. No. 10, v. 13, p. 567.

NOTE: In addition to the basic Federal law, quoted above, Land Office Circular 430 contains numerous supplementary acts, resolutions; citations and instructions, of general or special import. Regulations under the mining law are also included. Both statutes and regulations may be modified from time to time, and copies of laws and regulations in force at any time may be obtained from the proper offices of the Federal government.

LEASING ACT OF FEBRUARY 25, 1920
AN ACT TO PROMOTE THE MINING OF COAL, PHOSPHATE, OIL,
OIL SHALE, GAS AND SODIUM ON THE PUBLIC DOMAIN

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LEASES AND PROSPECTING PERMITS

1. GENERAL PROVISIONS

Lands subject to disposition; right to extract helium reserved; persons not entitled to benefits.

Sec. 181.-Deposits of coal, phosphate, sodium, potassium, oil, oil shale, or gas, and lands containing such deposits owned by the United States, including those in national forests, but excluding lands acquired under §§ 513 to 519 of Title 16, known as the Appalachian Forest Act, and those in national parks, and in lands withdrawn or reserved for military or naval uses or purposes, except as hereinafter provided, shall be subject to disposition in the form and manner provided by §§ 181 to 194, 201 to 208, 211 to 214, 221, 223 to 229, 241, 251, and 261 to 263 of this title, to citizens of the United States, or to any association of such persons, or to any corporation organized under the laws of the United States, or of any State or Territory thereof, and in the case of coal, oil, oil shale, or gas, to municipalities. The United States reserves the right to extract helium from all gas produced from lands permitted, leased, or otherwise granted under the provisions of the sections hereinbefore enumerated, under such rules and regulations as shall be prescribed by the Secretary of the Interior. 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. 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 said sections. (Feb. 25, 1920, c. 85, § 1, 41 Stat. 437.)

Lands disposed of with reservation of deposits of coal, and so forth.

Sec. 182.-The provisions of §§ 181 to 194, 201 to 208, 211 to 214, 221, 223 to 229, 241, 251, and 261 to 263 of this title, shall also apply to all deposits of coal, phosphate, sodium, oil, oil shale, or gas in the lands of the United States, which lands may have been or may be disposed of under laws reserving to the United States

such deposits, with the right to prospect for, mine, and remove the same, subject to such conditions as are or may hereafter be provided by such laws reserving such deposits. (Feb. 25, 1920, c. 85, § 34, 41 Stat. 450.)

Cancellation of prospecting permits.

Sec. 183.-The Secretary of the Interior shall reserve and may exercise the authority to cancel any prospecting permit upon failure by the permittee to exercise due diligence in the prosecution of the prospecting work in accordance with the terms and conditions stated in the permit, and shall insert in every such permit issued under the provisions of §§ 181 to 194, 201 to 208, 211 to 214, 221, 223 to 229, 241, 251, and 261 to 263 of this title appropriate provisions for its cancellation by him. (Feb. 25, 1920, c. 85, § 26, 41 Stat. 448.)

Limitation on number of leases to one person; combinations or unlawful trusts.

Sec. 184.-No person, association, or corporation, except as herein provided, shall take or hold coal, phosphate, or sodium leases or permits, during the life of such leases or permits in any one State exceeding in aggregate acreage, two thousand five hundred and sixty acres for each of said minerals; no person, association, or corporation shall take or hold at one time, oil or gas leases or permits exceeding in the aggregate, seven thousand six hundred and eighty acres granted hereunder in any one State, and not more than two thousand five hundred and sixty acres within the geologic structure of the same producing oil or gas field; and no person, association, or corporation shall take or hold at one time any interest or interests as a member of an association or associations or as a stockholder of a corporation or corporations holding a lease or leases, permit or permits, under the provisions hereof, which, together with the area embraced in any direct holding of a lease, permit or permits, under this subchapter, or which, together with any other interest or interests, as a member of an association or associations or as a stockholder of a corporation or corporations holding a lease or leases, permit or permits, under the provisions hereof for any kind of mineral leases hereunder, exceeds in the aggregate an amount equivalent to the maximum number of acres of the respective kinds of minerals allowed to any one lessee or permittee under this subchapter. Any interests held in violation of this subchapter shall be forfeited to the United States by appropriate proceedings instituted by the Attorney General for that purpose in the United States district court for the district in which the property, or some part thereof, is located, except that any ownership or interest forbidden in this subchapter which may be acquired by descent, will, judgment, or decree may be held for two years and not longer after its acquisition: *Provided*, That nothing herein contained

shall be construed to limit § 227, 228, and 251 of this title or to prevent any number of lessees under the provisions of this sub-chapter from combining their several interests so far as may be necessary for the purposes of constructing and carrying on the business of a refinery, or of establishing and constructing as a common carrier a pipe line or lines of railroads to be operated and used by them jointly, in the transportation of oil from their several wells, or from the wells of other lessees under this sub-chapter, or the transportation of coal or to increase the acreage which may be acquired or held under § 226 of this title: *Provided further*, That any combination for such purpose or purposes shall be subject to the approval of the Secretary of the Interior on application to him for permission to form the same: *And provided further*, That for the purpose of more properly conserving the natural resources of any single oil or gas pool or field, permittees and lessees thereof and their representatives may unite with each other or jointly or separately with others in collectively adopting and operating under a cooperative or unit plan of development or operation of said pool or field, whenever determined and certified by the Secretary of the Interior to be necessary or advisable in the public interest, and the Secretary of the Interior is thereunto authorized in his discretion, with the consent of the holders of leases or permits involved, to establish, alter, change, or revoke drilling, producing, and royalty requirements of such leases or permits, and to make such regulations with reference to such leases and permits with like consent on the part of the lessee or lessees and permittees in connection with the institution and operation of any such cooperative or unit plan as he may deem necessary or proper to secure the proper protection of such public interest: *And provided further*, That when any permit has been determined to be wholly or in part within the limits of a producing oil or gas field which permit has been included, with the approval of the Secretary of the Interior, in a unit operating agreement or other plan under this subchapter the Secretary of the Interior may issue a lease for the area of the permit so included in said plan without further proof of discovery : *Provided further*, That the Secretary of the Interior is hereby authorized, on such conditions as he may prescribe, to approve operating, drilling, or development contracts made by one or more permittees or lessees in oil or gas leases or permits, with one or more persons, associations, or corporations, whenever in his discretion and regardless of acreage limitations, provided for in this subchapter, the conservation of natural products or the public convenience or necessity may require it or the interests of the United States may be best subserved thereby: *And provided further*, That except as herein provided, if any of the lands or deposits, leased under the provisions of this subchapter shall be subleased, trustee, possessed, or controlled by any device permanently, temporarily, directly, tacitly, or in any

manner whatsoever, so that they form a part of or are in anywise controlled by any combination in the form of an unlawful trust, with consent of lessee, or form the subject of any contract or conspiracy in restraint of trade in the mining or selling of coal, phosphate, oil, oil shale, gas, or sodium entered into by the lessee, or any agreement or understanding, written, verbal, or otherwise, to which such lessee shall be a party, of which his or its output is to be or become the subject, to control the price or prices thereof or of any holding of such lands by any individual, partnership, association, corporation, or control in excess of the amounts of lands provided in this subchapter, the lease thereof shall be forfeited by appropriate court proceedings: *And provided further*, That nothing in this subchapter shall be construed as affecting existing leases within the borders of the naval petroleum reserves or agreements concerning operations thereunder or in relation to the same, but the Secretary of the Navy is hereby authorized, with the consent of the President, to enter into agreements such as those provided for herein, which agreements shall not, unless expressed therein, operate to extend the term of any lease affected thereby. (As amended Apr. 30, 1926, c. 197, 44 Stat. 373; July 3, 1930, c. 854, § 1, 46 Stat. 1007; Mar. 4, 1931, c. 506, 46 Stat. 1524.)

Rights of Way for Pipe Lines.

Sec. 185.-Rights-of-way through the public lands, including the forest reserves of the United States, may be granted by the Secretary of the Interior for pipe-line purposes for the transportation of oil or natural gas to any applicant possessing the qualifications provided in § 181 of this title, to the extent of the ground occupied by the said pipe line and twenty-five feet on each side of the same under such regulations and conditions as to survey, location, application, and use as may be prescribed by the Secretary of the Interior and upon the express condition that such pipe lines shall be constructed, operated and maintained as common carriers and shall accept, convey, transport, or purchase without discrimination, oil or natural gas produced from Government lands in the vicinity of the pipe line in such proportionate amounts as the Secretary of the Interior may, after a full hearing with due notice thereof to the interested parties and a proper finding of facts, determine to be reasonable: *Provided*, That the Government shall in express terms reserve and shall provide in every lease of oil lands under §§ 181 to 194, 201 to 208, 211 to 214, 221, 223 to 229, 241, 251 and 261 to 263 of this title that the lessee, assignee, or beneficiary, if owner, or operator or owner of a controlling interest in any pipe line or of any company operating the same which may be operated accessible to the oil derived from lands under such lease, shall at reasonable rates and without discrimination accept and convey the oil of the Government or of any citizen or company not the owner of any pipe line, operating a

lease or purchasing gas or oil under the provisions of §§ 181 to 194, 201 to 208, 211 to 214, 221, 223 to 229, 241, 251 and 261 to 263 of this title: *Provided further*, That no right-of-way shall hereafter be granted over said lands for the transportation of oil or natural gas except under and subject to the provisions, limitations, and conditions of this section. Failure to comply with the provisions of this section or the regulations and conditions pre-scribed by the Secretary of the Interior shall be ground for forfeiture of the grant by the United States district court for the district in which the property, or some part thereof, is located in an appropriate proceeding. (As amended Aug. 21, 1935, c. 599, § 1, 49 Stat. 678.)

Reservation of easements or rights of way for working purposes; reservation of right to sell or lease surface of lands.

Sec. 186.-Any permit, lease, occupation, or use permitted under §§ 181 to 194, 201 to 208, 211 to 214, 221, 223 to 229, 241, 251, and 261 to 263 of this title shall reserve to the Secretary of the Interior the right to permit upon such terms as he may determine to be just, for joint or several use, such easements or rights of way, including easements in tunnels upon, through, or in the lands leased, occupied, or used as may be necessary or appropriate to the working of the same, or of other lands containing the deposits described in the sections hereinbefore enumerated, and the treatment and shipment of the products thereof by or under authority of the Government, its lessees, or permittees, and for other public purposes. The Secretary of the Interior, in his discretion, in making any lease under the sections hereinbefore enumerated, may reserve to the United States the right to lease, sell, or otherwise dispose of the surface of the lands embraced within such lease under existing law or laws hereafter enacted, in so far as said surface is not necessary for use of the lessee in extracting and removing the deposits therein. If such reservation is made it shall be so determined before the offering of such lease. The said Secretary, during the life of the lease, is authorized to issue such permits for easements herein provided to be reserved. (Feb. 25, 1920, c. 85, § 29, 41 Stat. 449.)

Assignment or subletting of leases; relinquishment of rights under leases; conditions in leases as to operation of mines, wells, and so forth.

Sec. 187.-No lease issued under the authority of §§ 181 to 194, 201 to 208, 211 to 214, 221, 223 to 229, 241, 251, and 261 to 263 of this title shall be assigned or sublet, except with the consent of the Secretary of the Interior. The lessee may, in the discretion of the Secretary of the Interior, be permitted at any time to make written relinquishment of all rights under such a lease, and upon acceptance thereof be thereby relieved of all future obligations under said lease, and may with like consent

surrender any legal subdivision of the area included within the lease. Each lease shall contain provisions for the purpose of insuring the exercise of reasonable diligence, skill, and care in the operation of said property; a provision that such rules for the safety and welfare of the miners and for the prevention of undue waste as may be prescribed by said Secretary shall be observed, including a restriction of the workday to not exceeding eight hours in any one day for underground workers except in cases of emergency; provisions prohibiting the employment of any boy under the age of sixteen or the employment of any girl or woman without regard to age, in any mine below the surface; provisions securing the workmen complete freedom of purchase provision requiring the payment of wages at least twice a month in lawful money of the United States, and providing proper rules and regulations to insure the fair and just weighing or measurement of the coal mined by each miner, and such other provisions as he may deem necessary to insure the sale of the production of such leased lands to the United States and to the public at reasonable prices, for the protection of the interests of the United States, for the prevention of monopoly, and for the safeguarding of the public welfare. None of such provisions shall be in conflict with the laws of the State in which the leased property is situated. (Feb. 25, 1920, c. 85, § 30, 41 Stat. 449.)

Forfeiture or cancellation of leases.

Sec. 188.-Any lease issued under the provisions of §§ 181 to 194, 201 to 208, 211 to 214, 221, 223 to 229, 241, 251, and 261 to 263 of this title may be forfeited and canceled by an appropriate proceeding in the United States district court for the district in which the property, or some part thereof, is located whenever the lessee fails to comply with any of the provisions of said sections, of the lease, or of the general regulations promulgated under said sections and in force at the date of the lease and the lease may provide for resort to appropriate methods for the settlement of disputes or for remedies for breach of specified conditions thereof. (Feb. 25, 1920, c. 85, § 31, 41 Stat. 450.)

Rules and Regulations; rights of States not affected.

Sec. 189.-The Secretary of the Interior is authorized to prescribe necessary and proper rules and regulations and to do any and all things necessary to carry out and accomplish the purposes of §§ 181 to 194, 201 to 208, 211 to 214, 221, 223 to 229, 241, 251, and 261 to 263 of this title, also to fix and determine the boundary lines of any structure, or oil or gas field, for the purposes thereof. Nothing in said sections all be construed or held to affect the rights of the States or other local authority to exercise any rights which they may have, including the right to levy and collect taxes upon improvements, output of mines, or other rights, property, or

assets of any lessee of the United States. (Feb. 25, 1920, c. 85, § 32, 41 Stat. 450.)

Oaths required, when.

Sec. 190.-All statements, representations, or reports required by the Secretary of the Interior under §§ 181 to 194, 201 to 208, 211 to 214, 221, 223 to 229, 241, 251, and 261 to 263 of this title shall be upon oath, unless otherwise specified by him, and in such form and upon such blanks as the Secretary of the Interior may require. (Feb. 25, 1920, c. 85, § 33, 41 Stat. 450.)

Disposition of moneys received.

Sec. 191.-Ten per centum of all money received from sales, bonuses, royalties, and rentals under the provisions of §§ 181 to 194, 201 to 208, 211 to 214, 221, 223 to* 229, 241, 251, and 261 to 263 of this title, excepting those from Alaska, shall be paid into the Treasury of the United States and credited to miscellaneous receipts; for production prior to February 25, 1920, 70 per centum, and for production thereafter 52½ per centum of the amounts derived from such bonuses, royalties, and rentals shall be paid into, reserved, and appropriated as a part of the reclamation fund created by §§ 372, 373, 381, 383, 391, 392, 411, 416, 419, 421, 431, 432, 434, 439, 461, 476, 491, and 498 of Title 43, and for production prior to such date 20 per centum, and for production thereafter 37½ per centum of the amounts derived from such bonuses, royalties, and rentals shall be paid by the Secretary of the Treasury after the expiration of each fiscal 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. All moneys which may accrue to the United States hereunder from lands within the naval petroleum reserves shall be deposited in the Treasury as "miscellaneous receipts." (Feb. 25, 1920, c. 85, § 35, 41 Stat. 450.)

Payment of royalties in oil or gas; sale of such oil or gas.

Sec. 192.-All royalty accruing to the United States under any oil or gas lease or permit under §§ 181 to 194, 201 to 208, 211 to 214, 221, 223 to 229, 241, 251, and 261 to 263 of this title on demand of the Secretary of the Interior shall be paid in oil or gas. Upon granting any oil or gas lease, and from time to time thereafter during said lease, the Secretary of the Interior shall, except whenever in his judgment it is desirable to retain the same for the use of the United States, offer for sale for such period as he may determine, upon notice and advertisement on sealed bids or at public auction, all royalty oil and gas accruing or reserved to the United States under such lease. Such advertise-

ment and sale shall reserve to the Secretary of the Interior the right to reject all bids whenever within his judgment the interest of the United States demands; and in cases where no satisfactory bid is received or where the accepted bidder fails to complete the purchase, or where the Secretary of the Interior shall determine that it is unwise in the public interest to accept the offer of the highest bidder, the Secretary of the Interior, within his discretion, may readvertise such royalty for sale, or sell at private sale at not less than the market price for such period, or accept the value thereof from the lessee. Pending the making of a permanent contract for the sale of any royalty, oil or gas as herein provided, the Secretary of the Interior may sell the current product at private sale, at not less than the market price. Any royalty, oil, or gas may be sold at not less than the market price at private sale to any department or agency of the United States. (Feb. 25, 1920, c. 85, § 36, 41 Stat. 451.)

Disposition of deposits of coal, and so forth, in Wyoming.

Sec. 193.-The deposits of coal, phosphate, sodium, potassium, oil, oil shale, and gas, herein referred to, in lands valuable for such minerals, including lands and deposits in Lander, Wyoming, coal entries numbered 18 to 49, inclusive, shall be subject to disposition only in the form and manner provided in §§ 181 to 194, 201 to 208, 211 to 214, 221, 223 to 229, 241, 251, and 261 to 263 of this title, except as to valid claims existent on February 25, 1920, and thereafter maintained in compliance with the laws under which initiated, which claims may be perfected under such laws, including discovery. (As amended Feb. 7, 1927, c. 66, § 5, 44 Stat. 1058.)

Fees and commissions of registers.

Sec. 194.-Until otherwise provided, the Secretary of the Interior shall be authorized to prescribe fees and commissions to be paid registers of the United States land offices. on account of business transacted under the provisions of §§ 181 to 194, 201 to 208, 211 to 214, 221, 223 to 229, 241, 251, and 261 to 263 of this title. (Feb. 25, 1920, c. 85, § 38, 41 Stat. 451; Mar. 3, 1925, c. 462, 43 Stat. 1145.)

2. COAL

Division of land into leasing tracts; offer and award of leases; prospecting permits; notice of proposed lease.

Sec. 201.-The Secretary of the Interior is authorized to, and upon the petition of any qualified applicant shall, divide any of the coal lands or the deposits of coal, classified and unclassified, owned by the United States, outside of the Territory of Alaska, into leasing tracts of forty acres each, or multiples thereof, and in such form as, in the opinion of the Secretary of the Interior, will permit the most economical mining of the coal in such tracts,

but in no case exceeding two thousand five hundred and sixty acres in any one leasing tract, and thereafter the Secretary of the Interior 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. 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 §§ 181 to 194, 201 to 208, 211 to 214, 221, 223 to 229, 241, 251, and 261 to 263 of this title, prospecting permits for a term of two years, for not exceeding two thousand five hundred and sixty 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 hereunder for all or part of the land in his permit. No lease of coal hereunder shall be approved or issued until after notice of the proposed lease, or offering for lease, has been given for thirty days in a newspaper of general circulation in the county in which the lands or deposits are situated. (Feb. 25, 1920, c. 85, § 2, 41 Stat. 438.)

Common carriers; limitations of lease or permit.

Sec. 202.-No company or corporation operating a common carrier railroad shall be given or hold a permit or lease under the provisions of this subchapter 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 more than one permit or lease for each two hundred miles of its railroad line within the State in which said property is situated, 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 section shall preclude such a railroad of less than two hundred miles in length from securing one permit or lease hereunder. (Feb. 25, 1920, c. 85, § 2, 41 Stat. 438.)

Inclusion of additional lands in lease.

Sec. 203.-Any person, association, or corporation holding a lease of coal lands or coal deposits under this subchapter 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. (Feb. 25, 1920, c. 85, § 3, 41 Stat. 439.)

Same; upon showing probability of exhaustion.

Sec. 204.-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. (Feb. 25, 1920, c. 85, § 4, 41 Stat. 439.)

Consolidation of leases.

Sec. 205.-If, in the judgment of the Secretary of the Interior, the public interest will be subserved thereby, lessees holding under lease areas not exceeding the maximum permitted may consolidate their leases through the surrender of the original leases and the inclusion of such areas in a new lease of not to exceed two thousand five hundred and sixty acres of contiguous lands. (Feb. 25, 1920, c. 85, § 5, 41 Stat. 439.)

Noncontiguous tracts in single lease.

Sec. 206.-Where coal or phosphate lands aggregating two thousand five hundred and sixty acres and subject to lease hereunder do not exist as contiguous areas, the Secretary of the Interior is authorized, if, in his opinion the interests of the public and of the lessee will be thereby subserved, to embrace in a single lease noncontiguous tracts which can be operated as a single mine or unit. (Feb. 25, 1920, c. 85, § 6, 41 Stat. 439.)

Royalties; annual rentals; term of leases, development and operation.

Sec. 207.—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 there-

after, 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. (Feb. 25, 1920, c. 85, § 7, 41 Stat. 439.)

Permits to take coal for local domestic needs.

Sec. 208.-In order to provide for the supply of strictly local domestic needs for fuel, the Secretary of the Interior may, under such rules and regulations as he may prescribe in advance, issue limited licenses or permits to individuals or associations of individuals to prospect for, mine, and take for their use but not for sale, coal from the public lands without payment of royalty for the coal mined or the land occupied, on such conditions not inconsistent with §§ 181 to 194, 201 to 208, 211 to 214, 221, 223 to 229, 241, 251, and 261 to 263 of this title, as in his opinion will safeguard the public interests. This privilege shall not extend to any corporations. In the case of municipal corporations the Secretary of the Interior may issue such limited license or permit, for not to exceed three hundred and twenty acres for a municipality of less than one hundred thousand population, and not to exceed one thousand two hundred and eighty acres for a municipality of not less than one hundred thousand and not more than one hundred and fifty thousand population; and not to exceed two thousand five hundred and sixty acres for a municipality of one hundred and fifty thousand population or more, the land to be selected within the State wherein the municipal applicant may be located, upon condition that such municipal corporation will mine the coal therein under proper conditions and dispose of the same without profit to residents of such municipality for household use: *Provided*, That the acquisition or holding of a lease under

§§ 181, 201 and 202 to 207 of this title shall be no bar to the holding of such tract or operation of such mine under said limited license. (Feb. 25, 1920, c. 85, § 8, 41 Stat. 440.)

Suspension of rental and extension of lease on suspension of operations and production.

Sec. 209.-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 of coal, oil, and/or gas under any lease granted under the terms of §§ 201 to 208, 221, and 223 to 229 of this title, any payment of acreage rental 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: *Provided*, That nothing in this section shall be construed as affecting existing leases within the borders of the naval petroleum reserves and naval oil-shale reserves. (Feb. 25, 1920, c. 85, § 39, as added Feb. 9, 1933, c. 45, 47 Stat. 798.)

3. PHOSPHATES

Authority to lease lands.

Sec. 211.-The Secretary of the Interior is authorized to lease to any applicant qualified under §§ 181 to 194, 201 to 208, 211 to 214, 221, 223 to 229, 241, 251, and 261 to 263 of this title any lands belonging to the United States containing deposits of phosphates, under such restrictions and upon such terms as are herein specified, through advertisement, competitive bidding, or such other methods as the Secretary of the Interior may by general regulation adopt. (Feb. 25, 1920, c. 85, § 9, 41 Stat. 440.)

Amount of land included in lease; surveys.

Sec. 212.-Each lease shall be for not to exceed two thousand five hundred and sixty acres of land to be described by the legal subdivisions of the public land surveys, if surveyed; if unsurveyed, to be surveyed by the Government at the expense of the applicant for lease, in accordance with rules and regulations prescribed by the Secretary of the Interior and the lands leased shall be conformed to and taken in accordance with the legal subdivisions of such survey; deposits made to cover expense of surveys shall be deemed appropriated for that purpose; and any excess deposits shall be repaid to the person, association, or corporation making such deposits or their legal representatives. The land embraced in any one lease shall be in compact form, the length of which shall not exceed two and one-half times its width. (Feb. 25, 1920, c. 85, § 10, 41 Stat. 440.)

Royalties; annual rentals; term of leases; operation.

Sec. 213.-For the privilege of mining or extracting the phosphates or phosphate rock 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 by the Secretary of the Interior in advance of offering the same, which shall not be less than 2 per centum of the gross value of the output of phosphates or phosphate rock at the mine, due and payable at the end of each third month succeeding that of the sale or other disposition of the phosphates or phosphate rock, and an annual rental payable at the date of such lease and annually thereafter on the area covered by such lease at such rate as may be fixed by the Secretary of the Interior prior to offering the lease, which shall be not less than 25 cents per acre for the first year thereafter, 50 cents per acre for the second, third, fourth, and fifth years, respectively and \$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 a minimum annual production, except when 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 shall be made as the Secretary of the Interior shall determine unless otherwise provided by law at the time of the expiration of such periods. The Secretary of the Interior may permit suspension of operation under such lease for not exceeding twelve months at any one time when market conditions are such that the lease cannot be operated except at a loss. (Feb. 25, 1920, c. 85, § 11, 41 Stat. 440.)

Use of surface of other lands.

Sec. 214. Any qualified applicant to whom the Secretary of the Interior may grant a lease to develop and extract phosphates, or phosphate rock, under the provisions of this subchapter shall have the right to use so much of the surface of unappropriated and unentered lands, not exceeding forty acres, as may be determined by the Secretary of the Interior to be necessary for the proper prospecting for or development, extraction, treatment, and removal of such mineral deposits. (Feb. 25, 1920, c. 85, § 12, 41 Stat. 441.)

4. OIL AND GAS

Prospecting permits; terms and conditions, extension; location of lands; marking land; notice of application for permit; permits in Alaska, exchanging permits for leases.

Sec. 221.-The Secretary of the Interior is authorized and directed, under such necessary and proper rules and regulations as he may prescribe, to grant to any applicant qualified under §§ 181 to 194, 201 to 208, 211 to 214, 221, 223 to 229, 241, 256 and 261 to 263 of this title, a prospecting permit, which shall give the exclusive right, for a period not exceeding two years, to prospect

for oil or gas upon not to exceed two thousand five hundred and sixty acres of land wherein such deposits belong to the United States and are not within any known geological structure of a producing oil or gas field upon condition that the permittee shall begin drilling operations within six months from the date of the permit, and shall, within one year from and after the date of permit, drill one or more wells for oil or gas to a depth of not less than five hundred feet each, unless valuable deposits of oil or gas shall be sooner discovered, and shall, within two years from date of the permit, drill for oil or gas to an aggregate depth of not less than two thousand feet unless valuable deposits of oil or gas shall be sooner discovered: Provided, That said application was filed ninety days prior to August 21, 1935. It being the intention of Congress that there shall be no discrimination as between applicants for prospecting permits, the Secretary of the Interior is directed, in every case where one or more permits have been issued, to issue permits to all other applicants for prospecting permits on the same structure, even though one or more of the permittees has developed the said structure into a producing oil or gas field, if said application for permit was filed prior to the development of such structure into a producing oil or gas field, and said applicant has otherwise complied with the law: Provided further, That when such permit is issued upon any structure after discovery, the royalty to be paid upon the preferential lease provided for in § 223 of this title shall be 10 per centum in amount or value of the production and the annual payment of a rental as provided in said § 223. No prospecting permit shall be granted upon any application filed after ninety days prior to August 21, 1935. The Secretary of the Interior may, if he shall find that the permittee has been unable with the exercise of diligence to test the land in the time granted by the permit, extend any such permit for such time, not exceeding two years, and upon such conditions as he shall prescribe: Provided, That all permits out-standing on August 21, 1935, which on said date were not subject to cancellation for violation of the law or operating regulations and which have theretofore been extended by the Secretary of the Interior, shall be extended until December 31, 1937, subject to the applicable conditions of such prior extensions: Provided further, That the Secretary of the Interior is authorized to extend for an additional period of not to exceed one year any permit on which diligence has been exercised or on which drilling or prospecting has been suspended at the direction of the Secretary during the extension period hereby granted, but no extension of any permit beyond December 31, 1938, shall be granted under authority of §§ 181 to 194, 201 to 208, 211 to 214, 221, 223 to 229, 241, 256 and 261 to 263 of this title, or any other Act. Whether the lands sought in any such application and permit are surveyed or unsurveyed the applicant shall, prior to filing his application for permit, locate such lands in a reasonably com-

pact form and according to the legal subdivisions of the public land surveys if the land be surveyed; and in an approximately square or rectangular tract if the land be an unsurveyed tract, the length of which shall not exceed two and one-half times its width, and if he shall cause to be erected upon the land for which a permit is sought a monument not less than four feet high, at some conspicuous place thereon, and shall post a notice in writing on or near said monument, stating that an application for permit will be made within thirty days after date of posting said notice, the name of the applicant, the date of the notice, and such a general description of the land to be covered by such permit by reference to courses and distances from such monument and such other natural objects and permanent monuments as will reasonably identify the land, stating the amount thereof in acres, he shall during the period of thirty days following such marking and posting, be entitled to a preference right over others to a permit for the land so identified. The applicant shall, within ninety days after receiving a permit, mark each of the corners of the tract described in the permit upon the ground with substantial monuments, so that the boundaries can be readily traced on the ground, and shall post in a conspicuous place upon the lands a notice that such permit has been granted and a description of the lands covered thereby: Provided further, That in the Territory of Alaska prospecting permits not more than five in number may be granted to any qualified applicant for periods not exceeding four years, actual drilling operations shall begin within two years from date of permit, and oil and gas wells shall be drilled to a depth of not less than five hundred feet, unless valuable deposits of oil or gas shall be sooner discovered, within three years from date of the permit and to an aggregate depth of not less than two thousand feet unless valuable deposits of oil or gas shall be sooner discovered, within four years from date of permit: Provided further, That in said Territory the applicant shall have a preference right over others to a permit for land identified by temporary monuments and notice posted on or near the same for six months following such marking and posting, and upon receiving a permit he shall mark the corners of the tract described in the permit upon the ground with substantial monuments within one year after receiving such permit: Provided further, That any person holding a permit to prospect for oil or gas which shall not be subject to cancellation for violation of the law or operating regulations or which shall have been extended under the authority of §§ 181 to 194, 201 to 208, 211 to 214, 221, 223 to 229, 241, 256 and 261 to 263 of this title or any other Act, in force on or after August 21, 1935, or for which timely and acceptable application for extension shall have been filed prior to said date, shall have the right prior to the termination of such permit to exchange the same for a lease to the area described in the permit without proof of discovery, at a royalty of not less than 12½ per centum or

value of the production, to be determined by the Secretary of the Interior by general rule and under such other conditions as are fixed in § 226 of this title: Provided further, That no such lease shall be subject to the acreage limitations of § 184 of this title, until one year after the discovery of valuable deposits of oil or gas thereon: Provided further, That any application for any prospecting permit filed after ninety days prior to August 21, 1935, shall be considered as an application for lease under § 226 of this title: And provided further, That upon leases so granted in lieu of existing permits or granted to applicants for permits, no rentals shall be payable for the first two lease years, unless valuable deposits of oil or gas are sooner discovered within the boundaries of such lease. (As amended Aug. 21, 1935, c. 599, § 1, 49 Stat. 674.)

Same; extension of time for beginning drilling, and so forth.

Sec. 222.-The Secretary of the Interior may, if he shall find that any oil or gas permittee has been unable, with the exercise of diligence, to begin drilling operations or to drill wells of the depth and within the time prescribed by § 221 of this title, extend the time for beginning such drilling or completing it, to the amount specified in such section for such time, not exceeding three years, and upon such conditions as he shall prescribe. (Jan. 11, 1922, c. 28, 42 Stat. 356.)

Final extension of oil and gas permits.

Sec. 222i.-Oil and gas prospecting permits issued under authority of an Act entitled "An Act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain," approved February 25, 1920, as amended, outstanding on December 31, 1937 (a) which have been committed in whole or in part to a cooperative or unit plan of development and operation that on December 31, 1937, has been approved or prescribed by the Secretary of the Interior, or is in process of revision or reconsideration pursuant to prior review, without rejection, in the Department of the Interior; or (b) which, together with one or more other permits, have been committed in whole or in part to a cooperative or unit plan of development and operation for the whole of any single oil or gas pool or field (or reasonably compact area) that was filed before January 1, 1937, and rejected pursuant to instructions of said Secretary ; or (c) under which approved drilling was actively in progress at some time within the calendar year 1937; or (d) under which at least one well shall have been drilled to a depth of not less than two thousand feet subsequent to August 21, 1935, and prior to January 1, 1939, or (e) which have been issued subsequent to August 21, 1935, and for which timely compliance has been made with the drilling requirements of § 221 of this title, to the extent required by December 31, 1937, or, in the absence of such timely drilling, for which an acceptable coop-

erative or unit plan of development and operation has been filed on or before said date are all hereby extended to December 31, 1939, the provisions of any other Act or Acts to the contrary notwithstanding, subject, however, to the applicable conditions of the permits and of unfulfilled conditions of any prior extensions. All oil and gas prospecting permits shall cease and terminate without notice of cancellation on the final date of their current term, including any extension herein granted, and no extension of any permit beyond December 31, 1939, shall be granted under the authority of this section or any other Act. (Aug. 26, 1937, c. 828, 50 Stat. 842, as amended Aug. 11, 1939, c. 716, 53 Stat. 1418.)

Leases; amount and survey of land; term of lease; royalties and annual rental.

Sec. 223.-Upon establishing to the satisfaction of the Secretary of the Interior that valuable deposits of oil or gas have been discovered within the limits of the land embraced in any permit, the permittee shall be entitled to a lease for one-fourth of the land embraced in the prospecting permit: *Provided*, That the permittee shall be granted a lease for as much as one hundred and sixty acres of said lands, if there be that number of acres within the permit. The area to be selected by the permittee shall be in compact form and; if surveyed, to be described by the legal subdivisions of the public-land surveys; if unsurveyed, to be surveyed by the Government at the expense of the applicant for lease in accordance with rules and regulations to be prescribed by the Secretary of the Interior, and the lands leased shall be conformed to and taken in accordance with the legal subdivisions of such surveys; deposits made to cover expense of surveys shall be deemed appropriated for that purpose, and any excess deposits may be repaid to the person or persons making such deposit or their legal representatives. Such leases shall be for a term of twenty years upon a royalty of 5 per centum in amount or value of the production and the annual payment in advance of a rental of \$1 per acre, the rental paid for any one year to be credited against the royalties as they accrue for that year, and shall continue in force otherwise as prescribed in § 226 of this title for leases issued prior to August 21, 1935. The permittee shall also be entitled to a preference right to a lease for the remainder of the land in his prospecting permit at a royalty of not less than 12½ per centum. in amount or value of the production nor more than the royalty rate prescribed by regulation in force on January 1, 1935, for secondary leases issued under this section, and under such other conditions as are fixed for oil or gas leases issued under § 226 of this title the royalty to be determined by competitive bidding or fixed by such other method as the Secretary may by regulations prescribe: *Provided further*, That the Secretary shall have the right to reject any or all bids. (As amended Aug. 21, 1935, c. 599, § 1, 49 Stat. 676.)

New leases in lieu of old; terms and conditions.

Sec. 223a.- (a) The Secretary of the Interior is authorized to issue new leases to lessees holding oil or gas leases under any of the provisions of §§ 181 to 194, 201 to 208, 211 to 214, 221, 223 to 229, 241, 251, and 261 to 263 of this title on August 21, 1935, such new leases to be in lieu of the leases then held by such lessees and to be at a royalty rate of not less than 12½ per centum in amount or value of the production and upon such other terms and conditions as the Secretary of the Interior shall by general rule prescribe: *Provided*, That no limitation of acreage not provided for under the law or regulations under which any such old lease was issued shall be applicable to any such new lease.

(b) Nothing contained in this amendatory Act shall be construed to affect the validity of oil and gas prospecting permits or leases previously issued under the authority of §§ 181 to 194, 201 to 208, 211 to 214, 221, 223 to 229, 241, 251 and 261 to 263 of this title, and in existence on August 21, 1935, or impair any rights or privileges which have accrued under such permits or leases. (Aug. 21, 1935, c. 599, § 2, 49 Stat. 679.)

Payments for oil or as taken prior to application for lease.

Sec. 224.-Until the permittee shall apply for lease to the one quarter of the permit area heretofore provided for he shall pay to the United States 20 per centum of the gross value of all oil or gas secured by him from the lands embraced within his permit and sold or otherwise disposed of or held by him for sale or other disposition. (Feb. 25, 1920, c. 85, § 15, 41 Stat. 442.)

Conditions of permit or lease; forfeiture for violations of.

Sec. 225.-All permits and leases of lands containing oil or gas, made or issued under the provisions of this subchapter, shall be subject to the condition that no wells shall be drilled within two hundred feet of any of the outer boundaries of the lands so permitted or leased, unless the adjoining lands have been patented or the title thereto otherwise vested in private owners, and to the further condition that the permittee or lessee will, in conducting his explorations and mining operations, use all reasonable precautions to prevent waste of oil or gas developed in the land, or the entrance of water through wells drilled by him to the oil sands or oil-bearing strata, to the destruction or injury of the oil deposits. Violations of the provisions of this section shall constitute grounds for the forfeiture of the permit or lease, to be enforced through appropriate proceedings in courts of competent jurisdiction. (Feb. 25, 1920, c. 85, § 16, 41 Stat. 443.)

Lease of unappropriated deposits of oil or as in producing oil or fields; royalties and annual rentals; cancellation of leases.

Sec. 226.-All lands subject to disposition under §§ 181 to 194, 201 to 208, 211 to 214, 221, 223 to 229, 241, 256 and 261 to

263 of this title which are known or believed to contain oil or gas deposits, except as herein otherwise provided, may be leased by the Secretary of the Interior after August 21, 1935, to the highest responsible qualified bidder by competitive bidding under general regulations. Such lands shall be leased in units of not exceeding six hundred and forty acres, which shall be as nearly compact in form as possible. Such leases shall be conditioned upon the payment by the lessee of such bonus as may be accepted and of such royalty as may be fixed in the lease, which shall be not less than 12½ per centum in amount or value of the production and the payment in advance of a rental to be fixed in the lease of not less than 25 cents per acre per annum, which rental except as otherwise herein provided shall not be waived, suspended, or reduced unless and until a valuable deposit of oil or gas shall have been discovered within the lands leased: *Provided*, That the rental paid for any one year shall be credited against the royalties as they accrue for that year: *Provided further*, That in the event the Secretary of the Interior shall direct or shall assent to the suspension of operations or of production of oil or gas under any such lease, any payment of acreage rental as herein provided shall likewise be suspended during such period of suspension of operations or production: *And provided further*, That in the case of leases valuable only for the production of gas the Secretary of the Interior upon showing by the lessee that the lease cannot be successfully operated upon such rental or upon the royalty provided in the lease, may waive, suspend, or reduce such rental or reduce such royalty.

The Secretary of the Interior, for the purpose of more properly conserving the oil or gas resources of any area, field, or pool, may require that leases issued after August 21, 1935, under § 181 to 194, 201 to 208, 211 to 214, 221, 223 to 229, 241, 256 and 261 to 263 of this title be conditioned upon an agreement by the lessee to, operate, under such reasonable cooperative or unit plan for the development and operation of any such area, field, or pool as said Secretary may determine to be practicable and necessary or advisable, which plan shall adequately protect the rights of all parties in interest, including the United States : *Provided*, That all leases operated under such plan approved or prescribed by said Secretary shall be excepted in determining holdings or control under the provisions of §§ 181 to 194, 20.1 to 208, 211 to 214, 221, 223 to 229, 241, 256 and 261 to 263 of this title.

Leases issued after August 21, 1935, under this section shall be for a period of five years and so long thereafter as oil or gas is produced in paying quantities when the lands to be leased are not within any known geological structure of a producing oil or gas field, and for a period of ten years and so long thereafter as oil or gas is produced in paying quantities when the lands to be leased are within any known geological structure of a producing oil or gas field: *Provided*, That no such lease shall be deemed to expire

by reasons of suspension of prospecting, drilling, or production pursuant to any order or consent of the said Secretary: *Provided further*, That the person first making application for the lease of any lands not within any known geologic structure of a producing oil or gas field who is qualified to hold a lease under §§ 181 to 194, 201, 202 to 208, 211 to 214, 221, 223 to 229, 241, 251 and 261 to 263 of this title, including applicants for permits whose applications were filed after ninety days prior to August 21, 1935, shall be entitled to a preference right over others to a lease of such lands without competitive bidding at a royalty, in the case of oil, of $12\frac{1}{2}$ per centum in amount or value of the production when the said production does not exceed fifty barrels per well per day for the calendar month and of not less than $12\frac{1}{2}$ per centum in amount or value of the production when the said production exceeds fifty barrels per well per day for the calendar month, and, in the case of gas, at a royalty of $12\frac{1}{2}$ per centum in amount or value of the production when the said production does not exceed five million cubic feet per well per day for the calendar month and, when the said production exceeds five million cubic feet per well per day for the calendar month, at a royalty of not less than $12\frac{1}{2}$ per centum in amount or value of the production.

Leases issued prior to August 21, 1935, shall continue in force and effect in accordance with the terms of such leases and the laws under which issued: *Provided*, That any such lease that has become the subject of a cooperative or unit plan of development or operation, or other plan for the conservation of the oil and gas of a single area, field, or pool, which plan has the approval of the Secretary of the Department or Departments having jurisdiction over the Government lands included in said plan as necessary or convenient in the public interest, shall continue in force beyond said period of twenty years until the termination of such plan: *And provided further*, That said Secretary or Secretaries shall report all leases so continued to Congress at the beginning of its next regular session after the date of such continuance.

Any cooperative or unit plan of development and operation, which includes lands owned by the United States, shall contain a provision whereby authority, limited as therein provided, is vested in the Secretary of the Department or Departments having jurisdiction over such land to alter or modify from time to time in his discretion the rate of prospecting and development and the quantity and rate of production under said plan. The Secretary of the Interior is authorized whenever he shall deem such action necessary or in the public interest, with the consent of lessee, by order to suspend or modify the drilling or producing requirements of any oil and gas lease not subject to such a cooperative or unit plan, and no lease shall be deemed to expire by reason of the suspension of production pursuant to any such order.

Whenever it appears to the Secretary of the Interior that wells drilled upon lands not owned by the United States are drain-

ing oil or gas from lands or deposits owned in whole or in part by the United States, the Secretary of the Interior is hereby authorized and empowered to negotiate agreements whereby the United States or the United States and its permittees, lessees, or grantees shall be compensated for such drainage, such agreements to be made with the consent of the permittees and lessees affected thereby.

Whenever the average daily production of the oil wells on an entire leasehold or on any tract or portion thereof segregated for royalty purposes shall not exceed ten barrels per well per day, or where the cost of production of oil or gas is such as to render further production economically impracticable the Secretary of the Interior, for the purpose of encouraging the greatest ultimate recovery of oil and in the interests of conservation of natural resources, is authorized to reduce the royalty on future production when in his judgment the wells cannot be successfully operated upon the royalty fixed in the lease. The provision of this paragraph shall apply to all oil and gas leases issued under §§ 181 to 194, 201 to 208, 211 to 214, 221, 223 to 229, 241, 251 and 261 to 263 of this title, including those within an approved cooperative or unit plan of development and operation.

Any lease issued after August 21, 1935, under the provisions of this section, except those earned as a preference right as provided in § 223 of this title, shall be subject to cancellation by the Secretary of the Interior after thirty days' notice upon the failure of the lessee to comply with any of the provisions of the lease, unless or until the land covered by any such lease is known to contain valuable deposits of oil or gas. Such notice in advance of cancelation shall be sent the lease owner by registered letter directed to the lease owner's record post office address, and in case such letter shall be returned as undelivered, such notice shall also be posted for a period of thirty days in the United States Land Office for the district in which the land covered by such lease is situated, or in the event that there is no district land office for such leased land, then in the post office nearest such land. Leases covering lands known to contain valuable deposits of oil or gas shall be canceled only in the manner provided in § 188 of this title. (As amended July 3, 1930, c. 854, § 1, 46 Stat. 1007 March 4, 1931, c. 506, 46 Stat. 1523 , Aug. 21, 1935, c. 599, § 1, 49 Stat. 676.)

Leases to persons relinquishing rights under prior claims on withdrawn lands under pre-existing placer mining law; claims on naval petroleum reserves; fraud of claimant; adjustment of suits.

Sec. 227.-Upon relinquishment to the United States, filed in the General Land Office within six months after February 25, 1920, of all right, title, and interest claimed and possessed prior to July 3, 1910, and continuously since by the claimant or his predecessor in interest under the pre-existing placer mining law to any oil or gas bearing land upon which there has been drilled one

or more oil or gas wells to discovery embraced in the Executive order of withdrawal issued September 27, 1909, and not within any naval petroleum reserve, and upon payment as royalty to the United States of an amount equal to the value at the time of production of one-eighth of all the oil or gas already produced except oil, or gas used for production purposes on the claim, or unavoidably lost, from such land, the claimant, or his successor, if in possession of such land, undisputed by any other claimant prior to July 1, 1919, shall be entitled to a lease thereon from the United States for a period of twenty years, at a royalty of not less than 12½ per centum of all the oil or gas produced except oil or gas used for production purposes on the claim, or unavoidably lost: *Provided*, That not more than one-half of the area, but in no case to exceed three thousand two hundred acres, within the geologic oil or gas structure of a producing oil or gas field shall be leased to any one claimant under the provision of this section when the area of such geologic oil structure exceeds six hundred and forty acres. Any claimant or his successor, subject to this limitation, shall, however, have the right to select and receive the lease as in this section provided for that portion of his claim or claims equal to, but not in excess of, said one-half of the area of such geologic oil structure, but not more than three thousand two hundred acres.

All such leases shall be made and the amount of royalty to be paid for oil and gas produced, except oil or gas used for production purposes on the claim, or unavoidably lost, after the execution of such lease shall be fixed by the Secretary of the Navy under appropriate rules and regulations: *Provided, however*, That as to all like claims situate within any naval petroleum reserve the producing wells thereon only shall be leased, together with an area of land sufficient for the operation thereof, upon the terms and payment of royalties for past and future production as herein provided for in the leasing of claims. No wells shall be drilled in the land subject to this provision within six hundred and sixty feet of any such leased well without the consent of the lessee: *Provided, however*, That the President may, in his discretion, lease the remainder or any part of any such claim upon which such wells have been drilled, and in the event of such leasing said claimant or his successor shall have a preference right to such lease: *And provided further*, That he may permit the drilling of additional wells by the claimant or his successor within the limited area of six hundred and sixty feet theretofore provided for upon such terms and conditions as he may prescribe.

No claimant for a lease who has been guilty of any fraud or who had knowledge or reasonable grounds to know of any fraud, or who has not acted honestly and in good faith, shall be entitled to any of the benefits of this section.

Upon the delivery and acceptance of the lease, as in this section provided, all suits brought by the Government affecting

such land may be settled and adjusted in accordance herewith and all moneys impounded in such suits or under § 104 of this title shall be paid over to the parties entitled thereto. In case of conflicting claimants for leases under this section, the Secretary of the Interior is authorized to grant leases to one or more of them as shall be deemed just. All leases hereunder shall inure to the benefit of the claimant and all persons claiming through or under him by lease, contract, or otherwise, as their interests may appear, subject, however, to the same limitation as, to area and acreage as is provided for claimant in this section: *Provided*, That no claimant acquiring any interest in such lands since September 1, 1919, from a claimant on or since said date claiming or holding more than the maximum allowed claimant under this section shall secure a lease thereon or any interest therein, but the inhibition of this proviso shall not apply to an exchange of any interest in such lands made prior to the 1st day of January, 1920, which did not increase or reduce the area or acreage held or claimed in excess of said maximum by either party to the exchange: *Provided further*, That no lease or leases under this section shall be granted, nor shall any interest therein, inure to any person, association, or corporation for a greater aggregate area or acreage than the maximum in this section provided for. (Feb. 25, 1920, c. 85, § 18, 41 Stat. 443.)

Prospecting permits and leases to persons of lands not withdrawn, terms and conditions of fraud of claimants.

Sec. 228. Any person who on October 1, 1919, was a bona fide occupant or claimant of oil or gas lands under a claim initiated while such lands were not withdrawn from oil or gas location and entry, and who had previously performed all acts under then existing laws necessary to valid locations thereof except to make discovery, and upon which discovery had not been made prior to February 25, 1920, and who has performed work or expended on or for the benefit of such locations, an amount equal in the aggregate to \$250 for each location if application therefor shall be made within six months from February 25, 1920, shall be entitled to prospecting permits thereon upon the same terms and conditions, and limitations as to acreage, as other permits provided for in this subchapter, or where any such person has made such discovery, prior to said February 25, 1920, he shall be entitled to a lease thereon under such terms as the Secretary of the Interior may prescribe unless otherwise provided for in § 227 of this title: *Provided*, That where such prospecting permit is granted upon land within any known geologic structure of a producing oil or gas field, the royalty to be fixed in any lease thereafter granted thereon or any portion thereof shall be not less than 12½ per centum of all the oil or gas produced except oil or gas used for production purposes on the claim, or unavoidably lost: *Provided, however*, That the provisions of this section shall

not apply to lands reserved for the use of the Navy. No claimant for a permit or lease who has been guilty of any fraud or who had knowledge or reasonable grounds to know of any fraud, or who has not acted honestly and in good faith, shall be entitled to any of the benefits of this section.

All permits or leases hereunder shall inure to the benefit of the claimant and all persons claiming through or under him by lease, contract, or otherwise, as their interests may appear. (Feb. 25, 1920, c. 85, § 19, 41 Stat. 445.)

Preference right to permits or leases of claimants of lands bona fide entered as agricultural land; terms and conditions of.

Sec. 229.-In the case of lands bona fide entered as agricultural and not withdrawn or classified as mineral at the time of entry, but not including lands claimed under any railroad grant, the entryman or patentee, or assigns, where assignment was made prior to January 1, 1918, if the entry has been patented with the mineral right reserved, shall be entitled to a preference right to a permit and to a lease, as herein provided, in case of discovery; and within an area not greater than a township such entryman and patentees, or assigns holding restricted patents may combine their holdings, not to exceed two thousand five hundred and sixty acres, for the purpose of making joint application. Leases executed under this section and embracing only lands so entered shall provide for the payment of a royalty of not less than 12½ per centum as to such areas within the permit as may not be included within the discovery lease to which the permittee is entitled under § 223 of this title. (Feb. 25, 1920, c. 85, § 20, 41 Stat. 445.)

Water struck while drilling for oil or gas; acquisition and disposition by Secretary of Interior.

Sec. 229a.- (a) All prospecting permits and leases for oil or gas made or issued under the provisions of sections 221 to 229 of this title shall be subject to the condition that in case the permittee or lessee strikes water while drilling instead of oil or gas, the Secretary of the Interior may, when such water is of such quality and quantity as to be valuable and usable at a reasonable cost for agricultural, domestic, or other purposes, purchase the casing in the well at the reasonable value thereof to be fixed under rules and regulations to be prescribed by the Secretary: *Provided*, That the land on which such well is situated shall be reserved as a water hole under § 300 of Title 43.

(b) In cases where water wells producing such water have heretofore been or may hereafter be drilled upon lands embraced in any prospecting permit or lease heretofore issued under § § 221 to 229 of this title, the Secretary may in like manner purchase the casing in such wells.

(c) The Secretary may make such purchase and may lease or operate such wells for the purpose of producing water and of

using the same on the public lands or of disposing of such water for beneficial use on other lands, and where such wells have heretofore been plugged or abandoned or where such wells have been drilled prior to the issuance of any permit or lease by persons not in privity with the permitter or lessee, the Secretary may develop the same for the purposes of this section: *Provided*, That owners or occupants of lands adjacent to those upon which such water wells may be developed shall have a preference right to make beneficial use of such water.

(d) The Secretary may use so much of any funds available for the plugging of wells, as he may find necessary to start the program provided for by this section, and thereafter he may use the proceeds from the sale or other disposition of such water as a revolving fund for the continuation of such program, and such proceeds are hereby appropriated for such purpose.

(e) Nothing in this section shall be construed to restrict operations under any oil or gas lease or permit under §§ 221 to 229 of this title. (Feb. 25, 1920, c. 85, § 40, as added June 16, 1934, c. 557, 48 Stat. 977.)

NOTE: Secs. 231 to 236 pertain to certain lands in Oklahoma, and are not applicable to New Mexico.

5. OIL SHALE

Authority to make lease; survey of land; term of lease; royalties and annual rentals; rights of existing claimants.

Sec. 241.-The Secretary of the Interior is authorized to lease to any person or corporation qualified under this section and §§ 181 to 194, 201 to 208, 211 to 214, 221, 223 to 229, 251 and 261 to 263 of this title, any deposits of oil shale belonging to the United States and the surface of so much of the public lands containing such deposits or land adjacent thereto, as may be required for the extraction and reduction of the leased minerals, under such rules and regulations, not inconsistent with such sections, as he may prescribe. No lease hereunder shall exceed five thousand one hundred and twenty acres of land, to be described by the legal subdivisions of the public-land surveys, or if unsurveyed, to be surveyed by the United States, at the expense of the applicant, in accordance with regulations to be prescribed by the Secretary of the Interior. Leases may be for indeterminate periods, upon such conditions as may be imposed by the Secretary of the Interior, including covenants relative to methods of mining, prevention of waste, and productive development. For the privilege of mining, extracting, and disposing of the oil or other minerals covered by a lease under this section the lessee shall pay to the United States such royalties as shall be specified in the lease and an annual rental, payable at the beginning of each year, at the rate of 50 cents per acre per annum, for the lands included in the lease, the rental paid for any one year to be credited against

the royalties accruing for that year; such royalties to be subject to readjustment at the end of each twenty-year period by the Secretary of the Interior. For the purpose of encouraging the production of petroleum products from shales the Secretary may, in his discretion, waive the payment of any royalty and rental during the first five years of any lease. Any person having a valid claim to such minerals under existing laws on January 1, 1919, shall, upon the relinquishment of such claim, be entitled to a lease under the provisions of this section for such area of the land relinquished as shall not exceed the maximum area authorized by this section to be leased to an individual or corporation. No claimant for a lease who has been guilty of any fraud or who had knowledge or reasonable grounds to know of any fraud, or who has not acted honestly and in good faith, shall be entitled to any of the benefits of this section. Not more than one lease shall be granted under this section to any one person, association, or corporation. (Feb. 25, 1920, c. 85, § 21, 41 Stat. 445.)

6. ALASKA OIL PROVISIO

NOTE: Sec. 251 pertains to oil lands in Alaska, and is not applicable to New Mexico.

7. SODIUM

Prospecting permits; lands included.

Sec. 261.-The Secretary of the Interior is authorized, under such rules and regulations as he may prescribe, to grant to any qualified applicant a prospecting permit which shall give the exclusive right to prospect for chlorides, sulphates, carbonates, borates, silicates, or nitrates of sodium in lands belonging to the United States for a period of not exceeding two years: *Provided*, That the area to be included in such a permit shall not exceed two thousand five hundred and sixty acres of land in reasonably compact form. (As amended Dec. 11, 1928, c. 19, 45 Stat. 1019.)

Leases to permittees; survey of lands; royalties and annual rentals.

Sec. 262.-Upon showing to the satisfaction of the Secretary of the Interior that valuable deposits of one of the substances enumerated in § 261 of this title have been discovered by the permittee within the area covered by his permit and that such land is chiefly valuable therefor, the permittee shall be entitled to a lease for any or all of the land embraced in the prospecting permit at a royalty of not less than 2 per centum of the quantity or gross value of the output of sodium compounds and other related products at the point of shipment to market; the lands in such lease to be taken in compact form by legal subdivisions of the public land surveys, or, if the land be not surveyed, by survey executed at the cost of the permittee in accordance with regula-

tions prescribed by the Secretary of the Interior. Lands known to contain valuable deposits of one of the substances enumerated in § 261 of this title and not covered by permits or leases shall be subject to lease by the Secretary of the Interior through advertisement, competitive bidding, or such other methods as he may by general regulations adopt and in such areas as he shall fix, not exceeding two thousand five hundred and sixty acres. All leases under this section shall be conditioned upon the payment by the lessee of such royalty as may be fixed in the lease, not less than 2 per centum of the quantity or gross value of the output of sodium compounds and other related products at the point of shipment to market, and the payment in advance of a rental of 25 cents per acre for the first calendar year or fraction thereof, 50 cents per acre for the second, third, fourth, and fifth calendar years, respectively; and \$1 per acre per annum thereafter during the continuance of the lease, such rental for any one year to be credited against royalties accruing for that year. Leases under this section shall be for a period of twenty years, with preferential right in the lessee to renew for successive periods of ten years upon such reasonable terms and conditions as may be prescribed by the Secretary of the Interior unless otherwise provided by law at the expiration of such period: *Provided*, That nothing in §§ 181 to 194, 201 to 208, 211 to 214, 221, 223 to 229, 241, 251, and 261 to 263 of this title shall prohibit the mining and sale of sodium compounds under potassium leases issued pursuant to §§ 141 to 152 of this title and §§ 281 to 286 of this title, nor the mining and sale of potassium compounds as a byproduct from sodium leases taken under this section: *Provided further*, That on application by any lessee the Secretary of the Interior is authorized to modify the rental and royalty provisions stipulated in any existing sodium lease to conform to the provisions of this section. (As amended Dec. 11, 1928, c. 19, 45 Stat. 1019.)

Permits to use or lease of nonmineral lands for camp sites, and so forth.

Sec. 263.-In addition to areas of such mineral land which may be included in any such prospecting permits or leases, the Secretary of the Interior, in his discretion, may grant to a permittee or lessee of lands containing sodium deposits, and subject to the payment of an annual rental of not less than 25 cents per acre, the exclusive right to use, during the life of the permit or lease, a tract of unoccupied nonmineral public land, not exceeding forty acres in area, for camp sites, refining works, and other purposes connected with and necessary to the proper development and use of the deposits covered by the permit or lease. (Feb. 25, 1920, c. 85, § 25, 41 Stat. 447.)

8. SULPHUR

Prospecting permits; lands included.

Sec. 271. —The Secretary of the Interior is hereby authorized and directed, under such rules and regulations as he may prescribe, to grant to any qualified applicant a prospecting permit which shall give the exclusive right to prospect for sulphur in lands belonging to the United States located in the States of Louisiana and New Mexico for a period of not exceeding two years: *Provided*, That the area to be included in such a permit shall be not exceeding six hundred and forty acres of land in reasonably compact form. (Apr. 17, 1926, c. 158, § 1, 44 Stat. 301.)

Leases to permittees, privileges extended to oil gas permittees.

Sec. 272.-Upon showing to the satisfaction of the Secretary of the Interior that valuable deposits of sulphur have been discovered by the permittee within the area covered by his permit, and that the land is chiefly valuable therefor, the permittee shall be entitled to a lease for any or all of the land embraced in the prospecting permit, at a royalty of 5 per centum of the quantity or gross value of the output of sulphur at the point of shipment to market, such lease to be taken in compact form by legal sub-divisions of the public-land surveys; or if the land be not surveyed, by survey executed at the cost of the permittee in accordance with regulations prescribed by the Secretary of the Interior: *Provided*, That where any person having been granted an oil and gas permit makes a discovery of sulphur in lands covered by said permit, he shall have the same privilege of leasing not to exceed six hundred and forty acres of said land under the same terms and conditions as are given a sulphur permittee under the provisions of this section. (Apr. 17, 1926, c.. 158, § 2, 44 Stat. 301.)

Lease of lands not covered by permits or leases; rental.

Sec. 273.-Lands known to contain valuable deposits of sulphur and not covered by permits or leases shall be held subject to lease by the Secretary of the Interior through advertisement, competitive bidding, or such other methods as he may by general regulations adopt and in such areas as he shall fix, not exceeding six hundred and forty acres; all leases to be conditioned upon the payment by the lessee of such royalty as may be fixed in the lease and the payment in advance of a rental of 50 cents per acre per annum, the rental paid for any one year to be credited against the royalties accruing for that year. (Apr. 17, 1926, c. 158, § 3, 44 Stat. 301.)

Lands containing coal or other minerals.

Sec. 274.-Prospecting permits or leases may be issued in the discretion of the Secretary of the Interior under the provisions of §§ 271 to 276 of this title for deposits of sulphur in public lands also containing coal or other minerals on condition that such other deposits be reserved to the United States for disposal under applicable laws. (Apr. 17, 1926, c. 158, § 4, 44 Stat. 302.)

Laws applicable.

Sec. 275.-The general provisions of §§ 181 to 194, inclusive, of this title are made applicable to permits and leases under §§ 271 to 276 of this title, §§ 181 and 193 being amended to include deposits of sulphur, and § 184 being amended so as to prohibit any person, association, or corporation from taking or holding more than three sulphur permits or leases in any one State during the life of such permits or leases. (Apr. 17, 1926, c. 158, § 5, 44 Stat. 302.)

Sections 271 to 275 of this title applicable to Louisiana and New Mexico only.

Sec. 276.-The provisions of §§ 271 to 275 of this title shall apply only to the States of Louisiana and New Mexico. (Apr. 17, 1926, c. 158, § 6, 44 Stat. 302 ; July 16, 1932, c. 498, 47 Stat. 701.)

9. POTASH

Prospecting permits for chlorides, sulphates, carbonates, borates, silicates or nitrates of potassium; authorization; lands affected.

Sec. 281.-The Secretary of the Interior is hereby authorized, under such rules and regulations as he may prescribe, to grant to any qualified applicant a prospecting permit which shall give the exclusive right to prospect for chlorides, sulphates, carbonates, borates, silicates, or nitrates of potassium in lands belonging to the United States for a period of not exceeding two years: *Provided*, That the area to be included in such a permit shall not exceed two thousand five hundred and sixty acres of land in reasonably compact form: *Provided further*, That the prospecting provisions of this section and §§ 282 to 285 of this title shall not apply to lands and deposits in or adjacent to Searles Lake, California, which lands may be leased by the Secretary of the Interior under the terms and provisions of said sections. (Feb. 7, 1927, c. 66, § 1, 44 Stat. 1057.)

Leases to permittees of lands showing valuable deposits; royalty.

Sec. 22. Upon showing to the satisfaction of the Secretary of the Interior that valuable deposits of one of the substances enumerated in §§ 281 to 285 of this title has been discovered by the permittee within the area covered by his permit, and that such land is chiefly valuable therefor, the permittee shall be entitled to

a lease for any or all of the land embraced in the prospecting permit, at a royalty of not less than 2 per centum of the quantity or gross value of the output of potassium compounds and other related products, except sodium, at the point of shipment to market, such lease to be taken in compact form by legal sub-divisions of the public land surveys, or if the land be not surveyed, by survey executed at the cost of the permittee in accordance with regulations prescribed by the Secretary of the Interior. (Feb. 7, 1927, c. 66, § 2, 44 Stat. 1057.)

Lands containing valuable deposits and not covered by permits or leases; authority to lease; conditions; partial exemptions from rental and royalty of leases resulting from prospecting permits.

Sec. 283.-Lands known to contain valuable deposits enumerated in §§ 281 to 285 of this title and not covered by permits or leases shall be held subject to lease by the Secretary of the Interior through advertisement, competitive bidding, or such other methods as he may by general regulations adopt, and in such areas as he shall fix, not exceeding two thousand five hundred and sixty acres all leases to be conditioned upon the payment by the lessee of such royalty as may be fixed in the lease, not less than 2 per centum of the quantity or gross value of the output of potassium compounds and other related products, except sodium, at the point of shipment to market, and the payment in advance of a rental of 25 cents per acre for the first calendar year or fraction thereof; 50 cents per acre for the second, third, fourth, and fifth years, respectively; and \$1 per acre per annum thereafter during the continuance of the lease, such rental for any year being credited against royalties accruing for that year. Leases under §§ 281 to 285 of this title shall be for a period of 20 years, with preferential right in the lessee to renew the same for successive periods of ten years upon such reasonable terms and conditions as may be prescribed by the Secretary of the Interior, unless otherwise provided by law at the expiration of such periods. In the discretion of the Secretary of the Interior the area involved in any lease resulting from a prospecting permit may be exempt from any rental in excess of 25 cents per acre for twenty years succeeding its issue, and the production of potassium compounds under such a lease may be exempt from any royalty in excess of the minimum prescribed in said sections for the same period. (Feb. 7, 1927, c. 66, § 3, 44 Stat. 1057.)

Lands containing coal or other minerals in addition to potassium deposits; issuance of prospecting permits and leases, covenants in potassium leases.

Sec. 284.-Prospecting permits or leases may be issued under the provisions of §§ 281 to 285 of this title for deposits of potassium in public lands, also containing deposits of coal or other minerals, on condition that such other deposits be reserved to the

United States for disposal under appropriate laws: *Provided*, That if the interests of the Government and of the lessee will be subserved thereby, potassium leases may include covenants providing for the development by the lessee of chlorides, sulphates, carbonates, borates, silicates, or nitrates of sodium, magnesium, aluminum, or calcium, associated with the potassium deposits leased, on terms and conditions not inconsistent with the sodium provisions of §§ 261 and 263 of this title: *Provided further*, at where valuable deposits of mineral now subject to disposition under the general mining laws are found in fissure veins on any of the lands subject to permit or lease under §§ 281 to 285 of this title, the valuable minerals so found shall continue subject to disposition under the said general mining laws notwithstanding the presence of potash therein. (Feb. 7, 1927, c. 66, § 4, 44 Stat. 1058.)

Laws applicable.

Sec. 285.—The general provisions of §§ 181 to 194, inclusive, of this title are made applicable to permits and leases under §§ 281 to 284 of this title. (Feb. 7, 1927, c. 66, § 5, 44 Stat. 1058.)

Repeal of §§ 141 to 152; effect on pending applications.

Sec. 286. —The repeal of §§ 141 to 152 shall not affect pending applications for permits or leases filed prior to January 1, 1926, or valid claims existent on February 7, 1927, and there-after maintained in compliance with the laws under which initiated, which claims may be perfected under such laws, including discovery. (Feb. 7, 1927, c. 66, § 44 Stat. 1058.)

Extension prospecting permits.

Sec. 287.—Any prospecting permit issued under §§ 281 to 284 of this title may be extended by the Secretary of the Interior for a period not exceeding two years, upon a showing of satisfactory cause. (Feb. 7, 1927, c. 66, § 7, as added May 7, 1932, c. 174, 47 Stat. 151.)

CHAPTER 4

**LEASE OF GOLD, SILVER, OR QUICKSILVER DEPOSITS WHEN TITLE
CONFIRMED BY COURT OF PRIVATE LAND CLAIMS [New]**

- Sec.
291. Lease of gold, silver, or quicksilver deposits on lands title to which confirmed by Court of Private Land Claims.
292. Royalties and rentals; disposition.
293. Duties of Secretary of Interior.

Lease of gold, silver, or quicksilver deposits on lands title to which confirmed by Court of Private Land Claims.

Sec. 291: All gold, silver, or quicksilver deposits, or mines or minerals of the same on lands embraced within any land claim confirmed or hereafter confirmed by decree of the Court of Private Land Claims, and which did not convey the mineral rights to the grantee by the terms of the grant, and to which such grantee has not become otherwise entitled in law or in equity, may be leased by the Secretary of the Interior to the grantee, or to those claiming through or under him, for a period of twenty years, with the preferential right in the lessee to renew the same for successive periods of ten years, upon such reasonable terms and conditions as may be prescribed by the Secretary of the Interior, unless otherwise provided by law at the time of the expiration. of such periods. (June 8, 1926, c. 503, § 1, 44 Stat. 710.)

Royalties and rentals; disposition.

Sec. 292.-For the privilege of mining or extracting the gold, silver, or quicksilver deposits in the land covered by such lease, the lessee shall pay to the United States a royalty, which shall not be less than 5 per centum nor more than 12½ per centum of the net value of the output of the gold, silver, or quicksilver at the mine, due and payable at the end of each month succeeding that of the extraction of the minerals from the mine. All moneys received from royalties and rentals under the provisions of § § 291 to 293 of this title shall be deposited in the Treasury of the United States, and disposed of in the same manner as rentals and royalties under the provisions of § 191 of this title. (June 8, 1926, c. 503, § 2, 44 Stat. 710.)

Duties of Secretary of Interior.

Sec. 293.-The Secretary of the Interior is hereby authorized to perform any and all acts and to make such. rules and regulations as may be necessary and proper for the purpose of carrying §§ 291 and 292 of this title into full force and effect. (June 8, 1926, c. 503, § 3, 44 Stat. 710.)

CHAPTER 5

**LEASE AND GAS DEPOSITS IN OR UNDER RAILROADS AND
OTHER RIGHTS OF WAY [New]**

- Sec.
301. Authorization for lease of oil and gas deposits; by and to whom leased.
302. Assignment of lease; subletting.
303. Conditions precedent to award of lease; preferred class; bidding.
304. Provisions authorized in lease.
305. Royalties under lease.
306. Rules and regulations.

Authorization for lease oil and gas deposits; by and to whom leased.

Sec. 301.-- Whenever the Secretary of the Interior shall deem it to be consistent with the public interest he is authorized to lease deposits of oil and gas in or under lands embraced in railroad or other rights of way acquired under any law of the United States, whether the same be a base fee or mere easement: *Provided*, That, except as hereinafter authorized, no lease shall be executed hereunder except to the municipality, corporation, firm, association, or individual by whom such right of way was acquired, or to the lawful successor, assignee, or transferee of such municipality, corporation, firm, association, or individual. (May 21, 1930, c. 307, § 1, 46 Stat. 373.)

Assignment lease; subletting.

Sec. 302. The right conferred by this chapter may, subject to the approval of the Secretary of the Interior, be assigned or sublet by the owner thereof to any corporation, firm, association, or individual. (May 21, 1930, c. 307, § 2, 46 Stat. 373.)

Conditions precedent to award of lease; preferred class; bidding.

Sec. 303.-Prior to the award of any lease under § 301 of this chapter, the Secretary of the Interior shall notify the owner or lessee of adjoining lands and allow him a reasonable time, to be fixed in the notice given, within which to submit an offer or bid of the amount or percentage of compensatory royalty that such owner will agree to pay for the extraction through wells on his or its adjoining land, of the oil or gas under and from such adjoining right of way, and at the same time afford the holder of the railroad or other right of way a like opportunity within the same time to submit its bid or offer as to the amount or percentage of royalty it will agree to pay, if a lease for the extraction of the oil and gas deposits under the right of way be awarded to the holder of such right of way. In case of competing offers by the said parties in interest, the Secretary shall award the right to extract the oil and gas to the bidder, duly qualified, making the offer in his opinion most advantageous to the United States. In case but one bid or offer is received after notice duly given, he

may, in his discretion award the right to extract the oil and gas to such bidder. (May 21, 1930, c. 307, § 3, 46 Stat. 374.)

Provisions authorized in lease.

Sec. 304. —Any lease granted by the Secretary of the Interior pursuant to this chapter may, in the discretion of said Secretary, contain a provision giving the lessee the right, with the approval of said Secretary, to shut down the operation of any well or wells the operation of which has become unprofitable, to resume operations when such resumption may result in profit, and to abandon any well or wells that cease to produce oil and/or gas in paying quantities. (May 21, 1930, c. 307, § 4, 46 Stat. 374.)

Royalties under lease.

Sec. 305. —The royalty to be paid to the United States under any lease to be issued, or agreement made pursuant to this chapter, shall be determined by the Secretary of the Interior, in no case to be less than 12½ per centum in amount or value of the production, nor for more than twenty years: *Provided*, That when the oil or gas is produced from land adjacent to the right of way the amount or value of the royalty to be paid to the United States shall be within the discretion of the Secretary of the Interior: *Provided further*, That when the daily average production of any oil well does not exceed ten barrels per day said Secretary may, in his discretion, reduce the royalty on subsequent production. (May 21, 1930, c. 307, § 5, 46 Stat. 374.)

Rules and regulations.

Sec. 306. —The Secretary of the Interior is authorized and directed to adopt rules and regulations governing the exercise of the discretion and authority conferred by this chapter, which rules and regulations shall constitute a part of any application or lease hereunder. (May 21, 1930, c. 307, § 6, 46 Stat. 374.)

NOTE: For the administration of the Federal Leasing Act, numerous regulations have been made, and amended from time to time. Separate regulations pertaining to leasing of lands for coal, petroleum, potash, sulphur and other individual minerals or mineral groups are in force. The current regulations are on file in, and may be issued from, local land offices, or may be obtained on application from the Commissioner of the Land Office, Washington, D. C.

**PART III—NEW MEXICO STATUTES
PERTAINING TO MINES, MINING, OIL, AND MINERALS**

NOTE: The statutes that follow have been excerpted from two publications, "New Mexico Statutes, Annotated, 1929 Compilation" and "New Mexico Supplement, 1938." These are copyrighted by W. H. Courtright Publishing Company, and used here by limited permission (See page 23). Author's comments are in small roman type.

**TEXT OF SECTION 10 OF THE
ENABLING ACT FOR NEW MEXICO**

Sec. 10.—That it is hereby declared that all lands hereby granted, including those which, having been heretofore granted to the said territory, are hereby expressly transferred and confirmed to the said state, shall be by the said state held in trust, to be disposed of in whole or in part only in manner as herein provided and for the several objects specified in the respective granting and confirmatory provisions, and that the natural products and money proceeds of any of said lands shall be subject to the same trusts as the lands producing the same.

Disposition of any of said lands, or of any money or thing of value directly or indirectly derived therefrom, for any object other than that for which such particular lands, or the lands from which such money or thing of value shall have been derived, were granted or confirmed, or in any manner contrary to the provisions of this act, shall be deemed a breach of trust.

No mortgage or other incumbrance of the said lands, or any thereof, shall be valid in favor of any person or for any purpose or under any circumstances whatsoever. Said lands shall not be sold or leased, in whole or in part, except to the highest and best bidder at a public auction to be held at the county seat of a county wherein the lands to be affected, or the major portion thereof, shall lie, notice of which public auction shall first have been duly given by advertisement, which shall set forth the nature, time, and place of the transaction to be had, with a full description of the lands to be offered, and be published once each week for not less than ten successive weeks in a newspaper of general circulation published regularly at the state capital, and in that newspaper of like circulation which shall then be regularly published nearest to the location of such lands so offered nor shall any sale or contract for the sale of any timber or other natural product of such lands be made, save at the place, in the manner, and after the notice by publication thus provided for sales and leases of the lands themselves: *Provided*, That nothing herein contained shall prevent said proposed state from leasing any of said lands re-

ferred to in this section for a term of five years or less without said advertisement herein required.

All lands, leaseholds, timber, and other products of land before being offered shall be appraised at their true value, and no sale or other disposal thereof shall be made for a consideration less than the value so ascertained, nor in any case less than the minimum price hereinafter fixed, nor upon credit unless accompanied by ample security, and the legal title shall not be deemed to have passed until the consideration shall have been paid.

Lands east of the line between ranges eighteen and nineteen east of the New Mexico principal meridian, shall not be sold for less than five dollars per acre, and lands west of said line shall not be sold for less than three dollars per acre, and no lands which are or shall be susceptible to irrigation under any projects now or hereafter completed or adopted by the United States under legislation for the reclamation of lands, or under any other project for the reclamation of lands, shall be sold at less than twenty-five dollars per acre: *Provided*, That said state, at the request of the secretary of the interior, shall from time to time relinquish such of its lands to the United States as at any time are needed for irrigation works in connection with any such government project. And other lands in lieu thereof are hereby granted to said state, to be selected from lands of the character named and in the manner prescribed in section eleven of this act.

There is hereby reserved to the United States and exempted from the operation of any and all grants made or confirmed by this act to said proposed state all land actually or prospectively valuable for the development of water powers or power for hydroelectric use or transmission and which shall be ascertained and designated by the secretary of the interior within five years after the proclamation of the president declaring the admission of the state; and no lands so reserved and excepted shall be subject to any disposition whatsoever by said state, and any conveyance or transfer of such land by said state or any officer thereof shall be absolutely null and void within the period above named; and in lieu of the land so reserved to the United States and excepted from the operation of any of said grants, there be, and is hereby, granted to the proposed state an equal quantity of land to be selected from land of the character named and in the manner prescribed in section eleven of this act.

A separate fund shall be established for each of the several objects for which the said grants are hereby made or confirmed, and whenever any moneys shall be in any manner derived from any of said land the same shall be deposited by the state treasurer in the fund corresponding to the grant under which the particular land producing such moneys were by this act conveyed or confirmed. No moneys shall ever be taken from one fund for deposit in any other, or for any object other than that for which the land producing the same was granted or confirmed. The state treas-

urer shall keep all such moneys invested in safe interest-bearing securities, which securities shall be approved by the governor and secretary of state of said proposed state, and shall at all times be under a good and sufficient bond or bonds conditioned for the faithful performance of his duties in regard thereto as defined by this act and the laws of the state not in conflict herewith.

Every sale, lease, conveyance, or contract of or concerning any of the lands hereby granted or confirmed, or the use thereof or the natural products thereof, not made in substantial conformity with the provisions of this act shall be null and void, any provision of the constitution or laws of the said state to the contrary notwithstanding.

It shall be the duty of the attorney-general of the United States to prosecute in the name of the United States and its courts such proceedings at law or in equity as may from time to time be necessary and appropriate to enforce the provisions hereof relative to the application and disposition of the said lands and the products thereof and the funds derived therefrom.

Nothing herein contained shall be taken as in limitation of the power of the state or of any citizen thereof to enforce the provisions of this act. (Act of June 20, 1910, 36 Stat. L. 557 Fed. Stat. Ann. 1912 Supp. 1, 356.)

EXCERPTS FROM THE
CONSTITUTION OF THE STATE OF NEW MEXICO

ARTICLE XVII

MINES AND MINING

Inspector of Mines.

Section 1. There shall be an inspector of mines, who shall be appointed by the governor, by and with the advice and consent of the senate, for a term of four years, and whose duties and salary shall be as prescribed by law.

Mining regulations—Employment of children prohibited.

Section 2. The legislature shall enact laws requiring the proper ventilation of mines, the construction and maintenance of escapement shafts or slopes, and the adoption and use of appliances necessary to protect the health and secure the safety of employees therein. No children under the age of fourteen years shall be employed in mines.

ARTICLE XXII

SCHEDULE

Federal mining inspection laws continued in force.

Section 3. Until otherwise provided by law, the act of congress, entitled, "An act for the protection of the lives of miners," approved March third, eighteen hundred and ninety-one, and all

acts amendatory thereof, shall be and remain in force in this state to the same extent that they have been in force in the Territory of New Mexico the words; "Governor of the State," are hereby substituted for the words "Governor of such organized territory"; and for the words "Secretary of the Interior" wherever the same appear in said acts; and the chief mine inspector for the Territory of New Mexico, appointed by the President of the United States, is hereby authorized to perform the duties prescribed by said acts until superseded by the "inspector of mines" appointed by the governor, as elsewhere provided by the constitution, and he shall receive the same compensation from the state as he received from the United States.

ARTICLE XXIV

LEASES ON STATE LANDS

Contracts for the development and production of minerals on state lands.

Leases and other contracts, reserving a royalty to the state, for the development and production of any and all minerals on lands granted or confirmed to the State of New Mexico by the Act of Congress of June 20, 1910, entitled "An act to enable the people of New Mexico to form a constitution and state government and be admitted into the Union on an equal footing with the original states," may be made under such provisions relating to the necessity or requirement for or the mode and manner of appraisement, advertisement and competitive bidding, and containing such terms and provisions, as may be provided by Act of the Legislature; the rentals, royalties and other proceeds therefrom to be applied and conserved in accordance with the provisions of said Act of Congress for the support or in aid of the common schools, or for the attainment of the respective purposes for which the several grants were made.

NOTE: The above Article XXIV is an amendment to the Constitution and was adopted at the general election held in November, 1928.—C. H. F.

CHAPTER 88
MINES

Article

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88-101. Location—Marking—Notice—Recording. Any person or persons desiring to locate a mining claim upon a vein or lode of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper or other valuable deposit, must distinctly mark the location on the ground so that its boundaries may be readily traced, and post in some conspicuous place on such location, a notice in writing stating thereon the name or names of the locator or locators, his or their intention to locate the mining claim, giving a description thereof by reference to some natural object or permanent monument as will identify the claims and also within three months after posting such notice, cause to be recorded a copy thereof in the office of the clerk of the county in which the

notice is posted. And Provided, No other record of such notice shall be necessary. [L. '76, Ch. 38, § 1; C. L. '97, § 2286; Code '15, § 3445.

88-102. Id.—Recording—Fees. In order to carry out the intent of the preceding section, it is hereby made the duty of the county clerk of the several counties of this State, and they are hereby required to provide at the expense of their respective counties such book or books as may be necessary and suitable in which to enter the record hereinbefore provided for. The fees for recording such notices shall be ten cents for every one hundred words. [L. '76, Ch. 38, § 2; C. L. '97, § 2287; Code '15, § 3446.

88-103. Location—Discovery shaft. That the locator or locators of any mining claim, located after this act shall take effect, shall, within ninety days from the date of taking possession of same, sink a discovery shaft upon such claim, to a depth of at least ten feet from the lowest part of the rim of such shaft at the surface, exposing mineral in place, or shall drive a tunnel, adit, or open cut upon such claim, to at least ten feet below the surface, exposing mineral in place. [L. '89, Ch. 25, § 1; C. L. '97, § 2298; Code '15, § 3447.

88-104. Id.—Marking boundaries. The surface boundaries of mining claims hereafter located shall be marked by four substantial posts or monuments, one at each corner of such claim, so as to distinctly mark the claim on the ground, so that its boundaries can be readily traced, and shall otherwise conform to § 3445 (88-101). [L. '99, Ch. 57, § 1; Code '15, § 3448.

NOTE: As to placer claims see § 88-116, Page 27.

88-105. Relocation—Discovery shaft. The relocation of any mining ground, which is subject to relocation, shall be made in the same way as an original location is required by law to be made, except the relocater may either sink a new shaft upon the ground relocated to the depth of at least ten feet from the lowest part of the rim of such shaft at the surface, exposing mineral in place, or drive a new tunnel, adit, or open cut upon such ground, at least ten feet below the surface, exposing mineral in place, or the relocater may sink the original discovery shaft ten feet deeper than it is at the time of relocation, or drive the original tunnel, adit, or open cut upon such claim, ten feet further. [L. '89, Ch. 25, § 3; C. L. '97, § 2300; Code '15, § 3449.

88-106. Amended location notice. If at any time the owner of any mining claim heretofore or hereafter located, or his assigns, shall apprehend that the original notice of location is defective, erroneous or the requirement of law has not been complied with before filing; or shall be desirous of changing his surface boundaries or to take in any part of an overlapping claim which has

been abandoned, such owner may file in the office where notices of location are by law required to be filed, an amended or additional notice of location, subject to the provisions of this article. *Provided*, That such additional or amended notice of location does not interfere with the existing right of others at the time of filing such notice and no such amended or additional location, or record thereof, shall preclude the claimant or his assigns from proving any such title as he or they may have held under the previous location. [L. '89, Ch. 25, § 4 C. L. '97, § 2301; Code '15, § 3450.

88-107. Removing location notice or monument-Penalty. Any person who shall take down, remove, alter or destroy any stake, post, monument or notice of location upon any mining claim without the consent of the owner or owners thereof, shall be deemed guilty of a misdemeanor, and on conviction, shall be punished by a fine not exceeding one hundred dollars or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment. [L. '89, Ch. 25, § 5 C. L. '97, § 2302; Code '15, § 3451.

88-108. Id. Any person or persons, or the manager, officer, agent or employee of any person, firm, corporation or association, who shall in any manner alter, deface or change the location notice of any mining claim in this State, located under the laws of the United States and of this State, or any local regulations in force in the district wherein such claim is situated, thereby in any manner affecting the rights of any person, firm or corporation, to such claim or location, or the land covered thereby, shall be deemed guilty of a misdemeanor, and upon conviction thereof before any court of competent jurisdiction, shall be fined in a sum not less than one hundred dollars, nor more than five hundred dollars, or imprisoned in the county jail for not less than sixty days, nor more than one year, or by both such fine and imprisonment, in the discretion of the court trying the case. Nothing herein contained shall affect the rights of such locator or locators, and his or their assigns, to correct errors in such notice and file amended location notices as provided in § 88-106, and the laws of the United States *Provided*, Such change shall not affect or change the date of such location notice, or affect the rights of any other person. [L. '97, Ch. 58, § 3; C. L. '97, § 2311; Code '15, § 3452.

88-109. Annual labor—Lien holder may perform. When the owner or owners of any mining claim or claims now located or which may hereafter be located, upon which there shall exist any mortgage, miner's or mechanic's lien, or other encumbrance of any kind which may be hereafter made or incurred, shall refuse, neglect or fail, up to the first day of December of any year, to perform thereon the annual labor or make thereon the annual expenditure required by law to be made in order to prevent the

same from becoming open to relocation, in such case the holder or owner of such mortgage, lien or encumbrance, may, upon the first day of December of such year or any other time thereafter, before any such mining claim or claims shall have been relocated, enter with his or their workmen and employees upon the same and perform, or cause to be performed, the one hundred dollars' worth of labor or make the one hundred dollars' worth of improvements upon such claim or claims as by law required to be done or made each year in order to prevent such claim or claims from becoming open to relocation; that such work shall be done and improvements made in a workmanlike manner; that for the purpose of performing or causing to be performed such labor and improvements, the holder or holders of such mortgage, miner's or mechanic's lien, or other encumbrance, shall be considered the agent or the agents of the owner or owners of such mining claim or claims; that the owner or owners of such mining claim or claims, or any other person or persons, shall not in any manner prevent, obstruct, hinder or delay the performance of any labor or the making of such improvements and may be restrained from so doing by injunction; that upon the completion of the one hundred dollars' worth of labor or improvements by the holder or holders of any mortgage, miner's or mechanic's lien or other encumbrance as aforesaid, upon any mining claim, as herein provided, all sum or sums of money expended by him or them shall be and become a lien upon the said mining claim or claims and from the date of the completion of the same, draw the same rate of interest as the principal sum of such mortgage, miner's or mechanic's lien, or other encumbrance, and may be foreclosed according to law. [L. '89, Ch. 25, § 7 C. L. '97, § 2304; Code '15, § 3453.

88-110. Id.—Obstructing. Any person or persons who shall prevent, obstruct, hinder or delay the performance of the labor or the making of the improvements mentioned in the last preceding section, shall be deemed guilty of a misdemeanor, and upon conviction, shall be punished by a fine of not less than one hundred dollars or over five hundred dollars, or by imprisonment for a period not less than six months, nor more than one year, or by both fine and imprisonment. [L. '89, Ch. 25, § 8; C. L. '97, § 2305; Code '15, § 3454.

88-111. Assessment work on claim in litigation—How done. Hereafter in any suit or action pending in any of the courts of this State, involving the right to the possession or title of any lode or placer mining claim located under the mining laws, and upon which it is necessary to do the annual assessment work to prevent the same from becoming forfeited and subject to relocation, the party or parties to any such suit out of possession, upon petition to the court in which suit or action is pending, showing that such annual assessment work has not been done on or before the first

day of November in the year during which such work is required to be done, shall be entitled to an order as of course in such suit or action, permitting such party or parties to enter in and upon such mine or mining claims, with their agents and laborers, and to do and perform such annual assessment work to prevent the said mining claim or claims from becoming subject to relocation: *Provided*, That in the doing of such work, no ore shall be removed from the boundaries of such mining claim. [L. '05, Ch. 23, § 1; Code '15, § 3455.

88-112. Assessment work on claim in litigation—Effect. Upon the doing of any assessment work, as provided in § 88-111, the said mining claim or claims shall not be subject to relocation for failure to do the annual assessment work, as against any of the parties to such suit or action. [L. '05, Ch. 83, § Code '15, § 3456.

88-113. Proof of labor. The owner or owners of any unpatented mining claim in this State, located under the laws of the United States and of this State, shall within sixty days from and after the time within which the assessment work required by law to be done upon such claim should have been done and performed, cause to be filed with the clerk of the county in which such mining claim is situated, an affidavit setting forth the time when such work was done, and the amount, character and actual cost thereof, together with the name or names of the person or persons who performed such work; and such affidavit, when made and filed as herein provided, shall be prima facie evidence of the facts therein stated. The failure to make and file such affidavit as herein provided shall, in any contest, suit or proceedings touching the title to such claim, throw the burden of proof upon the owner or owners of such claim to show that such work has been done according to law. [L. '97, Ch. 58, § 8; C. L. '97, § 2315; Code '15, § 3457.

88-114. Abandonment. In addition to the provision of law now in force in respect to the abandonment of mining claims, they may be abandoned in the following manner: The owner or owners of any mining claim, wishing to abandon the same, may sign and acknowledge in the same manner provided by law for the acknowledgment of deeds, and file for record in the office of the county clerk, a certificate describing the same, stating when and by whom located, the name of the claim, the book and page where the notice of location of such claim is recorded; that he or they give up and abandon such claim, and that the same is open and subject to relocation. Upon the filing of such certificate, the mining claim therein described shall be considered abandoned and open to relocation as if the same had never been located, and the owner or owners thereof forever estopped from claiming any right or interest therein under the location mentioned in said certificate: *Provided*, That this provision for abandonment shall

not apply to any claim or location upon which any mortgage, lien or other encumbrance exists. [L. '89, Ch. 25, § 6; C. L. '97, § 2303; Code '15, § 3458.

88-115. Placer claims—How located. All public lands in the state of New Mexico chiefly valuable for the deposits of gypsum, fire-clay, petroleum oil, natural gas, alluvial deposits of gold, and all other material recognized by the laws of the United States as placer material may be located as placer mining claims as hereinafter provided. [L. '09, Ch. 65, § 1; Code '15, § 3459.

88-116. Id.—Location notice-Corner posts. The locator or locators shall, at the time of making location of any placer mining claim, cause a notice of such location to be placed at a designated corner of the claim so located, stating the name of the claim, the purpose and the kind of material for which such claim is located, the name or names of the persons locating same; and, if located upon surveyed lands, such notice shall contain a description of such claim by its legal subdivision; if upon unsurveyed lands, such notice shall contain a description of such claim by metes and bounds, with reference to some known object or monument. And whether upon surveyed or unsurveyed lands each corner of such claim shall be marked by a wooden post at least four feet high, securely set in the ground, or by a substantial stone monument. [L. '09, Ch. 65, § 2; Code '15, § 3460.

88-117. Id.—Location notice—Recording—Discovery—Prospecting for oil gas. A duplicate of such location notice shall be filed and recorded in the office of the county clerk of the county wherein the land located is situate, within ninety days after such location is made and such notice placed on the claim as aforesaid; and, prior to filing said notice, the locator or locators must have a bona fide discovery of the mineral or material claimed in said notice or said location will be void and subject to relocation by another person or persons: *Provided*, however, That in cases where land has been located for petroleum oil or natural gas, the locator or locators shall have the time from the date of the location to the end of the calendar year succeeding that in which the location is made, to make a discovery of petroleum oil or natural gas: *Provided further*, That when lands have been located for petroleum oil or natural gas, or both, the locator or locators thereof shall have the right to the exclusive possession and occupancy of the lands embraced in said location for the purpose of prospecting for petroleum oil or natural gas, during the period of time provided in this section for making discovery of petroleum oil or natural gas or both. [L. '27, Ch. 48, § 1, amending L. '25, Ch. 90, § 1; Code '15, § 3461.

NOTE. The Seventh Legislature by Chapter 90, Laws of 1925, amended Section 3461, Code of 1915, so as to read as follows: "A duplicate of such location notice shall be filed and recorded in the office of the County Clerk of

the county wherein the land located is situated, within ninety days after such location is made and such notice placed on the claim as aforesaid; and, prior to filing said notice, the locator or locators must have made a bona fide discovery of mineral or material claimed in said notice, shall have sunk a discovery shaft upon said claim, to a depth of at least ten feet from the lowest part of the rim of such shaft at the surface. The locator at the time of filing the location notice, as above provided, shall also file with the County Clerk, a sworn statement showing that the discovery or assessment work, as provided by the laws of the United States, has been performed, which statement shall clearly show the amount and kind of work performed." The Eighth Legislature in turn amended said Chapter 90 so as to read as above shown by § 88-117, which is almost the verbatim reenactment of said § 3461. Said Chapter 90 seems within the scope of proper state legislation and such acts, have been held to be valid and their provisions mandatory. Therefore, in considering locations made during the period the act was in force, attention should be given to whether compliance with its requirements was made.

Section 88-117 is probably ineffective in so far as it purports to relate to placer oil claims, unless such claims were in existence on February 25, 1920, and were validated by discovery and thereafter maintained according to law. On that date the Federal Leasing Act went into effect and removed oil and gas, deposits and lands in which they are found from the operation of the general mining laws. State legislation has followed to the same effect.—C. H. F.

88-118. Id.—Size. The size of the claim or claims to be located under §§ 88-115 to 88-117, and the amount of annual assessment work to be done thereon in order to hold possession of and secure patent to the same, shall be the same as provided by Revised Statutes of the United States. [L. '09, Ch. 65, § 4 Code '15, § 3462.

NOTE. Sections 2330 and 2331 of the United States Revised Statutes limit the size of placer claims. Section 2330 provides that no location of a placer claim, made after July 9, 1879, shall exceed one hundred and sixty (160) acres for any one person or association of persons which location shall conform to the United States Surveys. Section 2331 provides that all placer-mining claims located after May 10, 1872, shall conform as nearly as practicable with the United States system of public lands surveys, and the rectangular subdivisions of such surveys, and no such location shall include more than twenty (20) acres for each individual claimant; but where placer claims can not be conformed to legal subdivisions, survey and plat shall be made as on unsurveyed lands. Under these sections an individual may locate twenty (20) acres as a claim and an association may locate a claim not exceeding twenty (20) acres for each individual in the association but in no event exceeding one hundred and sixty (160) acres.

The size of lode claims is limited by § 2320 of the Revised Statutes which provides that a mining claim located after May 10, 1872, may equal but shall not exceed fifteen hundred (1500) feet in length along the vein or lode, and that no claim shall extend more than three hundred (300) feet on each side of the middle of the vein at the surface—C. H. F.

ARTICLE 2. ACTIONS—CONTESTS—POSSESSION

Section

88-201. Ejectment for recovery of mining claims.

88-202. Contested claims—Ejectment—Possession immaterial.

88-203. Id.—Special verdict or findings—Effect of pendency of suit.

88-204. Id.—Working mine during pendency—Waste.

88-205. Id.—Measurements and surveys—Right of entry.

- 88-206. Id.—Who may enter.
88-207. Id.—Notice of desire to enter.
88-208. Id.—Refusing entry—Effect—Remedy.
88-209. Id.—Admissibility of evidence.
88-210. Right of entry by stockholder.
88-211. Id.—Penalty for refusal.
88-212. Id.—Who are stockholders.
88-213. Persons in possession—Injunctions against—Trespass.

88-201. Ejectment for recovery of mining claims. An action of ejectment will lie for the recovery of the possession of a mining claim, as well as also of any real estate, where the party suing has been wrongfully ousted from the possession thereof, and the possession wrongfully detained. [L. '76, Ch. 38, § 5 C. L. '97, § 2289; Code '15, § 3463.

88-202. Contested claims—Ejectment—Possession immaterial. That when an application is made for a patent to a mine or mining claim under the laws of the United States by any person, persons, company or corporation claiming to own or have an interest therein, and such application is contested by any other person, persons, company or corporation in the land office of the United States, such person, persons, company or corporation so contesting, may bring a suit of ejectment in the district court of the county in which the mine or mining claim is situated, for the recovery of the same, whether in or out of possession of such mine or claim, and the question as to who was in possession of the mine or claim at the time when the application was made for patent, or when the suit was begun, shall not be considered by the court, except as it may be necessary in determining the interests of the respective claimants, and their right to the possession of said mine or claim. [L. '87, Ch. 54, § 1; C. L. '97, § 2290; Code '15, § 3464.

88-203. Id.—Special verdict or findings-Effect of pendency of suit. The court, in an action for the recovery of a mine or mining claim where a patent is applied for, and the contest is pending in the land office of the United States, may, upon motion of either party to the suit, require the jury to return a special verdict, if tried by a jury if not, then by a judge trying the same shall make a special finding as to the particular interest each party owns in the mine or claim in dispute, under and by virtue of the mining laws of the United States, which special verdict or finding shall be entered into the judgment and upon the record of the court trying the same: *Provided, however,* There shall be no special verdict by the court or jury, except where the evidence shows both parties to the suit to have a bona fide interest in the mine or claim sued for: *And provided further,* That no third person who may have entered upon such mining claim or any part thereof, for the purpose of locating or claiming the same before or during such litigation in the district court growing out of any contest in

any United States land office in this state, shall acquire any interest either at law or in equity in the claim or any part thereof in dispute, and shall be deemed and declared a trespasser or trespassers, unless he or they have been, or may, during the pendency of such litigation in the district court resulting from such contest in the United States land office, by a proper application to the court, be made party or parties to such suit adverse to either of such litigants, or both, or shall have taken such legal steps to assert his or their claim in a court of competent jurisdiction within six months after the commencement of such contest in the United States land office. [L. '89, Ch. 111, § 1; C. L. '97, § 2291; Code '15, § 3465.

88-204. Id.—Working mine during pendency—Waste. That nothing in the two preceding sections shall prohibit the working and development of a mine or mining claim by either party in interest who may be in possession of the mine or claim during the pendency of the suit, nor prohibit any one from bringing an action for damages, or a suit in equity to prevent waste. [L. '87, Ch. 54, § 3 C. L. '97, § 2292 Code '15, § 3466.

88-205. Id.—Measurements and surveys—Right of entry. In all actions at law, or suits in equity, in any of the district courts of this state, wherein the title or right of possession to any mining claim, or ores and minerals is in dispute, any party to such action or suit shall have the right to go upon or enter the workings of said mining claim for the purpose of measuring or surveying the same, either upon the surface or in the workings thereof, peaceably, and without molestation; the costs and expenses of such measurement or survey to be paid by the party for whose use and benefit the same was done. [L. '87, Ch. 55, § 1; C. L. '97, § 2293; Code '15, § 3467.

88-206. Id.—Who may enter. The right to go upon and enter said mining claim shall be extended to the party applying therefor, as well as a surveyor and two chain carriers. [L. '87, Ch. 55, § 2 C. L. '97, § 2294 Code '15, § 3468.

88-207. Id.—Notice of desire to enter. Before any person may enter upon or go into the workings of such mine without the consent of the person or corporation in possession, he shall give not less than five days' notice in writing to such person in possession, or to his agent or manager, and if the possession is held by a corporation, said notice shall be served upon the president, agent or manager of such corporation, or upon the foreman in charge of the mine, that at a certain date, specified in said notice, he desires to enter upon or go into the workings of said mine, as the case may be, for the purpose of surveying and taking a measurement of the same, in order that he may be able to present the facts on the trial. [L. '87, Ch. 55, § 3; C. L. '97, § 2295; Code '15, § 3469.

88-208. Id.—Refusing entry—Effect—Remedy. If such person or corporation shall not permit any party in interest in such suit or action, to go upon or enter said mine, as contemplated in the preceding sections, after having been notified in the manner designated, the court may, upon proper showing, verified by affidavit, or otherwise, exclude all evidence offered on the trial by the party so refusing, or render judgment or decree in favor of the party giving such notice: *Provided*, That the court may, in its discretion, make an order directing the sheriff to go upon the ground with the party applying for the measurement and survey of such mine, and place the person so applying in possession, for the purpose of measuring and surveying the same, in which case the court may direct the payment of costs as may be just and proper. [L. '87, Ch. 55, § 4; C. L. '97, § 2296 ; Code '15, § 3470.

88-209. Id.—Admissibility of evidence. The competency, relevancy and effect of such survey and measurement, as evidence, shall be governed by the ordinary rules of evidence in civil cases. [L. '87, Ch. 55, § 5; C. L. '97, § 2297; Code '15, § 3471.

88-210. Right of entry by stockholder. Any person owning stock in any corporation or company owning or operating mines in this state, shall at any time during the business hours of the day, have the right to enter in and upon any and all mines of such corporation or company, and all underground workings connected therewith for the purpose of examining the same. [L. '82, Ch. 33, § 1; C. L. '97, § 2306; Code '15, § 3472.

88-211. Id.—Penalty for refusal. Every corporation or company or officer or agent of such corporation or company who shall refuse to allow upon demand, any person owning stock in such corporation or company, to enter such mines, as in the preceding section provided, shall be guilty of a misdemeanor, and the corporation or company shall forfeit and pay to the party injured a penalty of one hundred dollars for every such refusal, and all damages resulting therefrom. [L. '82, Ch. 33, § 2; C. L. '97, § 2307; Code '15, § 3473.

88-212. Id.—Who are stockholders. The words "any person owning stock" as used in the preceding sections shall be taken and considered to mean stockholders, whose names appear on the stockbook of the company as owners of stock, and none others. [L. '84, Ch. 45, § 1; C. L. '97, § 2308; Code '15, § 3474.

88-213. Persons in possession—Injunctions against—Trespass. When any person, firm or corporation shall be lawfully and peaceably in possession of any mining claim in this state, and shall have complied with all the requirements of law and regulations in force in the district in which said mining claim is situated, such persons, firm or corporation shall be deemed to be the right-

ful possessor of such mining claim and of the land included therein; and any person or the officer, agent or employee of any corporation who shall by force, intimidation, fraud or stealth, or in the temporary absence of the rightful possessor, enter upon such mining claim with intent to hold the same, or any part thereof, against the rightful possessor shall be considered a trespasser, and the judge of the district court for the district in which such claim is situated shall, upon the proper showing of such facts made by affidavit or by oral testimony upon a hearing ordered for that purpose, and upon the filing with the clerk of said district court of a good and sufficient bond, grant an order to show cause why a writ of injunction should not issue, enjoining and restraining such trespasser, his servants, agents and employees, and any person associated with him, from in any manner interfering with the rightful possessor in the possession of such claim until the final disposition of such cause. [L. '97, Ch. 58, § 5; C. L. '97, § 2313; Code '15, § 3475.

ARTICLE 3. RECORDS OF MILLS AND SMELTERS

Section

88-301. Ore purchases and receipts—Record to be kept.

88-302. Id. Inspection.

88-303. Id.—Failure to keep book—Liability.

88-304. Id.—Improperly keeping record.

88-305. Purchasing stolen ore.

88-301. Ore purchases and receipts—Record to be kept. That every person, association or corporation that shall be engaged in the business of milling, sampling, concentrating, reducing, shipping or purchasing ores in the state of New Mexico, shall keep and preserve a book in which shall be entered at the time of the delivery of each lot of ore:

First. The name of the party on whose behalf such ore is delivered as stated.

Second. The name of the teamster, packer or other persons actually delivering such ore, and the name of the owner of the team or pack train delivering such ore.

Third. The weight or amount of each lot of ore.

Fourth. The name and location of the mine or claim from which it shall be stated that the same had been mined or procured.

Fifth. The date of delivery of any and all lots or parcels of ore. [L. '89, Ch. 103, § 1; C. L. '97, § 2318; Code '15, § 3476.

88-302. Id.—Inspection. Whenever affidavit shall have been made before any justice of the peace or notary public in any county in this state by any person, that ore has been stolen from him, stating as near as may be the amount and value of the ore stolen, such person, upon presentation of a certified copy of such affidavit shall have access to such books, and may examine the

entries which may have been made therein during a period of twelve months next preceding the filing of such affidavit. [L. '89, Ch. 103, § 2; C. L. '97, 2319; Code '15, § 3477.

88-303. Failure to keep book—Liability. Every person, association or corporation that shall fail or refuse to keep the book required by the terms of § 88-301, or shall fail or refuse to make any proper entry therein, or who shall refuse to any person who may be entitled to the same, as provided by the preceding section, the right of inspection thereof, shall forfeit and pay for each and every violation of the provisions of said section, a penalty of not less than fifty, nor more than three hundred dollars, to be collected by action of debt at the suit of any person who may have made the necessary affidavit provided for in the preceding section, to entitle such person to access to such books. In addition to said penalty, any person, association or corporation violating the provisions of the said section shall be liable at the suit of the party or person aggrieved, in the proper form of action, for all damages which may accrue to any party or person by reason of any such violation. And in all actions the fact that a false entry has been made shall be prima facie evidence that the same was made willfully or knowingly. [L. '89, Ch. 103, § 3; C. L. '97, § 2320; Code '15, § 3478.

88-304. Id.—Improperly keeping record. If any person, association or corporation shall fail or neglect to make the inquiries necessary to the making of the proper entries in said book as provided by § 88-301, or shall so negligently make entries therein that any lot of ore cannot be particularly identified, or so negligently that it cannot be perceived therefrom what person delivered any lot of ore or received the proceeds of the same when purchased, or shall fail to keep such book or shall willfully suffer the same to be lost or mislaid, so that the same cannot be produced for inspection, such failure or neglect shall not excuse any party defendant in any suit brought under the preceding section from judgment for any penalties prescribed by said section. [L. '89, Ch. 103, § 4; C. L. '97, § 2321 Code '15, § 3479.

88-305. Purchasing stolen ore. Any person, association or corporation, or the agent of any person, association or corporation who shall knowingly purchase or contract to purchase, or shall make any payment for or on account of any ore which shall have been taken from any mine or claim, by any person or persons who have taken or may be holding possession of any such mine or claim contrary to law, shall be considered as accessory after the fact to the unlawful holding or taking of such mine or claim, and upon conviction shall be subjected to the same punishment to which the principals may be liable. [L. '89, Ch. 103, § 5; C. L. '97, § 2322; Code '15, § 3480.

ARTICLE 4. RIGHTS OF WAY

Section

88-401. Rights of way for roads, pipe lines, tramways, railways, ditches and flumes—Eminent domain.

88-402. Id.—Notice of application.

88-403. Id.—Application.

88-404. Id.—Commissioners—Qualifications and oath.

88-405. Id.—Commissioners—Per diem and mileage.

88-406. Id.—Assessment of damages—Hearing—Order of court.

88-407. Id.—Ore on right of way.

88-408. Id.—Interference with shafts or tunnels.

88-409. Id.—Procedure.

88-401. Rights of way for roads, pipe lines, tramways, railways, ditches and flumes—Eminent domain. That any mine or oil well owners, mill owner or mill owners, or any mining, oil well drilling or milling corporation for the purpose of transporting or conveying coal, oil, ores or minerals to a mill, crusher, washer, tipple or reduction works of any sort for the reduction, washing, crushing, loading for shipment, or milling of such coal, oil, ores or minerals, or for the purpose of transporting or conveying coal, oil, ores, minerals, metals, waters, tailings, or refuse to or from any mill, washer, crusher, tipple or reduction works, shall have a right of way for a road, pipe line, tramway, railway, ditch or flume across the lands of other persons by condemnation and payment of damages. [L. '19, Ch. 109, § 1, amending Code '15, § 3481.

88-402. Id.—Notice of application. In order to acquire said right of way, the applicant or applicants shall give ten days' notice in writing, to be served by a sheriff or constable to each person owning or having any claim upon the lands to be crossed by the road, pipe line, tramway, railway, ditch or flume, that the applicant will file, before the judge of the district court of said county wherein the land lies, an application to condemn a right of way over such person's lands. [L. '19, Ch. 109, § 2, amending Code '15, § 3482.

88403. Id.—Application. The application shall set out the full name or title of the applicant or applicants and describe the location of the mine or mines, or oil well, mill or mills, he, it or they are operating or intend to operate, and a description as near as possible of the lands to be crossed by said road, pipe line, tramway, railway, ditch or flume, and said application shall be accompanied by a plat showing the location and position of said mine or mines, or oil well, mill or mills, and the lands over which said road, tramway, pipe line, railway, ditch or flume shall run, and the course and width of the ground necessary to be condemned and the facts showing the necessity for such road, pipe line, tramway, railway, ditch or flume. And for the purpose of making and preparing the plat aforesaid, such mine or well owner or mine or

well owners, mill owner or owners, or his, its or their agents, shall have the right to go upon the lands of any other persons and make all necessary surveys, measurements and investigations. [L. '19, Ch. 109, § 3, amending Code '15, § 3483.

88-404. Id.—Commissioners—Qualifications and oath. Upon the presentation of said application to the judge of said court, he shall at once order and make the appointment of three commissioners to assess the damages the commissioners shall be householders of the county wherein the property is situate, and shall make oath upon their appointment before any official authorized to acknowledge deeds in the state, that each of them is worth the sum of \$2,500.00 over and above all just debts, liabilities and exemptions by law, and said commissioners shall not be of the neighborhood of the mine or mill to be worked or operated. [L. '19, Ch. 109, § 4, amending Code '15, § 3484.

88-405. Id.—Commissioners-Per diem and mileage. The commissioners shall each be allowed five dollars per day for their services. The applicant shall pay in advance for one day to each commissioner, and such commissioners shall also be allowed mileage at the rate of twelve and one-half cents per mile each way for going to and returning from said place of assessment from their places of residence. [L. '89, Ch. 142, § 5; C. L. '97, § 2332; Code '15, § 3485.

88-406. Id.—Assessment of damages—Hearing—Order of court. The said commissioners shall view the ground and determine the amount of damages due to each owner or claimant or claimants, and assess said damages and report the same in writing to the said judge of said district court; that the said court shall at once examine said report and hear any objections made thereto in writing sustained by evidence to be submitted at such hearing, or by written affidavits notice of filing said affidavits must be given to the opposite party with copies of the affidavits ten days before the date of filing the same. Whereupon the judge of the court, shall, his discretion, either confirm, modify or reject the report of said commissioners. If said report of said commissioners be confirmed or modified by the judge, and all costs and damages paid by applicants the judge shall issue an order, attested by the clerk of his court, commanding the sheriff of said county to put the applicant in possession of said right of way as shown in said plat, for executing which, said sheriff shall be allowed \$5.00 and his mileage. [L. '19, Ch. 109, § 5, amending Code '15, § 3486.

88-407. Id.—Ore on right of way. In grading for said road, pipe line, tramway, railway, ditch or flume, if any ore is found, the applicant shall carefully throw it aside in a separate pile or

piles and not mix it with other dirt or debris. [L. '19, Ch. 109, § 6, amending Code '15, § 3487.

88-408. Id.—Interference with shafts or tunnels. No shaft shall be covered or tunnel intercepted or cut through or on, any mining claim without the consent of the owner thereof: *Provided*, this shall not apply to shafts and tunnels as they exist one month before the filing of the application. [L. '89, Ch. 142, § 8; C. L., '97, § 2335; Code '15, § 3488.

88-409. Id.—Procedure. The proceedings provided for in this article shall be as in a court of chancery, except as otherwise provided, and the judge of the district court of the county where such land lies may render his final decree therein in chambers, as well as in term time. [L. '89, Ch. 142, § 9; C. L. '97, § 2336; Code '15, § 3489.

ARTICLE 5. BUREAU OF MINES AND MINERAL RESOURCES

Section

- 88-501. Establishment of bureau.
- 88-502. Objects and duties of bureau.
- 88-503. Annual reports.
- 88-504. Printing of regular and special reports.
- 88-505. Distribution of materials collected.
- 88-506. Use of appropriated funds.

88-501. Establishment of bureau. There is hereby established a Bureau of Mines and Mineral Resources of the State of New Mexico which shall be a department of the New Mexico School of Mines and under the direction of its Board of Regents. The said board shall appoint as a director a suitable person to be known as the director of the Bureau of Mines and Mineral Resources and upon his nomination such assistants and employees as the said board shall deem necessary. Said board may also determine the compensation of all persons employed by the Bureau of Mines and Mineral Resources including the director and may remove them at will. [L. '27, Ch. 115, § 1.

88-502. Objects and duties of bureau. The objects and duties of said Bureau of Mines and Mineral Resources shall be as follows:

- (1) To collect, to compile and to publish statistics relative to New Mexico geology, mining, milling, metallurgy and oil and natural gas and the refining thereof.
- (2) To collect typical geological and mineral specimens and samples of products; to collect photographs, models and drawings of appliances used in the mines, mills, smelters, oil wells, natural gas wells and the refineries of oil and natural gas in New Mexico.
- (3) To collect a library and bibliography of literature pertaining to the progress of geology, mining, milling, smelting and

the production of oil and natural gas and refining the same in New Mexico.

(4) To study the geological formations of the state with special reference to their economic mineral resources, both metallic and non-metallic.

(5) To examine the topography and physical features of the state with reference to their practical bearing upon the occupation of the people.

(6) To study the mining, milling, smelting operations and oil and natural gas production and the refining of the same carried on in the state with special reference to their improvement.

(7) To prepare and publish bulletins and reports with the necessary illustrations and maps, which shall embrace both a general and detailed description of the natural resources and geology, mines, mineral deposits, both metallic and non-metallic, oil wells, natural gas wells, reduction plants, smelters, mills, oil refineries and natural gas refineries.

(8) To make qualitative examinations of rocks and mineral samples and specimens.

(9) To assist in the education of miners and prospectors through lectures and publications.

(10) To consider such other kindred, scientific and economic problems and questions as in the judgment of the board shall be deemed of value to the people of the state.

(11) To communicate special information on New Mexico geology, mining, both metallic and non-metallic, oil and natural gas and to serve as a bureau of exchange and information on the mineral, oil and natural gas resources of New Mexico.

(12) To cooperate with the University of New Mexico, with the state mine inspector and with other departments of state government as may be mutually beneficial and to cooperate with the United States Geological Survey and with the United States Bureau of Mines in accordance with the regulations of those institutions. [L. '27, Ch. 115, § 2.

88-503. Annual reports. The board shall cause to be prepared an annual report showing the progress and condition of the bureau, together with such other information as they may deem necessary or useful, or as the board may require. [L. '27, Ch. 115, § 3.

88-504. Printing of regular and special reports. The regular and special reports of the Bureau of Mines and Mineral Resources shall be printed as the board may direct and the reports may be distributed or sold by the board as the interests of the state or science may demand. The monies now in possession of the bureau, which have been obtained and those which are hereafter obtained from the sale of said reports, shall be used in such manner as the Board of Regents of the New Mexico School of Mines may direct. [L. '35, Ch. 19, § 1, amending Comp. '29, § 88-504.

88-505. Distribution of materials collected. All materials collected after having served the purpose of the bureau shall be distributed by the board to such educational institutions of the state as the board may direct. [L. '27, Ch. 115, § 5.

88-506. Use of appropriated funds. The board may use of the funds appropriated for the maintenance of the New Mexico School of Mines such sums as may be necessary for the maintenance of the bureau hereby created, not to exceed, however, such sums as may be appropriated for the New Mexico School of Mines from the fund provided by § 35 of Senate bill No. 2775 United States Congress. (Public—No. 146—66th Congress.) [L. '27, Ch. 115, § 6.

ARTICLE 6. COAL MINES

Section

- 88-601. to 88-605, inc. Repealed.
- 88-606. Negligence of overseer—Penalty.
- 88-607. Boiler inspection.
- 88-608. Repealed.
- 88-609. Scales.
- 88-610. Id.—Oath of weigher—Record.
- 88-611. Check-weighman.
- 88-612. Id.—Using false weights, etc.
- 88-612a. Inspector of mines is legal examiner of scales and measures.
- 88-612b. Defective scales or measuring devices—How marked.
- 88-612c. Unlawful to use condemned scales or devices.
- 88-612d. Inspector has right of entry.
- 88-612e. Act does not amend or repeal.
- 88-612f. Penalty for violation.
- 88-613. Id.—Offenses.
- 88-614. Payment of employees in script prohibited.
- 88-615. Repealed.
- 88-616. Coercing employees to trade.
- 88-617. Id.—Duty of district attorney.
- 88-618. Coercing purchases at company's store.
- 88-619. Id.—Penalty.
- 88-620. to 88-625. Repealed.
- 88-626. Setting fire to.

88-601 to 88-605, inc. Repealed by L. 33, Ch. 153, § 310.

88-606. Id.—Negligence of overseer—Penalty. For any willful failure or negligence on the part of the overseer of any coal mine, he shall be liable to conviction of a misdemeanor and punished according to law: *Provided*, That if such willful failure or negligence is the cause of the death of any person, the overseer, upon conviction, shall be deemed guilty of manslaughter. [L. '82, Ch. 57, § 9 ; C. L. '97, § 2347; Code '15, § 3495.

88-607. Id.—Boiler inspection. All boilers used for generating steam in and about the mine shall be kept in good order, and the owner or agent in charge of such mine shall have them inspected by some competent boiler maker as often as once in every three months. [L. '82, Ch. 57, § 10; C. L. '97, § 2348; Code '15, § 3496.

88-608. Repealed by L. '33, Ch. 153, § 310.

88-609. Id.—Scales. That the owner or agent of each coal mine within this state, at which the miners are paid by weight, shall provide at or near such mine suitable scales of standard make for the weighing of all coal mined. [L. '89, Ch. 126, § 1; C. L. '97, § 2350; Code '15, § 3498.

88-610. Id.—Oath of weigher-Record. The owner or agent of such mine shall require the person authorized to weigh the coal delivered from said mine to be sworn, before some person having authority to administer an oath, to keep the scales correctly balanced; to accurately weigh and to record a correct account of the amount weighed of each miner's car of coal delivered from such mine, and such oath shall be kept conspicuously posted at the place of weighing. The record of the coal mined by each miner shall be kept separate and shall be open to his inspection at all reasonable hours, and also for the inspection of all other persons pecuniarily interested in such mine. [L. '89, Ch. 126, § 2; Code '15, § 3499.

88-611. Check-weighman. In all coal mines in this state, the miners employed and working therein on a tonnage basis shall at the option of the majority thereof, be permitted by the owners of said mines to employ from among the employees of said mines, one or more check-weighmen, whose wages shall be paid by all miners employed or working on a tonnage basis in said mines.

The duties of such check-weighman shall be to see that all coal mined in the mine at which he is employed, is correctly weighed and accredited, and for that purpose every such aforesaid owner shall give to such check-weighman access to all scales and weights used for that purpose and to the records of such weights of coal at each scales. The owner shall provide a convenient and suitable office on the tipple for weighing coal which said office shall be kept in a comfortable and sanitary condition.

Said check-weighman shall be selected by a majority secret vote of those miners who produce coal on a tonnage basis in said mines and who contribute to the wages of such check-weighman. Said check-weighman shall continue in such employment at the will of the majority of said miners working on a tonnage basis.

Said check-weighman shall be paid in either of the following manners at the option of said miners, namely, by running a coal check and deducting a sufficient and equal amount from each ton of coal weighed to guarantee him the wages agreed upon by the said check-weighman and said miners, and shall be paid therefor by the owners of said mines in the same manner and at the same rate per ton as other employees running coal checks are paid or, said check-weighman may be paid on a percentage basis as agreed upon by the said check-weighman and said miners, in

which event the owner shall deduct the agreed percentage from the wages of said miners and pay the same to said check-weighman.

Said check-weighman shall before entering upon his duties make and subscribe to an oath before some officer duly authorized to administer oaths, that he is duly qualified and will faithfully discharge the duties of the check-weighman. Such oath shall be kept conspicuously posted at the place of weighing. [L. '37, Ch. 86, § 1, amending Comp. '29, § 88-611.

88-612. Id.—Using false weights, etc. Any person, company or firm having or using any scale or scales for the purpose of weighing the output of coal at mines so arranged or constructed that fraudulent weighing may be done thereby, or who shall knowingly resort to or employ any means whatsoever by reason of which such coal is not correctly weighed or reported in accordance with the provisions of the three preceding sections, or any weighman or check-weighman who shall fraudulently weigh or record the weights of such coal, or receive at or connive at, or consent to such fraudulent weighing, shall be deemed guilty of a misdemeanor, and shall upon conviction for each such offense be punished by a fine of not less than two hundred dollars (\$200), nor more than five hundred dollars (\$500), or by imprisonment in the county jail for a period not to exceed sixty days, or by both such fine and imprisonment, proceedings to be instituted in any court of competent jurisdiction. [L. '89, Ch. 126, § 4; C. L. '97, § 2353; Code '15, § 3501.

88-612a. Inspector of mines is legal examiner of scales and measures. The scale inspector of mines is hereby made the legal examiner of all scales, measures or other mechanical devices by which coal is weighed or measured for the purpose of determining or ascertaining the compensation which shall be paid coal mine employees and shall examine and balance said scales, measures or devices at any time that he may consider it necessary in his official visit to the mines and in no event shall he neglect or fail to inspect or examine the same for a period of more than six (6) months. [L. '37, Ch. 45, § 1.

88-612b. Defective scales or measuring devices—How marked. If the inspector shall find that any scales not complying with the standards now fixed and provided by law for weights and measures, or if he shall find that any measures or mechanical devices do not comply with the recognized standard for such instruments, he shall: (a) If said instruments are capable of repair, label the same "condemned for repairs" (b) In the event said scales, measures or mechanical devices are incapable of repair, he shall mark the same "condemned" and order the owner and/or operator of the mines to dispose of the same or to cease using them. [L. '37, Ch. 45, § 2.

88-612c. Unlawful to use condemned scales or devices. It shall be unlawful for any mine owner or operator to use any such scales, measures or mechanical devices after the same have been condemned by the state mine inspector unless the same have been repaired as required by said state mine inspector. [L. '37, Ch.45, §3.

88-612d. Inspector has right of entry. In the general performance of the duties imposed upon said state mine inspector, he may enter or go into and/or upon any land, place, buildings or premises for the purpose of making and testing said scales, measures or other mechanical devices and it shall be unlawful for any person to hinder, delay or impede in any manner such state mine inspector in the discharge of his duties. [L. '37, Ch. 45, § 4.

88-612e. Act does not amend or repeal. This act shall not be construed as amendatory of or appealing (repealing) any existing laws on weights and measures but shall be supplementary thereto. [L. '37, Ch. 45, § 5.

88-612f. Penalty for violation. Any person, firm or corporation violating any provision of this act, shall upon conviction thereof be fined in a sum of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00). [L. '37, Ch. 45, § 6.

88-613. Id.—Offenses. Any person, owner or agent operating a coal mine in this state who shall fail to comply with the provisions of §§ 88-609 to 88-612 inclusive, or who shall obstruct or hinder the carrying out of their requirements shall be fined for the first offense not less than fifty dollars (\$50), nor more than two hundred (\$200) dollars for the second offense not less than two hundred (\$200), nor more than five hundred (\$500), and for the third offense not less than five hundred dollars (\$500): *Provided*, That the provisions of said sections shall apply only to coal mines whose products are shipped by rail and shall not apply to mines where suitable scales of standard make furnished by any railroad or transportation company or through which the coal is shipped or used for such weighing. [L. '89, Ch. 126, § 5 C. L. '97, § 2354; Code '15, § 3502.

88-614. Payment of employees in script prohibited. It shall be unlawful for any person, firm, company or corporation owning or operating coal or other mines or transacting any kind of general mercantile business in the state of New Mexico, to sell, give, deliver, or in any manner issue directly or indirectly, to any person employed by him or it in payment for wages due for labor or as advances on wages of labor not due, any script, check, draft or order, or evidence of indebtedness payable or redeemable otherwise than in their face value in money and such person, acting

member or agent of any firm, acting agent or agents or officers of any company or corporation firm who shall violate any of the provisions of this section, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not exceeding five hundred dollars, nor less than two hundred and fifty dollars, and the amount of any script, token, check, draft, order or other evidence of indebtedness sold, given, delivered or in any manner issued in violation of the provisions of this section shall recover in money at the suit of any holder thereof against the person, firm, company or corporation selling, giving, or delivering or in any manner issuing the same. [L. '97, Ch. 11, § 1; C. L. 97, § 2355; Code '15, § 3503.

88-615. Repealed By L. '33, Ch. 70, § 1.

88-616. Coercing employees to trade. Whoever compels or in any manner seeks to compel or coerce an employee or any person, firm, company or corporation to purchase goods or supplies from any particular person, firm, company or corporation shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding five hundred dollars or imprisonment in the county jail not exceeding sixty days, or both, at the discretion of the court. [L. '97, Ch. 11, § 2; C. L. '97, § 2356 Code '15, § 3505.

88-617. Id.—Duty of district attorney. The district attorney of any county in the state of New Mexico, upon complaint being made to him of the violation of any of the provisions of the three preceding sections in said county shall cause such complaint to be investigated before the grand jury of the county where such wrong has been complained of at its next session following the time such complaint is made. [L. '97, Ch. 11, § 3; C. L., '97, § 2357 Code '15, § 3506.

88-618. Coercing purchases at company's store. It shall be unlawful for any person, firm, or corporation employing labor in this state, or any agent, superintendent, or boss of said person, firm, or corporation, by threat, direct or indirect, or in any other manner, to coerce, or compel any employee to buy goods of, or trade with, any store, business, or commissary, or to discharge or threaten to discharge any employee for failure so to do. [L. '21, Ch. 10, § 1.

88-619. Id.—Penalty. A violation of this act on conviction therefor, before a court of competent jurisdiction, shall subject the offender to a fine of not more than \$200.00 or less than \$50.00, or imprisonment for not more than ninety days nor less than thirty days, or both, in the discretion of the court trying the case. [L. '21, Ch. 10, § 2.

88-620 to 88-625 inc. Repealed by L. '33, Ch. 153, § 310.

88-626. Setting fire to. Any person who shall willfully set on fire or ignite or cause to be set on fire or ignited any building equipment or anything whatsoever at or within any mine when any person is present in such mine at the time, shall be deemed guilty of a felony, and upon conviction thereof, shall be imprisoned for not less than five years nor more than twenty-five years, provided, however, that if the life of any person be lost through the ignition or causing to be ignited of any such building, equipment or other thing as in this section provided, the person setting or causing to be set such fire shall be deemed guilty of murder in the first degree, and shall be dealt with according to the law at the time in force prescribing the penalty for such offense. [L. '12, Ch. 80, § 12; Code '15, § 3513.

ARTICLE 7. MISCELLANEOUS

Section

- 88-701. Locations on private lands—Rules and regulations.
- 88-702. Trespass by live stock.
- 88-703. Preventing trespass—Notices.
- 88-704. Trespass—Penalty.
- 88-705. Pest house.
- 88-706. Termination of lease—Notice.
- 88-707. Terminating lease without notice—Liability.
- 88-708. Smelters—Lead poisoning of employee—Duty of employer.
- 88-709. Id.—Failure to provide—Penalty.

88-701. Locations private lands—Rules and regulations. The owner or owners of lands within this state, the title to which has been vested by letters patent from the United States government, may make and file in the office of the county clerk of the county in which such lands are situated, such rules and regulations, not inconsistent with the laws of the United States and of this state, as they may see fit, governing the location and acquisition of mining claims thereon, which rules and regulations when so filed, shall be binding upon all parties, and a copy thereof duly certified by the county clerk shall be received and admitted as evidence in any suit or proceedings relating to such mining claims; such rules and regulations may be changed and supplemented from time to time by other rules and regulations filed in like manner, providing that such change shall not affect rights acquired prior thereto. [L. '97, Ch. 58, § 7; C. L. '97, § 2314; Code '15, § 3514.

88-702. Trespass by live stock. The owner of any live stock in this state shall not be liable to the owner or his agent or any mining or mineral claim or millsite for damages done by way of trespass upon the same by said live stock other than for actual damage done to buildings, tents, mining supplies or other personal property situated thereon: *Provided*, That nothing in this section

shall be construed as abridging or curtailing any of the existing rights of any such owner whenever any such mining or mineral claim or millsite may be used by the owners thereof, his tenant or lessee, as a live stock ranch. [L. '89, Ch. 105, § 1; C. L. '97, § 2327; Code '15, § 3515.

88-703. Preventing trespass—Notices. Whenever the owner or lessee of any mining property in the state of New Mexico shall desire to operate the same and to prevent trespassers from entering thereon, such owner or lessees may post notices in English and Spanish in at least three public places upon said premises, warning all persons from entering upon said property without permission of the owner or lessee or his or their authorized agent or superintendent, which notices shall describe the boundaries of said property. [L. '05, Ch. 28, § 1; Code '15, § 3516.

88-704. Trespass—Penalty. After the posting of such notices, it shall be unlawful for any person to enter upon said premises without such permission, and any person violating the provisions of the preceding section, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by fine not exceeding fifty dollars or imprisonment in the county jail for a period not exceeding thirty days, or both such fine and imprisonment, in the discretion of the court: *Provided*, That this section shall not apply to any person or persons entering said premises in good faith for the purpose of ascertaining whether assessment work has been one, or for the purpose of making a location on government land. [L. '05, Ch. 28, § 2; Code '15, § 3517.

88-705. Pest house. That all mining companies or other corporations doing business in this state who receive any money from their employees for the purpose of employing a physician to attend to and render medical aid to any of said employees during sickness, or to enforce sanitary regulations for the benefit of said employees, are hereby required to erect and maintain a proper and suitable pest house not less than one and one-half miles from any town, mining camp, settlement or village where the headquarters of such company may be, or where the greater portion of said employees may labor, for the purpose of taking proper care of, and quarantining any and all of said employees who may be affected with any contagious or infectious diseases, and any company or corporation violating any of the provisions of this section upon proper proceedings and conviction thereunder, shall be fined as set forth in § 35-3604, and in addition thereto shall be liable for all damages occasioned by their violation of the law. [L. '99, Ch 64, § 2; Code '15, § 3518

88-706. Termination of lease—Notice. Hereafter any lease upon any mine, or portion of a mine, not given in writing, for a

specified time, shall not be terminated until after notice of the date of such termination, given by the lessor to the lessee, not less than thirty days prior to such date of termination. [L. '91, Ch. 73, § 1; C. L. '97, § 2358 ; Code '15, § 3519.

88-707. Terminating lease without notice—Liability. The lessor and the mine upon which any lease is terminated without such thirty days' notice, shall be liable to the lessee for all damages resulting from such termination: *Provided*, That nothing in this or the preceding section shall prevent the forfeiture and termination of any such lease without such notice when the lessee is working the leased ground in such manner as to damage the property. [L. '91, Ch. 73, § 2; C. L. '97, § 2359; Code '15, § 3520.

88-708. Smelters—Lead poisoning of employee—Duty of employer. Whenever any employee of any corporation, person or persons engaged in the management and operation of any smelting works in the state of New Mexico, shall become disabled and rendered unfitted for labor by reason of lead poisoning, which said lead poisoning shall be the result and consequence of said employee's performance and proper discharge of said employee's duties in and about said smelting works, said employee shall be provided with and receive all proper medical attendance, medicines and sustenance during such disability, at the expense of said corporation, person or persons so employing him. [L. '87, Ch. 34, § 1; C. L. '97, § 2337 ; Code '15, § 3521.

88-709. Id.—Failure to provide—Penalty. If any such corporation, person or persons engaged in the management and operation of any smelting works in the state of New Mexico shall fail to provide such employee with all proper medical attendance, medicines and sustenance during such disability of said employee, then the reasonable expense of providing such employee with all proper medical attendance, medicines and sustenance during such disability of said employee may be recovered from such corporation, person or persons so engaged in the management and operation of smelting works as aforesaid, in an action at law by and in the name of any person or persons rendering or providing such employee with the said medical attendance, medicines and sustenance. [L. '87, Ch. 34, § 2; C. L. '97, § 2338; Code '15, § 3522.

HEALTH, SAFETY, AND PROTECTION OF PROPERTY

PART 1—GENERAL
ARTICLE 8. DEFINITIONS

Section

- 88-801. Mine.
- 88-802. Inspector.
- 88-803. Coal.
- 88-804. Pillar.
- 88-805. Working place.
- 88-806. Rock-dusting.
- 88-807. Rock-dust barrier.
- 88-808. Gas.
- 88-809. Permissible.
- 88-810. Operator.

88-801. Mine. For the purpose of this act the term "Mine" except where qualified in various sections of this act shall include all surface and underground operations to win coal, metals, and other mineral substances from their deposits (exclusive of natural gas or petroleum), all tunnel operations, all caisson operations, all mills, ore houses and treatment plants in close proximity to mine openings, and all quarries, pits, open-cut workings, strippings, placer mines, sand, gravel and similar banks. [L. '33, Ch. 153, § 1.

88-802. Inspector. The term "inspector" means the person commissioned by the Governor to have supervision of mines. [L. '33, Ch. 153, § 2.

88-803 Coal. The term "coal" shall include lignite, sub-bituminous, bituminous, semi-bituminous, semi-anthracite, and anthracite. [L. '33, Ch. 153, § 3.

88-804. Pillar. The term "pillar" shall mean a solid block of rock, ore, or coal to support the overlying strata in a mine. [L. '33, Ch. 153, § 4.

88-805. Working. The term "working place" shall mean a chamber, room, breast, slope, drift, entry or place where one or more men are employed. [L. '33, Ch. 153, § 5.

88-806. Rock-dusting. The term "rock-dusting" shall mean to distribute or apply on underground surfaces in coal mines fine rock-dust for the purpose of preventing, checking, controlling or extinguishing coal-dust explosions. [L. '33, Ch. 153, § 6.

88-807. Rock-dust barrier. The term "rock-dust barrier" shall mean such a quantity of dry rock dust placed in suitable containers so located in an underground coal mine that the advance wave of a coal-dust explosion will automatically cause the rock dust to be thrown into suspension and extinguish or tend to extinguish the flame. [L. '33, Ch. 153, § 7.

88-808. Gas. The term "gas" when used in parts of this act pertaining only to coal mines shall mean an inflammable gas,

chiefly methane, which when mixed in certain proportions with air is explosive. [L. '33, Ch. 153, § 8.

88-809. Permissible. The term "permissible" as applied in this act in connection with explosives, flame safety lamps, electric safety lamps, electric machinery, rescue apparatus and other devices shall mean materials, apparatus and devices officially listed by the United States Bureau of Mines under a schedule of tests and approved as having met its requirements for the respective specified uses. [L. '33, Ch. 153, § 9.

88-810. Operator. The term "operator" as applied in this act, shall mean and include owner, operator, lessee, manager, superintendent or agent, receiver or trustee operating any mine. [L. '33, Ch. 153, 10.

ARTICLE 9. STATE INSPECTOR OF MINES—APPOINTMENT AND SALARY

Section

88-901. Appointment.

88-902. Bond—Salary.

88-901. Appointment. The state engineer, the Governor and the president of the School of Mines shall constitute a board of examiners who shall examine all applicants for appointment to the office of state inspector of mines as to their qualifications to hold said office. Said board shall examine all such applicants and the Governor shall, by and with the advice and consent of the senate, appoint some qualified person so examined to said office. Provided, however, that the tenure of office of the duly appointed mine inspector at the time of the passage of this act shall not be affected hereby. [L. '33, Ch. 153, § 11.

88-902. Bond—Salary. The inspector shall give bond to the state in the sum of four thousand dollars (\$4,000.00) and shall receive as compensation for his services the sum of three thousand dollars (\$3,000.00) per annum payable monthly and in addition actual and necessary transportation and traveling expenses. [L. '33, Ch. 153, § 12.

ARTICLE 10. STATE INSPECTOR OF MINES-QUALIFICATIONS

Section

88-1001. Qualifications.

88-1001. Qualifications. No person shall be eligible to hold office unless he be a citizen of the United States, at least thirty years of age, a resident of New Mexico for one year next preceding his appointment, and shall have had at least five years experience in the working of coal mines in New Mexico and at least ten years of practical experience in the working of mines in the United States, and have a practical knowledge of mining engineering, of mine timbering, of the different systems of working and ventilating mines, of the

nature and properties of noxious, and poisonous gases of mines, and of the method of dispelling the same and guarding against explosions or fires, methods of fire control, the storage and use of explosives, of accident prevention, and all other details of mine operations, and shall not be interested financially or otherwise in any mine or company operating any mine in the state of New Mexico. [L. '33, Ch. 153', § 13.

ARTICLE 11. STATE INSPECTOR OF MINES—DUTIES

Section

88-1101. Duties.

88-1102. Authority to enter property.

88-1103. Record of inspection.

88-1104. Admission of inspector for examination.

88-1101. Duties. The duties of the inspector shall be as follows, to-wit:

(a) He shall make a careful and thorough inspection of every mine operated in the state as often as in his opinion may be necessary, but at least once yearly.

(b) Proceed without delay to any mine within the state when he learns of any explosion or other catastrophe therein by which lives of men are jeopardized or in which fatalities have occurred, and render such aid as he can in the rescue of persons within the mine and in the protection of rescuers from danger.

(c) Give written notice to the owners, operators, or managers of any mine wherein he shall find improper construction or that said mine is not furnished with reasonable and proper machinery and appliances for the safety of miners and other employees, that said mine is unsafe, stating in what particular the same is unsafe, and shall require said owners, operators or managers to provide such additional machinery, slopes, entries, shafts, drifts, means of escape, ventilation or other appliances necessary to the safety of miners and other employees of said mine, within a period to be named in said notice.

(d) Inspect and pass upon the adequacy and safety of all hoisting apparatus in mines, and may demand a test of safety catches or clutches upon such hoisting apparatus as often as once in every three months or whenever he may believe such hoisting apparatus to be defective.

(e) Arrange a uniform system of mine bell signals and furnish a copy of the same to each mine operator within the state

(f) Make a report to the Governor on or before the first day of December of each year; which said report shall cover the preceding fiscal year and shall contain a review of the official acts of the inspector; statistics of the numbers of persons employed in and about the mines in the state and of the production and the estimated value thereof, and a resume of the mining conditions generally existing in the state during the said year. [L. '33, Ch. 153, § 14.

88-1102. Authority to enter property. The inspector is given authority at all reasonable times to enter and inspect any mine in the state and the workings and machinery belonging thereto in such manner as not to impede or obstruct the workings of the mine; to make inquiry into the state of the mine, works and machinery thereof, the ventilation and mode of lighting the same, and all matters and things connected with and relating to the safety of the employees in and about the mines, and especially to the end that the provisions of law shall be complied with by the operators and employees thereof; to require that some person of practical experience and responsibility representing the operator shall accompany the said inspector upon such trips of inspection through the mine in order that the inspector may point out and specify any defects in the mine, in the methods of mining and in the equipment and construction thereof, which may violate any of the provisions of law; and to require that the owner, operator Or manager shall at all times furnish means necessary for such entry, inspection, examination and inquiry. [L. '33, Ch 153, § 15.

88-1103. Record of inspection. The inspector shall make an entry of record in his office of the time and material circumstances of each inspection and shall upon the request, of the operator furnish him a copy thereof. [L. '33, Ch. 153, § 16.

88-1104. Admission of inspector for examination. Every operator of any mine in this state shall admit the inspector for the purpose of making examination and inspection provided for by law. [L. '33, Ch 153, § 17.

ARTICLE 12. STATE INSPECTOR OF MINES-OFFICE AND INSTRUMENTS, ETC.

Section

- 88-1201. Office and equipment.
- 88-1202. Records and files.
- 88-1203. Dangerous apparatus—Unsafe mine.
- 88-1204. Summary report.
- 88-1205. Operators to comply with orders and notices.
- 88-1206. Accidents.
- 88-1207. Hearings on accidents.

88-1201. Office and equipment. The state shall provide for the use of the mine inspector a suitable office with fuel and light, provided with necessary furniture, fixtures, files and supplies, clerical and stenographic assistance for properly conducting his business as provided in this article; and shall further provide for the use of the inspector an anemometer, a barometer, safety lamps and other appliances and instruments necessarily required in the work of the mine inspector. [L. '33, Ch. 153, § 18.

88-1202. Records and files. The mine inspector shall keep in his office a record of all inspections, and copies of all official communications. He shall keep on file all mine maps and prints or copies thereof furnished by mine operators. He shall devote his whole time to the duties of his position. [L. '33, Ch. 53, § 19.

884203. Dangerous apparatus-Unsafe mine. When any mine or portion of a mine or machine, device, apparatus or equipment in the judgment of the inspector, is in so dangerous a condition from any cause, as to jeopardize life or health, he shall at once direct the management of the mine to remove the dangerous condition or safeguard the equipment forthwith; should the inspector find during his inspection of the mine, such dangerous condition existing therein, that in his opinion any delay in removing the workmen from such dangerous places or from the entire mine might cause loss of life or serious personal injury to the employees, the inspector shall have the right to request the representative of the operator accompanying the inspector to immediately withdraw all persons from such dangerous places or from the entire mine. [L. '33, Ch. 153, § 20.]

88-1204. Summary report. It shall be the duty of a mine inspector after a completion of an examination to make out a dated summary report of the condition in which he finds the mine, give one copy of said report to the owner of mine and post one copy showing all recommendations in a conspicuous place in glass cover outside of the mine office where it can be read and where it shall remain until superseded by his next report of inspection. [L. '33, Ch. 153, § 21.]

88-1205. Operators to comply with orders and notices. The operator of every mine shall observe and comply with all orders and written notices issued by the state mine inspector, in accordance with the provisions of this act. [L. '33, Ch. 153, § 22.]

88-1206. Accidents. Whenever the loss of life shall occur by reason of any accident, growing out of the operation of any mine the state mine inspector shall proceed immediately, if possible, to the scene of said accident and render such assistance as he may deem necessary for the safety of the employees, and shall investigate the causes and responsibility for such accident. So far as possible the operator shall not change the surroundings of an accident until the mine inspector has made his investigation. Provided, however, that such investigation shall be made within a reasonable time. [L. '33, Ch. 153, § 23.]

88-1207. Hearings on accidents. The mine inspector shall hold a hearing as to the cause and responsibility for each fatal mine accident and the mine operator shall assist him by providing a place for the hearing, a stenographer to transcribe the testimony of witnesses, and two copies of the typed transcript, as soon after the hearing as practicable, for filing in the office of the mine inspector as a public record. The mine inspector may have process of the district court in the district where the disaster occurs to compel the attendance of necessary witnesses and to compel the witnesses attending to testify under oath as to all

matters within their knowledge concerning the disaster under investigation. If an inquest has been held in connection with such accident the inspector may in lieu of the hearing above provided for adopt the findings of the inquest already had. [L. '33, Ch. 153, § 24.

PART 2-COAL MINES

ARTICLE 13. REGISTRATION OF COAL MINES AND STATISTICS REQUIRED

Section

- 88-1301. Registration of operation.
- 88-1302. Information regarding mine.
- 88-1303. Data to be furnished by operator upon request.

88-1301. Registration of operation. Each coal mine or mining operation in the state of New Mexico shall register with the state mine inspector annually before the first of August of each year, or upon start of operations the name of the operation, post office address, name of operator or person in charge and character of operation (that is, mineral produced or sought) . [L. '33, Ch. 153, § 25.

88-1301 Information regarding mine. Each mine or mining operation shall furnish to the mine inspector on or before November 15th of each year such information regarding estimated production and value of estimated production, men employed, mining equipment and methods and any other information as may be reasonably required for the previous fiscal year (November 1st to October 31st) on the blank form to be furnished the operator by the inspector for this purpose. *Provided*, that any information regarding production and value of production of mines shall be held confidential and not published by the mine inspector unless agreed to by the operator. [L. '33, Ch. 153, § 26.

88-1303. Data to be furnished by operator upon request. The mine operator shall at any time, upon the mine inspector's written request, furnish any reasonable information or data desired by the mine inspector. [L. '33, Ch. 153, 27.

ARTICLE 14. DUTIES OF MINE OPERATORS

Section

- 88-1401. Safe place to work.
- 88-1402. Person in charge of operation.
- 88-1403. Maps of mine.
- 88-1404. Abandonment of mine.
- 88-1405. Notices of accidents.
- 88-1406. Report of unusual condition by wire.
- 88-1407. Report of compensable accident.

88-1401. Safe place to work. Every mine employer shall furnish such employment and such place of employment as shall be reasonable (reasonably) safe for the employees therein, and shall furnish and use safety devices and safeguards, adopt and use

methods and processes reasonably adequate to render such employment and place of employment safe, and shall do every other thing reasonably necessary to protect the life, health, safety, and welfare of such employees. [L. '33, Ch. 153, § 28.

88-1402. Person in charge operation. The operator shall at all times during the operation of the mine have a person on the ground with final authority over all branches and phases of the operation of the mine during the time he is on duty. *Provided, however,* that nothing herein contained shall prevent the owner or operator from personally having such charge of the mine, provided he can qualify under all other provisions of this act. [L. '33, Ch. 153, § 29.

88-1403. Maps of mine. (a) The owner of every underground coal mine shall have made by a competent surveyor a clear and accurate map or maps showing the surface plant and the underground workings of the mine. The map or maps shall be on a scale of not more than 200 feet to the inch and shall bear the name of the mine, its location as to county, township, and section; the name of the company, owner, the north point, the scale to which the map is drawn, and the certificate of the surveyor as to the accuracy and date of the survey. The mine map or maps shall be extended and corrected every year. True copies of the map or maps and extensions and corrections thereof shall be provided, as follows: One copy of each map and plan shall be kept in the office of the mine, one copy of each map shall be delivered to the office of the mine inspector or to him personally and shall become the property of the state, and shall be kept at the office of the mine inspector, unless the owner of the property gives written authorization, mine maps filed in the office of the mine inspector shall not be available to any person other than the inspector or his clerks.

(b) Whenever an underground mine is about to be closed or abandoned for an indefinite period, the owner shall have made a complete final survey of all workings not represented on the map or maps of such mine, and shall properly enter the results upon the map or maps of the mine so as to show the exact relations of the most advanced workings to the boundary of the property and shall file a copy of same with the mine inspector. [L. '33, Ch. 153, § 30.

88-1404. Abandonment of mine. Upon abandonment of a mine the owner or operator must effectively close or fence off all surface openings down which persons could fall or through which persons could enter. Upon or near all such safeguards trespass warnings and appropriate danger notices shall be posted. [L. '33, Ch. 153, § 31.

88-1405. Notices of accidents. Whenever loss of life shall occur, by reason of any accident whatever, in and about any mine, or whenever any accident involving fire or explosion of dust or gasses occurs in or about a mine, it shall be the duty of the mine owner to give notice immediately to the state mine inspector by telephone or telegraph; and within ten days thereafter it shall be his duty to make and transmit a full and complete report in writing to the inspector of any such accident. It shall also be the duty of the operator to keep a complete record of all accidents which may occur in the mine operated by him at said mine, to which record the inspector shall have access. [L. '33, Ch. 153, § 32.]

88-1406. Report of unusual condition by wire. The operator shall report promptly to the mine inspector by telegraph or telephone the occurrence in and about the mines of inundations, extensive squeezes or caves, serious outbursts of gas or other serious conditions threatening to cause the loss of life or property. [L. '33, Ch. 153, § 33.]

88-1407. Report of compensable accident. report in writing shall be made to the mine inspector of each compensable mine accident. Such reports shall give the name, age and occupation of the injured person, the date of accident, name and location of mine, the cause of accident, actual work being performed when injured, nature or result of injury, probable length of disability; this report shall be made within one month of the date of injury. *Provided*, that a summary of all accidents occurring each month will answer the requirements of this act provided the data required is included. [L. '33, Ch. 153, § 34.]

ARTICLE 15. DUTIES OF MINE EMPLOYEES

Section

88-1501. Safety devices.

88-1502. Duty and things prohibited,

88-1503. Penalty for violation of above two sections.

88-1501. Safety devices. No mine employee or other person shall remove, displace, damage, destroy, carry off, or fail to use any safety device, safeguard notice or warning, provided for use in any mine employment or place of mine employment, or interfere in any way with the use thereof by any other person, or interfere with the use of any method or process adopted for the protection of any mine employee, in such employment or place of employment, or fail or neglect to follow and obey safety orders promulgated by the mine operator or the mine inspector, and to do every other thing reasonably necessary to protect the life, health, safety, and welfare of employees, including himself. [L. '33, Ch.. 153, § 35•]

88-1502. Duty and things prohibited. No underground coal mine employee or other person shall obstruct or throw open any

airway or open a door or regulator and not immediately close the same; he shall not carry matches, pipes, cigars, cigarettes, or any device capable of producing fire except as otherwise provided in this act he shall not carry into any mine or parts of any mine any explosive other than permissible explosive except as otherwise provided in this act. An underground coal mine employee shall use or provide for use only incombustible tamping, he shall not drill or pick out or attempt to drill or pick out any missed shots; he shall not refuse or neglect to procure his check or deposit it as provided in this act; he shall not neglect or refuse to securely prop the roof in his working place or to sprag the coal when necessary; he shall not unlock any safety lamp underground. [L. '33, Ch. 153, § 30.]

88-1503. Penalty for violation of above two sections. Any employee or other person violating the provisions of § 35 (88-1501) and 36 (88-1502) of article 8 shall be deemed guilty of a misdemeanor punishable by fine or imprisonment or both as set forth in another section of this act. No minor or other person shall carry into a mine intoxicating liquors or alcoholic beverages or enter the mine under the influence of intoxicating liquor; he shall not destroy any part of the machinery or equipment of the mine; no unauthorized person shall enter any part of the mine against a danger sign nor travel any haulageway in a mine where a manway is provided. [L. '33, Ch. 153, § 37.]

ARTICLE 16. OFFICIALS OF UNDERGROUND COAL MINES

Section

88-1601. Qualifications for certain positions underground.

88-1602. Permits of qualification.

88-1603. Inspector shall qualify men for positions.

88-1604. Examination of persons as to qualifications.

88-1605. Posting permits.

88-1601. Qualifications for certain positions underground. The state mine inspector, with the gratis assistance of local mine operators, shall, within one year from the passage of this act complete the qualifications of men to act as mine foremen, assistant mine foremen, mine examiners, and shot-firers and after one year from the date of passage of this act no mine operator shall employ any man as underground foreman, assistant mine foreman, mine examiner or shot-firer unless he has been qualified by the state mine inspector for such position. *Provided, however,* that when there are insufficient thus qualified shot-firers at any mine the mine foreman and mine examiner may examine any applicant as to his fitness to fill the position of shot-firer and having been satisfied of such fitness, may employ him in this capacity until the next visit of the mine inspector. [L. '33, Ch. 153, § 38.]

88-1602. Permits of qualification. Permits of qualification for the position of mine foreman, assistant mine foreman, mine examiner and shot-firer shall be of two classes, namely, gassy mines and non-gassy mines. Any official holding only permit to act in official capacity in a non-gassy mine shall not be allowed to serve in such capacity in a gassy mine. EL. '33, Ch. 153, § 39.

88-1603. Inspector shall qualify men for positions. The state mine inspector shall qualify men for the positions of mine foreman, assistant mine foreman, mine examiner and shot-firer and issue permits accordingly as follows:

(a) He may recognize the foreman's, assistant foreman's, mine examiner's or fireboss's, or shortfirer's (shot-fixer's) certificate issued by any other state and issue permits accordingly.

(b) He shall grant permits without examination to men who have held such positions in underground coal mines in the state of New Mexico for one year prior to the passage of this act if he and the local mine employer deem such men competent.

(c) He shall hold written examination, at times and places to be given out at least thirty (30) days in advance, to all men desiring to secure foreman and mine examiner permits and to all men holding such positions or men holding certificates from other states of whose competency he or the mine employer is not able to judge. Similarly, he shall hold oral examinations for shot-firer. Every person desiring to secure mine examiner's permit and not already in such position or not holding such certificate from another state shall first serve as shot-firer for six (6) months; similarly six (6) months as mine examiner shall be required before examination for mine foreman's or assistant mine foreman's position. Also any person not employed in the capacity of mine foreman, assistant mine foreman, mine examiner, or shot-firer and not holding certificate from another state who desires examination for such position shall have at least two years experience in and about coal mines to participate in mine examiner's examination and at least four years coal mine experience to participate in foreman's or assistant foreman's examinations. [L. '33, Ch. 153, § 40.

88-1604. Examination of persons as to qualifications. Any applicant for examination to position of foreman, assistant foreman, mine examiner or shot-firer shall satisfy the mine inspector that he is physically fit, and twenty-one (21) years of age or over. He shall then be examined by the mine inspector orally and in writing as to the provisions of the New Mexico mining law, the use and care of the flame safety lamp, coal mine ventilation, coal mining methods, and general principles of coal mine safety. He shall furnish recommendations as to his capacity for such position from five (5) citizens of the United States at least two of whom shall reside in New Mexico. [L. '33, Ch. 153, § 41.

88-1605. Posting permits. Any person and all persons working in or about any coal mine in this state, as mine foreman, assistant mine foreman and mine examiner, shall keep their permits of competency posted in a conspicuous place in the mine office. Any permit of competency may be revoked by the mine inspector in case the holder thereof willfully or persistently fails to perform and carry out the duties required by the holder by the provisions of this act, or has been found to be incompetent after employment. Such action shall be taken only after charges made in writing, and after due trial before the mine inspector. Upon the revocation of any such permit, the holder shall return the same to the mine inspector. L. '33, Ch. 153, § 42.

ARTICLE 17. DUTIES OF A MINE FOREMAN

Section

884701. Foreman.

88-1702. Must be on duty during working shift.

88-1703. Filling position when vacancy.

88-1704. Duties.

88-1705. Dangers.

88-1701. Foreman. All underground operations in coal mines shall be under the charge of a duly qualified foreman subject to the supervision and control of the operator. [L. '33, Ch. 153, § 43.

88-1702. Must be on duty during working shift. The mine foreman shall have full charge of all inside mine workings and of all persons employed therein, in order that all the provisions of this act so far as they relate to his duties shall be complied with, and the regulations prescribed for each class of workmen under his charge shall be carried out in the strictest manner possible. The mine foreman or an assistant mine foreman shall be on duty at all times during the working shift or shifts. [L. '33, Ch. 153, §44.

88-1703. Filling position when vacancy. In case of the necessary temporary absence of the mine foreman, the operator may deputize a competent person, holding a foreman's permit, if one be available who shall for the time being perform all his duties. In case of the death or resignation of a mine foreman the operator shall appoint a competent person, holding a foreman's permit if such qualified man be available, and if not he may temporarily appoint any other competent man, but shall immediately notify the mine inspector, who may assist him in securing a suitable man who has a foreman's permit. If no suitable man can be found the temporary man may serve with the approval of the mine inspector until the next examination. [L. '33, Ch. 153, § 45.

88-1704. Duties. The mine foreman shall devote the whole of his time to his duties in and about the mine while the mine is in operation and either he or his assistant foreman or foremen

shall visit each working place as often as necessary and not less than once daily. He shall be responsible for the safety of the men and the carrying out of all provisions of this act pertaining to coal mining, including ventilation, gas, timbering, haulage, and rock-dusting. The operator shall measure or cause to be measured mine air currents, at least semi-monthly, at or near the main intake and outlet airway, and also in the last cut-through in the last room and in the entry beyond the last room turned in each entry, and make a record of said measurements as provided for herein. When practicable measurements shall be taken on days when the men are at work, and for making such measurements an anemometer shall be provided and kept in good condition by the operator of the mine. He shall enter a true report of such measurements in a record book kept at the mine for this purpose, designating the place of measuring, area of each cross-cut and entry at place of measuring, the velocity of the air in each cross-cut and entry, and the number of men employed in each split of air, with the date when measurements were taken. The mine foreman, his assistant or assistants, or the mine examiner or mine examiners shall at least once each week travel and examine as to gas and general conditions all the air courses and roads and all the openings that give access to old working or fails as well as all accessible old workings and make a report of same in the record book; chalked initials together with the date shall be placed at each place inspected. If explosive gas is found he shall record an estimate of the quantity, place where found, and the method, date and time of its removal. At the end of each shift the mine foreman and each assistant mine foreman shall make a report in the record book giving the condition as to safety of the portions of the mine visited and making note of any unusual occurrence observed during the day. The mine foreman shall read and sign the reports in the record book of the mine examiner and assistant mine foreman. [L. '33, Ch. 153, § 46.

88-1705. Dangers. The mine foreman shall give prompt attention to the removal of all dangers observed or reported to him by his assistants, the mine examiners or by any other person or persons, and in case it is impracticable to remove the danger at once, he shall notify or cause to be notified every person in the district whose safety is presently menaced other than those engaged in making the condition safe and shall put barriers and danger notices at the entrance or entrances of the place of danger. [L. '33, Ch. 153, § 47.

ARTICLE 18. DUTIES OF ASSISTANT MINE FOREMAN

Section

88-1801. When employed.

88-1801. When employed. When assistant mine foremen are employed in underground coal mines their duty shall be to assist

the mine foreman in complying with the provisions of this act, and, in the absence of the mine foremen, they shall perform the duties of the mine foreman, and shall be liable to the same penalties as the mine foreman for any violation of this act. [L. '33, Ch. 153, § 48.

ARTICLE 19. DUTIES OF MINE EXAMINER—COAL MINES

Section

88-1901. Mine examiners.

88-1902. Dangerous places.

88-1903. Records.

88-1901. Mine examiners. The operator shall appoint a sufficient number of mine examiners in underground coal mines to examine every working place and all nearby open adjacent places within twelve hours prior to the entrance of a shift of miners, in non-gassy mines and four hours prior to the entrance of a shift of miners in gassy mines, when shifts in the same district of the mine do not immediately succeed one another, to determine if every place is free from a dangerous quantity of fire-damp or noxious gas, and if the roof and other conditions are safe for the workmen. The mine examiner shall leave at each place inspected his chalked initials together with the date. [L. '33, Ch. 153, § 49.

88-1902. Dangerous places. The mine examiners shall fence off and mark all dangerous places to prevent the entrance of men into such places, and shall station themselves at or near the mouth of the mine to warn and stop miners who normally would work in places found dangerous from entering such dangerous places until the dangerous conditions have been remedied under their supervision or that of a duly accredited mine official. [L. '33, C. 153, § 50.

88-1903. Records. The mine examiner shall record the findings of dangerous or gassy conditions in an individual record book as he makes his round and this book shall be initialed at the surface by the mine foreman and the fire boss prior to the entrance of the shift; he shall transfer this record to the main record book kept outside of the mine and his report in the main record book shall be signed by himself and countersigned by the mine foreman daily. The main record book shall be read and countersigned by the mine superintendent at least once each week. [L. '33, Ch. 153, § 51.

ARTICLE 20. DUTIES OF A SHOTFIRER—COAL MINES

Section

88-2001. Duties as to shot holes.

88-2002. Duties.

88-2003. Who may be employed.

88-2004. When foreman may act.

88-2001. Duties as to shot holes. It shall be the duty of every shotfirer in coal mines to inspect all shot holes before loading and firing any shot or blasts. He shall begin firing the shots at such place that he can proceed with the firing in a direction opposite from that which the air is traveling. Whenever in his opinion any of the working places are too dry, dusty or otherwise dangerous, or that the drill holes are improperly placed, or that the shot hole is in any particular defective, or if in the opinion of the shotfirer the exploding of such shot would be a menace to himself or other persons within the mine, or would cause undue wreckage of timbers or property, it shall be his duty to condemn such shot or drill hole, and refuse to fire such shot until such defective conditions are remedied. [L. '33, Ch. 153, § 52.

88-2002. Duties. The shotfirer shall carry out all of the provisions of this law regarding blasting, including the provisions as provided in article 20 (27) entitled "Explosives in Underground Coal Mines." If in the judgment of the mine inspector because of the finding of explosive gas the shotfirer should make tests for gas he shall carry the flame safety lamp and make such tests, provided, however, that he shall be first duly qualified as a mine examiner. [L. '33, Ch. 153, § 53.

88-2003. Who may be employed. A person having mine foreman's papers may be employed as a shotfirer, assistant foreman or mine examiner and a person having mine examiner's papers may be employed as shotfirer. [L. '33, Ch. 153, § 54.

88-2004. When foreman may act. In mines employing less than twenty (20) men the mine foreman may also act as mine examiner and shotfirer. L. '33, Ch. 153, § 55.

ARTICLE 21. ESCAPEWAYS—COAL MINES

Section

88-2101. Specifications.

88-2102. Second way when more than ten men.

88-2101. Specifications. Every underground coal mine shall have two or more ways of escape to the surface so arranged and equipped that men can escape quickly. In coal mines hereafter opened such ways of escape shall be spaced by at least fifty (50) feet of ground unbroken, save by cross-cuts, throughout their length if drifts or slopes and by at least two hundred feet if shafts so that damage to one from any source shall not thereby lessen the effectiveness of the other as a means of escape. If escapement is wholly from shafts over three hundred (300) feet in depth (vertical or inclined from the vertical more than 35 degrees) and the mine employs more than ten men underground on any one shift, in addition to the regular man hoisting equipment in one shaft there must be emergency equipment in at least one other shaft for the handling of men. If such shafts are

less than 300 feet in vertical depth the second shaft serving as an escapeway may be provided only with a substantial stairway with landings or platforms not over 30 feet apart measured vertically Provided that a ladderway may be used in lieu of a stairway if the restricted size of the shaft does not afford sufficient space for a stairway. [L. '33, Ch. 153, § 56.

88-2102. Second way when more than ten men. Not more than ten (10) men shall be employed in any part of a mine on any one shift until a second way of escape has been provided from that part of the mine. [L. '33, Ch. 153, § 57.

ARTICLE 22. FIRE CONTROL—COAL MINES

Section

- 88-2201. Fireproofing escapes.
- 88-2202. Water supply or extinguishers.
- 88-2203. Non-electrically type.
- 88-2204. Fire-fighting organization.
- 88-2205. Underground telephones.
- 88-2206. No non-fireproof buildings within fifty feet of opening.
- 88-2207. Inspection for fire.
- 88-2208. Storing inflammable substances.
- 88-2209. Storage of calcium carbide.
- 88-2210. Hay and straw to be baled when taken into mine.
- 88-2211. Limiting oil stored in mine.
- 88-2212. Dumping debris prohibited.
- 88-2213. Incandescent lamps.

88-2201. Fireproofing escapes. In shaft mines the escape shaft shall, if practicable, be fireproofed from the surface to the lowest level. [L. '33, Ch. 153, § 58.

88-2202. Water supply or extinguishers. In every underground mine in which more than ten (10) men are employed on any one shift, there shall be an adequate supply of water and (or) chemical fire extinguishers available on the surface and underground for fighting fires in and about the mine. If this supply of water is not furnished through pipes, hydrants, and hose it shall be kept in covered barrels of about fifty (50) gallons capacity, distributed at suitable locations on the surface and underground and buckets or cans hung or placed adjacent to each barrel. [L. '33, Ch. 153, § 59.

88-2203. Non-electrically type. A non-electrically conducting type of fire extinguisher shall be placed in or near surface and underground electrical stations where there is fire hazard. [L. '33, Ch. 153, § 60.

88-2204. Fire-fighting organization. All mines shall have a fire-fighting organization of employees, for fire prevention, fire control and the rescue of men. The superintendent of each such mine shall make plans in writing for the fighting or (of) surface and underground fires.: [L. '33, Ch. 153, § 61.

88-2205. Underground telephones. All mines shall establish underground telephones at suitable points or other warning system approved by the state mine inspector to facilitate quick warning of underground employees in event of fire or other danger. [L. '33, Ch. 153, § 62.]

88-2206. No non-fireproof buildings within fifty feet of opening. After the adoption of this act, no mine operator shall erect any non-fireproof structures within fifty (50) feet of any mine opening, provided, however, that open wooden head frames shall be excepted from this position. Every operating mine having non-fireproof structures within fifty (50) feet of any mine opening shall have such structures fireproofed or removed within six (6) months of the adoption of this act. Provided that if the operator deems such fireproofing impracticable and the mine inspector agrees, fire-proof tight emergency doors may be installed at or near the portals of mine openings and collars of shafts in lieu thereof. [L. '33, Ch. 153, § 63.]

88-2207. Inspection for fire. All timbered shaft stations shall be inspected for fire at close of each shift by a man designated by the operator. [L. '33, Ch. 153, § 64.]

88-2208. Storing inflammable substances. Lubricating oils and similar inflammable substances when stored on the surface shall be kept in a covered building at least one hundred (100) feet from any mine opening, and at least three hundred (300) feet from any explosives magazine, gasoline, naphtha, distillate, and fuel oils except in quantities of fifty (50) gallons or less shall be stored in tanks buried in the ground, and at least one hundred (100) feet from any mine opening, and at least three hundred feet from any explosives magazine. No oil or gasoline storage shall be so situated that leakage would permit the oil or gasoline to flow within one hundred (100) feet of any mine opening or within three hundred (300) feet of any explosives magazine. [L. '33, Ch. 153, § 65.]

88-2209. Storage of calcium carbide. Surface storage of calcium carbide shall be in detached, waterproof, dry and ventilated buildings. If practicable it shall not be stored in underground workings but if stored in underground workings it shall be kept in original covered metal package of not to exceed one hundred (100) pounds each, one such covered package only being allowed on each level. In mines using carbide lamps covered metal receptacles for used carbide shall be placed at convenient points on the surface and underground. [L. '33, Ch. 153, § 66.]

88-2210. Hay and straw to be baled when taken into mine. Hay, straw, or similar inflammable material taken underground shall be in compressed bales, or covered with tarpaulin, or in a

closed car. It shall be promptly delivered to the underground stable and immediately used or stored in locked, fireproof compartment. The amount of hay stored underground at any time shall not exceed the amount normally consumed in forty-eight (48) hours. [L. '33, Ch. 153, 67.]

88-2211. Limiting oil stored in mine. Not more than one barrel or tank of lubricating oil holding fifty-two (52) gallons, or the equivalent thereof, shall be stored on any one level underground; it shall be kept in fireproof surroundings. Gasoline shall not be stored in underground mines. [L. '33, Ch. 153, § 68.]

88-2212. Dumping debris prohibited. The dumping of oily waste, papers, hay, waste carbide, explosive containers, and similar inflammable debris into underground abandoned workings is prohibited. *Provided*, that old timber may be buried in the filling material of old workings. All underground working places and passages and parts of the mine readily accessible to men shall be kept free of empty boxes, waste paper and other combustible rubbish, and waste timber underground shall be removed from the mine, as soon as possible or used in underground filling. [L. '33, Ch. 153, § 69.]

88-2213. Incandescent lamps. Incandescent lamps in and about mines shall be so placed that they cannot come into contact with combustible material. [L. '33, Ch. 153, § 70.]

ARTICLE 23. UNDERGROUND LADDERWAYS—COAL MINES

Section

88-2301. Ladders in mine.

88-2302. Platforms in ladderways.

88-2303. Backward inclining prohibited

88-2304. Rungs of ladders.

88-2305. Ladderways and stairways.

88-2306. Partitioned from hoistways.

88-2307. Ladders extended three feet above platforms.

88-2301. Ladders in mine. All underground ladders shall be of substantial construction and maintained in good condition and free of loose rock. The distance between the centers of the rungs shall not exceed twelve (12) inches. [L. '33, Ch. 153, § 71.]

88-2302. Platforms in ladderways. Every permanent ladderway hereafter installed and all other ladderways so far as practical with an inclination of more than forty-five (45) degrees from the horizontal shall have substantial platforms at intervals of not more than thirty feet measured vertically. Where the inclination of any ladderway installed exceeds sixty degrees the sections of this ladder shall be staggered at each platform. [L. '33, Ch. 153, § 72.]

88-2303. Backward inclining prohibited. No ladders inclining backward from the vertical shall be installed. [L. '33, Ch. 153, § 73.]

88-2304. Rungs of ladders. The rung of a ladder shall not be less than four (4) inches from the wall, or other obstruction behind it. [L. '33, Ch. 153, § 74.]

88-2305. Ladderways and stairways. (a) Ladderways or stairways shall be provided in all manways steeper than thirty-five (35) degrees from the horizontal hereafter driven.

(b) When shafts dipping more than thirty-five (35) degrees from the horizontal are being sunk they shall be provided with ladders to within such distance of the bottom as will secure them from blasting. From the lower end of each such ladderway a chain, wire rope or extension ladder shall be provided to reach to the bottom of the shaft. [L. '33, Ch. 153, § 75.]

88-2306. Partitioned from hoistways. In shafts of more than one hundred (100) feet in vertical depth and used for hoisting purposes all ladderways and stairways shall be partitioned off completely, if possible, from the hoistway compartments. [L. '33, Ch. 153, § 76.]

88-2307. Ladders extended three feet above platforms. Ladders shall be extended at least three (3) feet above every ladderway platform, unless convenient and secure handholds are fixed at such places. [L. '33, Ch. 153, § 77.]

ARTICLE 24. HAULAGE UNDERGROUND—COAL MINES

Section

- 88-2401. Shelter holes.
- 88-2402. Stop block or derail.
- 88-2403. Switch levers, frogs and guard rails.
- 88-2404. Drags or devices on grades.
- 88-2405. Setting brakes or blocking cars.
- 88-2406. Headlights and signals.
- 88-2407. Front and rear lights.
- 88-2408. Persons permitted to ride trains.
- 88-2409. Acts prohibited on moving trains.
- 88-2410. Use of electric locomotives.

88-2401. Shelter holes. (a) In any coal mine all entries, tunnels, and slopes used both for the travel of men and for animal or mechanical haulage shall be provided with shelter holes at intervals not exceeding one hundred (100) feet; the shelter holes shall be not less than four (4) feet high, four (4) feet deep and four (4) feet wide and approximately level with the road, and shall be kept whitewashed or otherwise well marked and free from debris. Provided that where the clearance between mine car or locomotive and the rib is four feet or more shelter holes will not be required, provided the clearance space between track

and rib is kept free of debris. Any (And) provided that cross-cuts or roomnecks will answer in lieu of the shelter hole requirement provided that they are properly accessible and free of debris and at intervals not exceeding one hundred (100) feet.

(b) On haulage roads hereafter constructed and not used as man traveling ways there shall be a clearance space between mine car and rib of at least three (3) feet unless shelter holes of their equivalent at one hundred (100) feet intervals are provided. [L. '33, Ch. 153, § 78.

88-2402. Stop block or derail. At the top of any slope or incline used for haulage there shall be an automatic stop block or spring derail which will stop or derail cars, except when removed or closed by an attendant while cars are passing under control. [L. '33, Ch. 153, § 79.

88-2403. Switch levers, frogs and guard rails. Switch levers underground shall be installed in such manner so to avoid danger of men tripping over them. Frogs and guard rails shall be properly blocked. [L. '33, Ch. 153, § 80.

88-2404. Drags or devices on grades. Except while gathering trips an effective drag or mechanical device shall be used on all mechanically hauled trips when going against an average grade of five (5) percent or more. [L. '33, Ch. 153, § 81.

88-2405. Setting brakes or blocking cars. Brakes shall be set or sprags applied or cars blocked while standing or being loaded on grades. [L. '33, Ch. 153, § 82.

88-2406. Headlights and signals. All electric locomotives shall have efficient headlights and an audible signal device. [L. '33, Ch. 153, § 83.

88-2407. Front and rear lights. On main haulage the front end of all underground trips or trains pushed by locomotive or hauled by other mechanical means shall be provided with an efficient light; a light shall be displayed on the rear of any trip or train or main haulage. [L. '33, Ch. 153, § 84.

88-2408. Persons permitted to ride trains. No persons other than train or trip crews and authorized officials shall ride on locomotives and only trip crews on the rear of loaded cars. No person shall ride on top of loaded cars. [L. '33, Ch. 153, § 85.

88-2409. Acts prohibited on moving trains. Jumping off of moving locomotives to throw switches or open doors, and the coupling and uncoupling of cars in motion, are prohibited. [L. '33, Ch. 153, § 86.

88-2410. Use of electric locomotives. (a) Electric trolley locomotives and storage-battery locomotives of non-permissible

type shall be used underground in coal mines only where the normal air contains less than one-quarter of one per cent of methane, and shall not be used beyond the last open break-through in any entry, nor within fifty (50) feet of the neck of the first room in which pillars are being drawn, nor past seated or open places which give off methane as detected by a flame safety lamp. [L. '33, Ch. 153, § 87.]

ARTICLE 25. HOISTING EQUIPMENT—COAL MINES

Section

- 88-2501. Clearance and safety devices.
- 88-2502. Cages and equipment.
- 88-2503. Brakes and hoists.
- 88-2504. Safety catches on cages.
- 88-2505. Buckets.
- 88-2506. Ropes and cables.
- 88-2507. Attachment of hoisting rope to reel.
- 88-2508. Transporting men in cars.
- 88-2509. Testing cages before men lowered.
- 88-2510. Speed of buckets when men lowered.
- 88-2511. Signals.
- 88-2512. Position of cage or bucket when not attended.
- 88-2513. Timbers and tools longer than cage or bucket.
- 88-2514. Hoist engineer.

88-2501. Clearance and safety devices. In shafts and inclines where men are hoisted or lowered, there shall be at least twenty (20) feet of hoistway clearance above the landings at which men enter or leave the cages, skips or cars and at mines in which over one hundred (100) men are employed underground on any shift there shall also be approved overwinding and overspeeding devices connected with the hoist, or equivalent approved devices shall be installed and maintained to prevent the cage from being overwound or from falling if overwound, and from overspeeding considering the character of the hoisting equipment and depth of hoisting. [L. '33, Ch. 153, § 88.]

88-2502. Cages and equipment. Cages when used for hoisting men shall have strongly constructed bonnets extending over the space on which the men stand and shall have approved steel or sheet-iron or wire-mesh sides extending not less than five (5) feet above the floor of the cage or floor of each deck of a multiple-deck cage. When men are being hoisted or lowered at the end or beginning of shifts, cages shall have gates or doors closing the entrance to each deck. Each deck of each cage used for hoisting men shall have an easy and secure overhead handhold for every man on the cage. [L. '33, Ch. 153, § 89.]

88-2503. Brakes on hoists. All hoists shall be equipped with brakes able to stop and to hold the fully loaded unbalanced cage or skip at any point in the shaft or incline. Each hoist shall have ample power to hoist a fully loaded unbalanced cage or skip. [L. '33, Ch. 153, § 90.]

88-2504. Safety catches on cages. Cages used for hoisting or lowering men shall be provided with approved safety catches, capable of bringing to a stop the fully loaded cage or skip in any part of the shaft or headframe in case the rope or rope connection should break. [L. '33, Ch. 153, § 91.

88-2505. Buckets. Shaft-sinking buckets shall be provided with self-locking safety hooks and, when the shaft is over one hundred (100) feet in depth, with crossheads and guides. Floating crossheads shall not be used unless securely fastened to the bucket rope. Approved hatches, safety doors, bulkheads or other means affording ample protection against falling objects shall be provided for men in shafts during sinking operations. [L. '33, Ch.153, § 92.

88-2506. Ropes and cables. No rope or cable shall be used for hoisting or lowering men when on inspection it is found that the number of broken wires exceeds two any single pitch length or lay of the rope, When the wires on the crown of the strands are worn to less than sixty-five (65) per cent of their original diameter, or when inspection indicates a dangerous amount of corrosion or distortion. [L. '33, Ch. 153, § 93.

88-2507. Attachment of hoisting rope to reel. The hoisting rope shall be firmly clamped to the drum or reel, and at least two turns of the rope shall remain on the drum or reel, when the cage or skip attached to the rope rests at the bottom of the shaft or incline. [L. '33, Ch. 153, § 94.

88-2508. Transporting men in cars. When men are transported in skips or cars in inclines there shall be special provision in addition to the coupling to insure against accident should the coupling of any of the cars break or become detached or through failure of the rope or its becoming detached at the socket. [L. '33, Ch. 153, § 95.

88-2509. Testing cages before men lowered. Where men enter shaft mines by cage or skip, the cage or skip except when constantly in use shall be lowered to the bottom of the shaft and raised to the surface just prior to the beginning of a shift and before the men are permitted to be lowered. [L. '33, Ch. 153, § 96.

88-2510. Speed of buckets when men lowered. In hoisting or lowering men with a bucket the speed, except in the case of apprehended danger, shall not exceed two hundred (200) feet per minute when the bucket in (is) within one hundred (100) feet of the surface or bottom, or five hundred (500) feet per minute in any other part of the shaft. [L. '33, Ch. 153, § 97.

88-2511. Signals. In any shaft mine employing more than twenty-five (25) men or in any shaft mine more than five hundred

(500) feet in vertical depth there shall be at least two effective methods of signaling between each of the shaft stations, and the engine room, one of which methods, in each case shall be a telephone or speaking tube. The signals shall be so arranged that the cager or person in charge of each station can signal directly to hoist men who can also signal directly to all of the stations. Calling or rapping shall not be accepted as a proper method of signaling. [L. '33, Ch. 153, § 98.

88-2512. Position of cage or bucket when not attended. The cage or bucket must not be left at a level or station when not attended but must be released and raised at least five (5) feet above the station sill. Whenever any cage or bucket remains at a level or in such position that men can step on to it, the hoistman must remain at his brakes prepared to answer signals. [L. '33, Ch. 153, § 99.

88-2513. Timbers and tools longer than cage or bucket. All timbers, tools, etc., longer than depth of the bucket, cage or skip to be hoisted or lowered, must be securely lashed at the upper end to the cable in such a manner, that they will ride up or down the shaft without catching. [L. '33, Ch. 153, § 100.

88-2514. Hoist engineer. Only an experienced, competent, sober hoist engineer, over the age of eighteen (18) years, not suffering from deafness or from any other physical defect that could in any way interfere with his competency shall be placed in charge of or allowed to operate an engine for the lowering of men into or hoisting them out of the mine. [L. '33, Ch. 153, § 101,

ARTICLE 26. EXPLOSIVES—GENERAL PROVISIONS—COAL MINES

Section

88-2601. Storage.

88-2602. Protection of magazines.

88-2603. Storage of caps.

88-2604. Distribution in mine.

88-2605. Protection of magazine.

88-2606. Persons allowed in magazine.

88-2601. Storage. Explosives shall be stored on the surface only, except as hereinafter provided in magazines located at safe distances away from all mine openings, mine buildings, or inhabited dwellings, these distances to correspond so far as possible with recommendations as set forth by explosive manufacturers. [L. '33, Ch. 153, § 102.

88-2602. Protection of magazines. Magazines shall be of fire and bullet proof construction of type recommended by the explosive manufacturers and shall have properly screened ventilation, and dry wooden floors, free from exposed nail heads, dirt and rubbish. No lights other than enclosed, guarded electric or

electric battery or electric safety lamps, and no stoves or electric heaters shall be permitted in any magazine. [L. '33, Ch. 153, §103.

88-2603. Storage of caps. Detonators or blasting caps shall not be stored with other explosives but in separate magazines. [L. '33, Ch. 153, § 104. -

88-2604. Distribution in mine. In mines where the explosive is distributed to the miners or working places underground, the distribution shall be done as soon as the explosive is taken into the mine. [L. '33, Ch. 153, § 105.

88-2605. Protection of magazine. The magazine shall be kept securely locked except when attended and no inflammable material shall be allowed within six (6) feet of the same. Smoking shall not be permitted in, or in the vicinity of any magazine, and no matches, tool, material or appliance which might cause a spark or flame shall be carried into any magazine. [L. '33, Ch. 153, § 106.

88-2606. Persons allowed in magazine. The magazine shall be placed under the charge of a man or men designated by the superintendent and no person other than officials or those authorized by the superintendent to handle explosives, shall be allowed to enter any magazine. [L. '33, Ch. 153, § 107.

ARTICLE 27. EXPLOSIVES IN UNDERGROUND COAL MINES

Section

88-2701. Storage in mine.

88-2702. Electric detonators in mine.

88-2703. Men carrying individual supply into mine.

88-2704. Transporting by car into mine.

88-2705. Firing permissible explosives in mines.

88-2706. Tamping shots.

88-2707. Shotfirer's duty.

88-2708. Examination after shooting.

88-2709. Misfired shots.

88-2710. Depth of drill holes.

88-2711. Record of misfired shots.

88-2712. Drilling out misfired shots prohibited.

88-2713. Penalty for abusing shotfirer.

88-2701. Storage in mine. Unless all explosives are taken out of the mine after each shift the operator shall require the miner to keep explosives in a portable tight covered box of wood or other non-conducting material. The explosive box shall be kept in a cross-cut or recess at a safe distance from the working face and from electric wiring. No detonators, tools, pieces of metal or oily material shall be kept in the explosive box. [L. '33, Ch. 153, § 108.

88-2702. Electric detonators in mine. In coal mines electric detonators shall be transported and handled in the mine solely by

shotfirers'; they shall be carried in separate containers from other explosives. The leg wires of detonators shall be twisted together or otherwise adequately short circuited before taken into the mine. [L. '33, Ch. 153, § 109.

88-2703. Men carrying individual supply into mine. The operator may permit men to carry their individual supplies of explosives into the mine, provided the explosives are carried in non-conducting covered containers and that these containers are kept in good repair. [L. '33, Ch. 153, § 110.

88-2704. Transporting by car into mine. In mines where electricity is not used as a source of power or in mines electrically equipped, if the electric current is cut off from other than properly installed lighting circuits when explosives are being transported, explosives in bulk may be taken into the mine in an ordinary mine car when propelled by man, animal, or cable. If the electric current is not cut off from the mine, explosives in bulk must be transported in a properly insulated car with at least two empty cars between the locomotive and the cars containing the explosive. [L. '33, Ch. 153, § 111.

88-2705. Firing permissible explosives in mines. Only permissible explosive fired electrically by portable battery or electric firing machine shall be used in the coal mines of this state; *Provided*, that black powder may be used if all shots are fired by electricity from the surface after all employees are out of the mines and provided that in coal mines non-permissible explosive may be used in rock work if permitted in writing by the state mine inspector and under such restrictions as he may impose. All shots shall be loaded, tamped, and fired electrically by shotfirers with portable battery or electric firing machine when all other persons except shotfirers, officials, and necessary company men are out of the mine, or electrically from the surface with all persons out of the mine. At least one hundred (100) feet of lead wire shall be used with each shotfiring battery or device. [L. '33, Ch. 153, § 112.

88-2706. Tamping shots. In coal mines all holes shall be tamped with clay or other incombustible material which shall be furnished and delivered by the operator to points convenient to working places. Only wooden tamping bars shall be used. [L. '33, Ch.153, § 113.

88-2707. Shotfirers' duty. Shotfirers shall not load or shoot any shot in any mine, if in their judgment the drill hole for said shot is not properly placed to do the work it is designated to do, or if the place is dangerous because of explosive gas or fine dry dust. [L. '33, Ch. 153, § 114.

88-2708. Examination after shooting. After shooting, shotfirers, firebosses or mine foremen shall, as soon as it is safe to do

so, visit and examine places where shots have been fired to see that there is no fire or other existing danger. [L. '33, Ch. 153, § 115.]

88-2709. Misfired shots. The shotting circuit shall be disconnected for at least fifteen (15) minutes prior to returning to a misfired shot on which the attempt to ignite was by electricity and no misfires of explosives shall be withdrawn. [L. '33, Ch. 153, § 116.]

88-2710. Depth of drill holes. Holes drilled in coal, except anthracite coal, for explosives shall not exceed four (4) feet in depth, unless the coal is of greater thickness than four (4) feet, in which case the hole shall be of a length or depth, not greater than the thickness of the coal that is being removed, except when the coal is undercut or sheared, the length or depth of the hole may be greater but shall be less by six (6) inches than the depth of the undercutting or shear. Undercut, center cut or over cut coal shall not be blasted until the coal cuttings have been completely removed from the kerf. [L. '33, Ch. 153, § 117.]

88-2711. Record of misfired shots. The operator shall cause to be kept a written daily record of all shots misfired. [L. '33, Ch. 153, § 118.]

88-2712. Drilling out misfired shots prohibited. No person shall attempt to drill out a misfired hole but shall drill another hole not less than twelve (12) inches distant from such misfired shot. [L. '33, Ch. 153, § 119.]

88-2713. Penalty for abusing shotfirer. Any person who shall, by violence, abusive language or innuendo, injure, humiliate or embarrass any shotfirer because of said shotfirer having condemned any shot hole, shall, upon conviction thereof, be punished by a fine of not exceeding one hundred dollars or by imprisonment for not less than thirty days nor more than one year. [L. '33, Ch. 153, § 120.]

ARTICLE 28. VENTILATION AND GASES IN UNDERGROUND COAL MINES

Section

88-2801. Provisions for ventilation.

88-2802. Fans and explosion doors.

88-2803. When deemed gassy.

88-2804. Auxiliary blowers.

88-2805. Provisions for ventilation.

88-2806. Ventilation of gassy mines.

88,2807. Ventilating furnace prohibited.

88-2808. Entries.

88-2809. Air intakes and returns.

88-2810. Fans to be reversible.

88-2811. Continuous operation of fans.

88-2812. Ventilating pressure shall be registered.

- 88-2813. Fans. shall be inspected daily.
- 88-2814. Withdrawal of men when fans stopped.
- 88-2815. When air unfit.
- 88-2816. Use of lights in, gassy mines.
- 88-2817. Matches, tobacco, etc., not allowed in gassy mines.
- 88-2818. Non worked part of mine to be sealed off.
- 88-2819. Headings and bore holes when approaching abandoned mine.
- 88-2820. Faces free from gas—Crosscuts.
- 88-2821. Removal of explosive gas.

88-2801. Provisions for ventilation. Every operator of any coal mine which shall have attained a distance of one hundred feet in depth of shaft or length of slope, entry or drift from the surface, or from the bottom of the shaft, shall use all reasonable means to provide an adequate amount of ventilation of not less than one hundred cubic feet of pure air per minute for each person at work in said mine and not less than three hundred cubic feet of pure air per minute for each mule, horse or burro used in said mine, and to cause such air to be forced by proper appliances through said mine to the face of each and every working place in such manner as to render harmless and expel therefrom all dangerous or poisonous gases, and shall use reasonable care at all times to keep all workings in operation in said mine free from standing gas. All underground workings more than five hundred (500) feet from a surface opening must be ventilated by a fan installed on the surface. [L. '33, Ch. 153, § 121.

88-2802. Fans and explosion doors. Every fan, hereafter installed at any coal mine must be placed at least twenty feet distant from the side or mouth of the shaft entry or slope with which it is connected for ventilation purposes, and shall be of fireproof construction; and explosion doors shall be provided in a direct line with the mine opening. [L. '33, Ch. 153, § 122.

88-2803. When deemed gassy. For the purpose of this act, an underground coal mine shall be deemed gassy if so classified by the state mine inspector and if the operator objects to such classification and the state mine inspector shall then determine by tests with an approved flame safety lamp, or by chemical analysis or by other approved appliances or methods that there is present two or more per cent of methane in any open part of the mine, or if the return air of any ventilation split is shown by analysis of a sample taken in duplicate that it contains One-fourth per cent or more of methane, the mine shall be deemed gassy. [L. '33, Ch. 153, § 123.

88-2804. Auxiliary blowers. Electrically driven auxiliary fans or "blowers" may only be used in a non-gassy mine and only for a sixty (60) day period, upon issuance of a written permit by the state mine inspector. Such auxiliary fans shall not be used to supplant usual ventilation methods but only to take care of a temporary emergency such as driving through a rock fault.

Such fan installation shall be fireproof with no loose exposed inflammable material within ten (10) feet of the fan and motor. [L. '33, C.153, § 124.

88-2805. Provisions for ventilation. In gassy mines, in all new development started after the passage of this act, and where possible in all old work all ventilation of two or more pairs of entries or dips shall be controlled by undercasts or overcasts for each pair of entries or dips. Principal doors of the self closing type, if possible in pairs used in such old work in lieu of overcast or undercast shall have an attendant on duty at such door at all times and it shall be a violation of the mining law to block or latch such door open. The state mine inspector shall classify as principal doors those seriously deranging or stopping ventilation of other workings. All other doors shall be of the self closing type with another door or canvas used in conjunction therewith. [L. '33, Ch. 153, § 125.

88-2806, Ventilation gassy mines. In gassy mines active workings shall be ventilated with fresh air and air passing through caved and abandoned workings shall not circulate through live workings. [L. '33, Ch. 153, § 126.

88-2807. Ventilating furnace prohibited. After the passage of this act a ventilating furnace shall not be used at any coal mine in the state, regardless of the number of men employed therein. [L. '33, Ch. 153, § 127.

88-2808. Entries. In any mine all entries shall be driven in pairs or more except that in case of emergency special permit in writing may be granted by the state mine inspector for the driving of a single entry. In no case shall a place or places be turned off of an entry ahead of the last open crosscut. [L. '33, Ch. 153, § 128.

88-2809. Air intakes and returns. All stoppings, overcasts, and undercasts between intakes and returns hereafter constructed shall be substantially built, if practicable, of masonry, concrete or other incombustible material of ample strength, airtight and well-hitched into the rib. New, or renewal of all air stoppings, overcasts and undercasts between intakes and returns shall be made in accordance with the above requirement. [L. '33, Ch. 153, § 129.

88-2810. Fans to be reversible. All mine fans hereafter installed shall be so arranged that the ventilating current can be reversed quickly. [L. '33, Ch. 153, § 30.

88-2811. Continuous operation of fans. All ventilating fans shall be kept in operation continuously night and day unless underground operations are suspended, but in case of suspension of operations the main fan shall be started at least three hours

before beginning work underground and no person shall be permitted underground thereafter except for the purpose of inspection until the mine has been examined and all open places pronounced free of accumulations of explosive gas. Provided that should it at any time become necessary to change the speed, stop or reverse fan on account of accident or needed repairs to any part of the machinery connected therewith, or by reason of any other unavoidable cause, it shall be the duty of the mine foreman, or the assistant mine foreman in charge, after first having provided for the safety of the persons employed in the mine preferably by removing them from the mine to order said fan to be regulated or stopped so as to make the necessary repairs or to remove any other difficulty that may exist. [L. '33, Ch. 153, § 131.

88-2812. Ventilating pressure shall be registered. The ventilating fan at mines in which one hundred (100) or more are employed on any one shift shall be equipped with a recording instrument by which the ventilating pressure shall be continuously registered. The registration chart for each day with the date thereof shall be kept in the office of the mine for at least one year. [L. '33, Ch. 153, § 132.

88-28 13. Fans shall be inspected daily. The fan shall be inspected at least daily, and if electrically operated, the fan shall be on an electrical circuit, independent of the circuit which transmits power into the mine. [L. '33, Ch. 153, § 133.

88-2814. Withdrawal men when fans stopped. In case of stoppage of the fan for more than thirty (30) minutes in a gassy mine or more than four (4) hours in a non-gassy mine, all men shall be immediately withdrawn from the mine and no men shall be permitted to enter the mine until the fan has been in operation for two hours and the mine examiners have returned to the surface and reported the mine safe. No fan shall be reversed while men are in the mine unless authority to do so is given, preferably in writing by the mine foreman, superintendent, state inspector, or other responsible person. [L. '33, Ch. 153, § 134.

88-2815. When air unfit. The air in any unsealed place shall be considered unfit for men if it shall be found to contain less than nineteen (19) per cent oxygen more than one (1) per cent carbon dioxide or a harmful amount of poisonous gas and men shall be prohibited from working in such place except for the purpose of rendering it safe and fit. [L. '33, Ch. 153, § 135.

88-2816. Use of lights in gassy mines. Within the discretion of the mine inspector no open lights shall be used in gassy coal mines on any one shift; only permissible safety lamps either flame or electric approved by the United States Bureau of Mines shall be used as portable lights. [L. '33, Ch. 153, § 136.

88-2817. Matches, tobacco, etc., not allowed in gassy mine. The operator shall not permit men in any underground mine using permissible safety lamps to carry matches, lighters, cigarettes or smoking tobacco into or in such mine and shall cause men going underground to be searched for these articles at least once a week upon going on shift. [L. '33, Ch. 153, § 137.]

88-2818. Non worked part of mine to be sealed off. All worked-out areas or areas abandoned temporarily or permanently that cannot be so ventilated as to prevent the accumulation of explosive and noxious gases, or that are not kept thoroughly dusted, shall be sealed off by substantial fire-proof stoppings keyed or recessed into the rib. Such areas sealed hereafter shall have one or more pipes with closed valve or valves extending through the seal for testing the gases behind the stopping. [L. '33, Ch. 153, § 138.]

88-2819. Headings and bore holes when approaching abandoned mine. When any working has approached within one hundred (100) feet of any portion of an abandoned mine not known to be free from gas or dangerous accumulation of water or explosive gas, the advance workings or headings shall not exceed nine (9) feet in width and there shall be constantly at least one bore hole, eighteen (18) feet in advance drilled centrally in the face of each heading; and when within fifty (50) feet of conjectured location of the workings, in addition to the center hole, there shall also be drilled in advance at least two holes for each nine (9) feet advance of the face, one on each side of the heading at an angle of thirty (30) degrees to forty-five (45) degrees with the axis of the entry or workings, which holes shall be drilled at least eighteen (18) feet deep. [L. '33 Ch 153, § 139.]

88-2820. Faces free from gas—Crosscuts. In gassy mines, entry and room faces shall be ventilated by a current of moving air directly by a line brattice if necessary so as to keep such faces free at all times from gas as determined by a flame safety lamp. Crosscuts in all coal mines shall be driven not more than one hundred (100) feet apart and such lesser distance apart as is necessary to comply with this provision or as is ordered by the state mine inspector. In non-gassy mines crosscuts shall not be more than one hundred (100) feet apart unless greater distance is authorized by the state mine inspector. No entry or room shall be abandoned until a crosscut has been made at the face. [L. '33, Ch. 153, § 140.]

88-2821. Removal of explosive gas. Accumulation of explosive gas shall not be permitted to exist after discovery longer than may be necessary to remove such accumulation but such accumulation shall not be removed in such manner or at such time so as to endanger the lives of men in the mine. Explosive

gases shall be removed only by the usual method of ventilation and shall in no case be brushed out of a place. [L. '33, Ch. 153, § 141.

ARTICLE 29. TIMBERING IN UNDERGROUND COAL MINES

Section

88-2901. Mines to be sufficiently timbered.

88-2902. Duty of workmen.

88-2903. Systematic methods to be adopted.

88-2904. Workmen finding place of work dangerous.

88-2905. Suitable timbers and tools to be supplied.

88-2906. Instruction of new miners.

88-2901. Mine to be sufficiently timbered. Every shaft, slope, tunnel, entry, aircourse, and working place in the mine shall be sufficiently timbered, if necessary to protect persons therein from falling coal or rock. It shall be the duty of the operator to carry out and enforce the provisions of this rule, but nothing contained herein shall be construed to relieve the miner from the duty of caring for his own working place save as hereinafter provided. [L. '33, Ch. 153, § 142.

88-2902. Duty of workmen. Every workman employed in a mine shall examine his working place as to safety from loose rock or coal before commencing work and also at frequent intervals during the shift. He shall take down or secure loose rock or coal immediately and shall set props and other timbering securely as soon as needed and as required by mine timbering regulations. [L. '33, Ch. 153, § 143.

88-2903. Systematic methods to be adopted. Proper and systematic methods of timbering shall be adopted throughout each mine. [L. '33, Ch. 153, § 144.

88-2904. Workmen finding place of work dangerous. Should a workman at any time find his working place becoming dangerous beyond his control from any cause or condition, he shall at once cease work and notify the mine foreman or his assistant of such danger and upon leaving such place he shall place some plain warning at the entrance thereto, to warn others from entering into the danger and he shall not return until ordered to do so by the mine foreman or his assistant. [L. '33, Ch. 153, § 145.

88-2905. Suitable timbers and tools to be supplied. It shall be the duty of the operator to see that all miners in the mine are supplied with suitable timbers. It shall be the duty of the miner to have such suitable tools as are necessary to keep his working place in safe condition. For the purpose of this and section 147 (88-2906) the term "timbers" shall be held to include and mean all wood to be used by the miner and/or all steel or concrete material used in lieu of timber. L. '33, Ch. 153, § 146.

88-2906. Instruction of new miners. Every miner when first employed shall be instructed by a responsible mine official in proper timbering and roof testing practice and correct practice in barring down loose material. [L. '33, Ch. 153, § 147.

ARTICLE 30. ROCK DUST IN UNDERGROUND COAL MINES
EXCEPT ANTHRACITE

Section

- 88-3001. Keeping mines rock dusted.
- 88-3002. Rock dusting to be sufficient to prevent explosions.
- 88-3003. Specifications for rock dust.
- 88-3004. Dust samples.
- 88-3005. How samples to be taken.
- 88-3006. Record of place samples taken.
- 88-3007. Rock-dust barriers.
- 88-3008. Inspection of barriers.
- 88-3009. When above provisions shall be installed.

88-3001. Keeping mines rock dusted. All coal mines shall be kept thoroughly rock dusted, unless all coal dust on the floor, ribs and roof and timber is in a muddy condition at all times. *Provided, however,* that this article shall not apply to mines producing pure anthracite coal. [L. '33, Ch. 153, § 148.

88-3002. Rock dusting to be sufficient to prevent explosions. All entries, slopes and aircourses in non-gassy mines and in gassy mines all entries, slopes, aircourses, rooms, cross-cuts and pillar working shall be rock-dusted to within at least forty (40) feet of the face. The rock-dusting shall be done with such frequency that all surfaces required to be rock-dusted shall be kept in such condition that the incombustible content of the adhering dust shall not be less than fifty-five (55) per cent and as much more as may be deemed necessary by the state mine inspector to prevent coal dust explosions. Provided that where because of coal spillage it is not practicable in the judgment of the state mine inspector to maintain the rock dust on floors of haulageways or parts thereof at the legal minimum that watering of roadways sufficiently extensive and frequent to keep them in a wet condition shall be accepted in lieu of their rock-dusting, this provision, however, not to exempt the rock-dusting of ribs and roof in such haulage-ways. [L. '33, Ch. 153, § 149.

88-3003. Specifications for rock dust. Rock dust used shall be pulverized limestone, dolomite, gypsum, shale or other material containing less than five (5) per cent combustible material approved by the state mine inspector. Preferably fifty per cent or more of this dust should pass through a two hundred (200) mesh sieve. [L. '33, Ch. 153, § 150.

88-30040 Dust samples. In all mines a sufficient number of dust samples shall be collected and tested in the course of a ninety-day period from various parts of the mine to obtain a

record of the general dust conditions. Such samples shall be collected at one thousand (1000) feet or less intervals and shall appear to represent average or worse than average conditions. When such samples excluding all material over twenty (20) mesh in size show the incombustible content to be below the legal minimum the mine or portions thereof shall be re-rock-dusted. *Provided*, that general additional rock-dusting of the mine every ninety days will serve in lieu of sampling and testing of dust unless examination of the mine by the state mine inspector shows that additional rock-dusting at ninety-day periods is insufficient to protect the mine against coal dust explosions. [L. '33, Ch. 153, §151.

88-3005. How samples to be taken. A sample shall be taken in the following manner: A groove six (6) inches wide across the floor from rib to rib shall be made in the loose fine material by scoop or other means, also one or more six (6) inch strips of dust shall be brushed from both ribs and the roof (if dust is adhering to the roof) and where the entry has timber sets, from top of one collar and from the lagging (if any). All of the material thus gathered, and which may be conveniently gathered on an oil cloth or canvas, shall be screened and that passing through the screen shall be placed in a container suitably labeled. The sample shall be finally screened through a twenty (20) mesh sieve and from this under twenty (20) mesh dust a determination shall be made of the incombustible content. The floor sample shall be kept separate from the rib and roof sample. [L. '33, Ch. 153, § 152.

88-3006. Record of place samples taken. A written record shall be entered in a book kept for that purpose at the mine office, showing the location at which samples have been taken and the results of the tests and analysis. A map of the mine shall be kept posted to show the extent of the rock-dusting and the location of rock-dust barriers. [L. '33, Ch. 153, § 153.

88-3007. Rock-dust barriers. Rock-dust barriers approved by the state mine inspector shall be placed at or near the entrance to panels or on main entries and aircourses or wherever feasible to isolate panels and sections of a mine in the event of an explosion. Sets of barriers shall contain at least fifty (50) pounds of dust for each square foot of cross-sectional area of entry at barrier location. [L. '33, Ch. 153, § 154.

88-3008. Inspection of barriers. Rock-dust barriers shall be inspected at least once a month and the superintendent shall keep a written record of these inspections and shall report to the mine inspector annually the condition of all rock-dust barriers, the number of barriers erected and if any barriers are removed, the number so removed and the reasons for such removals. [L. '33, Ch. 153, § 155.

88-3009. When above provisions shall be installed. Rock-dusting and the installation of rock-dust barriers as provided in § 142-155 (88-2901 to 88-3008) inclusive shall be started within ninety (90) days and completed within twelve (12) months from the passage of this act. [L. '33, Ch. 153, § 156. .

ARTICLE 31. ELECTRICITY—COAL MINES

Section

- 88-3101. Electrician to be employed.
- 88-3102. Voltage for signal systems.
- 88-3103. Voltage for portable apparatus.
- 88-3104. Voltage for transmission purposes.
- 88-3105. Sign notices.
- 88-3106. Repairs, renewals and extensions.
- 88-3107. Intentional electric shocks prohibited.
- 88-3108. Grounding apparatus.
- 88-3109. Switchboards.
- 88-3110. Switches.
- 88-3111. Fuses and circuit breakers.
- 88-3112. Track bonding.

88-3101. Electrician to employed. Each operator at whose mine electricity is used for power shall employ a competent electrician who shall have charge of the electrical apparatus in and about the mine, or mines. Nothing in this section shall prevent the electrician from performing other duties. [L. '33, Ch. 153, § 157.

88-3102. Voltage for signal systems. Signal systems shall not have a voltage exceeding 60 volts at any point in the system. This rule shall not be construed to apply to lamp signals or shaft signals. [L. '33, Ch. 153, § 158e

88-3103. Voltage for portable apparatus. Motors of electric locomotives, loaders, coal cutting machines, and other portable apparatus shall not be operated at a voltage exceeding 250 volts. *Provided, however,* that all such equipment in use at the time of the passage of this act may be used and the same may be repaired, replaced or relocated or additions made thereto, if the voltage thereof at no time exceeds 550 volts. [L. '33, Ch. 153, § 159.

88-3104. Voltage for transmission purposes. For transmission purposes underground a voltage in excess of 550 volts may be used, provided that such circuits are carried inside metallic Sheaths or armors with the sheaths or armors permanently grounded. This higher voltage may only be applied to transformers or stationary motors. [L. '33, Ch. 153, § 160.

88-3105. Sign notices. At electric stations where caution sign notices will tend to prevent electrical accidents, such notices shall be posted. [L. '33, Ch. 153, § 161.

88-3106. Repairs, renewals and extensions. Repairs, renewals, or extensions of electrical apparatus and circuits shall not be made while such apparatus or circuits are alive unless conditions make it absolutely necessary in which case the utmost precaution shall be taken when working on them. [L. '33, Ch. 153, § 162.

88-3107. Intentional electric shocks prohibited. No person working in or about a mine shall willfully cause another person to receive an electric shock. [L. '33, Ch. 153, § 163.

88-3108. Grounding apparatus. The frames, cases and bed-plates of electrical apparatus other than portable motors, such as stationary motors, generators, and transformers and the non-current carrying, metallic parts of switchboards, and other electrical appliances shall be effectively grounded. [L. '33, Ch. 153, § 164.

88-3109. Switchboards. (a) Switchboards shall be so located in an underground station that there shall be a straight passageway of not less than three feet wide in front and in back of the switchboard. This three-foot passageway shall be clear of all apparatus mounted on the boards and shall be accessible at both ends but shall not be entered by an unauthorized person and shall not be used for the storage of material or clothing. The space behind switchboards where the voltage exceeds 650 volts shall be kept closed by locked doors that can be opened from within without the use of a key. In case of existing installations that do not meet the requirements with respect to passage space in back of the switchboard, no person shall be permitted back of the boards while any apparatus or circuits connected therewith are alive. Where the voltage exceeds 650 volts, all live metal parts on the front of switchboards within seven feet of the floor shall be protected.

(b) Rubber mats or other equally effective means of insulation shall be kept on the floor along the entire front of all switchboards.

(c) Switchboards shall be wired in a workmanlike manner with wiring having adequate insulation for the voltage used. If the wires are brought close together they shall have a tight incombustible outer covering. [L. '33, Ch. 153, -§ 165.

88-3110. Switches. (a) All switches for use underground shall be rugged in construction and adequately proportioned as to capacity. On new equipment hereafter installed switches operating on circuits over 125 volts, except trolley lines, that are opened while under load shall be provided with quick-break attachments to prevent excessive arcing. Where, because of moisture, there is likelihood of switch handles becoming electrically charged, special switches operated with short wood handles shall be provided. In so far as feasible switches shall be located in a

thoroughly dry place. In case the switches can not be so located, an insulated platform shall be provided for the men to stand on when operating the switch.

(b) Where there is danger of accident due to the closing of an open switch, proper warning signs shall be placed at such switch by the person opening the said switch. Where practicable, switches shall be so wired that the blades will not be alive when the switch is open. Switches shall not be installed in such a manner as to close by gravity. Switches shall be convenient and accessible, yet so safeguarded that the liability to accidental contact with live parts thereof shall be reduced to a minimum. All switches should be of the enclosed permissible type.

(c) Oil switches shall be used for operating or controlling all alternating current circuits above 600 volts. [L. '33, Ch. 153, § 166.

88-3111. Fuses and circuit breakers. Fuses and automatic circuit breakers shall be constructed so as to effectually interrupt the current when a short circuit occurs or when the current through them exceeds a predetermined value. Iron or copper wires shall not be used for fuses. All fuses shall be stamped or marked, or shall have a label attached indicating their rating. Fuses shall be adjusted or replaced only by an authorized person. [L. '33, Ch. 153, § 167.

88-3112. Track bonding. The tracks of all main haulage systems that use a rail return shall be bonded at every joint and around switches and frogs. Such tracks shall be cross-bonded. [L. '33, Ch. 153, § 168.

ARTICLE 32. ELECTRICITY IN UNDERGROUND COAL MINES

Section.

88-3201. Insulators and insulating of electric wires.

88-3202. Safety provisions for wires.

88-3203. Bare places on wires.

88-3204. Fireproof rooms for transformers.

88-3205. Air currents around electric equipment.

88-3206. Permissible type.

88-3207. Fresh air around torches.

88-3201. Insulators and insulating of electric wires. (a) All electric wiring, other than armored cable and trailing cable used in connection with portable motors, shall be supported on suitable insulators mechanically and electrically sufficient for the character of the load and these insulators shall be placed at intervals close enough to prevent excessive sag or contact with other wires, timbers, roof, rib or other non-insulating material.

(b) Trailing cables used in connection with portable motors shall consist of extra flexible stranded conductors, heavily insulated and protected with stout braiding or other equally effective covering. Such cables shall be regularly inspected before

or after each working shift, and when found to offer a hazard and in need of repair, shall be removed to the surface, thoroughly dried out and repaired. [L. '33, Ch. 153, § 169.

88-3202. Safety provisions for wires. No electric equipment or wiring other than armored cable or its equivalent shall hereafter be installed in the return air course in any gassy coal mine. All trolley wires if less than feet above the rail shall be thoroughly guarded from man contact at all partings, entry junctions, and at all other points where men have to travel under them. All bare, rubber covered or weather proof power lines other than trolley lines and wires used exclusively for signaling shall be guarded from man contact at all points where men have to travel under them ; so far as possible they shall be installed in locations where there is the minimum danger of an contact and were possible on the opposite side of entry or slope from shelter holes. [L. '33, Ch. 153, § 170.

88-3203. Bare places on wires. The outer end of trailing cables shall be provided with suitable means for attaching the cables to the power supply without hazard to the person making such connections. are places on insulated power wires where portable machine connections are made shall be adequately protected by guards from man contact such breaks in insulation shall be adequately repaired or guarded when no longer used as connecting points. [L. '33, Ch. 153, § 171.

88-3204. Fireproof rooms for transformers. Transformers other than those used on signal circuits shall be installed in fire-proof rooms and mounted on substantial fireproof bases or walls. Door or doors to rooms shall be installed. [L. '33, Ch. 153, § 172.

88-3205. Air currents around electric equipment. In all underground gassy coal mines electrically operated hoists, pumps, compressors, and charging stations, and all other similar underground electrical equipment shall be installed so as to be ventilated at all times by fresh intake air, and so as to involve no fire hazard. All such installations in non-gassy coal mines shall be made in places where there is a definite moving current of air and so as to involve no fire hazard. [L. '33, Ch. 153, § 173.

88-3206. Permissible type. In gassy mines all electrical equipment to be installed in the future shall be of the permissible type if such is economically practicable. [L. '33, Ch. 153, § 174.

88-3207. Fresh air around torches. Torches or similar devices for rail bonding or other similar use may only be used in gassy mines in fresh intake air. [L. '33, Ch. 153, § 175.

ARTICLE 33. GENERAL PROVISIONS—COAL MINES

Section

88-3301. Solitary emplyment forbidden—Riding aerial tramways.

88-3302. Bumpers on dump tracks.

88-3303. Fuel-burning engines.
88-3304. Moving machinery shall be guarded.
88-3305. Protective hats or caps.
88-3306. When workers shall wear goggles.
88-3307. Inexperienced men in mine.
88-3308. Fire resistant cloth to be used in mine.

88-3301. Solitary employment forbidden—Riding aerial tramways. (a) Solitary employment on shaft re-timbering or shaft repair work is forbidden.
(b) So far as practicable oilers and inspectors only shall be allowed to ride on aerial tramways. [L. '33, Ch. 153, § 176.

88-3302. Bumpers on dump tracks. Waste dump tracks on the surface shall be kept in good condition and a bumper or other effective device shall be placed at the end of each to prevent cars rolling over the embankment. [L. '33, Ch. 153, § 177.

88-3303. Fuel-burning engines. No fuel-burning locomotive or engine of any kind shall be permitted underground without a written exemption issued by the mine inspector. [L. '33, Ch. 153, § 178.

88-3304. Moving machinery shall be guarded. All flywheels, gears, belts, and all exposed moving machinery parts that are liable to cause injury, or dangerous parts of machinery used in and about a mine shall be appropriately guarded to prevent injuries to attendants or other purposes. Stairs, platforms, and dangerous walks in or about the mine shall be provided with rails, fences and gates. [L. '33, Ch. 153, § 179.

88-3305. Protective hats or caps. All underground workers and all persons allowed below the collar of the shaft shall be compelled to wear protective hats or caps. [L. '33, Ch. 153, § 180.

88-3306. When workers shall wear goggles. All underground workers shall equip themselves with goggles and shall wear them when starting machine drill holes, drilling hitches, breaking boulders, picking, barring down, blowing out holes, loading upper holes, pulling chutes, cutting samples, or doing similar work and as further directed by the operator. [L. '33, Ch. 153, § 181.

88-3307. Inexperienced men in mine. Inexperienced men in underground mines shall at all times be under the supervision of an experienced miner or mine official. [L. '33, Ch. 153, § 182.

88-3308. Fire resistant cloth to be used in mine. Canvas or brattice cloth used in mines shall be of substantial fire resistant material. [L. '33, Ch. 153, § 183,

ARTICLE 34. SYSTEM OF CHECKING MEN IN UNDERGROUND
COAL MINES

Section

88-3401. System to be installed.

88-3401. System to be installed. The operator of each and every underground coal mine shall install a system of checking in and out employees whereby every employee shall be identified by means of a check. A record shall be kept of underground miners and location of every employee in the mine. [L. '33, Ch. 153, § 184.

ARTICLE 35. PREPARATION OF COAL UNDERGROUND

Section

88-3501. Screening and storage prohibited.

88-3501. Screening and storage prohibited. Coal shall not be forked or screened underground and shall not be stored underground in piles or in chutes to an extent involving danger of spontaneous fires. [L. '33, Ch. 153, § 185.

ARTICLE 36. FIRST AID, EQUIPMENT, SUPPLIES AND TRAINING—COAL MINES

Section

88-3601. Training in first aid.

88-3602. First aid cabinets and other equipment.

88-3601. Training in first aid. At every mine the operator shall endeavor to have all officials and employees trained in first aid and there shall be men trained in first aid at every operation no matter how small. An average of 25 per cent or more of all employees shall be retrained in first aid yearly. [L. '33, Ch. 153, § 186.

88-3602. First aid cabinets and other equipment. Every mining operation shall have one or more first aid cabinets containing first aid material. At or in every mine there shall be, in addition to first aid cabinet or cabinets, splints, a stretcher or stretchers, blanket or blankets all of which shall be protected from moisture and dust in suitable containers. [L. '33, Ch. 153, § 187.

ARTICLE 37. RESCUE APPARATUS—COAL MINES

Section

88-3701. Necessary apparatus where fifty or more men employed.

88-3702. Rescue crews.

88-3701. Necessary apparatus where fifty or more men employed. Each operator employing 50 or more men underground in any coal mine or group of coal mines shall have and maintain in good working order ten or more oxygen breathing mine rescue apparatus of the two hour permissible type with accessories or five such oxygen breathing mine rescue apparatus and five gas

masks of a type permissible for use in air containing carbon monoxide. *Provided*, that one or more mining operations situated one hour's drive or less from one another may maintain a joint rescue station in lieu, of individual maintenance of rescue equipment provided such station is equipped with at least 10 such oxygen apparatus and there is a man in charge of the rescue station who can be readily reached at all times. A gas mask shall not be used where a flame safety lamp will not burn. [L. '33, Ch. 153, § 188.

88-3702. Rescue crews. Each operator employing 50 or more men underground in any coal mine or group of mines shall have two or more crews of five men each trained in the use of oxygen breathing apparatus and gas masks. **Provided**, that if such operator is assisting in maintaining a joint rescue station a minimum of 5 men shall be trained. Such trained members of a rescue crew or crews shall undergo retraining for at least 4 hours every six months. [L. '33, Ch. 153, § 189.

ARTICLE 38. TIME ALLOWED OPERATORS TO COMPLY COAL MINES

Section

88-3801. Six months to comply with act.

88-3801. months to comply with act. Except as to specific time provisions made in certain sections of this act, the operators shall have six months after the passage of this act to comply with its provisions. [L. '33, Ch. 153, § 190.

PART 3—MINES OTHER THAN COAL MINES ARTICLE 39. REGISTRATION

Section

88-3901. Necessary information.

88-3902. Additional information when ten or more employees.

88-3903. Written requests for data.

88-3901. Necessary information. Each operation (operator) in the state of New Mexico shall register with the State Mine Inspector annually before the 1st of August of each year or upon start of operations the name of the operations, post office address, name of operator or person in charge and character of operation (that is, mineral produced or sought) [L. '33, Ch. 153, § 191.

88-3902. Additional information when ten or more employees. Each mine or mining operation employing more than ten (10) men shall furnish to the mine inspector on or before November 15th of each year such information regarding estimated production and value of estimated production, men employed, mining equipment and methods and any other information as may be

reasonably required for the previous fiscal year (November 1st to October 31st) on the blank form to be furnished the operator by the inspector for this purpose. Provided, that any information regarding production and value of production of mines shall be held confidential and not published by the mine inspector unless agreed to by the operator. [L. '33, Ch. 153, § 192.

88-3903. Written requests for data. The mine operator shall at any time, upon the mine inspector's written request, furnish any reasonable information or data desired by the mine inspector. [L. '33, Ch. 153, § 193.

ARTICLE 40. DUTIES OF MINE OPERATORS

Section

88-4001. Safety for employees.

88-4002. Person with authority to be on the ground.

88-4003. Protection of abandoned mine.

88-4004. Serious conditions of mine to be reported by wire.

88-4005. Reports of compensable accidents.

88-4001. Safety for employees. Every mine employer shall furnish such employment and such place of employment as shall be reasonably safe for the employees therein, and shall furnish and use safety devices and safeguards, adopt and use methods and processes reasonably adequate to render such employment and place of employment safe, and shall do every other thing reasonably necessary to protect the life; health, safety, and welfare of such employees. [L. '33, Ch. 153, § 194.

88-4002. Person with authority to be on the ground. The mine operator shall at all times during the operation of the mine have a person on the ground with authority over all branches and phases of the operation of the mine during the time he is on duty. *Provided, however,* that nothing herein contained shall prevent the owner or operator from personally having such charge of the mine, provided he can qualify under all other provisions of this act. [L. '33, Ch. 153, § 195.

88-4003. Protection of abandoned mine. Upon abandonment of a mine the owner or operator must effectively close or fence off all surface openings down which persons could fall, or through which persons could enter. Upon or near all such safeguards trespass warnings and appropriate danger notices shall be posted. [L. '33, Ch. 153, § 196.

88-4004. Serious conditions of mine to be reported by wire. The operator shall report promptly to the mine inspector by telegraph or telephone the occurrence (occurrence) in and about the mines of serious outbursts of gas or other serious conditions threatening to cause the loss of lives. [L. '33, Ch. 153, § 197.

88-4005. Reports of compensable accidents. A report in writing shall be made to the mine inspector of each compensable mine

accident. Such reports shall give the name, age, and occupation of the injured person, the date of accident, name and location of mine, the cause of accident, actual work being performed when injured, nature or result of injury, probable length of disability; this report shall be made within one month of the date of injury. [L. '33, Ch. 153, § 198.

ARTICLE 41. DUTIES OF MINE EMPLOYEES

Section

88-4101. In general.

88-4102. Penalty for violation of above section.

88-4103. Escapeways when ten or more men employed on shift.

88-4104. Ladderways and stairways.

88-4105. Second escapeway when ten or more employees.

88-4101. In general. No mine employee or other person shall remove, displace, damage, destroy, carry off, or fail to use any safety device, safeguard notice or warning, provided for use in any mine employment or place of mine employment, or interfere in any way with the use thereof by any other person, or interfere with the use of any method or process adopted for the protection of any mine employee, in such employment or place of employment, or fail or neglect to follow and obey safety orders promulgated by the mine operator or the mine inspector, and to do every other thing reasonably necessary to protect the life, health, safety, and welfare of employees, including himself. [L. '33, Ch. 153, §199.

88-4102. Penalty for violation of above section. Any employee violating the provisions of § 199 (88-4101) of article 34 (41) shall be deemed guilty of a misdemeanor punishable by fine or imprisonment or both as set forth in another section of this act. No miner or other person shall carry into a mine intoxicating liquors or alcoholic beverages or enter the mine under the influence of intoxicating liquor; he shall not destroy any part of the machinery or equipment of the mine; no unauthorized person shall enter any part of the mine against a danger sign nor travel any haulageway in a mine where a manway is provided. [L. '33, Ch. 153, § 200.

88-4103. Escapeways when ten or more men employed on shift. Every underground mineral mine employing more than ten (10) men underground on any one shift should if practicable have two or more ways of escape to the surface, so arranged and equipped that men can escape quickly. Such ways of escape shall be so separated throughout their length that damage to one from any source shall not lessen the effectiveness of the other as a means of escape. If such mine has two or more shafts and if escapement is wholly from shafts over three hundred (300) feet in depth (vertical or inclined from the vertical more than thirty-five (35) degrees) and the mine employs more than ten (10) men

underground on any one shift, in addition to the regular man hoisting equipment in one shaft there must be emergency equipment in at least one other shaft for the handling of men if hoisting from such shaft is practicable. If hoisting is impracticable adequate ladderways shall be provided from surface to the lowest working level. [L. '33, Ch. 153, § 201.

88-4104. Ladderways and stairways. If escapement is wholly by shafts then if such shafts are less than three hundred (300) feet in vertical depth the second shaft serving as an escapeway may be provided with a substantial stairway with landings or platforms not over thirty (30) feet apart measured vertically in lieu of hoisting equipment; Provided that a ladderway may be used in lieu of a stairway if the restricted size of the shaft does not afford sufficient space. The lower levels may connect with one or both shafts by raises equipped with ladders which are readily travelable by men in case the shafts do not bottom at the same level. [L. '33, Ch. 153, § 202.

88-4105. Second escapeway when ten or more employees. Not more than ten (10) men shall be employed in any part of a mine on any one shift until, if practicable, a second way of escape has been provided from that part of the mine to another part of the mine. [L. '33, Ch. 153, § 203.

ARTICLE 42. FIRE CONTROL

Section

- 88-4201. Fireproof escapeways.
- 88-4202. Supply of water and fire extinguishers.
- 88-4203. Placing fire extinguishers.
- 88-4204. Air lines shall be convertible into water lines.
- 88-4205. Fire-fighting organization of employees.
- 88-4206. Telephones in mine.
- 88-4207. Fires in mines prohibited—Open torches.
- 88-4208. Inspection for fire.
- 88-4209. Hay and straw permitted in mines.
- 88-4210. Oil permitted in mines.
- 88-4211. Inflammable debris dumping in mine prohibited.
- 88-4212. Incandescent lamps.

88-4201. Fireproof escapeways. In any shaft mine employing more than ten (10) men underground on any one shift and the escapeway is wholly by shaft, which shaft is more than five hundred (500) feet in vertical depth, if practicable, the shaft shall be fireproofed from the surface to the lowest depth, provided, however, that a spraying system approved by the state mine inspector may be installed in lieu thereof. [L. '33, Ch. 153, § 204.

88-4202. Supply of water and fire extinguishers: In every underground mine in which more than ten (10) men are employed on any one shift, there shall be an adequate supply of water and (or) chemical fire extinguishers available on the surface and

underground for fighting fires in and about the mine. If this supply of water is not furnished through pipes, hydrants, and hose it shall be kept in covered barrels of about fifty (50) gallons capacity, distributed at suitable locations on the surface and underground and buckets or cans hung or placed adjacent to each barrel. [L. '33, Ch. 153, § 205.

88-4203. Placing extinguishers. A non-electrically conducting type of fire extinguisher shall be placed in or near surface and underground electrical stations where there is fire hazard. [L. '33, Ch. 153, § 206.

88-4204. Air lines shall be convertible into water lines. All air lines in timbered mines shall be readily convertible into water lines if a water supply is available unless the air lines are paralleled by water lines. [L. '33, Ch. 153, § 207.

88-4205. Fire-fighting organization of employees. All mines employing more than twenty-five (25) men shall have a fire-fighting organization of employees, for fire prevention, fire control and the rescue of men. The superintendent of each such mine shall make plans in writing for the fighting of surface and underground fires. [L. '33; Ch. 153, § 208.

88-4206. Telephones in mine. All mines employing more than twenty-five (25) men underground on any one shift shall establish underground telephones at suitable points or other warning system approved by the state mine inspector to facilitate quick warning of underground employee in event of fire or other danger. EL. '33, Ch. 153, § 209.

88-4207. Fires in mines prohibited—Open torches. Fires for heating shall not be permitted underground, and open torches, lighted acetylene lamps and candles shall not be left unattended in any mine. EL. '33, Ch. 153, § 210.

88-4208. Inspection for fire. All timbered shaft stations shall be inspected for fire at close of each shift by a man designated by the operator. [L. '33, Ch. 153, § 211.

88-4209. Hay and straw permitted mines. Hay, straw, or similar inflammable material taken underground shall be in compressed bales, or covered with tarpaulin, or in closed car. It shall be promptly delivered to the underground stable and stored in a locked, fireproof compartment. The amount of hay stored underground at any time shall not exceed the amount normally consumed in forty-eight (48) hours. [L. '33, Ch. 153, § 212.

88-4210. Oil permitted in mines. Not more than one barrel or tank of lubricating oil holding fifty-two (52) gallons, or the equivalent thereof, shall be stored on any one level underground; it shall be kept in fireproof surroundings. Gasoline shall not be stored in underground mines. -['33, Ch. 153, § 213.

88-4211. Inflammable debris dumping in mine prohibited. The dumping of oily waste, papers, hay, waste carbide, explosive containers, and similar inflammable debris into underground abandoned workings is prohibited. *Provided*, that old timber may be buried in the filling material of old workings. All underground working places and passages and parts of the mine readily accessible to men shall be kept free of empty boxes, waste paper and other combustible rubbish, and waste timber underground shall be removed from the mine as soon as possible or used in underground filling. [L. '33, Ch. 153, § 214.

88-4212. Incandescent lamps. Incandescent lamps in and about mines shall be so placed that they cannot come into contact with combustible material. [L. '33, Ch. 153, § 215.

ARTICLE 43. UNDERGROUND LADDERWAYS

Section

88-4301. Construction of ladders.

88-4302. Platforms.

88-4303. Backward incline of ladders prohibited.

88-4304. Rungs three inches from wall.

88-4305. Ladderways and stairways.

88-4306. Stairways and hoistways to be separated.

88-4307. Extension of ladders.

88-4301. Construction of ladders. All underground ladders shall be of substantial construction and maintained in good condition and free of loose rock. The distance between the centers of the rungs shall not exceed twelve (12) inches. [L. '33, Ch. 153, § 216.

88-4302. Platforms. Every permanent ladderway hereafter installed and all other ladderways so far as practical with an inclination of more than forty-five (45) degrees from the horizontal shall have substantial platforms at intervals of not more than thirty feet measured vertically. Where the inclination of any ladderway installed exceeds sixty degrees the sections of this ladder shall be staggered at each platform. [L. '33, Ch. 153, § 217.

88-4303. Backward incline of ladders prohibited. No ladders inclining backward from the vertical shall be installed. [L. '33, Ch. 153, § 218.

88-4304. Rungs three inches from wall. The rung of a ladder shall not be less than three (3) inches from the wall, or other obstruction behind it. [L. '33, Ch. 153, § 219.

88-4305. Ladderways and stairways. (a) Ladderways or stairways shall be provided in all manways steeper than thirty-five (35) degrees from the horizontal hereafter driven.

(b) When shafts dipping more than thirty-five (35) degrees from the horizontal are being sunk they shall be provided with

ladders to within such distance from the bottom as will secure them from blasting. From the lower end of each such ladderway a chain, wire rope or extension ladder shall be provided to reach to the bottom of the shaft. [L. '33, Ch. 153, § 220.

88-4306. Stairways and hoistways to be separated. In shafts of more than one hundred (100) feet in vertical depth and used for hoisting purposes all ladderways and stairways shall be partitioned off completely, if possible, from the hoistway compartments. [L. '33, Ch. 153, § 221.

88-4307. Extension of ladders. Ladders shall be extended at least three (3) feet above every ladderway platform, unless convenient and secure handholds are fixed at such places. [L. '33, Ch. 153, § 222.

ARTICLE 44. HAULAGE UNDERGROUND Section

88-4401. Shelter holes in haulage-ways.

88-4402. Stop blocks or derail devices.

88-4403. Switch levers, frogs and guard rails.

88-4404. Drags or mechanical devices.

88-4405. Brakes and blocking cars.

88-4406. Headlights and signals.

88-4407. Lights on front and rear of train.

88-4408. Persons who may ride on trains.

88-4409. Alighting from and coupling moving cars prohibited.

88-4401. Shelter holes on haulageways. On every underground mine haulageway in which mechanical haulage at speeds in excess of three miles an hour is employed or in which animal haulage is employed and which is traveled by men, there shall be, at intervals of not more than one hundred (100) feet, shelter or refuge holes not less than four (4) feet high, three feet deep and four (4) feet wide, kept free of obstructions and approximately level with the road. Provided, that a continuous clearance space for man travel on one side of the trackway of at least thirty (30) inches free from obstruction between the farthest extension of any car, locomotive, or machine used in normal mine operation and the nearest wall or timber will serve in lieu of shelter or refuge holes. [L. '33, Ch. 153, § 223.

88-4402. Stop blocks or derail devices. At the top of any slope or incline used for haulage there shall be an automatic stop block or spring derail which will stop or derail cars, except when removed or closed by an attendant while cars are passing under control. [L. '33, Ch. 153, § 224.

88-4403. Switch levers, frogs and guard rails. Switch levers underground shall be installed in such manner as to avoid danger of men tripping over them. Frogs and guard rails shall be properly blocked. [L. '33, Ch. 153, § 225.

88-4404. Drags or mechanical devices. Except while gathering trips an effective drag or mechanical device shall be used on all mechanically hauled trips when going against an average grade of five (5) per cent or more. [L. '33, Ch. 153, § 226.

88-4405. Brakes and blocking cars. Brakes shall be set or sprags applied or cars blocked while standing or being loaded on grades. [L. '33, Ch. 153, § 227.

88-4406. Headlights and signals. All electric locomotives shall have efficient headlights and an audible signal device. [L. '33, Ch. 153, § 228.

88-4407. Lights on front and rear of train. On main haulage the front end of all underground trips or trains pushed by loco-motive or hauled by other mechanical means shall be provided with an efficient light a light shall be displayed on the rear of any trip or trains on main haulage. [L. '33, Ch. 153, § 229.

88-4408. Persons who may ride trains. No persons other than train or trip crews and authorized officials shall ride on locomotives and only trip crews on the rear of loaded cars. No person shall ride on top of loaded cars. [L. '33, Ch. 153, § 230.

88-4409. Alighting from and coupling moving cars prohibited. Jumping off of moving locomotives to throw switches or open doors, and the coupling and uncoupling of cars in motion, are prohibited. [L. '33, Ch. 153, § 231.

ARTICLE 45. HOISTING EQUIPMENT

Section

88-4501. Safety provisions.

88-4502. Cages.

88-4503. Brakes and hoists.

88-4504. Safety catches.

88-4505. Safety devices for buckets.

88-4506. Ropes and cables on hoists.

88-4507. Attachment of rope to drum.

88-4508. Additional coupling for cars.

88-4509. Cages at bottom when not in use.

88-4510. Speed of buckets.

88-4511. When two signal methods shall be provided.

88-4512. Cages or buckets must have attendant when left at level or station.

88-4513. Timbers and tools longer than cage or bucket.

88-4514. Hoist engineer.

88-4501. Safety provisions. In shafts and inclines where men are hoisted or lowered, there shall be at least twenty (20) feet of hoistway clearance above the landings at which men enter or leave the cages, skip or cars, and at mines in which over one hundred (100) men are employed underground on any shift there shall also be approved overwinding and overspeeding devices connected with the hoist, or equivalent approved devices shall be

installed and maintained to prevent the cage from being over-wound or from falling if overwound, and from overspeeding considering the character of the hoisting equipment and depth of hoisting. [L. '33, Ch. 153, § 232.

88-4502. Cages. Cages when used for hoisting men shall have strongly constructed bonnets extending over the space on which the men stand and shall have approved steel or sheet-iron or wire-mesh sides extending not less than five (5) feet above the floor of the cage or floor of each deck of a multiple-deck cage. When a shift of men are being hoisted or lowered, cages shall have gates or doors closing the entrances to each deck when used by men. The cage doors must be kept closed while hoisting or lowering with men. Each deck of each cage used for hoisting men shall have an easy and secure overhead handhold for men on the cage. [L. '33, Ch. 153, § 233.

88-4503. Brakes on hoists. All hoists shall be equipped with brakes able to stop and to hold the fully loaded unbalanced cage or skip at any point in the shaft or incline. Each hoist shall have ample power to hoist a fully loaded-unbalanced cage or skip. [L. '33, Ch. 153, § 234.

88-4504. Safety catches. Cages used for hoisting or lowering men shall be provided with approved safety catches, capable of bringing to a stop the fully loaded cage or skip in any part of the shaft or headframe in case the rope or rope connection should break. [L. '33, Ch. 153, § 235.

88-4505. Safety devices for buckets. Shaft-sinking buckets shall be provided with self-locking safety hooks and, when the shaft is over one hundred (100) feet in depth, with crossheads and guides. Floating crossheads shall not be used unless securely fastened to the bucket rope. Approved hatches, safety doors, bulkheads or other means affording ample protection against falling objects shall be provided for men in shafts during sinking operations. [L. '33, Ch. 153, § 236.

88-4506. Ropes and cables hoists. No rope or cable shall be used for hoisting or lowering men (a) when on inspection it is found that the number of broken wires exceeds six in any single pitch length or lay of the rope, when the wires on the crown of the strands are worn to less than sixty-five (65) per cent of their original diameter, or when inspection indicates a dangerous amount of corrosion or distortion. [L. '33, Ch. 153, § 237.

88-4507. Attachment of rope to drum. The hoisting rope shall be firmly clamped to the drum or reel, and at least two turns of the rope shall remain on the drum or reel, when the cage or skip attached to the rope rests at the bottom of the shaft or incline. [L. '33, Ch. 153, § 238.

88-4508. Additional coupling for cars. When Men are transported in skips or cars in inclines there shall be special provision in addition to the coupling to insure against accident should the coupling of any of the cars break or become detached or through failure of the rope or its becoming detached at the socket. [L. '33, Ch. 153, § 239.

88-4509. Cages at bottom when not in use. Where men enter shaft mines by cage or skip, the cage or skip except when constantly in use shall be lowered to the bottom of the shaft and raised to the surface just prior to the beginning of a shift and before the men are permitted to be lowered. [L. '33, Ch. 153, § 240.

88-4510. Speed of buckets. In hoisting or lowering men with a bucket the speed, except in the case of apprehended danger, shall not exceed two hundred (200) feet per minute when the bucket is within one hundred (100) feet of the surface or bottom, or five hundred (500) feet per minute in any other part of the shaft. [L. '33, Ch. 153, § 241.

88-4511. When two signal methods shall be provided. In any shaft mine employing more than twenty-five (25) men or in any shaft mine more than five hundred (500) feet in vertical depth there shall be at least two effective methods of signaling between each of the shaft stations, and the engine room, one of which methods, in each case, shall be a telephone or speaking tube. The signal shall be so arranged that the eager or person in charge of each station can signal directly to hoistman who can also signal directly to all of the stations. Calling or rapping shall not be accepted as a proper method of signaling. In addition to two methods of signalling to be used at shaft stations, there shall be a handpull rope or cable in the shaft to be used for emergency signalling, or a device for signalling from a moving cage. [L. '33, Ch. 153, § 242.

88-4512. Cages or buckets must have attendant when left at level on station. The cage or bucket must not be left at a level or station when not attended but must be released and raised at least five (5) feet above the station sill. Whenever any cage, or bucket remains at a level or in such position that men can step on to it, the hoistman must remain at his brakes prepared to answer signals. [L. '33, Ch. 153, § 243.

88-4513. Timbers and tools longer than cage or bucket. All timbers, tools, etc., longer than depth of the bucket, cage or skip to be hoisted or lowered, must be securely lashed at the upper end to the cable in such a manner that they will ride up or down the shaft without catching. [L. '33, Ch. 153, § 244.

88-4514. Hoist engineer. Only an experienced, competent, sober hoist engineer, over the age of eighteen (18) years, not

suffering from deafness or from any other physical defect that could in any way interfere with his competency shall be placed in charge of or allowed to operate an engine for the lowering of men into or hoisting them out of the mine. [L. '33, Ch. 153, § 245.

ARTICLE 46. EXPLOSIVES—GENERAL PROVISIONS

Section

88-4601. Storage.

88-4602. Magazines.

88-4603. Storage of caps.

88-4604. Underground magazines.

88-4605. Safety in and around magazines.

88-4606. Persons allowed to enter magazines.

88-4601. Storage. Explosives shall be stored on the surface only, except as hereinafter provided, in magazines located at safe distances away from all mine openings, mine buildings, or inhabited dwellings, these distances to correspond so far as possible with recommendations as set forth by explosive manufacturers. [L. '33, Ch. 153, § 246.

88-4602. Magazines. For the storage of more than five hundred (500) pounds of explosives a magazine shall be constructed of fire and bullet proof construction of type recommended by the explosive manufacturers and shall have properly screened ventilation, and dry wooden floors, free from exposed nail heads, dirt and rubbish. No lights other than inclosed guarded electric or electric batter (battery) or electric safety lamps, and no stoves or electric heaters shall be permitted in any magazine. [L. '33, Ch. 153, § 247.

88-4603. Storage of caps. Detonators or blasting caps shall not be stored with other explosives but in separate magazines. [L. '33, Ch. 153, § 248.

88-4604. Underground magazines. The main explosive magazine may be located underground at a point removed from active workings, or principal haulage and if possible in a tunnel or chamber not connected to any part of the mine workings. It shall be dry, adequately ventilated, have wooden flooring and be locked. In no case shall explosive in such magazine be placed within ten (10) feet of any main haulage track. [L. '33, Ch. 153, § 249.

88-4605, Safety in and around magazines. The magazine shall be kept securely locked except when attended and no in-flammable material shall be allowed within sixty (60) feet of the same. Smoking shall not be permitted in or in the vicinity of any magazine, and no matches, tool, material or appliance which might cause a spark or flame shall be carried into any magazine. [L. '33, Ch. 153, § 250.

88-4606. Persons allowed to enter magazines. The magazine shall be placed under the charge of a an or men designated by

the superintendent and no person other than officials or those authorized by the superintendent to handle explosives, shall be allowed to enter any magazine. [L. '33, Ch. 153, § 251.

ARTICLE 47. EXPLOSIVES—USE THEREOF

Section

- 88-4701. Auxiliary magazines.
- 88-4702. Cutting and capping fuses.
- 88-4703. Cap fuses to be exploded within forty-eight hours.
- 88-4704. Burning rate of fuses.
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- 88-4708. Tamping bars.
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- 88-4710. When to be fired electrically.
- 88-4711. Warning when firing shots.
- 88-4712. Limitation on entrance when doubt about shot having exploded.
- 88-4713. Unexploded shots not to be removed from bore hole.
- 88-4714. Using light or power electricity to fire shots.

88-4701. Auxiliary magazines. Auxiliary explosive magazines may be placed on each level of a mine. They shall be placed at such locations as in case of an explosion endanger the minimum number of men possible. They shall be well ventilated, dry, and so placed that there is a minimum of fire hazard. In no cases shall a main haulage track come within ten (10) feet of an auxiliary magazine. No more than a forty-eight (48) our supply of explosive shall be kept in any underground auxiliary explosive magazine. [L. '33, Ch. 153, § 252.

88-4702. Cutting and capping fuses. All fuses shall be cut, capped and crimped for all working places by well-qualified men and at a safe distance from magazine. Detonators shall be crimped on the fuse only with a suitable crimper. [L. '33, Ch. 153, § 253.

88-4703. Capped fuses to be exploded within forty-eight hours. All primers and capped fuses shall be exploded within forty-eight (48) hours after making. This does not include delay-action electric detonators. [L. '33, Ch 153, § 254.

88-4704. Burning rate of fuses. No fuse shall be used that burns faster than one foot in thirty (30) seconds or slower than one foot in fifty-five (55) seconds. The burning rate of every lot of fuse received at a mine shall be determined, and the results posted at a mine entrance. If a shipment of fuse lasts more than sixty (60) days the burning rate must be rechecked each sixty (60) days. [L. '33, Ch. 153, § 255.

88-4705. Precautions in handling. Particular precautions shall be exercised in the handling, loading and unloading, and transportation of explosives in quantity underground. Open

lights shall be placed at least ten (10) feet away when this work is being performed. [L. '33, Ch. 153, § 256.

88-4706. Carrying not over fifty pounds in sack by one person. Explosives being taken from underground magazines or from the surface direct to working places must be in sacks or bags. If carried by men one man shall not carry more than fifty (50) pounds of explosives at one time. [L. '33, Ch. 153, § 257.

88-4707. Fuses and detonators not stored with explosives. Detonators and fuse shall not be stored with explosives. [L. '33, Ch. 153, § 258.

88-4708. Tamping bars. Wooden tamping bars only shall be used for charging explosives into drill holes. [L. '33, Ch. 153, § 259.

88-4709. Length of fuses—Lighting more than one. No fuse less than thirty (30) inches in length shall be used. This provision does not apply to delay electric detonators. Whenever more than one hole is to be shot in one blast, no fuse shall be cut shorter than six (6) feet, and the men lighting the fuse shall be accompanied by another man with a light. [L. '33, Ch. 153, § 260.

88-4710. When to be fired electrically. Except in case of emergency all shaft and winze rounds in shafts or winzes over twenty-five (25) feet in depth shall be fired electrically. All rounds in raises over one hundred (100) feet vertically in height above the level, sub-level or side opening shall be fired electrically. [L. '33, Ch. 153, § 261.

88-4711. Warnings when firing shots. Anyone about to fire shots shall cause warnings to be given in every direction, and all entrances to the place or places where shots are to be fired shall be guarded so far as possible by men; otherwise by suitable signs or signals. [L. '33, Ch. 153, § 262.

88-4712. Limitation on entrance when doubt about shot having exploded. If it is not certain that all shots in any place have exploded, no one shall be permitted to enter that place for a period of one hour if fuse were used or for fifteen (15) minutes if electric instantaneous blasting detonators were used, or for thirty (30) minutes if electric blasting delay detonators were used. [L. '33, Ch. 153, § 263.

88-4713. Unexploded shots not to be removed from bore hole. No one shall be permitted to extract or attempt to extract explosives from a bore hole that has been charged, but shall, when possible, put in a new primer and blast again. When not possible to do this, a new hole may be drilled, which shall not be nearer to the original hole than two feet, and shall be pointed at such an angle as to eliminate all danger of its meeting or coming closer

to the other hole than two feet, and such new hole shall be charged with a fresh supply of explosives, and then detonated; Provided that when the above cannot be complied with, a hole nearer than two feet may be drilled under the direct supervision of the shift boss. [L. '33, Ch. 153, § 264.

88-4714. Using light or power electricity to fire shots. Electricity from light or power circuits shall not be used for firing shots in a mine, except where the electrical connections to such light or power circuits are made within an enclosed switch box, which shall be kept securely locked with switch in an open position, and shall be accessible only to the authorized boss or shot-firer. [L. '33, Ch. 153, § 265.

ARTICLE 48. VENTILATION AND GASES

Section

88-4801. Air circulation.

88-4802. Fans.

88-4803. Fans to be reversed quickly.

88-4804. Necessary ventilation.

88-4805. Means of distribution of air.

88-4806. When air unfit.

88-4807. When blower to be used.

88-4808. When gassy.

88-4801. Air circulation. In any mine in which one hundred (100) or more men are employed on any shift or in any mine more than one thousand (1000) feet in vertical depth or in any mine in which men are employed in workings more than two thousand (2000) feet from the nearest surface opening the operator shall provide on the surface or underground a fan or other mechanical means for producing and controlling the air circulation within the mine except where natural ventilation is sufficient and approved by the mine inspector in writing. Two years from the effective date of this act shall be allowed to comply with this section, provided, however, the mine inspector may extend this time. [L. '33, Ch. 153, § 266.

88-4802. Fans. (a) Main surface fans and their housings and connections between them and the mine opening shall be made of incombustible material.

(b) Both main and auxiliary underground electrically driven fans shall be installed and maintained so as to reduce the fire hazard to a minimum. [L. '33, Ch. 153, § 267.

88-4803. Fans to be reversed quickly. Main surface fans and main underground fans shall be so arranged that the ventilating current can be reversed quickly. [L. '33, Ch. 153, § 268.

88-4804. Necessary ventilation. Each mine shall be so ventilated as to supply to the workers a quantity of air ample for the needs of men and animals and render harmless any gases produced during mine operation. L. '33, Ch. 153, § 269.

88-4805. Means of distribution of air. Means of distribution of air to workers may consist of splitting of air currents and driving of connections between levels and may include the use of doors, overcasts or undercasts, bulkheads, regulators, canvas or brattice, auxiliary compressed air or electrically driven fans or blowers with tubing, and compressed air lines. [L. '33, Ch. 153, § 270.

88-4806. When air unfit. The air in any unsealed place shall be considered unfit for men if it shall be found to contain less than nineteen (19) per cent oxygen, more than one (1) per cent carbon dioxide, or a harmful amount of poisonous gas, and men shall be prohibited from working in such place except for the purpose of rendering it safe and fit. [L. '33, Ch. 153, § 271.

88-4807. When blower to be used. In each working place where the air temperature exceeds eighty (80) degrees F. (dry bulb) and the relative humidity exceeds eighty-five (85) per cent a current of moving air shall be supplied to the men by means of a blower and pipe or equivalent means. [L. '33, Ch. 153, § 272.

88-4808. When gassy. If any mine shall produce quantities of explosive gas, which, in the judgment of the state mine inspector, are dangerous to life or property he may place it under any one or several of the provisions in this act relating to gassy coal mines. [L. '33, Ch. 153, § 273.

ARTICLE 49. ELECTRICITY

Section

- 88-4901. Electrician.
- 88-4902. Voltage for signals.
- 88-4903. Voltage for portable apparatus.
- 88-4904. Voltage for transmission.
- 88-4905. Sign notices.
- 88-4906. Repairs, renewals and extensions.
- 88-4907. Wilfully causing electric shocks.
- 88-4908. Grounding appliances.
- 88-4909. Switchboards.
- 88-4910. Switches.
- 88-4911. Fuses and circuit breakers.
- 88-4912. Track bonding.

88-4901. Electrician. Each operator whose mine electricity is used for power shall employ a competent electrician who shall have charge of the electrical apparatus in and about the mine, or mines. Nothing in this section shall prevent the electrician from performing other duties. [L. '33, Ch. 153, § 274.

88-4902. Voltage for signals. Signal systems shall not have a voltage exceeding sixty (60) volts at any point in the system. This rule shall not be construed to apply to lamp signals or shaft signals. [L. '33, Ch. 153, § 275.

88-4903. Voltage for portable apparatus. Motors of electric locomotives, loaders, coal cutting machines, and other portable apparatus shall not be operated at a voltage exceeding two hundred fifty (250) volts. *Provided, however,* that all such equipment in use at the time of the passage of this act may be used and the same may be repaired, replaced or relocated or additions made thereto, if the voltage thereof at no time exceeds five hundred fifty (550) volts. [L. '33, Ch. 153, § 276.

88-4904. Voltage for transmission. For transmission purposes underground a voltage in excess of five hundred fifty (550) volts may be used, provided that such circuits are carried inside metallic sheaths or armors with the sheaths or armors permanently grounded. This higher voltage may only be applied to transformers or stationary motors. [L. '33, Ch. 153, § 277.

88-4905. Sign notices. At electric stations where caution sign notices will tend to prevent electrical accidents, such notices shall be posted. [L. '33, Ch. 153, § 278.

88-4906. Repairs, renewals and extensions. Repairs, renewals, or extensions of electrical apparatus and circuits shall not be made while such apparatus or circuits are alive unless conditions make it absolutely necessary, in which case the utmost precaution shall be taken when working on them. [L. '33, Ch. 153, § 279.

88-4907. Willfully causing electric shocks. No person working in or about a mine shall willfully cause another person to receive an electric shock. [L. '33, Ch. 153, § 280.

88-4908. Grounding appliances. The frames, cases and bed-plates of electrical apparatus other than portable motors, such as stationary motors, generators, and transformers and the non-current carrying, metallic parts of switchboards, and other electrical appliances shall be effectively grounded. [L. '33, Ch. 153, § 281.

88-4909. Switchboards. (a) Switchboards shall be so located in an underground station that there shall be a straight passageway of not less than three feet wide in front and in back of the switchboard. This three-foot passageway shall be clear of all apparatus mounted on the board and shall be kept free of all obstructions. The space back of switchboards shall be accessible at both ends but shall not be entered by an unauthorized person and shall not be used for the storage of material or clothing. The space behind switchboards where the voltage exceeds six hundred fifty (650) volts shall be kept closed by locked doors that can be opened from within without the use of a key. In case of existing installations that do not meet the requirements with respect to passage space in back of the switchboard, no person shall be permitted back of the board while any apparatus or cir-

cuits connected therewith are alive. Where the voltage exceeds 650 volts, all live metal parts on the front of switchboards within seven feet of the floor shall be protected.

(b) Rubber mats or other equally effective means of insulation shall be kept on the floor along the entire front of all switchboards.

(c) Switchboards shall be wired in a workmanlike manner with wiring having adequate insulation for the voltage used. If the wires are brought close together they shall have a tight incombustible outer covering. [L. '33, Ch. 153, § 282.

88-4910. Switches. (a) All switches for use underground shall be rugged in construction and adequately proportioned as to capacity. Switches replaced new, operating on circuits over one hundred twenty-five (125) volts, except trolley lines, that are opened while under load shall be provided with quick-break attachments to prevent excessive arcing. Where, because of moisture, there is likelihood of switch handles becoming electrically charged, special switches operated with short wood handles shall be provided. In so far as feasible switches shall be located in a thoroughly dry place. In case the switches cannot be so located, an insulated platform shall be provided for the men to stand on when operating the switch.

(b) Where there is danger of accident due to the closing of an open switch, proper warning signs shall be placed at such switch by the person opening said switch. Where practicable, switches shall be so wired that the blades will not be alive when the switch is open. Switches shall not be installed in such a manner as to close by gravity. Switches shall be convenient and accessible, yet so safeguarded that the liability to accidental contact with live parts thereof shall be reduced to a minimum.

(c) Oil switches shall be used for operating or controlling all alternating current circuits above six hundred (600) volts. [L. '33, Ch. 153, § 283.

88-4911. Fuses and circuit breakers. Fuses and automatic circuit breakers shall be constructed so as to effectually interrupt the current when a short circuit occurs or when the current through them exceeds a predetermined value. Iron or copper wires shall not be used for fuses. All fuses shall be stamped or marked, or shall have label attached indicating their rating. Fuses shall be adjusted or replaced only by an authorized person. [L. '33, Ch. 153, § 284.

88-4912. Track bonding. The tracks of all main haulage systems that use a rail return shall be bonded at every joint and around switches and frogs. Such tracks shall be cross-bonded. [L. '33, Ch. 153, § 285.

ARTICLE 50. TIMBERING IN UNDERGROUND MINES

Section

88-5001. Sufficiently timbered when necessary.

88-5002. Suitable timbers and tools to be supplied.

88-5003. Working place to be vacated when necessary timbers not supplied.

88-5004. Safety instruction for new miners.

88-5005. Protecting openings.

88-5006. Employee's duty to inspect working place.

88-5007. Daily inspection of working places.

88-5008. Re-opening temporarily abandoned part of mine.

88-5001. Sufficiently timbered when necessary. Every shaft, incline, winze, adit, tunnel, level, or drift, and every working place in the mine shall be sufficiently timbered if necessary to protect persons therein from injury from falling material. It shall be the duty of the operator to carry out and enforce the provisions of this section, but nothing contained herein shall be construed to relieve the miner from the duty of caring from (for) his own working place, save as hereinafter provided. [L. '33, Ch. 153, § 286.

88-5002. Suitable timbers and tools to be supplied. It shall be the duty of the operator to see that all miners in the mine are supplied at all times with such suitable timbers and have such suitable tools as are necessary to keep their working places in safe condition. For the purpose of this and succeeding rules the term "timbers" shall be held to include and mean all wood to be used by the miner, and or steel or concrete material used in lieu of timber. [L. 33, Ch. 153, § 287.

88-5003. Working place to be vacated when necessary timbers not supplied. If for any cause necessary timbers cannot be supplied to any place when necessary, it shall be the duty of the mine foreman to instruct the miner or miners to vacate all such working places and to see that they obey until supplied with the timbers needed, but nothing contained herein shall be construed to relieve the operator of the duty of supplying such timbers. [L. '33, Ch. 153, § 288.

88-5004. Safety instruction for new miners. Every miner when first employed shall be instructed in safety practices including testing of back by a responsible mine official or a responsible man designated by him. [L. '33, Ch. 153, § 289.

88-5005. Protecting openings. Winzes, chutes, manways, or other openings in the bottom of a level, drift, or stope; (a) shall be kept covered by a substantial hatch or bars, or (b) shall be planked over, except when in use, or (c) shall be barred off by standard railing, or (d) shall be provided with a gangway on one side not less than twelve (12) inches wide, which gangway shall have standard railings on each side and the approaches to such gangway at either end shall be protected by standard railings. [L. '33, Ch. 153, § 290.

88-5006. Employee's duty inspect working place. Each underground employee shall inspect his working place for bad ground, bad timber, or any loose material that may fall. This shall be done upon return to a working place after blasting, when changing from one working place to another, and as often thereafter as would seem necessary. Loose or dangerous rock shall be immediately barred down or timbered. Suitable bars should be used in prying down loose material. Any unusual hazards found shall be reported to an official who will give instruction as to the proper procedure. [L. '33, Ch. 153, § 291.

88-5007. Daily inspection working places. Every working place in a mine shall be inspected as to safety by an official or other designated person at least once in each working shift except in case of emergency when such inspection may be temporarily waived.. [L. '33, Ch. 153, § 292.

88-5008. Re-opening temporarily abandoned part mine. Whenever a stope or other working that has been temporarily abandoned or idle is to be re-opened it shall first be examined by a competent official and all material which has become loosened during disuse and might cause injury must be removed before operations are resumed. [L. '33, Ch. 153, § 293.

ARTICLE 51. METHODS OF UNDERGROUND MINING

Section

88-5101. Workmanlike manner.

88-5102. Pillars.

88-5101. Workmanlike manner. The operator shall carry on all mining operations in a workmanlike manner, having due regard to the health, safety, and welfare of miners and other employees.. '33, Ch. 153, § 294.

88-5102. Pillars. On each side of shafts used for hoisting or ventilation, pillars shall be left standing of sufficient dimensions to protect and secure the shafts. Mining or stoping shall not be permitted to approach within such proximity to the shaft as to render it insecure, until a mine is to be abandoned and the pillars drawn. [L. '33, Ch. 153. § 295.

ARTICLE 52. DUST IN METAL MINES

Section

88-5201. Drill dust prohibited when it may be inhaled.

88-5201. Drill dust prohibited when it may be inhaled. No operator or person in charge of any underground metal mine shall cause to be drilled or bored by machinery, nor shall any mine employee drill or bore by machinery, a hole or holes in any working place in ground that causes dust from drilling, unless the drilling machine is equipped with a water jet or spray sufficient

in allaying dust from drilling, or unless some other means equally effective are used to prevent the inhalation of dust. [L. '33, Ch. 153, § 296.

ARTICLE 53. DUST IN MILLS, ORE HOUSES, AND TREATMENT
PLANTS

Section

88-5301. Sprinkling equipment.

88-5301. Sprinkling equipment. Every mill, ore house or treatment plant in close proximity to mine workings where dry or dusty ore or rock is handled, sorted, crushed, concentrated, or treated shall be supplied at all times with suitable clean water and sprinkling equipment which shall be used for the purpose of wetting the ore or rock to allay the dust, or else equivalent protection shall be provided. [L. '33, Ch. 153, § 297.

ARTICLE 54. GENERAL PROVISIONS

Section

88-5401. Solitary employment-Riding aerial tramways. 88-5402. Track bumpers or other devices.

88-5403. Fuel-burning engines.

88-5404. Safety guards.

88-5405. Protective hats and caps.

88-5406. Inexperienced men.

88-5401. Solitary employment—Riding aerial tramways. (a) Solitary employment on shaft re-timbering or shaft repair work is forbidden.

(b) So far as practicable oilers and inspectors only shall be allowed to ride on aerial tramways. [L. '33, Ch. 153, § 298.

88-5402. Track bumpers or other devices. Waste dump tracks on the surface shall be kept in good condition and a bumper or other effective device shall be placed at the end of each to prevent cars rolling over the embankment. [L. '33, Ch. 153, § 299.

88-5403. Fuel-burning engines. No fuel-burning locomotive or engines of any kind shall be permitted underground without a written exemption issued by the mine inspector. [L. '33, Ch. 153, §300.

88-5404. Safety guards. All flywheels, gears, belts, and all exposed moving machinery parts that are liable to cause injury, or dangerous parts of machinery used in and about a mine shall be appropriately guarded to prevent injuries to attendants or other persons. Stairs, platforms, and dangerous walks in or about the mine shall be provided with rails, fences, and gates. [L. '33; Ch. 153, § 301.

88-5405. Protective hats and caps. All underground workers and all persons allowed below the collar of the shaft shall be compelled to wear protective hats or caps. [L. '33, Ch. 153, § 302.]

88-5406. Inexperienced men. Inexperienced men in underground mines shall at all times be under the supervision of an experienced miner or mine official. [L. '33, Ch. 153, § 303.]

ARTICLE 55. FIRST AID, EQUIPMENT, SUPPLIES AND TRAINING

Section

88-5501. First aid training.

88-5502. First aid cabinets and equipment.

88-5501. First aid training. At every mine the operator shall endeavor to have all officials and employees trained in first aid and these shall be men trained in first aid at every operation no matter how small. An average of twenty-five (25) per cent or more of all employees shall be retrained in first aid yearly. [L. '33, Ch. 153, § 304.]

88-5502. First aid cabinets and equipment. Every mining operation shall, have one or more first aid cabinets containing first aid material. At or in every mine there shall be, in addition to first aid cabinet or cabinets, splints, a stretcher or stretchers, blanket or blankets, all of which shall be protected from moisture. [L. '33, Ch. 153, § 305.]

ARTICLE 56. TIME ALLOWED OPERATORS TO COMPLY

Section

88-5601. Time to comply with provisions.

88-5601. Time to comply with provisions. Except as to specific time provisions made in certain sections of this act, the operators shall have six months after the passage of this act to comply with its provisions. [L. '33, Ch. 153, § 306.]

PART 4—PENALTIES—APPEALS—SAVING CONSTITUTIONALITY —REPEALS

ARTICLE 57. PENALTIES—ETC.

Section

88-5701. Penalties for violations.

88-5702. Appeals to courts.

88-5703. Construction clause.

88-5704. Repeal.

88-5701. Penalties for violations. Any violation of any provision of this act by mine operator, mine official, miner, or other mine employee shall be deemed a misdemeanor and shall be punished by a fine of not more than two hundred dollars (\$200) or by imprisonment of fine more than three months in the county jail, or by both such fine and imprisonment. Each and every day's

violation of any provision of this act shall be deemed a separate offense, and it shall be the duty of the mine inspector to institute proceedings in the proper courts in case of all such violation. [L. '33, Ch. 153, § 307.

88-5702. Appeals to courts. Every owner, operator or employee of any such mine shall have a right of appeal to the district court in the county wherein such mine is situated and from such district court to the supreme court as to the necessity or reasonableness of the order or requirement of the inspector under any of the provisions of this act. [L. '33, Ch. 153, § 308.

88-5703. Construction clause. If any clause, sentence, paragraph, or part of this act shall for any reason be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such judgment shall not affect, impair or invalidate the remainder of the act but shall be confined in its operation to the clause, sentence, or paragraph or part thereof directly involved in the controversy in which such judgment has been rendered. [L. '33, Ch. 153, § 309.

88-5704. Repeal. Sections 134-901, 134-902, 134-903, 134-904, 134-905, 134-906, 88-601, 88-602, 88-603, 88-604, 88-605, 88-608, 88-620, 88-621, 88-622, 88-623, 88-624, 88-625, of New Mexico Statutes Annotated, 1929 Compilation and all other acts or parts of acts in conflict with the provisions of the act are hereby repealed. [L. '33, Ch. 153, § 310.

CHAPTER 132
STATE LANDS

Article

1. General Provisions, in part.
4. Oil and Gas Leases, §§ 132-401 to 132-438.
5. Records of Oil and Gas Leases, §§ 132-501 to 132-508.

ARTICLE 1. GENERAL PROVISIONS

Section

- 132-101. State land office created—Commissioner of public lands—Powers.
132-102. Commissioner of public lands—Leases and sales—Recording—Powers—Reports.
132-110. Leases and sales—Erroneous payments—Correction.
132-112. Leases.
132-124. Coal land—Not to be sold—Leases—Permit to prospect.
132-125. Id.—Leases—Rental—Area.
132-126. Id.—Lease—Renewal.
132-127. Id.—Lease—Tonnage—How determined.
132-128. Id.—Lease—Additional land.
132-129. Id.—Lease—Bond—Improvements not to be mortgaged.
132-130. Id.—Lease—Improvements—Disposition of.
132-131. Id.—Lease—Forfeiture.
132-132. Mineral lands—Leases.
132-133. Id.—Locations—Area.
132-134. Id.—Lease—Survey.
132-135. Id.—Location Notice.
132-136. Id.—Discovery shaft—Lease—Terms—Royalty.
132-136a. Id.—Commissioner to enter into formal agreement with secretary of commerce.
132-137. Id.—Lessee, fraud by.
132-138. Id.—Commissioner—Inspect records.
132-139. Id.—Lease—Renewal—Preference.
132-140. Oil and gas lands—Leases—Term—Rent—Royalty—Forfeiture.
132-141. Saline, oil, gas lands—Not to be sold—Leases.
132-142. Salt from saline lands—Leases and royalties.
132-143. Shale and clay deposits—Leases—Terms.
132-144. Mineral lands—How developed.
132-150. Depredations on—Penalty.
132-151. Trespass and waste on leased lands.
132-154. Rights-of-way.
132-156. Leases—Grazing and agricultural—Mineral reserved.

132-101. State land office created—Commissioner of public lands—Towers. A state land office is hereby created, the executive officer of which shall be the commissioner of public lands, hereinafter called the commissioner, who shall have jurisdiction over all lands owned in this chapter by the state, except as may be otherwise specifically provided by law, and shall have the management, care, custody, control and disposition thereof in accordance with the provisions of this chapter and the law or laws under which such lands have been or may be acquired. [L. '12, Ch. 82, § 1 Code '15, § 5178.

132-102. Commissioner of public lands—Leases and sales—Recording--Powers---Reports. The commissioner shall have a seal with an appropriate device thereon; and such seal affixed to

any contract, deed, lease or other instrument executed by the commissioner shall be prima facie evidence of the due execution thereof. Said commissioner shall receive and pass upon all applications for leasing or purchasing state lands and timber; and shall execute and authenticate for the state all deeds, leases, contracts or other instruments affecting such lands. All such leases, deeds, contracts and grants heretofore or hereafter executed shall be entitled to record with acknowledgment, and record thereof in the county in which the land described therein is situated shall be constructive notice to all persons of the contents thereof. [L. '12, Ch. 82, § 2 ; Code '15, § 5179.

NOTE: The section continues with other matter not pertaining to mineral lands.

132-110. Leases and sales —Erroneous payments—Correction. Any money erroneously paid on account of any lease or sale of state lands shall be repaid by voucher drawn by the commissioner presented to the state auditor who shall draw his warrant upon the state treasurer for the amount thereof, who shall pay same out of the fund to the credit of which said money was placed. [L. '12, Ch. 82, § 10; Code '15, § 5187.

132-112. Leases. All lands owned by the state shall be subject to lease as provided by law. [L. '12, Ch. 82, § 12 ; Code '15, § 5189.

132-124. Coal land—Not to be sold—Leases—Permit to prospect. Lands belonging to the state and known to contain deposits of coal shall not be sold, but shall be leased by the commissioner as hereinafter provided in this chapter. Any person, association of persons, or corporation may apply under the provisions of this chapter for an exclusive right to prospect for coal, for which purpose permit may be issued covering a specified area, conforming to legal subdivisions of not less than forty acres nor more than six hundred and forty acres, and for a term not exceeding one year, and upon such terms and conditions as the commissioner may prescribe. [L. '12, Ch. 82, § 24; Code '15, § 5201.

132-125. Id.—Leases—Rental—Area. On or before the expiration of such permit, the commissioner may grant the applicant the right to develop and extract coal, in specified areas, for periods not exceeding five years, on such terms and conditions as are in accordance with customary methods of operation of coal mines and will be to the best interests of the state; Provided, that rental therefor shall be on a royalty basis, which shall be not less than eight cents per ton, payable quarterly. The minimum sum to be paid to the state under such lease shall be as follows: for the first year, not less than three dollars per acre in the aggregate for the tract leased ; second year, not less than, four dollars per acre; and for each year thereafter during the life of the lease, not

less than five dollars per acre. Any such lessee shall have a right to extend his development into, and extract coal from, any state lands contiguous or adjacent to the lands he has leased, and for such purpose a lease may be granted upon not exceeding six hundred and forty acres additional, when such additional area is tributary to the shaft, slope or other opening through which the lessee has developed or is developing the first acquired lease area, Provided, that there shall not at the time be any other such lessee of such contiguous or adjacent lands. [L. '12, Ch. 82, § 25; Code '15, § 5202.

132-126. Id.—Lease—Renewal. At the expiration of any such lease, the lessee shall have the preference right of renewal, subject to such laws as may be in force at the expiration of his lease. [L. '12, Ch. 82, § 26; Code '15, § 5203.

132-127. Id.—Lease—Tonnage--How determined. The commissioner may employ some competent person, who shall measure the cubical contents of every opening from which coal has been extracted in every leased coal mine, and shall calculate the tonnage of coal extracted therefrom, using the specific gravity of the coal as a basis of calculation, and shall check the returns made by the lessee against such calculation, allowing a reasonable percentage for the usual losses in mining and handling the production, and shall deduct for such bands of bone or rock as may be included in the coal seam, but unfit for fuel. [L. '12, Ch. 82, § 27; Code '15, § 5204.

132-128. Id.—Lease—Additional land. The commissioner may lease to the lessee of any state coal lands a tract of state lands, adjacent or contiguous thereto, not exceeding three hundred and twenty acres, when such adjacent or contiguous lands are necessary for the development or operation of the coal lands leased, or for trackage, yards, dwellings, offices, or for any purpose incidental or necessary to the development or operation of the coal lands so leased. Any such lease shall terminate at the same time as the lease upon the coal lands. The rental for the land, prescribed to be leased by this section, shall be \$3.00 per acre per annum. *Provided*, that should such leased land be underlain with coal, the coal therein shall be subject to lease, and the lessee first mentioned shall not hinder nor obstruct any other lessee from extracting the coal thereunder, and shall surrender so much of said premises to any such lessee as may be necessary for mine equipment or building used in the immediate process of extraction of the coal; and the later lessee shall pay damages to the earlier as same may appear, be agreed upon, or as determined by arbitration in the manner prescribed by law. [L. '12, Ch. 82, § 28 ; Code '15, § 5205.

132-129. Id.—Lease—Bond—Improvements not to be mortgaged. The lessee of coal lands shall not mortgage any improve-

ments placed by him on said lands, and any such mortgage shall be null and void. A lease to develop and dispose of coal shall not be given until the applicant has filed a good and sufficient bond, to be approved by the commissioner, conditioned for the faithful performance of the terms of such lease. [L. '12, Ch. 82, § 29; Code '15, § 5206.

132-130. Id.—Lease—Improvements—Disposition of. On the termination of a coal lands lease, the lessee shall have the right to dispose of such buildings upon such lands as, in the opinion of the commissioner, may be safely removed without injury to the lands, but the retiring lessee shall forfeit so much of his improvements as to the commissioner may deem necessary to withhold; *Provided*, that if the commissioner shall, at any time thereafter lease the premises and receive payment for such improvements so withheld, the amount so received shall be paid to the former lessee. [L. '12, Ch. 82, § 30; Code '15, § 5207.

132-131. Id.—Lease—Forfeiture. Failure by the lessee to comply with the terms and conditions of any such lease, shall work a forfeiture thereof at the option of the commissioner, as provided in this chapter with reference to other forfeitures. [L. '12, Ch. 82, § 31; Code '15, § 5208.

132-132. Mineral lands—Leases. The commissioner may execute leases and contracts for the prospecting and development of any lodes or deposits of metals or minerals in rock in place upon or in any land now belonging to the state or which it may hereafter acquire. [L. '12, Ch. 82, § 32; Code '15, § 5209.

132-133. Mineral lands—Location—Area. Any location upon lands of the state containing any lode or deposit of metals or minerals in rock in place shall be in the form of a rectangular parallelogram, except in case of a fractional area between prior appropriated lands, and such location shall not exceed 1500 feet in length by 600 feet in width in one lot, location or claim; and the locators of all such mining claims shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations, and of all veins, lodes and ledges throughout their entire depth, the top or apex of which lies inside of such surface lines extended downward vertically, although such veins, lodes or ledges may so far depart from a perpendicular in their course downward as to extend outside the vertical side-lines of such surface locations. But their right of possession to such outside parts of such veins or ledges shall be confined to such portions thereof as lie between vertical planes drawn downward as above described, through the end-lines of their locations, so continued in their own direction that such planes will intersect such exterior parts of such veins or ledges. And nothing in this section shall authorize the locator or posses-

sor of a vein or lode which extends in its downward course beyond the vertical line of his claim to enter upon the surface of a claim owned or possessed by another.

Provided, that for the purposes of this chapter it shall not be necessary that the angles, at the corner boundaries of such lots, locations or claims, shall be absolutely correct angles of 90 degrees, but approximately right angles, to be corrected when surveyed, but without infringing upon adjoining lots, locations or claims. [L. '31, Ch. 12; § 1, amending Comp. '29, § 132-133.

132-134. Id.—Lease—Survey. Before any lease shall be issued covering any mining claim located upon state lands, the location or claim shall be surveyed by some competent surveyor designated by the commissioner. As far as possible the survey shall conform to the original boundaries marked by the location. The survey shall be tied by a line, giving the distance and direction to the nearest section or quarter section corner, U. S. survey or if the nearest quarter section corner is more than a mile distant, then the tie shall be made to some permanent and conspicuous natural object, or to some durable monument, either of which shall be marked as a witness object for said claim. A reasonable compensation (consistent with the labor performed and expense incurred), shall be paid to the surveyor by the locator.

The surveyor shall file a plat of the survey together with a copy of his field notes, in the office of the commissioner. A copy of such plat and field notes shall be delivered to the locator by the surveyor making such survey. [L. '12, Ch. 82, § 34 ; Code '15, § 5211.

132-135. Id.—Location notice. Subject to the provisions of this chapter, any person may make location upon, and have the right to prospect lodes or deposits as hereinabove in this chapter described. Such locations shall be made in the manner prescribed by law applicable to the location of lode claims. A copy of any location notice made as aforesaid shall be filed in the state land office, for the filing of which a fee of one dollar shall be paid. Fees thus received shall be credited to the state lands maintenance fund. Upon filing of such copy the commissioner shall issue a permit to the locator granting him the exclusive right to prospect for ores or metals within the limits of said location for a period of ninety days from date of said location. [L. '12, Ch. 82, § 35; Code '15, § 5212.

132-136. Id.—Discovery shaft—Lease—Terms—Royalty. If within said period of ninety days, the locator shall sink a shaft at least ten feet in depth upon the location or shall drive a tunnel, adit or open cut in such location a depth of not less than ten feet below the surface, and shall discover ore in rock in place upon the location, upon application therefor the commissioner shall

execute in favor of such locator, or his assigns, a good and sufficient lease, granting the right to mine and extract ores from said location during a term of not exceeding five years from the date of such lease, subject to the payment of an annual rental of twenty-five dollars, payable annually in advance, in addition to which the lessee or his heirs or assigns shall pay to the commissioner a royalty of two per centum of the cash returns from smelter, mill or other reduction process, from ores extracted from said location or claim, less transportation and smelting or reduction charges, accounting to be made for each shipment when returns are received by lessee, or at choice of commissioner to be paid by smelting company or reduction works. *Provided*, that on deposits of precious or semi-precious stones in rock in place, a royalty of five per centum of the gross proceeds shall be paid by the lessee or his assigns, without any deduction for transportation or other charges. *Provided* that where the commissioner shall contract with the United States through the secretary of the interior and the secretary of commerce authorizing the United States to investigate state lands to determine the location, extent and mode of occurrence of potash and other deposits, the commissioner shall require, in addition to the payments to be made the commissioner and the royalty of two per centum hereinabove mentioned, an additional royalty of two and one-half per centum of the sale value of any potash or other minerals extracted from said lands, which latter royalty shall be paid to the government until such time as the total amount derived from said royalty shall equal the cost of such government investigation as determined by the secretary of the interior and the secretary of commerce jointly. [L. '31, Ch. 3, § 1, amending Comp. '29, § 132-136.

132-136a. Id.-Commissioner to enter into formal agreement with secretary of commerce. The state land commissioner is hereby expressly authorized and directed to enter into such formal agreement and contract with the secretary of the interior and the secretary of the commerce jointly as such officers are authorized to enter into with said land commissioner under the terms and provisions of the act of the sixty-ninth congress, No. 759, H. R. 15827, entitled:

"An Act to amend section 2 of an Act entitled An Act authorizing investigations by the Secretary of the Interior and the Secretary of Commerce jointly to determine the location, extent, and ode of occurrence of potash deposits in the United States, and to conduct laboratory tests." [L. '31, Ch. 3, § 2.

132-137. Id.—Lessee, fraud by. Any lessee of mineral lands under this chapter who shall conceal, or attempt to conceal any of such returns, or who shall in any manner defraud, or attempt to defraud, the state out of any such royalty shall be deemed guilty

of a felony and upon conviction thereof shall be punished by a fine of not more than one thousand dollars, or by imprisonment for not more than three years, or both; and his lease shall be forfeited in the manner hereinbefore provided in this chapter. [L. '12, Ch. 82, § 37; Code '15, § 5214.

132-138. Id.—Commissioner—Inspect records. The commissioner, or his representative, shall have the right to inspect all records or books of account pertaining to the mining, extraction, transportation, reduction and returns of all ores taken from such leased lands. [L. '12, Ch. 82, § 38; Code '15, § 5215.

132-139. Id.—Lease—Renewal—Preference. Any lessee of such mineral lands, or the heirs, successors or assigns of such lessee, shall have a preferential right to a renewal lease, or to purchase during the life of such lease, provided all terms and conditions of the expiring lease shall have been fully performed. In case of purchase by another, one year's notice to vacate shall be given to the lessee. [L. '12, Ch. 82, § 39; Code '15, § 5216.

132-140. Oil and gas lands—Leases—Term—Rent—Royalty — Forfeiture. The commissioner may execute leases for the extraction of petroleum and natural gas on and from any state lands, prescribing such terms and conditions as he may deem advisable, but no such lease shall be for a term exceeding five years, subject, however, to right of renewal on such terms and conditions as the commissioner may prescribe. No such lease shall be made for less than one hundred (\$100)- dollars, and in addition thereto said lease shall provide for royalty to be paid to the state of not less than five per centum of the gross value of all petroleum and natural gas products extracted during the term of the lease, payable quarterly. Failure on the part of any such lessee to comply with the terms and conditions of his lease shall work a forfeiture and cancellation thereof as herein provided. [L. '15, Ch. 73, § 4, amending Code '15, § 5217.

132-141. Saline, oil; gas lands—Not to be sold—Leases. State saline lands and state lands known to contain valuable minerals, petroleum or natural gas in paying quantities, and sections of state lands adjoining lands upon which there are producing mines, oil wells or gas wells, or which are known to contain valuable minerals, petroleum or natural gas in paying quantities, shall not be sold, but may be leased as provided in this chapter. [L. '12, Ch. 82, § 40a; Code '15, § 5218.

132-142. Salt from saline lands—Leases and royalties. The commissioner may execute leases for the extraction of salt from the saline lands and lakes belonging to the state. Such leases shall provide for a royalty on all salt extracted therefrom of not less than ten per cent of the actual sale price at the place of extrac-

tion. Said royalties shall be paid quarterly and accurate record shall be kept of all sales made. All leases made hereunder shall contain such conditions and shall provide for the cancellation of the lease by the commissioner for the breach thereof. [L. '23, Ch. 99, § 1, amending Code '25, § 5219 as further amended by L. 39, Ch. 81, § 1.

NOTE: See also § 151-1101, page 186.

132-143. Shale and clay deposits—Leases—Terms. The commissioner may also execute leases for the mining, extraction or disposition of shale, clay or other natural deposits in or upon, or products of state lands, not otherwise provided for in this chapter, upon such terms and conditions as he may deem for the best interests of the state, not repugnant to law. Any mortgage upon improvements on any such lands so leased shall be void. [L. '12, Ch. '82, § 42 ; Code '15, § 5220.

132-144. Mineral lands—How developed. All lands under lease for extraction of coal or other deposits, shall be developed and operated in a workmanlike manner and with a view to development of the whole area tributary to the shafts, drifts, tunnels or other openings made, and failure of the lessee or his assigns to observe this provision shall be cause for cancellation and forfeiture of the lease thereon in the manner hereinbefore provided in this chapter. [L. '12, Ch. 82, § 43; Code '15, § 5221.

132-150. Depredations on—Penalty. Any person who shall cut down, remove, destroy or injure, or who shall take, remove or carry away, any timber, trees or fire wood standing, growing or lying upon any state lands, or who shall extract or remove, or attempt to extract or remove, from any state lands, any stone, minerals, oil, gas, salt or other natural products or deposit, or any lessee who shall permit the same to be done, without authority from the commissioner, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished as provided in the preceding section, and in addition thereto shall forfeit and pay to the state an amount double the value of the material so cut, removed, destroyed, injured or extracted. [L. '12, Ch. 82, § 49; Code '15, § 5227.

132-151. Trespass and waste on leased lands. Every lessee of state lands shall protect the land leased by him from waste or trespass by unauthorized persons, and failure so to do shall subject his lease to forfeiture and cancellation in the manner herein-before prescribed in this chapter, and the attorney general may bring suit for damages caused by any such waste or trespass. [L. '12, Ch. 82, § 50; Code '15, § 5228.

132-154. Rights-of-way. The commissioner may grant rights-of-way and easements over, upon or across state lands for public highways, railroads, tramways, telegraph, telephone and

power lines, irrigation works, mining; logging and for other purposes, upon payment by the grantee or grantees of the price fixed by the commissioner, which shall not be less than the minimum price for the lands, used, as fixed by law. [L. '12, Ch. 82, § 53; Code '15, § 5231.

132-156. Leases—Grazing and agricultural—Mineral reserved. In all leases of state lands for grazing or agricultural purposes there shall be inserted a clause reserving the right to execute leases for mining purposes thereon, or for the extraction of petroleum, natural gas, salt, or other deposit therefrom, and the right to sell or dispose of any other natural surface products of such lands other than grazing, agricultural or horticultural products also a clause reserving the right to grant rights-of-way and easements for any of the purposes mentioned in § 5231 (132-154) . [L. '12, Ch. 82, § 55; Code '15, § 5233.

ARTICLE 4. OIL AND GAS LEASES

Section

- 132-401. Commissioner may issue leases—Terms.
- 132-402. Form and terms.
- 132-403. Preference of lessees for new lease.
- 132-404. Assignment of leases.
- 132-405. Applications for leases.
- 132-406. Annual rental.
- 132-407. Restricted districts.
- 132-408. Auction sale of leases.
- 132-409. Lease where no bids at sale.
- 132-410. Commissioner may withhold lands from lease.
- 132-411. Cancellation of leases for non-payment or non-performance.
- 132-412. Repealed.
- 132-413. Rules and regulations.
- 132-414. Leases in effect upon passage of this act.
- 132-415. Repealed.
- 132-416. Jurisdiction of district courts to alter decisions of the commissioner.
- 132-417. Id.—Determination of controversies.
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- 132-419. Constitutional construction.
- 132-420. Repeal.
- 132-421. Lessees to purchase improvements from owner thereof.
- 132-122. Log of well and specimen of drill cuttings—Payment of royalties.
- 132-423. Lease of lands sold on contract.
- 132-424. Mineral reservation on lands classified as mineral.
- 132-425. Assignment of leases.
- 132-426. Lessee may remove improvements upon cancellation of lease.
- 132-427. Rules and regulations.
- 132-428. Construction clause.
- 132-429. Carbon dioxide gas.
- 132-430. Id.—Leases to explore for and develop.
- 132-431. Id.—Leases—Term of Rental-Royalty.
- 132-432. Restricted district—Rental on lands within.
- 132-433. Owner of oil ,and gas lease may exchange for dioxide lease.
- 132-434. Owner of oil and gas lease may procure dioxide lease.

- 132-435. After drilling commenced, may procure additional lease.
- 132-436. Commissioner may sell dioxide leases at private sale.
- 132-437. Drilling by owner of oil and gas lease, and dioxide lease—Considered compliance with both.
- 132-438. Emergency clause.

132-401. Commissioner may issue leases—Terms. The commissioner of public lands, hereinafter referred to as the "Commissioner," is hereby authorized to execute and issue, in the name of the state of New Mexico as lessor, leases for the exploration, development and production of oil and natural gas from any lands belonging to the state of New Mexico, or held in trust by the state under grants from the United States, and including lands which have been, or may hereafter be sold by the state with reservation of the minerals in the land, such leases to be issued upon such terms and conditions as the commissioner may deem to be for the best interests of the state, and not inconsistent with the provisions of chapter 125 (this Article) of the Session Laws of 1929 and amendments thereto. [L. '31, Ch. 18, § 1, amending Comp. '29, § IX-401.

132-402. Form and terms of lease. All leases issued by the commissioner, except leases issued pursuant to § 8 (132-414) of this act, shall be for a primary term of five years, and as long thereafter as oil and gas in paying quantities, or either of them, be produced from the leased premises, and shall contain the following terms and conditions (except as otherwise noted), and shall be in substantially the following form:

Lease NoApplication No.....

OIL AND GAS LEASE

This agreement, dated this the day of A. D. 19....., made and entered into by and between the State of New Mexico, acting by and through the undersigned, its Commissioner of Public Lands, thereunto duly authorized, party of the first part and hereinafter called the "Lessor," and..... party of the second part, hereinafter called the "Lessee," whether one or more,

Witnesseth:

Whereas, the said lessee has filed in the office of the Commissioner of Public Lands an application for an oil and gas lease covering the lands hereinafter described and has tendered therewith the required first payment being not less than the amount required by law and by the rules and regulations of the New Mexico State Land Office; and

Whereas, all of the requirements of law relative to said application and tender have been duly complied with and said application has been approved and allowed by the commissioner of Public Lands;

Therefore, for and in consideration of the premises as well as the sum of (\$.....) Dollars, the same being the amount of the tender above mentioned, paid in cash, and evidenced by official receipt No....., and of the further sum of \$..... filing fee, and of the covenants and agreements hereinafter contained on the part of the lessee to be paid, kept and performed, the said lessor has granted and demised, leased and let, and by these presents does grant, demise, lease and let unto the said lessee exclusively, for the sole and only purpose of exploration, development and production of oil and/or gas thereon and therefrom with the. right to own all oil and gas so produced and saved therefrom and not reserved as royalty by the lessor under the terms of this lease, together with rights-of-way, easements and servitudes for pipe lines, telephone and telegraph lines, tanks, power houses, stations, gasoline plants, and fixtures for producing, treating and caring for such products, and housing and boarding employees, and any and all rights and privileges necessary, incident to or convenient for the economical operation of said land, for oil and gas, with right for such purposes to the free use of oil, gas, casing-head gas, or water from said lands, but not from lessor's water wells, and with the right of removing either during or after the term hereof, all and any improvements placed or erected on the premises by the lessee, including the right to pull all casing, subject, however, to the conditions hereinafter set out, the following described land situate in the countyof, State of New Mexico, and more particularly described as follows: Said lands having been awarded to lessee and designated as tract No at a public sale held by the Commissioner of Public Lands on,19..... (To be filled in only where lands are offered at public sale.)

To Have and to Hold said land, and all the rights and privileges granted hereunder, to and unto the lessee for a primary term of from the date hereof, and as long thereafter as oil and gas in paying quantities, or either of them, is produced from said land by the lessee, subject to all of the terms and conditions as hereinafter set forth.

In consideration of the premises the parties covenant and agree as follows:

1. Subject to the free use without royalty, as hereinbefore provided, the lessee shall pay the lessor as royalty one-eighth part of the oil produced and saved from the leased premises, or the cash value thereof, at the option of the lessor, such value to be the price prevailing the day oil is run into a pipe line, if the oil be run into a pipe line, or into storage tanks, if the oil be stored.
2. The lessee agrees to pay the lessor the one-eighth of the net proceeds derived from the sale of gas from each gas well.

If casing-head gas produced from said land is sold by the lessee, the lessee shall pay the lessor as royalty one-eighth of the net proceeds of said sale; if casing-head gas produced from said lands is utilized by the lessee otherwise than for carrying on the lessee's operations for producing oil or gas from said lands, then the lessee shall pay the lessor the market value in the field of the equal one-eighth part of the casing-head gas so utilized at the time of such utilization.

3. Lessee agrees to make full settlement on the 20th day of each month for all royalties due the lessor for the preceding month, under this lease and to permit the lessor or its agents, at all reasonable hours, to examine lessee's books relating to the production and disposition of oil and gas produced. Lessee further agrees to submit to lessor annually upon forms furnished by lessor verified reports showing lessee's operations for the preceding year.

4. It is expressly agreed that the consideration hereinbefore specified is a good, valid and substantial consideration and sufficient in all respects to support each and every covenant herein, including specifically the option granted the lessee to prevent the termination of this lease from year to year, by the payment or tender of the further rental hereinafter provided for.

An annual rental, at the rate ofper acre shall also become due and payable to the lessor by the lessee, or by any transferee or assignee of the same, or any part hereof, where such transferee or assignee has been recognized, and such transfer or assignment approved by the lessor as hereinafter provided, upon each acre of the land above described and then claimed by such lessee, transferee or assignee hereunder, and the same shall be due and payable in advance to the lessor on the successive anniversary dates of this lease, but the annual rental on any assignment shall in no event be less than six dollars (\$6.00) .

In event the lessee shall elect to surrender any or all of said acreage, he shall deliver to the Commissioner a duly executed release thereof and in event said lease has been recorded, then he shall upon request furnish and deliver to said Commissioner a certified copy of a duly recorded release.

5. The lessee may at any time by paying to the State of New Mexico, acting by its Commissioner of Public Lands, or other authorized officer, all amounts then due as provided herein and the further sum of Ten Dollars (\$10.00) , surrender and cancel this lease insofar as the same covers all or any portion of the lands herein leased and be relieved from further obligations or liability hereunder, in the manner as hereinbefore provided. *Provided*, this surrender clause and the option herein reserved to the lessee shall cease and become absolutely inoperative immediately and concurrently with the institution of any suit in any court of

law or equity by the lessee, lessor, or any assignee, to enforce this lease, or any of its terms express or implied.

6. All payments due hereunder shall be made on or before the day such payment is due, in cash or by certified exchange at the office of the Commissioner of Public Lands in Santa Fe, New Mexico.

7. The lessee with the consent of the lessor, shall have the right to assign this lease in whole or in part. *Provided, however,* that no assignment of an undivided interest in the lease or in any part thereof nor any assignment of less than a legal sub-division shall be recognized or approved by the lessor. Upon approval writing by the lessor of an assignment, the assignor shall stand relieved from all obligations to the lessor with respect to the lands embraced in the assignment and the lessor shall likewise be relieved from all obligations to the assignor as to such tracts, and the assignee shall succeed to all of the rights and privileges of the assignor with respect to such tracts and shall be held to have assumed all of the duties and obligations of the assignor to the lessor as to such tracts.

8. Lessee agrees with reasonable diligence to offset all paying oil or gas wells drilled, within 300 feet of any of the land covered by this lease and retained hereunder.

9. The lessee agrees to notify the lessor of the location of each well before commencing drilling thereon, to keep a complete and accurate log of each well drilled and to furnish a copy thereof, verified by some person having actual knowledge of the facts, to the lessor upon the completion of any well, and to furnish the log of any unfinished well at any time when requested to do so by the lessor.

If any lands embraced in this lease shall be included in any deed or contract of purchase outstanding and subsisting issued pursuant to any sale made of the surface of such lands prior to the date of this lease, it is agreed and understood that no drilling operation shall be commenced on any such lands so sold unless and until the lessee or his assignee shall have filed a good and sufficient bond with the lessor as required by law, to secure the payment for such damage to the livestock, range, water, crops or tangible improvements on such lands as may be suffered by the purchaser holding such deed or contract of purchase, or his successors, by reason of the developments, use and occupation of such lands by such lessee. *Provided, however,* that no such bond shall be required if such purchaser shall waive the right to require such bond to be given in the manner provided by law.

10. In drilling wells all water-bearing strata shall be noted in the log, and the lessor reserved the right to require that all or any part of the casing shall be left in any non-productive well when lessor deems it to the interest of the State of New Mexico to maintain said well or wells for water. For such casing so left

in wells the lessor shall pay to the lessee the reasonable value thereof.

11. Lessee shall be liable and agrees to pay for all damages to the range, livestock, growing crops or improvements caused by lessee's operations on said lands. When requested by the lessor, the lessee shall bury pipe-lines below plough depth.

12. The lessee shall not remove any machinery or fixtures placed on said premises, nor draw the casing from any well unless and until all payments and obligations due the lessor under the terms of this agreement shall have been paid or satisfied. The lessee's right to remove the casing is subject to the provisions of paragraph 10 above.

13. Upon failure or default of the lessee or any assignee to comply with any of the provisions or covenants hereof, the lessor is hereby authorized to cancel this lease and such cancellation shall extend to and include all rights hereunder as to the whole of the tract so claimed, or possessed by the lessee or assignee so defaulting, but shall not extend to, nor affect the rights of any other lessee or assignee claiming any portion of the lands upon which no default has been made; *Provided, however*, that before any such cancellation shall be made, the lessor shall mail to the lessee, or assignee so defaulting, by registered mail, addressed to the post-office address, of such lessee or assignee as shown by the records of the state land office, a notice of intention of cancellation specifying the default for which cancellation is to be made, and if within 30 days from the date of mailing said notice the said lessee or assignee shall remedy the default specified in said notice, cancellation shall not be made.

14. All the terms of this agreement shall extend to and bind the heirs, executors, administrators, successors and assigns of the parties hereto.

15. If the lessee shall have failed to make discovery of oil and/or gas in paying quantities during the primary term thereof, the lessee may continue this lease in full force and effect for an additional term of five years and as long thereafter as oil and gas in paying quantities, or either of them is produced from the leased premises, by paying each year in advance, as herein provided, double the rental provided herein for the primary term, or the highest rental prevailing at the commencement of the secondary term in any rental district, or districts in which the lands, or any part thereof, may be situated, if it be greater than double the rental provided for the primary term. (This paragraph [15] shall not be inserted in any lease issued pursuant to the provisions of § 3 [132-403] of this act.)

In Witness Whereof, the party of the first part has hereunto signed and caused its name to be signed by its Commissioner of Public Lands thereunto duly authorized, with the seal of his Office

affixed, and the lessee has signed this agreement the day and year first above written.

STATE OF NEW MEXICO

By

Commissioner of Public Lands, Lessor.

.....
.....(Seal)

Lessee.

Distributed this the day of 19
[L. '31, Ch. 18, § 2, amending Comp. '29, § 132-402.

132-403. Preference of lessees for new leases. The legal owners of all leases issued by the commissioner of public lands prior to the effective date of this amendment, containing provision, or provisions, for preference right to a new lease, or extension of the term thereof upon the expiration of the initial five year term, and were valuable discoveries of the oil and gas have not been made, shall have an absolute preference right to such new lease or ex-tension, upon the terms and conditions provided in such leases without paying a bonus therefor, and in the exercise of such preference right the provisions of chapter 125 (this article) of the 1929 session laws, and of this act relating to sales made upon competitive bidding by sealed bids, or at public auction, shall not apply in any case, but all such renewals, extensions or new leases made pursuant to such preference rights shall be only for a term of five years and as long thereafter as oil and gas in paying quantities, or either of them, is produced from the leased premises, and without further preference right to renewal or extension for successive terms. [L. '31, Ch. 18, § 3, amending Comp. '29, § 132-403.

132-404. Assignment of leases. All leases issued under the provisions of this act shall be assignable in whole or in part; *Provided, however,* that no assignment of an undivided interest in the lease or any part thereof, or any assignment of less than a legal subdivision shall be recognized or approved by the commissioner. The term "legal subdivision" as used in this act shall be construed in its ordinary sense as used and recognized in the general land office of the United States and in the state land office of New Mexico. The assignments provided for herein shall be executed and acknowledged in the manner prescribed for conveyances of real estate in this state and shall be filed in duplicate in the office of the commissioner who shall retain one copy of the said assignment in his office as a public record and shall record same in permanent form in his office as a public record and shall return the duplicate copy to the person entitled thereto. The approval of the commissioner shall be noted upon both copies of the said assignment. The commissioner shall prescribe the form to be used for such assignments and shall fix a reasonable fee for the

filing, recording and approval of same. The commissioner shall have the right to refuse approval of any assignment not executed in proper form or by the proper person or persons, or when the lease is not in good standing as to the assigned tracts, or when litigation is pending affecting the lease or the interest of any person therein. Upon approval by the commissioner of an assignment the assignor shall stand relieved from all obligations to the state with respect to the lands embraced in the assignment and the state shall likewise be relieved from all obligations to the assignor as to such tract or tracts, and thereupon the assignee shall succeed to all of the rights and privileges of the assignor with respect to such tracts and shall be held to have assumed all of the duties and obligations of the assignor to the state as to such tracts. *Provided, however,* if oil or gas is being produced upon some part of the lands embraced in the lease held by the assignor at the time the assignment is made, such lease, as to the lands assigned, shall remain in full force and effect as long thereafter as oil and gas in paying quantities, or either of them, is produced from said land subject, however, to all of the terms and conditions of such lease. In all cases where production of oil or gas in paying quantities has been heretofore obtained or may be hereafter obtained by any assignee under a single state lease, such production shall continue the lease as to all lands held thereunder by such assignee at the time production was obtained, whether under one or more assignments, as long as oil or gas in paying quantities is produced from, any of said lands, and all leases upon which such production has been heretofore obtained, and upon which rentals shall have been paid or tendered and which have not been cancelled by the Commissioner, are hereby confirmed and declared to be valid and existing contracts with the State of New Mexico according to all of their terms and conditions, as to all lands held by such assignee. [L. '29, Ch. 125, § 4; as amended by L. 39, Ch. 234, §1.

132-405. Applications for leases. Applications for the issuance of any lease authorized by this act shall be executed under oath by the applicant or by his agent or attorney duly authorized in writing, or by any officer or attorney in fact of the corporation if the application be made by a corporation. The application shall be accompanied by the amount offered by the applicant as the bonus, if any, and rental for the first year. The form of the application shall be prescribed by the commissioner and all applications shall contain a description of the lands by legal subdivisions upon which the lease is desired, together with such data and information concerning development on and in the vicinity of the lands as may reasonably be required by the commissioner. The commissioner may also require any applicant for a lease to file in the office of the commissioner an appraisalment in such form as the commissioner may require, showing the value of the lands for oil and gas purposes, such appraisalment to be made under

oath by one or more disinterested persons having personal knowledge of the facts set forth in the appraisal. The commissioner shall not be bound by the statements contained in any such application or appraisal. No lease shall be issued without the filing of an application therefor as prescribed herein, and no lease shall be issued for less than the amount offered by the applicant as a bonus, if any, and rental for the first year, and if an appraisal of the land for oil and gas purposes be required as provided herein, then no lease shall issue for less than the value of same as shown by such appraisal. [L. '29, Ch. 125, § 5.

132-406. Annual rental. All leases issued by the commissioner of public lands shall provide for an annual rental to be paid by the lessee, the amount thereof to be fixed by the commissioner, but in no case shall the same be less than five cents nor more than one dollar per acre, except during the secondary term of the leases provided for herein; Provided the first year's rental for any lease, except leases issued pursuant to relinquishment under section 8 (132-414) of this act, shall not be less than one hundred (\$100.,00) dollars.

It shall be the duty of the commissioner to classify and divide all state lands subject to lease hereunder into districts to be known as "rental" districts, and thereupon prescribe the rental per acre to be paid under leases to be made upon lands in the respective rental districts, and upon such division shall post in a conspicuous place in the state land office a description of such districts and the rental prevailing in each; *Provided, however,* the commissioner may, from time to time, alter or change the boundaries of such districts, or redistrict all of said lands, and increase or diminish the rental prevailing in each, but any change in the boundaries of the districts, or amount of rental, shall not become effective until ten days after giving notice thereof by posting a description, or list, or such changes, in a conspicuous place in the state land office.

Not more than six thousand, four hundred (6,400) acres of land may be embraced within any one lease, and where part of the lands in any lease are situated in one rental district and part thereof in another, or other districts, the lessee shall be required to pay the rental prevailing in the district wherein part of the lands affected are situated having the highest rental. [L. '31, Ch. 18, § 4, amending Comp. '29, § 132-406.

132-407. Restricted districts. There is hereby created a restricted district comprising townships 3 to 15 south inclusive, ranges 34 to 39 east inclusive; townships 16 to 20 south inclusive, ranges 28 to 39 east inclusive and townships 21 to 26 south inclusive, ranges 34 to 39 east inclusive, N. M. P. M. No oil and gas leases upon any state lands within said restricted district shall be made except upon competitive bidding by sealed bids or at

public auction as hereinafter provided. No lands within the boundaries of said restricted district shall be eliminated therefrom by the commissioner, but the commissioner may, from time to time, when in his judgment the interest of the state requires such action, extend the boundaries thereof and create other restricted districts, or areas, within which oil and gas leases may be made only upon competitive bidding by sealed bids or at public auction. Notice of the extension of the boundaries of said district, or of the creation of other districts, shall be given in the same manner as provided for giving notice of change in rental districts, as provided by section 4 (132-406) of this act. Nothing contained in this act shall be construed as requiring a uniform annual rental to prevail over the entire area embraced in any restricted district. The commissioner may, when it is deemed for the best interests of the state, fix the annual rental to be paid under the terms of each lease covering lands in any restricted district at the time notice of sale thereof is given, as hereinafter provided, without regard to the rental prevailing in the district in which the lands offered for lease are situated, and in such cases the provisions of section 4 (132-406) hereof, except those relating to the maximum and minimum rental, shall not apply. [L. '31, Ch. 18, § 5, amending Comp. '29, § 132-407.]

132-408. Auction sale of leases. The commissioner shall hold a public sale of oil and gas leases upon lands which may be open to lease and embraced within the restricted district, or districts, created, and which may be created under the preceding section, on the 10th day of each month, or, on the next business day following where the 10th falls on Sunday or a legal holiday and shall offer for lease such lands in designated tracts to the highest and best bidder therefor. All sales of leases upon competitive bidding, or at public auction, shall be governed by regulations issued by the commissioner not in conflict with the provisions of this act. Notice of such sales shall be given by posting in a conspicuous place in the state land office, not less than ten days before the date of sale, a notice of same, specifying the day and hour when, and the place where, the sale will be held, giving a description of the lands in each tract to be offered for lease and the annual rental per acre to be paid by the lessee. The commissioner may, when it is deemed to be for the best interests of the state, also specify a minimum bonus to be paid for the leases upon the respective tracts, and when so specified the same shall be paid in addition to the first year's rental. The notice shall also contain such other information as the commissioner may deem advisable or necessary. Sales may be conducted through sealed bids or at public auction, or by both methods combined, but the method of conducting each sale shall be stated in the notice of sale required herein. Sales may be held at the option of the commissioner either in the office of the commissioner or at the county

seat of the county in which the lands, or the greater part thereof, are situated. The commissioner is, authorized to give such additional notice of the sales, either by publication in newspapers, or by mailing copies of the notice of sale to interested persons, firms, or corporations, as he may deem necessary to give proper publicity thereto. The commissioner shall have the right to reject all bids received at any sale for the lease upon any tract, but shall not reject any bids made in conformity with the regulations and provisions of this act without rejecting all bids applicable to the same tract or tracts of land. Leases sold at sales as provided herein shall be awarded to the respective bidders offering the largest bonus, which shall be paid in addition to the first year's rental, or where a minimum bonus is not specified and no offer of a bonus is received, to the bidder offering the rental specified in the notice of sale, which, for the first year, shall not be less than \$100 for each lease, as provided in § 4 (132-406) hereof. Where two or more sealed bids making the same offer for the same tract are received, the commissioner shall award the lease thereon in accordance with such regulations as he may prescribe. The successful bidders shall file proper applications for the leases purchased and shall complete the payment of any balance due on their bids before the closing of the office of the commissioner on, the day of the sale. [L. '31, Ch. 18, § 6, amending Comp. '29, § 132-408.

132-409. Lease where no bid at sale. If no bid be received for any lease offered by notice of sale as provided herein, then the tract or tracts upon which no bids are received may be leased by the commissioner to the first applicant for the respective tracts any time within ten days after such sale at not less than the minimum amount of rental and bonus, if any, specified in the notice of sale. [L. '31, Ch. 18, § 7, amending Comp. '29, § 132-409.

132-410. Commissioner may withhold lands from lease. Nothing contained in this act shall be construed as requiring the commissioner to offer any tract or tracts of land for lease but the commissioner shall have power to withhold any tract or tracts from leasing for oil and gas purposes if in his opinion the best interests of the state will be served by so doing. [L. '29, Ch. 125, § 10.

132-411. Cancellation of leases for non-payment or non-performance. The commissioner is hereby authorized to cancel any lease issued as provided herein for non-payment of rentals or non-performance by the lessee of any provision or requirement of the lease Provided, however, that before any such cancellation shall be made the commissioner must mail to the lessee or assignee by registered letter, addressed to the post office address of such lessee or assignee shown by the records of the office of the commissioner, a notice of intention to cancel said lease, specifying the de-

fault for which the lease is subject to cancellation, and if within thirty (30) days after the mailing of said notice to the lessee or assignee he shall remedy the default specified in such notice, then no cancellation of the said lease shall be entered by the commissioner but otherwise the said cancellation shall be made and all rights of the lessee or assignee under the lease shall thereupon terminate. The mailing of the notice as provided in this section shall constitute notice of the intention of the commissioner to cancel the lease and no proof of receipt of such notice shall be necessary or required. [L. '29, Ch. 125, § 11.

132-412. Repealed by L. '31, Ch. 18, § 9.

132-413. Rules and regulations. The commissioner is hereby authorized and required to prescribe and publish for the information of the public, all rules and regulations necessary for carrying out the provisions of this act, and he may amend or rescind any rule or regulation promulgated by him under the authority contained herein; *Provided, however,* that no rule or regulation or amendment of same, or any order rescinding any rule or regulation shall become effective earlier than fifteen (15) days after the promulgation of same, and a copy of the proposed rule, regulation, amendment or order shall be posted in a conspicuous place in the office of the commissioner for a period of at least fifteen (15) days prior to the taking effect of the same. [L. '29, Ch. 125, § 13.

132-414. Leases in effect upon passage of this act. All oil and gas leases issued by the commissioner of public lands prior to the effective date of this amendment which have not expired or, which have not been legally cancelled for nonperformance by the lessee or assignee, are hereby declared to be valid and existing contracts with the State of New Mexico according to their terms and provisions, and the obligation of the state and of the commissioner to observe and conform to the terms and provisions thereof is hereby recognized. In any case where two or more persons claim a valid lease on the same tract or tracts of land under the provisions of this section, then the rights of the conflicting claimants shall be determined by the commissioner subject to right of appeal from the decision of the commissioner as provided by law.

The legal owner and holder of any lease or leases issued by the commissioner prior to March 12, 1929, if not in default of any of the provisions thereof, may relinquish the same to the state and upon application filed at the time of filing such relinquishment, the commissioner shall issue the applicant a new lease upon the form prescribed §, 2 (132-402) of this act. The primary term of the new lease issued pursuant to such relinquishment shall be the unexpired term of the original lease and as long thereafter as oil and gas in paying quantities, or either of them,

is produced from the leased premises by the lessee, and the new lease shall provide for the payment of the annual rental prevailing in the district wherein the lands affected are situated, but not less than the rental provided in the original lease. In converting such lease, as herein provided, the commissioner shall prescribe a reasonable filing fee for the filing of the relinquishment and application, and the lessee shall not be required to pay any rental in addition to the rental provided in the lease relinquished for the current year in which the lease is relinquished, except the difference, if any, between the amount of rental provided in the old lease and that to be provided in the new lease. The provisions of chapter 125 (this article) of the 1929 session laws, and of this act relating to sales of leases within a restricted district upon competitive bidding, or by sealed bids, or at public auction, shall not apply to this section. [L. '31, Ch. 18, § 8, amending Comp. '29, § 132-414.

132-415. Repealed by L. '31, Ch. 18, § 9.

132-416. Jurisdiction district courts to alter decisions of the commissioner.

Any person or corporation aggrieved by any ruling or decision of the commissioner affecting the interest of such person or corporation in any lease issued under, or affected by the provisions of this act, may apply to the district court of the county in which the lands or the greater part thereof affected by said order or decision, are located, for an order directed to the commissioner requiring him to show cause, if any cause he may have, why the said order or decision should not be cancelled or set aside. The district court of such county shall have jurisdiction as a court of equity to receive such application for order to show cause and to issue such order and to cancel or set aside the order or decision of the commissioner complained of by the petitioner, provided that not less than twenty (20) days shall be allowed to the commissioner for making return to any order to show cause which may be issued as provided herein. Any other person interested in the outcome of the controversy may upon proper showing tote court be made a party to or be permitted to intervene in the proceeding and have his rights in the subject matter determined. Appeals to and writs of error from the supreme court shall lie from the decisions of the district court in such cases as in other cases, provided that the application therefor be filed not less than thirty (30) days after the entering of the decision of the district court. [L. '29, Ch. 125, § 16.

132-417. Id. Determination of controversies. The district court of the county in which the lands or the major portion thereof may be located which are embraced in any lease issued under or affected by the provisions of this act, shall have original exclusive jurisdiction as a court of equity for the determination of controversies between persons or corporations respecting their

rights in, or claim under such lease, and no such controversies shall be considered or determined by the commissioner of public lands. Appeals to and writs of error from the supreme court shall be allowed in such cases, as provided in § 16 (132-416) herein. [L. '29, Ch. 125, § 17.

132-418. *Id.*—Manner of proof of commissioner's records. In the proceedings above described in §§ 16 (132-416) and 17 (132-417) of this act, records, books and papers in the office of the commissioner of public lands shall be proven by copies thereof, duly certified by the commissioner, or by certified transcript of such records and proceedings as may be necessary, which shall be admissible in evidence in such cases, and no original book, record or paper shall be removed from the office of the commissioner of public lands except upon order of a district court after a special application therefor. [L. '29, Ch. 125, § 18.

132-419. Constitutional construction. If any provision of this act shall be declared invalid, then such invalidity shall not affect the remaining valid provisions of the act, it being the intent that all of the valid provisions hereof shall be given full force and effect regardless of the invalidity of any other provisions. [L. '29, Ch. 125, § 19.

132-420. Repeal. Chapter 46 of the session laws of 1927 and all other acts and parts of acts in conflict or inconsistent with the provisions of this act are hereby repealed; **Provided, however,** that applications for oil and gas leases on file in the office of the commissioner and not disposed of when this act takes effect shall be disposed of and leases issued pursuant thereto in accordance with statutes and regulations in force at the time of the filing of the respective applications. [L. '29, Ch. 125, § 20.

132-421. Lessees to purchase improvements from owner thereof. If mineral lands upon which improvements have been made shall be leased in conformity with law to other than the owner of such improvements thereon, then such purchaser or such new lessee shall pay to the owner thereof the value of such improvements at an agreed price with the owner thereof; and if such owner of improvements and such new lessee or purchaser are not able to agree upon a value, the value shall be determined by a board of three arbitrators, one to be selected by the owner of the improvements, one by the commissioner of public lands, and the third by two so selected. The word "improvements" shall be construed to mean surface improvements, machinery, and other equipment not removed from said lands under the provisions of § 9 used in the operation of the plant on such land, and work performed in the development of the property for operation and mining. No lease shall be issued to any applicant other than the owner of such improvements until such

applicant files with the commissioner of public lands receipt showing payment in full of the value of such improvements as agreed upon between such applicant and the owner of the improvements, or determined by the board of arbitrators; or until such applicant shall pay to the commissioner of public lands the value of such improvements so determined. If payment is made to the commissioner of public lands, it shall be at once delivered to the owner of the improvements. [L. '25, Ch. 137, § 3

132-422. Log of wells and specimen of drill cuttings.—Payment of royalties. The lessee shall be required to submit to the commissioner of public lands with each and every royalty payment, a correct statement showing the amount of oil or gas produced and saved since the last report and the market value thereof, except oil and gas used in developing and operating said lease. All books and accounts of the lessee pertaining to the production, transportation, and marketing of the output from the leased lands shall be open to the examination and inspection at all reasonable hours by the Commissioner of public lands or his representative. The value of any unpaid royalty, and any sum due the state upon any lease, shall become a prior lien upon the production from the leased premises and the improvements situated thereon. The lessee shall furnish to the commissioner of public lands, as and when called for by him, a full, accurate and complete log, and also a complete specimen of drill cuttings of any and all wells drilled by lessee on the leased lands. [L.'25, Ch.' 137, § 4.

132-423. Lease of lands sold on contract. State lands sold heretofore, or which may be sold hereafter on any deferred payment plan under contract containing a reservation to the state of the minerals therein contained, may be leased by the state for oil gas, or other mineral development or exploitation, as provided by law in the same manner as other state lands.

Provided, that before any lessee of minerals on state lands so sold shall commence development or operations thereon such lessee shall execute and file with the commissioner of public lands a good and sufficient bond or undertaking in an amount to be fixed by said commissioner, but not less than two thousand dollars (\$2,000.00), in favor of the state of New Mexico for the use and benefit of the purchaser holding purchase contract or deed to such lands on which such development is about to be commenced, his grantees or successors in interest to secure the payment for such damage to the livestock range, water, crops, or tangible improvements on such lands may be suffered by such purchaser or his successors in interest, by reason of such development, use and occupation of such lands by such lessee.

And provided further, that if any such purchaser shall file with the commissioner of public lands a waiver duly executed and acknowledged by him of his right to require such bond, such development, occupation and use of the lands by a mineral lessee

may be permitted without the bond herein required. [L, '29, Ch. 45, § 1, amending L. '25, Ch 137, § 5.

132-424. Mineral reservation on lands classified as mineral. Where state lands have been sold heretofore, or may be sold hereafter on any deferred payment plan under contract containing a reservation to the state of the minerals therein contained and be-fore the payment of the 'total purchase price, such land shall have been leased for mineral purposes as in this act provided , or where before the payment of the full amount of the purchase price shall have been made or patent issued, the land shall be known, classified or reported as mineral lands, or where by reason of proximity to known mineral lands or productive oil and gas wells, the commissioner of public lands shall deem such lands to be of probable mineral character and valuable as such, he shall make proper notation on the records of his office designating the said lands as mineral lands. The commissioner of public lands is hereby authorized to issue to the purchaser of any such mineral land or lands so classified as mineral, upon full payment of the purchase price according to the terms of the contract, a limited patent only, which shall contain reservation to the state of New Mexico to all the minerals in the said lands, together with the right to the state or its grantees, to prospect for, mine and remove the same; and such lands shall, notwithstanding the issuance of such patent, be subject to lease under the provisions of this act;

Provided, that no lease for such lands shall be issued and no person shall be authorized to prospect for, mine or remove any minerals until an indemnity bond shall be given or waiver of the same filed, as set forth in § 5 (132-423) of this act. [L. '25, Ch. 137, § 6.

132-425. Assignment of leases. All oil and gas leases issued under the provisions of this act may be assigned in whole or in part with the consent and approval of the commissioner of public lands; and after such approval the assignee shall become entitled to all the rights and privileges and be bound by all the obligations of the lease only in so far as the lands assigned are concerned. [L. '25, Ch. 137, § 7.

132-426. Lessee may remove improvements upon cancellation of lease. In the event of the cancellation or forfeiture of any lease_ issued under the provisions of this act from any cause whatever, the lessee or assignee shall be permitted to remove any and all improvements from the lands which lessee can remove without injury thereto, *Provided, however*, that the commissioner of public lands may require that all or any part of the casing shall be left in any well, which is productive of water when he shall deem it to the interest of the state to maintain said well, or wells, for water, and in such case the lessee shall be paid the reasonable value of the casing therein. [L '25, Ch. 137, § 8.

132-427. Rules and regulations. The commissioner of public lands shall be, and he hereby is, authorized and empowered to adopt such uniform and reasonable rules and regulations and to prepare such uniform forms of leases as he may deem necessary to carry into effect the terms and provisions of this act and not inconsistent herewith. [L. '25, Ch. 137, § 10.]

132-428. Construction clause. Should any of the provisions of this act be declared invalid by a court, such act of the court shall not affect any other provision herein unless so expressly declared by such court, it being the intention of the legislature to give effect to the valid provisions of this act regardless of the invalidity of any other provision. [L. '25, Ch. 137, 12.]

132-429. Carbon dioxide gas. Carbon dioxide gas used in this act shall mean non-combustible gas, composed chiefly of carbon dioxide, occurring naturally in underground rocks. [L. '37, Ch. 177, § 1.]

132-430. Id.—Leases to explore for and develop. The commissioner of public lands, hereinafter referred to as the commissioner, is hereby authorized to execute and issue in the name of the state of New Mexico, as lessor, leases for the exploration, development and production of carbon dioxide gas from any land belonging to the state of New Mexico or held in trust by the state under grants from the United States and any lands which have been or may hereafter be sold by the state with the reservation of the minerals in said land; such leases to be issued upon such terms and conditions as the commissioner may deem to be for the best interests of the state and not inconsistent with the provisions hereof. [L. '37, Ch. 177, § 2.]

132-431. Id.—Leases—Term of—Rental--Royalty. All leases issued by the commissioner under this act shall be for a primary term of five years and as long thereafter as carbon dioxide gas in paying quantities be produced from the leased premises. The minimum annual rental for which said lands may be leased under this act shall be the sum of 2½ cents per acre. The minimum royalty to be paid the state under any such lease shall be .1 2½ per cent of the fair value of the carbon dioxide gas as the same is taken from the well at the place of production. The commissioner is hereby vested with power and authority to determine from time to time the fair value of such carbon dioxide gas when taken from the well at the place of production. Any person dissatisfied with the value so fixed by the commissioner may appeal from the decision of said commissioner to the district court in the same manner as other appeals are taken from the decision of said commissioner. [L. '37, Ch. 177, § 3.]

132-432. Restricted district—Rental on lands within. That portion of the state of New Mexico lying east of the New Mexico

Principal Meridian and north of the New Mexico Base Line is hereby declared as a restricted district in relation to the production of carbon dioxide gas, and no lands lying within said district may be leased under the provisions of this act for an annual rental of less than 5 cents per acre. The commissioner is hereby given the authority to determine from time to time and fix the boundaries of other restricted districts in the state of New Mexico where carbon dioxide gas is produced or likely to be produced, and, when such restricted districts are so fixed by the commissioner, no lands lying therein shall be leased under the provisions of this act for an annual rental of less than 5 cents per acre. The commissioner may from time to time fix a minimum annual rental of more than 5 cents per acre in any restricted district. [L. '37, Ch. 177, § 4.

132-433. Owner of oil gas lease may exchange for dioxide lease. Any owner of an oil and gas lease from the state of New Mexico may within ninety days after the effective date of this act exchange the existing oil and gas lease for a carbon dioxide gas lease without any additional costs therefor upon the same lands covered by the oil and gas lease. The carbon dioxide gas lease given in place of the oil and gas lease shall run from the time of the original oil and gas lease and shall be for the same period of said oil and gas lease. All rentals paid upon the oil and gas lease shall be credited as payments upon the carbon dioxide gas lease. [L. '37, 'Ch. 177, § 5.

132-434. Owner of oil and gas lease may procure dioxide lease. The owner of any existing oil and gas lease from the state of New Mexico may within ninety days from the effective date of this act secure from the commissioner a carbon dioxide gas lease upon the same lands covered by the oil and gas lease upon payment by said lessee of the sum of $2\frac{1}{2}$ cents per acre for the first annual rental, and payment thereafter of $2\frac{1}{2}$ cents per acre annual rental on lands in unrestricted districts and 5 cents per acre on lands in restricted districts. [L. '37, Ch. 177, § 6.

132-435. After drilling commenced, may procure additional lease. The owner of any oil and gas lease or carbon dioxide gas lease from the state of New Mexico may, within thirty days after the commencement of drilling operations on the land covered in said lease, obtain an oil and gas lease or a carbon dioxide gas lease in addition to the lease already held by him on the same premises upon the same terms and conditions set forth in the preceding paragraph, provided that said premises have not already been leased to persons other than the person beginning said drilling prior to the time such application is made therefor. [L. '37, Ch. 177, § 7.

132-436. Commissioner may sell dioxide leases at private sale. The commissioner may sell carbon dioxide gas leases as

provided in this act on lands in an unrestricted district at private sale, in the same manner as oil and gas leases are now sold, and shall sell carbon dioxide gas leases as provided in this act on lands within restricted districts at public auction, in the same manner as oil and gas leases on lands in restricted districts are now sold. [L. '37, Ch. 177, § 8.

132-437. Drilling by owner of oil and gas lease, and dioxide lease— Considered compliance with both. Where a well is drilled on any premises by the owner of both an oil and gas lease and a carbon dioxide gas lease on the same premises, the said drilling shall be considered as development for oil, gas and carbon dioxide gas. [L. '37, Ch. 177, § 9.

132-438. Emergency clause. That it is necessary for the preservation of the public peace and safety of the inhabitants of the state of New Mexico that the provisions of this act shall become effective at the earliest possible time, and therefore an emergency is hereby declared to exist, and this act shall take effect and be in full force and effect from and after its passage and approval. [L. '37, Ch. 177, § 10.

ARTICLE 5. RECORDS OF OIL AND GAS LEASES

Section

132-501. Records of commissioner of public lands constructive notice.

132-502. Acknowledgment of parties to instruments.

132-503. Contracts may be filed in state land office.

132-504. Commissioner to install system of records and books.

132-505. Id.—Tract book system.

132-506. Id.—Make rules and regulations.

132-507. Fees for filing and recording.

132-508. Repealing clause.

132-501. Records of commissioner of public lands constructive notice. All leases and other instruments executed or issued by the commissioner of public lands, hereinafter referred to as the commissioner, pertaining to oil and gas rights in state lands, and including assignments of such rights when approved by the commissioner, shall be made in duplicate and one copy thereof retained in the files of the state land office and recorded in full by the commissioner in suitable books provided by him and kept for such purpose. Such filing and recording shall be constructive notice to all persons of the contents of such instruments from the date of such filing and it shall not be necessary to record such instruments in the county where the lands affected thereby are located, and the filing and recording in the office of the commissioner as provided herein shall have the same force and effect as the filing and recording of such instruments in the county where the lands affected thereby are located would now have under existing statutes. [L. '25, Ch. 68, § 1.

132-502. Acknowledgment of parties to instruments. All such instruments shall be acknowledged by the parties thereto except that the commissioner shall not be required to acknowledge any such instrument but shall authenticate his signature to same with his seal of office. [L. '25, Ch. 68, § 2.

132-503. Contracts may be filed in state land office. Contracts between persons or corporations owning or holding oil and gas rights in state lands, when duly acknowledged by the parties thereto, may be filed for record and recorded in the state land office in the same manner and with the, same force and effect as the instruments referred to in the foregoing sections. [L. '25, Ch. 68, §3.

132-504. Commissioner to install system of records and books. The commissioner is authorized and directed to provide and install as soon as possible after the passage of this act a full and complete system of records and books in his office for carrying out the provisions of this act and shall provide for the full and complete indexing of such records, and such records and indices shall be open for inspection by the public during the business hours of the office under such reasonable rules and regulations as may be prescribed by the commissioner. [L. '25, Ch. 68, § 4.

132-505. Id.—Tract book system. The commissioner shall also install in his office as soon as practicable a tract book system for the mineral lands of the state on which any oil and gas rights have been granted by him, which tract books shall be separate from the tract books pertaining to grazing rights or purchase contracts, and all instruments on file in his office pertaining to oil and gas rights shall be noted on such tract books in connection with the tract or tracts affected thereby, and such notations shall show the nature of the instrument, its date, the parties thereto, the date of filing, and the book and page where recorded. [L. 25, Ch. 08, § 5.

132-506. Id.—Make rules and regulations. The commissioner is authorized to make, publish and enforce all necessary and reasonable rules and regulations for carrying out the purposes and provisions of this act and shall take necessary precautions for the safekeeping and protection of the instruments and records referred to in this act. [L. '25, Ch. 68, § 6.

132-507. Fees for filing and recording. The commissioner shall prescribe adequate, reasonable, and uniform fees to be charged for the filing and recording of instruments under the provisions hereof and all such fees shall be covered into the maintenance fund of his office and all reasonable and necessary expenditures for carrying out the provisions of this act shall be made from such maintenance fund and the same are hereby directed and authorized to be made. [L. '25, Ch. 68, § 7.

132-508. Repealing clause. All acts and parts of acts in conflict herewith are hereby repealed, and this act shall apply to all instruments now in file in the state land office and which pertain to oil and as rights in state lands, but nothing contained herein shall be construed to deprive any person or corporation of any valid and existing right acquired in good faith through compliance with or the operation of any law in effect prior to the passage of this act. [L. '25, Ch. 68, § 8.

CHAPTER 151
WATERS
ARTICLE 11. SALT LAKES

Section
151-1101. Salt Lakes.

151-1101. Salt Lakes. All the salt lakes within this state, and the salt which has, or may accumulate on the shores thereof, is, and shall be free to the citizens, and each one shall have power to collect salt on any occasion free from molestation or disturbance. If any person or persons shall prevent any other person or persons, or shall attempt to prevent them from gathering salt, or going for, or returning with it, or shall arm or embody themselves for any or either of the above purposes, or shall molest or disturb, hinder or annoy any person or persons gathering salt, or going to, or returning from any salt lakes, or shall interfere with the salt gathered, or the animals, carts, or wagons, or any other mode of conveyance or transportation, shall be deemed guilty of a felony, and punished by confinement in the penitentiary, not less than two nor more than seven years, or by a fine of not less than one thousand dollars. [L. '53-'54, p. 20, §§ 1 and 2; C. L. '65, Ch. 98, §§ 1 and 2; C. L. '97, § 58; Code '15, § 5814.

NOTE: Although this section has not been formally repealed, unless by implication in § 132-508 above, it would seem to be superseded by the leasing provisions on pages 164 and 165 (§§ 132-141 and 142) regarding saline lands and lakes.

CHAPTER 97
OIL AND GAS

Article

1. State Geologist, §§ 97-101 to 97-109.
2. Regulations of wells, §§ 97-201 to 97-204.
3. Release of Leases, §§ 97-301 to 97-303.
4. Taxation of Output, §§ 97-401 to 97-406.
- 4A. Excise Tax on Natural Products, §§ 97-4A101 to 97-4A127.
5. Recording Assignments of Royalties, §§ 97-501 to 97-502.
6. Conservation of Oil and Gas, §§ 97-601 and 97-602.
7. Leases and Sale of Royalties Covering Lands Owned by Minors or Incompetents, §§ 97-701 and 97-708.
8. Conservation commission, §§ 97-801 to 97-828.
9. Interstate Compact, §§ 97-901 to 97-909.

ARTICLE 1. STATE GEOLOGIST

Section

97-102 to 97-109 inc. Repealed.

97-102 to 97-109 inc. Repealed by L. '35, Ch. 72, § 26.

ARTICLE 2. REGULATIONS OF WELLS

Section

97-201 to 97-204 inc. Repealed.

97-201 to 97-204 inc. Repealed by L. '35, Ch. 72, § 26.

ARTICLE 3. RELEASE OF LEASES

Section

97-301. Duty to release forfeited leases.

97-302. Failure to release—Action and damages.

97-303. Demand for release before bringing action.

97-301. Duty to release forfeited leases. Whenever any oil, gas or other mineral lease heretofore or hereafter executed shall become forfeited, it shall be the duty of the lessee, his, or its heirs, executors, administrators, successors or assigns, within thirty days from the date this act shall take effect, if the forfeiture occurred prior thereto, and within thirty days from the date of the forfeiture of any and all other leases, to have such lease released from record in the county where the leased land is situated, without cost to the owner thereof. [L. '25, Ch. 118, § 1.

97-302. Failure to release—Action and damages. Should the owner of such lease neglect or refuse to execute a release as provided by this act, then the owner of the leased premises may sue in any court of competent jurisdiction to obtain such release, and he may also recover in such action of the lessee, his, or its heirs, executors, administrators, successors, or assigns, the sum of one hundred dollars (\$100.00) as damages, and all costs, together with a reasonable attorney's fee for preparing and prosecuting the suit, and he may also recover any, additional damages that the evidence in the case will warrant. In all such actions, writs of attachment may issue as in other cases. [L. '25, Ch. 118, § 2.

97-303. Demand for release before bringing action. At least twenty days before bringing the action provided for in this act, the owner of the leased land, either by himself or by his agent or attorney, shall demand of the holder of the lease (if such demand by ordinary diligence can be made in this state) that said lease be released of record. Such demand may be either written or oral. When written, a letter-press or carbon or written copy thereof when shown to be such, may be used as evidence in any court with the same force and effect as the original. [L. '25, Ch 118, § 3.

ARTICLE 4. TAXATION OR OUTPUT

Section

97-401. Producers report to tax commission.

97-402. Tax commission certify net value to county assessor.

97-403. Assessment.

97-404. Taxes, when delinquent.

97-405. Taxation in lieu of all other taxes.

97-406. Returns.

97-401. Producers report to tax commission. That every owner or operator of any oil well or gas well that shall have produced oil or gas during any three months period, as hereinafter specified, shall on or before the tenth day of February, May, August and November of each year make and forward to the state tax commission a verified return in such form as said commission shall prescribe and covering the operations of each oil well and gas well during the three months' period expiring on the last day of January, April, July and October, stating the name and address of such owner or operator, the location and description of the property, the total quantities of oil and gas produced during and on hand at the end of each of such periods, the current market value of such oil or gas at the place of production, any royalty paid or due on account of such production and to whom payable, and such other facts as may be required by the commission. The commission shall have all powers given it by existing law to enforce the making of such reports or to ascertain the facts relative thereto. [L. '25, Ch. 83, § 1.

97-402. Tax commission certify net value to county assessor. From such return and such other information as may be available, the commission shall determine the net value of such quarterly output, being the market value thereof at such well, less any royalties on such quarterly output paid or owing the United States, or to any Indian tribe or Indian, being wards of the United States, or the state of New Mexico, less a further deduction of fifty per centum as allowance for production costs and amortization; and said commission shall certify such net value to the assessor of the county which such well is located as the taxable valuation of the output of such well. [L. , '25, Ch. 83, § 2.

97-403. Assessment. Within five days after the receipt of such certificate, the assessor shall enter such valuation upon a special tax roll and assess and extend the taxes thereon at the rates levied and, assessed, upon the last tax filed with the county treasurer upon other property in the county and district in which such well is located, and deliver such tax roll to the county treasurer, and forward a copy thereof to the state tax commission. [L. '25, Ch. 83, § 3.]

97-404. Taxes, when delinquent. Immediately upon the receipt of such tax roll, the county treasurer shall send by registered letter to the owner or operator at the address stated in said return, a notice giving the amount of such taxes and that the same are due and payable. If said taxes be not paid within thirty days from the date of such notice, such taxes all become delinquent at the expiration of such period and shall thereafter bear interest at the same rate and be subject to the same penalties as delinquent taxes upon real and personal property and shall be collected in the manner provided by law for the collection of such delinquent taxes. [L. '23, Ch. 83, § 4.]

97-405. Taxation in lieu of all other taxes. Taxes so collected shall be distributed in proportion to the various levies applicable to the district in which said oil or gas well is located. The tax provided herein shall be in lieu of all other taxes on such oil wells or gas wells or on their production. [L. '25, Ch. 83, § 5.]

97-406. Returns. The first return required for the year 1925 shall be made on or before the tenth day of August, 1925, and shall cover the period from January 1, 1925, to July 1, 1925, and thereafter returns shall be made quarterly as above specified. Taxes on the output of such oil wells or gas wells for the period up to December 31, 1924, shall be covered by existing laws and not in any manner affected by this act, and the equipment belonging to such owner or operator used in the operation of such well. [L. '25, Ch. 83, § 6.]

ARTICLE 4A. .EXCISE= TAX ON NATURAL PRODUCTS

Section

97-4A101. Excise tax on oil, gas and other products—Paid by owner at time of severance.

97-4A102. Amount of tax--Computation.

97-4A103. Taxes due when—File return—Contents—Powers of commissioner.

97-4A104. Collected by bureau of revenue—State treasurer—Duties of—Appropriation.

97-4A105. Deposit of security--Sale of—Disposition of proceeds.

97-4A106. Reports—Who makes—Withhold amount of tax.

97-4A107. Tax deducted before paying royalty, etc.

97-4A108. Purchaser deduct tax—When.

97-4A109: Persons deducting tax, file report—Actual severer not released.

97-4A110: Title in dispute—Tax, how paid.

- 97-4A111. Owner liable—Commissioner estimate tax—Lien not released.
 97-4A112. Notice to taxpayer—Correct return may be filed.
 97-4A113. Distraint—Duties of sheriff.
 97-4A114. Id.—Property subject to.
 97-4A115. Tax--When delinquent—Not exempt from general taxes.
 97-4A116. Additional information—Examine books—Subpoena witnesses--Examination refused--
 Failure to appear—Certify to district court.
 97-4A117. False return—Penalty.
 97-4A118. Purchasers file statement—Contents—Filed when.
 97-4A119. Bureau of revenue enforce collection.
 97-4A120. Failure of refusal to report—Penalty.
 97-4A121. Corporation report—When.
 97-4A122. Definitions.
 97-4A123. Injunction—Production restrained—How.
 97-4A124. Person—Definition of.
 97-4A125. Receipt for payment.
 97-4A126. Constitutionality.
 97-4A127. Commissioner of revenue may install meters, gauges, etc.

97-4A101. Excise tax on oil, gas, and other products—Paid by owner at time severance. That for the year 1937, commencing March 1, 1937, and for each subsequent year, taxes are hereby levied on the following natural resource products: Oil, gas, coal, copper, gold, lead, silver, stone, asphalt, zinc, potash, and timber severed from the soil of this state.

Such taxes shall be paid by the owner or proportionately by the owners thereof at the time of severance, and shall become due and payable monthly as herein provided, and shall operate as a first lien on all such products, which lien shall follow such products into the hands of third persons, whether in good or bad faith, and whether same shall be found in a manufactured or unmanufactured state. [L. '37, Ch. 103, § 1.

97-4A102. Amount of tax—Computation. Taxes as levied by Amount of § 1 (97-4101) of this Act shall be predicated upon the value of such products severed and saved from the soil of this state and shall be paid at the following rates:

On oil	2%
On natural gas	2%
On coal	1/8 of 1%
On gold	1/8 of 1%
On lead	1/8 of 1%
On stone	1/8 of 1%
On timber	1/8 of 1%
On zinc	1/8 of 1%
On silver	1/8 of 1%
On copper	1/8 of 1%
On potash	1%
On asphalt	1/8 of 1%

The value of all such production shall be computed as of the time when and the place where the same have been severed or

taken from the soil immediately after such severance. [L. '37, Ch. 103, § 2.

97-4A103. Taxes due when—File return—Contents—Powers of commissioner. All taxes levied hereunder shall be due and payable in monthly installments on or before the 15th day of the month next succeeding the month in which said products were severed or taken from the soil of this state. The taxpayer, on or before the 15th day of the month next succeeding the month in which the tax accrues shall make out and file with the bureau of revenue a return for the preceding month in such form as may be prescribed by the said bureau. Showing the business conducted by the taxpayer during the preceding month, showing the kind and gross quantity and value of said products so severed, the names of the owner or owners at the time of severance, the portion owned by each, the location of each place or places where the same were severed from the soil, and such other information as the commissioner of revenue may require.

The commissioner of revenue may, in his discretion, require the first purchaser of said products to pay the tax hereunder, rather than the owner, or said commissioner may grant permission for the tax to be paid by the first purchaser of said products rather than by the owner thereof.

The taxpayer shall accompany the return with a remittance of the amount of the tax due. In computing the amount of said tax there shall be deducted from the gross value of said products, the value of said products due or paid to the United States of America or the state of New Mexico, as the case may be, for and as rental or royalty payments.

The commissioner of revenue, if he deems it necessary in order to insure the payment of any tax imposed by this act, may require returns and the payment of the tax to be made for other than monthly periods.

The commissioner of revenue for good cause may extend not to exceed thirty days the time for making any return required under the provisions of this act, and may by general order extend the time for making returns for any class of products subject to taxation hereunder. [L. '37, Ch. 103, § 3.

97-4A104. Collected by bureau of revenue—State treasurer—Duties of—Appropriation. All taxes levied under this act shall be collected by the bureau of revenue of the state of New Mexico and by it paid over to the state treasurer immediately after receiving same. The state treasurer shall cover all such taxes into the general funds of the state treasury, after deducting three per centum (3%) of the amount thereof for administrative purposes, which shall be placed by the state treasurer in the severance tax administrative fund hereby created. There is hereby appropriated an amount equal to three per centum (3%) of all moneys collected under this act, or so much thereof as may be

necessary for the enforcement of this act, the same to be expended only with the approval of the state board of finance. [L. '37, Ch. 103, § 4.

97-4A105. Deposit of security—Sale of—Disposition of proceeds. The bureau of revenue, whenever it deems it necessary to insure compliance with the provisions of this act, may require any person subject to tax hereunder to deposit with it such security as the commissioner of revenue may determine. The same may be sold by the bureau of revenue at public sale if it becomes necessary to do so, in order to recover any tax, interest, or penalty due. Notice of such sale shall be made by publication once a week for two successive weeks in some newspaper published at the city of Santa Fe, and shall be served upon the person who deposited such securities personally or by mail addressed to such person at his address as the same appears upon the records of the said bureau. Upon any such sale the surplus, if any, above the amounts due under this act and the cost of advertising and making the sale, shall be returned to the persons who deposited the security. [L. '37, Ch. 103, § 5.

97-4A106. Reports—Who makes—Withhold amount of tax. Except as otherwise provided in this act, in the making of the reports required herein and the payment of said taxes shall be by those actually engaged in the operation of severing, whether it be the owner of the soil or another severing from the soil of another, or the owner of any of said products severing the same from the soil of another.

The reporting taxpayer shall collect and withhold out of the value of said products so severed, the proportionate parts of the total tax due by the respective owners of the severed products at the time of severance. [L. '37, Ch. 103, § 6.

97-4A107. Tax deducted before paying royalty, etc. Every person actually engaged in the severing of any of said products mentioned herein from the soil or actually operating the properties from which said products are severed under contracts or agreements requiring royalty interest, excess royalty, or working interest, either in money or in kind, is hereby authorized, empowered, and required to deduct from any amount due or from anything due, the amount of tax herein levied before making such payment; *Provided, however,* no such deductions shall be made from any amount or amounts due the United States of America or the state of New Mexico as royalty or rental payments. [L. '37, Ch. 103, § 7.

97-4A108. Purchaser deduct tax—When. When any person actually engaged in severing said products from the soil under contracts, or agreements requiring payments direct to any owner of the proportionate share of such products, as set out in preced-

ing section, shall sell such products to any person under contracts or agreements, requiring such purchasers to pay all owners of said products direct, then the person actually severing such products from the soil or actually operating the properties from which said products are severed, may not be required to deduct the tax herein levied, but in such event such deductions shall be made by the purchaser before making payments to each owner of such products; *Provided*, that nothing herein shall be construed as releasing the person severing the products from liability for the payment of said taxes. [L. '37, Ch. 103, § 8.

97-4A109. Persons deducting tax, file report—Actual severer not released. Every person purchasing said products severed from the soil under contracts or agreements requiring such purchasers to make payments direct to the owners of said products is hereby authorized, empowered, and required, to deduct from any amount due any owner of such products the amount of the tax levied by the provisions of this act before making such payments.

All persons required to deduct from amounts due to others the tax herein levied shall file with the bureau of revenue the reports herein required and shall at the same time pay to said Bureau the amount of the tax so deducted or withheld under the provisions of this act; *Provided*, that nothing herein shall be construed as releasing the person severing the products from the liability of payment of said taxes. [L. '37, Ch. 103, § 9.

97-4A110. Title in dispute—Tax, how paid. Whenever the title to any said products is in dispute or whenever any person, either the purchaser of such products or the person engaged in the severance of such products or operating the properties from which such products are severed, shall be withholding payments on account of litigation or for any other reason, such purchaser or person is hereby authorized, empowered, and required to deduct from the gross amount thus held the amount of the tax herein levied, and to make remittance thereof to the bureau of revenue as hereinbefore provided. [L. '37, Ch. 103, § 10.

97-4A111. Owner liable—Commissioner estimate tax—Lien not released. The owners of said products severed from the soil are hereby made proportionately responsible for the payment of the tax herein levied, and if the reports provided for herein are not made and the tax due on such products is not paid by the purchaser thereof or by the person actually engaged in severing such products from the soil or operating the properties from which said products are severed, then the commissioner of revenue shall make from any information in his possession and cause to be recorded in the mortgage records of the county where such products are severed from the soil, a statement under oath showing the proportionate amount of the tax due by each owner of the

product severed from the soil, which statement, when filed for record, shall operate as a first lien and mortgage on all property from which said natural products were severed and on all property of the affected tax debtors as the case may be, and said property shall be subject to distraint and sale for the payment of the taxes due; *Provided*, nothing herein shall be construed as waiving or releasing the lien upon such products severed wherever same may be found. [L. '37, Ch.103, § 11.

97-4A112. Notice to taxpayer—Correct return may be filed. Whenever the commissioner of revenue shall have caused the statement provided for in the preceding section to be recorded, he shall give notice to the taxpayer by registered mail of the recording of such statement. The said taxpayer may thereafter within thirty days make a correct return of the amount of tax due and pay the same together with interest as provided in this act. If no return is made thereon within said thirty days and the amount of tax determined by the Commissioner to be due together with any interest is not paid within said period, the sheriff of the county wherein said products were severed shall forthwith distraint and sell for the payment of such taxes and interest any property belonging to the tax debtor or debtors, as provided above, which may be found within the county of said sheriff. L. '37, Ch. 103, § 12.

97-4A113. Distraint—Duties of sheriff. The sheriff of any county, when ordered by the bureau of revenue, is hereby required to distraint and sell any property, assets, and effects belonging to any person owing the tax herein levied, after recordation of the statement required in this act, and after the notice required herein has been given; and all such distraints and sales shall be controlled and governed by the laws of the state respecting distraint and sale of personal property for the enforcement of collection of taxes, and penalties shall be imposed and collected as prescribed herein. [L. '37, Ch. 103, § 13.

97-4A114. Id.—Property subject to. All leases, interests, including royalty interests, contracts, and rights of any kind to ownership of any of the said products severed from the soil, and all and every kind of right of ownership in the properties from which same are severed, are hereby declared to be subject to distraint and sale for the payment of the tax herein levied, in preference and prior to all other claims and liens. [L. '37, Ch. 103, § 14.

97-4A115. Tax--When delinquent—Not exempt from general taxes. The tax provided by this act shall be and become delinquent after the date fixed for making payment as herein provided, and from such time shall be subject to interest for such delinquency at 1% of the tax per month until paid.

The payment of the severance tax levied by this act shall be in addition to and shall not affect the liability of the party or parties so taxed for the payment of all state, county, municipal, district and special taxes levied upon their real estate and other corporeal property, including the emergency school tax, production, and other special taxes. No severance tax shall be levied by any county or other political subdivision of the state. [L. '37, Ch. 103, § 15.

97-4A116. Additional information—Examine books—Subpoena witnesses—Examination refused—Failure to appear—Certify district court. The commissioner of revenue shall have the power to require any person engaged in severing said products from the soil, to furnish any additional information by him deemed necessary for the purpose of computing the amount of such tax and for said purpose to examine the books, records, and files of any such person and to that end may require all wells and pipe lines producing oil and natural gas taxed herein to be properly measured. The bureau of revenue shall have the further power in carrying out its duties in the administration of this act to subpoena and examine witnesses, and if such witnesses shall fail or refuse to appear at the request of the commissioner of revenue or other person designated by him, or refuse access to the books, records, and files, the commissioner of revenue shall certify the facts and the name or names of the witness or witnesses so failing or refusing to appear or refusing access to books or papers, to the district court within and for the proper county, and the said court shall thereupon issue a summons to the said party to appear before the said bureau of revenue at a place designated within the jurisdiction of said court on a day fixed, and give such evidence and open for inspection such books, records, and files, as may be required, and failure or refusal to obey the summons as aforesaid shall by said court be punished as a contempt of said court. And whenever it shall appear to the commissioner of revenue that any such person has made an untrue or incorrect return, as hereinabove provided, said commissioner shall correct such return and compute the tax on same and shall take the steps required by law to collect such tax.[L. '37, Ch. 103, § 16.

97-4A117. False return—Penalty. Any person who shall intentionally make any false oath to any return or report required by this act shall be deemed guilty of perjury and shall be subject to all the penalties prescribed for said crime. L. '37, Ch. 103, § 17.

97-4A118. Purchasers file statement—Contents—Filed when. It is hereby made the duty of all purchasers and others dealing in any said products severed from the soil of this state to file monthly with the bureau of revenue, a statement, under oath, showing the names and addresses of all persons from whom said

purchaser or dealer has purchased any of said products in its natural state severed from the soil of this state during the preceding month, together with the total quantity of each such product purchased. Said report shall be filed within fifteen (15) days after the expiration of each month and shall be upon such forms as prescribed by said bureau of revenue. [L. '37, Ch. 103 § 18.

97-4A119. Bureau of revenue enforce collection. It is hereby made the duty of the bureau of revenue to supervise and enforce collection of all taxes that may be due under the provisions of this act, and to that end the bureau of revenue is hereby vested with all the power and authority conferred by this Act. [L. '37, Ch. 103, § 19.

97-4A120. Failure or refusal to report--When. Any person failing or refusing to make the reports as required by this act and remaining in default thereof for more than thirty days after notice to him by the commissioner of Revenue, or failing to comply with any other requirement in this act contained, shall be subject to a penalty of not less than five hundred (\$500) dollars nor more than fifteen hundred (\$1500) dollars payable to the state of New Mexico, and such penalty shall accrue for each ten (10) days failure to comply with this act, and such penalty shall accrue for failure to comply with this act with reference to each separate oil or gas well, mines or mineral operations, or timber operation. [L. '37, Ch. 103, § 20.

97-4A121. Corporations report—When. Every corporation, association, person, common carrier, or pipe line company who shall receive or purchase or transport any of said products shall make reports in the form and manner required by the bureau of revenue, showing the total amount of such products received, purchased, stored or transported during any prescribed period, and such other information as may be required by the commissioner, [L. '37, Ch. 103, § 21.

97-4A122. Definitions. The word "oil" as used in this law means petroleum oil, mineral oil, or other oil taken from the earth, and the words "natural gas" mean any gas taken from the earth, including carbon dioxide gas. The word "severed" as used in this act shall be construed to mean the taking from the soil any of the products mentioned herein in any manner whatsoever, and shall include the cutting of timber. The term "owner" when used in connection with the severing of any of the natural resource products covered by this act under any lease or contract with the state or United States, shall include any person having the right to sever such products. [L. '37, Ch. 103, § 22.

97-4A123. Injunction—Production restrained—How. Upon complaint being filed under the direction of the attorney general

in the district court for the county in which said natural products are located, the said court shall have the power to restrain by injunction, any person from continuing to produce said products while delinquent in the filing of any report or the paying of any tax, penalty or cost required under the provisions of this act. [L. '37, Ch. 103, § 23.

97-4A124. Person—Definition of. The word "person" as used in this act shall include any person, firm, concern, receiver, receivers, trustee, executor, administrator, agent, institution, association, partnership, company, corporations and persons acting under declarations of trust. [L. '37, Ch. 103, § 24.

97-4A125. Receipt for payment. Any person paying any tax, penalty or cost under the provisions of this act, shall be entitled to a receipt for the same, showing the time of payment and the purpose for which paid. [L. '37, Ch. 103, § 25.

97-4A126. Constitutionality. If any section, subsection, clause, sentence or phrase of this act is for any reason to be held unconstitutional, such decision shall not affect the remaining portions of this act. The legislature hereby declares that it would have passed the remaining portions of this act, irrespective of the fact that any such section, subsection, clause, sentence or phrase of this act be declared unconstitutional. [L. '37, Ch. 103, § 26.

97-4A127. Commissioner of revenue may install meters, gauges, etc. The commissioner of revenue is hereby empowered to install meters, gauges, or other measuring devices on any or all pipe lines through which oil or gas is transported from points within the state and destined to points without this state whenever in his discretion such installation is advisable or necessary for the best interests of the state or any department thereof. [L. '37, Ch.115, § 1.

ARTICLE 5. RECORDING ASSIGNMENTS OF ROYALTIES

Section

97-501. All assignments of royalties shall be recorded.

97-502. Id.—Notice—Unrecorded not affect title.

97-501. All assignments of royalties shall be recorded. That all assignments and other instruments of transfer of royalties in the production of oil, gas or other minerals on any lands in this state, including lands operated under lease or contract from the United States and from the state of New Mexico, shall be recorded in the office of the county clerk of the county where the lands are situated. [L. '27, Ch. 76, § 1.

97-502. Id.—Notice.—Unrecorded not affect title. Such records shall be notice to all persons of the existence and contents of such assignments and other instruments so recorded from the

time of filing the same for record, and no assignment or other instrument of transfer affecting the title to such royalties not recorded as herein provided shall affect the title or right to such royalties of any purchaser or transferee in good faith, without knowledge of the existence of such unrecorded instrument. [L. '27, Ch. 76, § 2.

ARTICLE 6. CONSERVATION OF OIL AND GAS

Section

97-601 and 97-602. Repealed.

97-601 and 97-602. Repealed by L. '35, Ch. 72, § 26.

NOTE: See Article 8, pages 200 to 215.

ARTICLE 7. LEASES AND SALE OF ROYALTIES COVERING LANDS OWNED BY MINORS OR INCOMPETENTS

Section

97-701. Oil and gas leases--Approval by district court.

97-702. Term of lease.

97-703. Petition to court for authority to lease lands.

97-704. Court must approve sale of lease.

97-705. Guardian or committee may be required to give additional bond.

97-706. Guardian or committee may close estate prior to termination of lease.

97-707. Sale of mineral rights or royalties.

97-708. Repeal.

97-701. Oil and gas leases—Approval by district court. The guardian of a minor, or the committee of the estate of any mentally incompetent person shall have the power to lease for oil and gas development the real estate, or any undivided interest therein, belonging to the estate of such minor or mentally incompetent person, upon such terms and conditions as shall be approved by the district court of the county in which said real estate is situate. [L. '31, Ch. 143, § 1.

97-702. Term of lease. Such lease may be for a term not exceeding five years and as long thereafter as oil or gas may be produced from the premises embraced in such lease, even though the term of such lease may be for a period exceeding the period of the minority of such minor or the period of disability of such mentally incompetent person. [L. '31, Ch. 143, § 2.

97-703. Petition to court for authority to lease lands. The natural guardian of a minor, or other guardian appointed by the court or the committee or guardian of a person mentally incompetent, shall present to the court a petition for authority to lease such lands for oil and gas development, which petition shall set forth the description of the land to be leased and its distance from producing or drilling wells, whether said land is proven or unproven as to its oil and gas content and the reasons why it is deemed necessary, desirable, of [or] for the best interest of the estate to enter into such lease. A copy of the form of such lease

setting forth the terms and conditions thereof shall be attached to the petition. The court on being sufficiently advised in the premises, may thereupon by order approve the leasing of said real estate by private contract with the proposed lessee and direct the guardian or committee to execute such lease on the form proposed or such form as is satisfactory to the court, and such lease so executed on behalf of such estate shall be valid and binding. [L. '31, Ch. 143, § 3.

97-704. Court must approve sale of lease. The court in its discretion, may continue the matter for hearing and require such notice of the proposed leasing to be given to the parties in interest as the court may direct. The court, in its discretion, may order the leasing of said land to be conducted at public sale upon such notice and in such manner as the court shall direct. In the event of a public sale, such sale shall be reported back to the court and no lease shall be executed and delivered until and unless the sale of said lease is approved by the court. [L. '31, Ch. 143, § 4.

97-705. Guardian committee may required to give additional bond. Unless the general bond of such guardian or committee is deemed by the court to be properly conditioned and adequate in amount to protect the estate, the guardian or committee, before conducting any sale or executing any lease, shall enter into a bond to the state of New Mexico, with sureties and in an amount to be approved by the court, conditioned that such guardian or committee shall properly account for all income received as the result of such lease. The amount of said bond may be required by the court to be increased or decreased from time to time as the interest of the estate may require. The receipt of the guardian or committee evidencing the payment to such guardian or committee of any bonus, royalties or rents, shall be a complete acquittance in favor of the person, firm or corporation paying such bonus, royalty or rental to the extent of any such payment. [L. '31, Ch. 143, § 5.

97-706. Guardian or committee may close estate prior to termination lease. The guardian or committee may close the estate prior to the termination of any oil and gas lease so entered into, and all rights of the guardian or committee therein, including the right to receive the income from said lease thereafter accruing shall pass to and vest in the ward. [L. '31, Ch. 143, § 6.

97-707. Sale of mineral rights or royalties. The guardian or committee may sell, under the supervision of the court, all or any part of the oil and gas mineral estate reserved to the lessor in any such lease, including all or part of the royalty and other income reserved to the lessor in and by said lease, by following the procedure provided for the sale of real estate by a guardian or committee [L. '31; Ch. 143; § 7.

97-708. Repeal. All acts and parts of acts in conflict here-with are hereby repealed. [L. 31, Ch. 143, § 8.]

ARTICLE 8. CONSERVATION COMMISSION

Section

- 97-801. Waste prohibited.
- 97-802. Waste declared to include, what.
- 97-803. Commission created.
- 97-804. Power of commission.
- 97-805. Rules of procedure for hearings.
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97-801. Waste prohibited. The production or handling of crude petroleum oil or natural gas, or the handling of products thereof, in such manner or under such conditions or in such amounts as to constitute or result in waste is each hereby prohibited. [L. '35, Ch. 72, § 1.]

97-802. Waste declared to include, what. As used in this act, the term "waste," in addition to its ordinary meaning, shall include:

(a) "Underground waste" as those words are generally understood in the oil business, and in any event to embrace the inefficient, excessive, or improper, use or dissipation of the reservoir energy, including gas energy and water drive, of any pool, and the locating, spacing, drilling, equipping, operating, or producing, of any well or wells in a manner to reduce or tend to reduce the total quantity of crude petroleum oil or natural gas ultimately recoverable from any pool.

(b) "Surface waste" as those words are generally understood in the oil business, and in any event to embrace the unnecessary or excessive surface loss or destruction without beneficial

use, however caused, of natural gas, crude petroleum oil or any product thereof, but including the loss or destruction, without beneficial use, resulting from evaporation, seepage, leakage, or fire, especially such loss or destruction incident to or resulting from the manner of spacing, equipping, operating, or producing, well or wells, or incident to or resulting from the use of inefficient storage or from the production of crude petroleum oil in excess of the reasonable market demand.

(c) The production of crude petroleum oil in this state in excess of the reasonable market demand for such crude petroleum oil. Such excess production causes or results in waste which is prohibited by this act. The words "reasonable market demand," as used herein, shall be construed to mean the demand for such crude petroleum oil for reasonable current requirements for current consumption and use within or outside the state, together with the demand for such amounts as are reasonably necessary for building up or maintaining reasonable storage reserves of crude petroleum oil or the products thereof, or both such crude petroleum oil and products. [L. '35, Ch. 72, § 2.

97-803. Commission created. There is hereby created an oil conservation commission, hereinafter in this act called the "Commission," to be composed of the governor of this state, the commissioner of public lands and the state geologist; Provided that the governor may appoint some practical oil man, resident of this state, to serve in the place and stead of the governor as a member of said commission. No salary or compensation shall be paid any member of the commission for his services as a member thereof, but the actual and necessary expenses of the members of said commission, incurred or expended in the performance of the duties imposed on said commission, shall be paid out of the oil conservation fund hereinafter created, *provided*, that if the state geologist shall hold any other state office his salary may be adjusted by the governor, and such geologist paid part of his salary out of the oil conservation fund. The term of office of each member of the commission shall be concurrent with the other office held by him, except that if the governor shall appoint a practical oil man to serve in his place and stead, the term of office of the person so appointed shall expire with the term of the governor by whom he shall have been appointed. The commission shall organize by electing a chairman from its membership, and shall appoint a secretary. Two members of the commission shall constitute a quorum for all purposes. The commission shall adopt a seal and such seal affixed to any paper signed by the secretary of the commission shall be prima facie evidence of the due execution thereof. The attorney general shall be the attorney for the commission. Any member of the commission, or the secretary thereof, or any employee of the commission, shall have power to administer oaths to any witness in any hearing, investigation or

proceeding contemplated by this act or by any other law of this state relating to the conservation of oil or gas. [L. '35, Ch. 72, § 3.

97-804. Power of commission. The commission shall have, and it is hereby given, jurisdiction and authority over all matters relating to the conservation of oil and gas in this state, and of the enforcement of all the provisions of this act and of any other law of this state relating to the conservation of oil or gas. It shall have jurisdiction and control of and over all persons or things necessary or proper to enforce effectively the provisions of this act or of any other law of this state relating to the conservation of oil or gas. [L. '35, Ch. 72, § 4.

97-805. Rules of procedure for hearings. The commission shall prescribe its rules of order or procedure in hearings or other proceedings before it under this act. Any notice required to be given under this act or under any rule, regulation or order prescribed by the commission shall be by personal service on the person affected, or by publication once in a newspaper of general circulation published at Santa Fe, New Mexico, and once in a newspaper of general circulation published in the county, or one of the counties if there be more than one, in which any land, oil or gas or other property which may be affected shall be situated. Such notice shall issue in the name of "The State of New Mexico" and shall be signed by at least a majority of the members of the commission or by the secretary of the commission, and the seal of the commission shall be impressed thereon, and it shall specify the number and style of the case, and the time and place of hearing, shall briefly state the general nature of the order or orders, rule or rules, or regulation or regulations contemplated by the commission on its own motion or sought in a proceeding brought before the commission, the name of the petitioner, or applicant, and unless the order, rule or regulation is intended to apply to and affect the entire state, it shall specify or generally describe the common source or sources of supply that may be affected by such order, rule or regulation. Personal service thereof may be made by any agent of the commission or by any person over age of eighteen years, in the same manner as is provided by law for the service of summons in civil actions in the district courts of this state. Such service shall be complete at the time of such personal service or on the date of such publication, as the case may be. Proof of service shall be by the affidavit of the person making personal, service, or the publisher of the newspaper in which publication is had, as the case may be. All rules, regulations and orders made by the commission shall be entered in full by the secretary thereof in a book to be kept for such purpose by the commission, which shall be a public record and open to inspection at all times during reasonable office hours. A copy of any such rule, regulation or order, certi-

fied by the secretary of the commission under the seal of the commission, shall be received in evidence in all courts of the state with the same effect as the original. [L. '35, Ch. 72, § 5.

97-806. Subpoenas and testimony before commission. The commission, or any member thereof, is hereby empowered to subpoena witnesses, to require their attendance and giving of testimony before it, and to require the production of books, papers, and records in any proceeding before the commission. No person shall be excused from attending and testifying, or from producing books, papers, and records before the commission, or from Obedience to the subpoena of the said commission, whether such subpoena be signed or issued by one or more of the members of the said commission, in any hearing, investigation or proceeding held by or before the said commission or in any cause or proceeding in any court by or against the said commission, relative to matters within the jurisdiction of said commission, on the ground or for the reason that the' testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; Provided that nothing herein contained shall be construed as requiring any person to produce any books, papers or records, or to testify in response to any injury, not pertinent to some question lawfully before such commission or court for determination. No natural person shall be subjected to criminal prosecution, or to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may be required to testify, or produce evidence, documentary or otherwise before said commission, or in obedience to its subpoena, or in any cause or proceeding, provided, that no person testifying shall be exempted from prosecution and punishment for perjury committed in so testifying. [L. '35, Ch. 72, § 6.

97-807. Attachment for witnesses—Contempt. In case of failure or refusal on the part of any person to comply with any subpoena issued by said commission or any member thereof, or on the refusal of any witness to testify or answer as to any matters regarding which he may be lawfully interrogated, any district court in this state, or any judge thereof, on application of said commission, may issue an attachment for such person and compel him to comply with such subpoena and to attend before the commission and produce such documents, and give his testimony upon such matters as may be lawfully required, and such court or judge shall have the power to punish for contempt as in case of disobedience of a like subpoena issued, by or from such court, or a refusal to testify therein. [L. '35, Ch. 72, § 7.

97-808. Perjury. If any person of whom an oath shall be required under the provisions of this act, or by any rule, regulation or order of the commission, shall willfully swear falsely in regard to any matter or thing respecting which such oath is re-

quired, or shall willfully make any false report or affidavit required or authorized by the provisions of this act, or by any rule, regulation or order of the commission, such person shall be deemed guilty of perjury and shall be punished by imprisonment in the state penitentiary for not more than five years nor less than six months. [L. '35, Ch. 72, § 8.

97-809. Rules and regulations to prevent waste. The commission is hereby empowered, and it is its duty, to prevent the waste prohibited by this act. To that end, the commission is empowered to make and enforce rules, regulations and orders, and to do whatever may be reasonably necessary to carry out the purposes of this act, whether or not indicated or specified in any section hereof. [L. '35, Ch. 72, § 9.

97-810. Rules and regulations may regulate, what. Included in the power given to the commission is the authority: to collect data, to make investigations and inspections; to examine properties, leases, papers, books and records; to examine, check, test and gauge oil and gas wells, and tanks, plants, refineries, and all means and modes of transportation and equipment; to hold hearings; to provide for the keeping of records and the making of reports, and for the checking of the accuracy thereof; to limit and prorate production of crude petroleum oil and natural gas; to require either generally or in particular areas certificates of clearance or tenders in connection with the transportation of crude petroleum oil or any products thereof, or both such oil and products.

Apart from any authority, express or implied, elsewhere given to or existing in the commission by virtue of this act or the statutes of this state, the commission is hereby authorized to make rules, regulations and orders for the purposes and with respect to the subject matter stated herein, viz.:

(1) To require dry or abandoned wells to be plugged in such way as to confine the crude petroleum oil, natural gas, and water in the strata in which they are found, and to prevent them from escaping into other strata; the commission may require a bond of not to exceed ten thousand (\$10,000.00) dollars conditioned for the performance of such regulations.

(2) To prevent crude petroleum oil, natural gas, and water from escaping from the strata in which they are found into another stratum or other strata;

(3) To require reports showing locations of all oil and gas wells, and for the filing of logs and drilling records or reports.

(4) To prevent the drowning by water of any stratum or part thereof capable of producing oil or gas, or both oil and gas, in paying quantities, and to prevent the premature and irregular encroachment of water, or any other kind of water encroachment, which reduces or tends to reduce the total ultimate recovery of

crude petroleum oil or gas, or both such oil and gas, from any pool.

- (5) To prevent fires;
- (6) To prevent "blow-outs" and "caving" in the sense that the conditions indicated by such terms are generally understood in the oil business.
- (7) To require wells to be drilled, operated and produced in such manner as to prevent injury to neighboring leases or properties
- (8) To identify the ownership of oil and gas producing leases, properties, wells, tanks, refineries, pipe lines, plants, structures, and all transportation equipment and facilities;
- (9) To require the operation of wells with efficient gas-oil ratios and to fix such ratios
- (10) To fix the spacing of wells. [L. '35, Ch. 72, § 10.

97-811. May limit production. Whenever, to prevent waste, the commission limits the total amount of crude petroleum oil to be produced in this state, it shall allocate or distribute the allowable production among the fields of the state. Such allocation or distribution among the fields of the state shall be made on a reasonable basis, giving, if reasonable under all the circumstances, to each pool with small wells of settled production, an allowable production which will prevent a general premature abandonment of the wells in the field. [L. '35, Ch. 72, § 11.

97-812. Allowable production in preventing waste. Whenever, to prevent waste, the total allowable production for any field or pool in the state is fixed by the commission in an amount less than that which the field or pool could produce if no restriction were imposed, the commission shall prorate or distribute the allowable production among the producers in the field or pool. Such proration or distribution shall be made on a reasonable basis. The rules, regulations or orders of the commission shall, so far as it is practicable to do so, afford to the owner of each property in a pool the opportunity to produce his just and equitable share of the oil and gas in the pool, being an amount, so far as can be practically determined, and so far as such can be practicably obtained without waste, substantially in the proportion that the quantity of the recoverable oil and gas under such property bears to the total recoverable oil and gas in the pool, and for this purpose to use his just and equitable share of the reservoir energy.

No owner of a property in a pool should be required by the commission, directly or indirectly, to drill more wells than are reasonably necessary to secure his proportionate part of the production. To avoid the drilling of unnecessary wells, a proration unit for each pool may be fixed, such being the area which may be efficiently and economically drained and developed by one

well. The drilling of unnecessary wells creates fire and other hazards conducive to waste, and unnecessarily increases the production cost of oil and gas to the operator, and thus also unnecessarily increases the cost of the products to the ultimate consumer.

The pooling of properties or parts thereof shall be permitted, and if not agreed upon, may be required in any case when and to the extent that the smallness or shape of a separately owned tract would, under the enforcement of a uniform spacing plan or proration unit, otherwise deprive or tend to deprive the owner of such tract of the opportunity to recover his just and equitable share of the crude petroleum and natural gas in the pool. Provided, that the owner of any tract that is smaller than the drilling unit established for the field, shall not be deprived of the right to drill on and produce from such tract, if same can be done without waste; but in such case, the allowable production from such tract, as compared with the allowable production therefrom if such tract were a full unit, shall be in ratio of the area of such tract to the area of a full unit. All orders requiring such pooling shall be upon terms and conditions that are just and reasonable, and will afford to the owner of each tract in the pool the opportunity to recover or receive his just and equitable share of the oil and gas in the pool as above provided, so far as may be practicably recovered without waste. In the event such pooling is required, the costs of development and operation of the pooled unit shall be limited to the lowest actual expenditures required for such purpose including a reasonable charge for supervision; and in case of any dispute as to such costs the commission shall determine the proper costs.

Minimum allowable for some wells may be advisable from time to time, especially with respect to wells already drilled when this act takes effect, to the end that the production will repay reasonable lifting cost and thus prevent premature abandonment and resulting waste.

Whenever it appears that the owners in any pool have agreed upon a plan for the spacing of wells, or upon a plan or method of distribution of any allowable (production) fixed by the commission for the pool, or upon any other plan for the development or operation of such pool, which plan, in the judgment of the commission, has the effect of preventing waste as prohibited by this act and is fair to the royalty owners in such pool, then such plan shall be adopted by the commission with respect to such pool; however, the commission, upon hearing and after notice, may subsequently modify any such plan to the extent necessary to prevent waste as prohibited by this act.

After the effective date of any rule, regulation or order fixing the allowable production, no person shall produce more than the allowable production applicable to him, his wells, leases or properties as fixed by the commission, and the allowable production

shall be produced in accordance with the applicable rules, regulations or orders.

Crude petroleum oil produced within the allowable (production) as fixed by the commission shall herein be referred to as "legal oil" and crude petroleum oil produced in excess of such allowable (production) shall be "illegal oil." [L. '35, Ch. 72, § 12.

97-813. Illegal oil. The sale or purchase or acquisition, or the transportation, refining, processing, or handling in any other way, of crude petroleum oil in whole or in part produced in excess of the amount allowed by any statute of this state, or by any provision of this act, or by any rule, regulation or order of the commission made thereunder, is hereby prohibited, and such oil or commodity is hereby referred to as "illegal oil."

The sale or purchase or acquisition, or the transportation, refining, processing, or the handling in any other way, of any product of crude petroleum oil, which product is derived in whole or in part from crude petroleum oil produced in whole or in part in excess of the amount allowed by any statute of this state, or by any provision of this act, or by any rule, regulation or order of the commission made thereunder, is hereby prohibited, and each such commodity or product is herein referred to as "illegal oil product" to distinguish it from "legal oil product." L. '35, Ch. 72, § 13.

97-814. Certificates of clearance. The commission is specifically authorized and directed to make such rules, regulations and orders, and may provide for such certificates of clearance or tenders, as may be necessary to make effective the prohibitions contained in section 13 (97-813).

Unless and until the commission provides for certificates of clearance or tenders, or some other method, so that any person may have an opportunity to determine whether any contemplated transaction of sale or purchase or acquisition, or of transportation, refining, processing, or handling in any other way, involves illegal oil or illegal oil product, no penalty, shall be imposed for the sale or purchase or acquisition, or the transportation, refining, processing, or handling in any other way, of illegal oil or illegal oil product, except under circumstances stated in the succeeding provisions of this paragraph. Penalties shall be imposed for the commission of each transaction prohibited in section 13 (97-813) when the person committing the same knows that illegal oil or illegal oil product is involved in such transaction, or when such person could have known or determined such fact by the exercise of reasonable diligence or from facts within his knowledge. However, regardless of lack of actual notice or knowledge, penalties as provided in this act shall apply to any sale or purchase or acquisition, and to the transportation, refining, processing, or handling, in any other way, of illegal oil or illegal oil product where administrative provision is made for identifying

the character of the commodity as to its legality. It shall likewise be a violation for which penalties shall be imposed for any person to sell or purchase or acquire, or to transport, refine, process, or handle in any way, any crude petroleum oil or any product without complying with the rule, regulation, or order of the commission relating thereto. [L. '35, Ch. 72, § 14.

97-815. Public hearings on rules and regulations. Except as provided for herein, before any rule, regulation or order, including revocation, change, renewal or extension thereof, shall be made under the provisions of this act, a public hearing shall be held at such time, place and manner as may be prescribed by the commission. The commission shall first give reasonable notice of such hearing (in no case less than ten days, except in an emergency) and at any such hearing any person having an interest in the subject matter of the hearing shall be entitled to be heard. In case an emergency is found to exist by the commission which in its judgment requires the making of a rule, regulation or order without first having a hearing, such emergency rule, regulation or order shall have the same validity as if a hearing with respect to the same had been held after due notice. The emergency rule, regulation or order permitted by this section shall remain in force no longer than fifteen days from its effective date, and, in any event, it shall expire when the rule, regulation or order made after due notice and hearing with respect to the subject matter of such emergency rule, regulation or order becomes effective. [L. '35, Ch. 72, § 15.

97-816. Reports, estimates, findings and documents. The reports, estimates, findings of fact, or similar documents or findings of the United States Bureau of Mines, or of any other department or agency of the United States government, or of any bureau or agency under an interstate compact to which the state of New Mexico is a party, made with respect to the reasonable market demand for crude petroleum oil, may be considered by the commission or by any court and taken as being prima facie correct. [L. '35, Ch. 72, § 16.

97-817. Injunction proceedings against commission. Any person or party in interest adversely affected by any statute of this state with respect to conservation of oil or gas or both, or by any provision of this act, or by any rule, regulation or order made by the commission thereunder, or by any act done or threatened thereunder, and who has exhausted his administrative remedy, may seek court review and relief by a suit for injunction against the commission as defendant or the members thereof by suit in the district court of Santa Fe County, or in the district court of the county where the plaintiff, or one of the plaintiffs, resides, or in the district court of the county where any property adversely affected may be situate. Such suit shall have preced-

ence over all other causes, proceedings or suits on the docket of a different nature, and the attorney general may have the case set for trial after ten days' notice to the plaintiff or his attorney. In such trial, the burden of proof shall be upon the plaintiff. The statute, provision of this act, or the rule, regulation or order, complained of, shall be taken as prima facie valid, and such prima facies shall not be overcome, in connection with any application for injunctive relief, including temporary restraining order, by verified bill or by affidavit of, or in behalf of, the applicant. [L. '35, Ch. 2, §17.

97-818. No temporary restraining orders--Bond for injunction. No temporary restraining order or injunction of any kind shall be granted against the commission or the members thereof, or against the attorney general, or against any agent, employee or representative of the commission, restraining the commission, or any of its members, or any of its agents, employees or representatives, or the attorney general, from enforcing any statute of this state relating to conservation of oil or gas, or any of the provisions of this act, or any rule, regulation or order made thereunder, except after due notice to the members of the commission, and to all other defendants, and after a hearing at which it shall be clearly shown to the court that the act done or threatened is without sanction of law, or that the provision of this act, or the rule, regulation or order complained of, is invalid, and that if enforced against the complaining party, will cause an irreparable injury, with respect to an order or decree granting temporary injunctive relief, the nature and extent of the probable invalidity of the statute, or of any provision of this act, or of any rule, regulation or order thereunder involved in such suit, must be recited in the order or decree granting the temporary relief, as well as a clear statement of the probable damage relied upon by the court as justifying temporary injunctive relief.

No temporary injunction of any kind, including a temporary restraining order against the commission or the members thereof, or its agents, employees or representatives, or the attorney general, shall become effective until the plaintiff shall execute a bond to the state with sufficient surety in an amount to be fixed by the court reasonably sufficient to indemnify all persons who may suffer damage by reason of the violation pendente lite by the complaining party of the statute or the provisions of this act or of any rule, regulation or order complained of. Any person so suffering damage may bring suit thereon before the expiration of six months after the statute, provision, rule, regulation or order complained of shall be finally held to be valid, in whole or in part, or such suit against the commission, or the members thereof, shall be finally dismissed. Such bond shall be approved roved by the judge of the court in which the suit is pending, and shall be for the use and benefit of all persons who may suffer damage by

reason of the violation pendente lite of the statute, provision, rule, regulation or order complained of in such suit, and who may bring suit within the time prescribed by this section and such bond shall be so conditioned.

From time to time, on motion and with notice to the parties, the court may increase or decrease the amount of the bond and may require new or additional sureties, as the facts may warrant. [L. '35, Ch. 72, § 18.

97-819. Actions for violations and penalties. Whenever it shall appear that any person is violating, or threatening to violate, any statute of this state with respect to the conservation of oil or gas, or both, or any provision of this act, or any rule, regulation or order made thereunder, the commission, through the attorney general, shall bring suit against such person in the district court of Santa Fe County, or in the county of the residence of the defendant, or in the county of the residence of any defendant if there be more than one defendant, or in the county where the violation is alleged to have occurred, for penalties, if any are applicable, and to restrain such person from continuing such violation or from carrying out the threat of violation. In such suit the commission may obtain injunctions, prohibitory and mandatory, including temporary restraining orders and temporary injunctions, as the facts may warrant including, when appropriate, an injunction restraining any person from moving or disposing of illegal oil or illegal oil product, and any or all such commodities may be ordered to be impounded or placed under the control of an agent appointed by the court if, in the judgment of the court, such action is advisable. [L. '35, Ch. 72, § 19.

97-820. Actions by private persons or associations for damages. Nothing in this act contained or authorized, and no suit by or against the commission, and no penalties imposed or claimed against any person for violating any statute of this state with respect to conservation of oil and gas, or any provision of this act, or any rule, regulation or order issued thereunder, shall impair or abridge or delay any cause of action for damages which any person may have or assert against any person violating any statute of this state with respect to conservation of oil and gas, or any provision of this act, or any rule, regulation or order issued thereunder. Any person so damaged by the violation may sue for and recover such damages as he may be entitled to receive. In the event the commission should fail to bring suit to enjoin any actual or threatened violation of any statute of this state with respect to the conservation of oil and gas, or of any provision of this act, or of any rule, regulation or order made thereunder, then any person or party in interest adversely affected by such violation, and who has notified the commission in writing of such violation or threat thereof and has requested the commission to

sue, may, to prevent any or further violation, bring suit for that purpose in the district court of any county in which the commission could have brought suit. If, in such suit, the court holds that injunctive relief should be granted, then the commission shall be made a party and shall be substituted for the person who brought the suit, and the injunction shall be issued as if the commission had at all times been the complaining party. [L. '35, Ch. 72, § 20.]

97-821. Violation of court order justifies appointment of receiver. The violation by any person of an order of the court relating to the operation of a well or wells, or of a pipe line or other transportation, equipment or facility, or of a refinery, or of a plant of any kind, shall be sufficient ground for the appointment of a receiver with power to conduct operations in accordance with the order of the court. [L. '35, Ch. 72, § 21.]

97-822. Penalties for violations. Any person who, for the purpose of evading this act, or of evading any rule, regulation or order made hereunder, shall intentionally make or cause to be made any false entry or statement of fact in any report required to be made by this act or by any rule, regulation or order made hereunder; or who, for such purpose, shall make or cause to be made any false entry in any account, record or memorandum kept by any person in connection with the provisions of this act or of any rule, regulation or order made thereunder or who, for such purpose, shall omit to make, or cause to be omitted, full, true and correct entries in such accounts, records or memoranda, of all facts and transactions pertaining to the interest or activities in the petroleum industry of such person as may be required by the commission under authority given in this act or by any rule, regulation or order made hereunder or who, for such purpose, shall remove out of the jurisdiction of the state, or who shall mutilate, alter, or by any other means falsify, any book, record, or other paper pertaining to the transactions regulated by this act or by any rule, regulation or order made hereunder—shall be deemed guilty of a felony and shall be subject, upon conviction in any court of competent jurisdiction, to a fine of not more than one thousand (\$1,000.00) dollars, or imprisonment for a term of not more than three years, or to both such fine and imprisonment.

Any person who violates any provision of this act or any rule, regulation or order of the commission made hereunder, shall, in the event a penalty for such violation is not otherwise provided for herein be subject to a penalty of not to exceed one thousand (\$1,000.00) dollars a day for each and every day of such violation, and for each and every act of violation, such penalty to be recovered in a suit in the district court of Santa Fe County, or in the district court of the county where the defendant resides, or in the county of the residence of any defendant if there be

more than one defendant, or in the district court of the county where the violation took place. The place of suit shall be selected by the commission, and such suit, by direction of the commission, shall be instituted and conducted in the name of the commission by the attorney general or under his direction by the district attorney of the county where the suit is instituted. The payment of any penalty as provided for herein shall not have the effect of changing illegal oil into legal oil, or illegal oil product into legal oil product, nor shall such payment have the effect of authorizing the sale or purchase or acquisition, or the transportation, refining, processing, or handling in any other way, of such illegal oil or illegal oil product, but to the contrary penalty shall be imposed for each prohibited transaction relating to such illegal oil or illegal oil product.

Any person aiding or abetting any other person in the violation of any statute of this state relating to the conservation of oil and gas, or the violation of any provision of this act, or any rule, regulation or order made thereunder, shall be subject to the same penalties as are prescribed herein for the violation by such other person. [L. '35, Ch. 72, § 22.

97-823. Forfeiture of illegal oil. Apart from, and in addition to, any other remedy or procedure which may be available to the commission, or any penalty which may be sought against or imposed upon any person, with respect to violations relating to illegal oil or illegal oil product, all illegal oil and illegal oil product shall, except under such circumstances as are stated herein, be contraband and shall be seized and sold, and the proceeds applied as herein provided. Such sale shall not take place unless the court shall find in the proceeding provided in this paragraph, that the owner of such illegal oil or illegal oil product is liable, or in some proceeding authorized by this act, such owner has already been held to be liable, for penalty for having produced such illegal oil, or for having purchased or acquired such illegal oil or illegal oil product. Whenever the commission believes that illegal oil or illegal oil product is subject to seizure and sale, as provided herein, it shall, through the attorney general, bring a civil action in rem for the purpose in the district court of Santa Fe County, or in the district court of the county where the commodity is found, or the action may be maintained in connection with any suit or cross-action for injunction or for penalty relating to any prohibited transaction involving such illegal oil or illegal oil product. Notice of the action in rem shall be given in conformity with the law or rule applicable to such proceeding. Any person or party in interest who may show himself to be adversely affected by any such seizure and sale shall have the right to intervene in said suit to protect his rights.

Whenever the pleading with respect to the forfeiture of illegal oil or illegal oil product shows ground for seizure and

sale, and such pleading is verified or is supported by affidavit or affidavits, or by testimony under oath, the court shall order such commodity to be impounded or placed under the control, actual or constructive, of the court through an agent appointed by the court.

The judgment effecting the forfeiture shall provide that the commodity be seized, if not already under the control of the court, and that a sale be had in similar manner and with similar notice as provided by law or rule with respect to the sale of personal property under execution; *Provided, however*, the court may order that the commodity be sold in specified lots or portions, and at specified intervals, instead of being sold at one time. Title to the amount sold shall pass as of the date of the seizure. The judgment shall provide for payment of the proceeds of the sale into the common school fund, after first deducting the costs in connection with the proceedings and the sale. The amount sold shall be treated as legal oil or legal oil product, as the case may be, in the hands of the purchaser, but the purchaser and the commodity shall be subject to all applicable laws and rules, regulations and orders with respect to further sale or purchase or acquisition, and with respect to the transportation, refining, processing, or handling in any other way, of the commodity purchased.

Nothing in this section shall deny or abridge any cause of action a royalty owner, or any lien holder, or any other claimant, may have, because of the forfeiture of the illegal oil or illegal oil product, against the person whose act resulted in such forfeiture. [L. '35, Ch. 72, § 23.

97-824. Definitions. Unless the context otherwise requires, the words defined in this section shall have the following meaning when found in this act, to-wit:

(a) "Person" means any natural person, corporation, association, partnership, receiver, trustee, guardian, executor, administrator and a fiduciary of any kind.

(b) "Pool" means an underground reservoir containing a common accumulation of crude petroleum oil or natural gas or both. Each zone of a general structure, which zone is completely separated from any other zone in the structure, is covered by the word "pool" as used herein.

(c) "Field" means the general area which is underlaid or appears to be underlaid by at least one pool; and "field" also includes the underground reservoir or reservoirs containing such crude petroleum oil or natural gas, or both. The words "field" and "pool" can the same thing when only one underground reservoir is involved; however, "field" unlike "pool" may relate to two or more pools.

(d) "Product" means any commodity or thing made or manufactured from crude petroleum oil or natural gas, and all

derivatives or crude petroleum oil or natural gas, including refined crude oil, crude tops, topped crude, processed crude petroleum, residue from crude petroleum, cracking stock, uncracked fuel oil, treated crude oil, fuel oil, residuum, gas oil, naphtha, distillate, gasoline, kerosene, benzene, wash oil, waste oil, lubricating oil, and blends or mixtures of crude petroleum oil or natural gas or any derivative thereof.

(e) "Owner" means the person who has the right to drill into and to produce from any pool, and to appropriate the production either for himself or for himself and another.

(f) "Producer" means the owner of well or wells capable of producing oil or natural gas or both in paying quantities. [L. '35, Ch. 72, § 24.

97-825. Tax on oil and gas produced. There is hereby levied a tax of one-eighth of one per cent on the proceeds of all oil and gas produced in this state, except royalties payable to the United States or to this state. Such tax shall be reported and collected at the same time and in the same manner as the emergency school tax now, or hereafter provided by law, is returned and collected. Such tax when collected shall be paid to the state treasurer and by him covered into a fund designated as the oil conservation fund. Such fund, or so much thereof as may be necessary, is hereby appropriated to the oil conservation commission to be by it expended in the enforcement of this act. The commission is hereby authorized, within the limits of the fund available, to employ a secretary and such other employees and agents as may be necessary to enforce the provisions of this act. [L. '35, Ch. 72, § 25.

97-826. Repeal. Sections 97-201 to 97-204, inclusive, and § § 97-102 to 97-109, inclusive, of the New Mexico Statutes, Annotated, Compilation of 1929, and § § 97-601 and 97-602 of New Mexico Statutes, Annotated, Compilation of 1929, are hereby repealed. [L. 35, Ch. 72, § 26.

97-827. Constitutionality. If any part or parts of this act be held to be unconstitutional, such unconstitutionality shall not affect the validity of the remaining portions of this act. The legislature hereby declares that it would have passed the remaining parts of this act if it had known that such part or parts thereof would be declared unconstitutional. [L. '35, Ch. 72, § 27.

97-828. Carbon dioxide gas—Prevention of waste. The oil conservation commission is hereby vested with the authority and duty of regulation and conserving the production of and preventing waste of carbon dioxide gas within this state in the same manner, insofar as is practicable as it regulates, conserves and prevents waste of natural or hydrocarbon gas. The provisions of this act (Chapter 72—New Mexico Session Laws of 1935) relating to gas or natural gas shall also apply to carbon dioxide

gas insofar as the same are applicable. Carbon dioxide gas as used herein shall mean non-combustible gas composed chiefly of carbon dioxide occurring naturally in under-ground rocks. [L. '37, Ch. 193, § 1.

ARTICLE 9. INTERSTATE COMPACT

Section

97-901. Ratification of 'compact.

97-902. Notice of approval.

97-903. Withdrawal.

97-904. Not binding until approved by all States and Congress. 97-905. How state shall approve compact.

97-906. Extending time.

97-907. Extended two years.

97-908. Governor empowered to withdraw.

97-909. Emergency.

97-901. Ratification of compact. The state of New Mexico does hereby ratify, approve and adopt the compact aforesaid, which is as follows:

AN INTERSTATE COMPACT TO CONSERVE OIL AND GAS

ARTICLE I

This agreement may become effective within any compacting State at any time as prescribed by that State, and shall become effective within those States ratifying it whenever any three of the States of Texas, Oklahoma, California, Kansas and New Mexico have ratified and Congress has given its consent. Any oil-producing State may become a party hereto as herein-after provided.

ARTICLE II

The purpose of this compact is to conserve oil and gas by the prevention of physical waste thereof from any cause.

ARTICLE III

Each State bound hereby agrees that within a reasonable time it will enact laws, or if laws have been enacted, then it agrees to continue the same in force, to accomplish within reasonable limits the prevention of:

- (a) The operation of any oil well with an inefficient gas-oil ratio.
- (b) The drowning with water of any stratum capable of producing oil or gas, or both oil and gas in paying quantities.
- (c) The avoidable escape into the open air or the wasteful burning of gas from a natural gas well.
- (d) The creation of unnecessary fire hazards.
- (e) The drilling, equipping, locating, spacing or operating of a well or wells so as to bring about physical waste of oil or gas or loss in the ultimate recovery thereof.
- (f) The inefficient, excessive or improper use of the reservoir energy in producing any well.

The enumeration of the foregoing subjects shall not limit the scope of the authority of any state.

ARTICLE IV

Each State bound hereby agrees that it will, within a reasonable time, enact statutes, or if such statutes have been enacted then it will continue the same in force, providing in effect that oil produced in violation of its valid oil and/or gas conservation statutes or any valid rule, order or regulation promulgated thereunder, shall be denied access to commerce and providing for stringent penalties for the waste of either oil or gas.

ARTICLE V

It is not the purpose of this compact to authorize the States joining herein to limit the production of oil or gas for the purpose of stabilizing or fixing the price thereof, or create or perpetuate monopoly, or to promote regimentation, but is limited to the purpose of conserving oil and gas and preventing the avoidable waste thereof within reasonable limitations.

ARTICLE VI

Each State joining herein shall appoint one representative to a commission hereby constituted and designated as THE INTERSTATE OIL COMPACT COMMISSION, the duty of which said commission shall be to make inquiry and ascertain from time to time such methods, practices, circumstances and conditions as may be disclosed for bringing about conservation and the prevention of physical waste of oil and gas, and at such intervals as said commission deems beneficial it shall report its findings and recommendations to the several States for adoption or rejection. The commission shall have power to recommend the coordination of the exercise of the police powers of the several States within their several jurisdictions to promote the maximum ultimate recovery from the petroleum reserves of said States, and to recommend measures for the maximum ultimate recovery of oil and gas. Said Commission shall organize and adopt suitable rules and regulations for the conduct of its business.

No action shall be taken by the Commission except: (1) by the affirmative votes of the majority of the whole number of the compacting States, represented at any meeting and (2) by a concurring vote of a majority in interest of the compacting States at said meeting, such interest to be determined as follows: such vote of each State shall be in the decimal proportion fixed by the ratio of its daily average production during the preceding calendar half-year to the daily average production of the compacting States during said period.

ARTICLE VII

No state by joining herein shall become financially obligated to any other state, nor shall the breach of the terms hereof by

any State subject such State to financial responsibility to the other States joining herein.

ARTICLE VIII

This compact shall expire September 1, 1937. But any State joining herein may, upon sixty (60) days' notice, withdraw herefrom.

The representatives of the signatory States have signed this agreement in a single original which shall be deposited in the archives of the Department of State of the United States, and a duly certified copy shall be forwarded to the Governor of each of the signatory States.

This compact shall become effective when ratified and approved as provided in ARTICLE I. Any oil-producing State may become a party hereto by affixing its signature to a counterpart to be similarly deposited, certified and ratified.

Done in the City of Dallas, Texas, this sixteenth day of February, 1935.

E. W. Marland, the governor of the state of Oklahoma.

James V. Allred, the governor of the state of Texas.

R. L. Patterson, for the state of California.

Frank Vesely, E. H. Wells, Hugh Burch, Hiram M. Dow, for the state of New Mexico.

The following representatives recommended to their respective Governors and Legislatures the ratification of the foregoing agreement:

John W. Olvey, for the state of Arkansas.

Warwick M. Downing for the state of Colorado.

Ralph J. Pryor, E. B. Shawver, T. C. Johnson for the state of Kansas.

Gordon P. Vannananaam, Gerald Cotter, for the state of Michigan.

William Bell for the state of Illinois. [L. '35, Ch. 128, § 1.

97-902. Notice of approval. Notice of the approval of said compact shall be given by the governor of New Mexico to the governors of Oklahoma, Texas, California, Kansas, Arkansas, Colorado, Michigan and Illinois, and to the department of state of the United States. [L. '35, Ch. 128, § 2.

97-903. Withdrawal. That the governor of the state of New Mexico be and he hereby is authorized and empowered, for and on behalf of the state of New Mexico, to determine when and if it shall be for the best interests of the state of New Mexico to withdraw from said compact, upon sixty (60) days' notice, as provided by the terms thereof, and in event he shall determine that the state should withdraw from said compact he shall have full power and authority to give necessary notice and take any and all other steps necessary to effect the withdrawal of the state of New Mexico from said compact. [L. '35, Ch. 128, § 3.

97-904. Not binding until approved by all States and Congress. The ratification and approval of said compact by this state shall not be binding or obligatory until it shall have been likewise approved by the legislature of any two of the states of Texas, Oklahoma, California and Kansas and by the congress of the United States. [L. '35, Ch. 128, § 4.

97-905. How state shall approve compact. That whenever any three of the states of Texas, Oklahoma, California, Kansas and New Mexico shall have ratified said compact and congress shall have given its consent, the governor of the state of New Mexico shall appoint one representative of the state of New Mexico to the interstate oil compact commission, whose duty and authority on behalf of the state shall be as provided in said compact. [L. '35, Ch. 128, § 5.

97-906. Extending time. The governor of the state of New Mexico is hereby authorized and directed, for and in the name of the state of New Mexico, to execute an agreement with other states now members of the interstate oil compact commission, by the terms of which the interstate compact to conserve oil and gas, executed in the city of Dallas, Texas, on the 16th day of February, 1935, and now on deposit with the department of state of the United States, shall be extended for a period of two years from its expiration date (September 1, 1937), subject to the approval of congress. [L. '37, Ch. 16, § 1.

97-907. Extended two years. The agreement to extend said interstate compact to conserve oil and gas, and which the governor of this state is hereby authorized and directed to execute for and in the name of the state of New Mexico shall be in substance as follows:

"It is hereby agreed that the Interstate Compact to conserve oil and gas executed in the City of Dallas, Texas, on the 16th day of February, 1935, and now on deposit with the Department of the State of the United States, be and the same is hereby extended for a period of two years from its date of expiration (September 1, 1937) , this agreement to become effective, when executed by any three of the states of Texas, Oklahoma, California, Kansas and New Mexico, and consent thereto is . given by Congress." [L. '37, Ch. 16, § 3.

97-908. Governor empowered to withdraw. The governor of New Mexico is authorized and empowered for and on behalf of the state of New Mexico to determine if and when it shall be for the best interest of the state of New Mexico to withdraw from said compact upon sixty (60) days' notice as provided by the terms of the compact. In the event he shall determine that this state should withdraw from said compact he shall have full power and authority to give necessary notice and to take any and

all steps necessary and proper to effect the withdrawal of the state of New Mexico from said compact. [L. '37, Ch. 16, § 4.

97-909. Emergency. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval. [L. '37, Ch. 16, § 5.

NOTE: The three preceding sections, 907 to 909, were re-enacted (L. '38, Ch. 31, §§ 3, 4, and 5) in identical wording, except for the change of date extending the compact further, for two years beyond September 1, 1939.

An act extending the compact for another two years, until September 1, 1943, was under consideration by the State Legislature of 1941 at the time this bulletin went to press.

NOTE: The State Legislature of 1939 amended § 29-202 of New Mexico Statutes, Annotated, 1929 Compilation, pertaining to corporate powers under community land grants, to read as follows:

Provided, however, that no sale of the lands held in common can be made to persons who are non-heirs of the grant unless a majority of such heirs present at a mass meeting to be called fifteen days in advance thereof by the President of the Board of Trustees vote in favor of any proposed sale to non-heirs, and *Provided, further,* that no lease of the lands held in common can be made to any person whatsoever for a period of time exceeding twenty years; *Provided, further,* nevertheless, that as to any oil and gas lease executed upon lands held in common where oil and gas or either of them in commercial quantities is being, or shall be, produced from lands covered by said lease, then and in such event, this limitation as to the period of time shall not apply as to any such oil and gas lease so long as oil or gas or either of them is being produced in commercial quantities from said land.

CHAPTER 104
PIPE LINES

Section

- 104-101. Right-of-way for pipe lines.
- 104-102. Pipe lines declared common carriers.
- 104-103. May erect telephone or telegraph line along right-of-way.
- 104-104. Construction of pipe lines.
- 104-105. Storage awaiting transportation.
- 104-106. Corporation commission have supervision.
- 104-107. Damages for refusing oil or gas for transportation—Damages.
- 104-108. License.
- 104-109. Pipe lines for gas.

104-101. Right-of-way for pipe lines. Any person, firm, association, or corporation may exercise the right of eminent domain to take and acquire the necessary right-of-way for the construction, maintenance, and operation of pipe lines for the conveyance of petroleum, natural gas, and the products therefrom, but any such right-of-way shall in all cases be so located as to do the least damage to private or public property consistent with proper use and economical construction. Such land and right-of-way shall be acquired in the manner provided by law for the condemnation and taking of private property in the state of New Mexico for railroads, telegraph, telephone and other public uses and purposes. The engineers, surveyors and other employees of such person, firm, association or corporation shall have the right to enter upon the lands and property of the state and of private persons and of private and public corporations for the purpose of making necessary surveys and examinations for selecting and locating suitable routes for such pipe lines, subject to responsibility for any damage done to such property in making such surveys and examinations. [L. '27, Ch. 125, § 1.

104-102. Pipe lines declared common carriers. All pipe lines laid, built, or maintained for the conveyance of crude oil or gas within the state of New Mexico are hereby declared to be common carriers, and said conveyance of said oil and gas shall be in the manner and under the restrictions in this act provided. [L. '27, Ch. 125, § 2.

104-103. May erect telephone or telegraph lines along right-of-way. The owners or operators of any pipe lines for which any right-of-way is obtained under the provisions of this act shall be entitled to erect and construct a telephone or telegraph line upon and along such right-of-way for use in the operation of such pipe line and shall not be required to operate said telegraph or telephone line as a toll line or to open same to the use of the public Provided, that the construction and maintenance of said telephone or telegraph line shall not interfere with the cultivation of any agricultural land. [L. '27, Ch. 125, § 3.

104-104. Construction of pipe lines. All pipe lines passing through farm lands shall be placed below the surface of the ground to a sufficient depth as not to interfere with cultivation of lands through which they pass. All pipe lines passing through or over streams or stream beds or bodies of water must be so constructed, maintained and operated as not to pollute any water in such stream, body of water, or which may, at any time, be in or run in such stream bed. Any pipe line constructed, maintained or operated contrary to the provisions of this section shall be adjudged a nuisance and abated as such with damages and, in addition thereto, all persons in any way responsible for such operation or maintenance shall be guilty of a misdemeanor punishable by imprisonment not exceeding one year or by fine of not less than \$100.00 nor more than \$1,000.00 and each day of such unlawful operation or maintenance shall constitute a separate offense. [L. '27, Ch. 125, § 4.

104-105. Storage awaiting transportation. It shall be the duty of every person, firm, association or corporation operating under such pipe line to provide suitable necessary receptacles for receiving such oil and gas for transportation and for storage at the place of delivery until the same can be reasonably removed by the consignee, and shall be liable therefor from the time the same is delivered for transportation until a reasonable time after the same has been transported to the place of consignment and ready for delivery to the consignee. In event the capacity of such pipe line is not sufficient to carry all of such oil or gas offered for transportation, that it shall be the duty of every such person, firm, association, or corporation daily to receive and forward such oil or gas as shall be offered for transportation in such proportion as the oil or gas of each shipper offering the same for shipment bears to the total volume of oil or gas offered for such transportation. Such common carrier shall issue to the shipper a certificate showing the actual quantity and specific gravity thereof. [L. '27, Ch. 125, § 5.

104-106. Corporation commission have supervision. The corporation commission of the state of New Mexico shall have the general supervision and control over all such persons, firms, associations or corporations in the performance of said business, and shall prescribe reasonable rates for the transportation through said pipe lines of said oil or gas, and shall prescribe reasonable rules for the conduct and operation thereof, which rates and rules when prescribed and delivered in writing to any such person, firm, association, or corporation, shall be printed and posted up in a convenient, accessible and conspicuous place at each office, station or place of business where such oil or gas is received or delivered. The said state corporation commission is hereby authorized to prescribe reasonable maximum rates

which shall be charged for the transportation of such oil or gas, which rates shall be binding on every such person, firm, association or corporation; *Provided*, in event the reasonableness of such rates are contested in the manner provided by law, in such proceedings the burden of proof to show the unreasonableness of such rates shall be upon the person, firm, association, or corporation contesting the same. [L. '27, Ch. 125, § 6.

104-107. Damages for refusing oil or gas for transportation —Damages.

Any such person, firm, association, or corporation which shall fail or refuse to accept, transport, and deliver when offered, up to the full capacity of such pipe line and at rates not to exceed those provided for by this act, or shall fail, neglect or refuse to obey any rule so established by the said state corporation commission, shall be liable to the person injured by such failure or refusal for the damage suffered by the shipper in the sum of not less than \$500.00 liquidated damage, together with reasonable attorney's fees, to be fixed by the court, in case suit shall be brought therefor, and each day's failure or refusal of such owner or operator of such pipe line to accept, transport or deliver oil or gas up to the full capacity of such pipe line at the rates prescribed by the state corporation commission when offered, shall be a separate failure upon which suit may be brought as provided in this act such damages and attorney's fees to be recovered in any court of competent jurisdiction; and in case of any corporation so refusing or failing, the state corporation commission is hereby authorized to revoke the charter or permit to do business in this state of such corporation. [L. '27, Ch. 125, § 7.

104-108. License. The owners or operators of all pipe lines laid, built, or maintained for the conveyance of crude oil or gas within the state of New Mexico shall, within thirty days after the taking effect of this act, and annually thereafter on the first day of July of each year, apply for and procure a license from the state corporation commission to operate such pipe lines, and shall on or before the 20th day of each month pay to the state corporation commission a license fee of one-tenth of one cent per barrel of oil or gasoline transported by such pipe lines, and one-tenth of one cent per ten thousand cubic feet of gas transported by such pipe lines, for the preceding calendar month. All license fees so collected by the state corporation commission shall be paid into a fund known as the "pipe line contingency fund," and shall be expended only for the inspection of, and administration and enforcement of the rules and regulations affecting, pipe lines as provided for in this act. [L. '27, Ch. 125, § 8.

104-109. Pipe lines for gas. No pipe line for the transportation of gas shall be laid or run within a distance of four hundred feet parallel to any railway, and any pipe line crossing the right-

of-way of any railway company shall be buried to a depth and for a distance prescribed by the state corporation commission. [L. '27,C.125,§9.

CHAPTER 111
PUBLIC LANDS

Article 5. Mineral Leases for Exploration and Development, §§ 111-501 to 111-504.

**ARTICLE 5. MINERAL LEASES FOR EXPLORATION AND
DEVELOPMENT**

Section

111-501. Commissioner of public lands may issue mineral leases—Rentals and royalties.

111-502. Term of leases.

111-503. Salt excepted from provisions of act.

111-504. Rules and regulations.

111-501. Commissioner of public lands may issue mineral leases--Rentals and royalties. That the commissioner of public lands be and he is hereby authorized to issue leases for the development, exploration and production of potassium, sodium, phosphorus and other minerals of similar occurrence, and their salts and compounds including chlorides, sulphates, carbonates, borates, silicates, nitrates and any and all other salts and compounds of the said minerals, on any lands of the state of New Mexico upon such terms and conditions as he may deem to be for the best interests of the state and conformable to this act. The minimum first year's rental for such leases shall be one hundred (\$100.00) dollars and in all cases there shall be reserved to the state a royalty of not less than five (5%) per centum of the amount or value of the minerals produced, such royalty to be computed upon the value of said minerals delivered at the nearest or most accessible railroad shipping point. [L. '29, Ch. 140, § 1.

111-502. Term of leases. Leases under this act may be made for a term of ten years or less and as long thereafter as said minerals, or any of them, in paying quantities shall be produced from the leased lands. [L. '29, Ch. 140, § 2.

111-503. Salt excepted from provisions of act. There is expressly excepted from the provisions of this act, chloride of sodium, usually called and known as common salt, and this act shall not be construed as modifying, altering, repealing, or in any wise changing the existing statutes relating to the leasing of state lands for the production of chloride of sodium, or common salt. [L. '29, Ch. 140, § 3.

111-504. Rules and regulations. The commissioner of public lands shall prescribe and promulgate from time to time all necessary rules and regulations for carrying out the provisions hereof. [L. '29, Ch. 140, § 4.

CHAPTER 134
STATE OFFICERS

ARTICLE 9. INSPECTOR OF MINES

Section
134-901 to 134-906 inc. Repealed.

134-901 to 134-906. inc. Repealed by L. '33, Ch. 153, § 310.

CHAPTER 141
TAXATION

Article 5. The State Tax Commission §§ 141-502 (in part) and 141-505.

ARTICLE 5. THE STATE TAX COMMISSION

Section
141-502. Assessment by commission (in part).
141-505. Method of valuing mineral property.

141-502. Assessment by commission (in part). At its regular meeting beginning on the first Monday of March of each year, the commission:

- (1) Shall determine the actual value:
 - (a) Of mineral property in the state, as hereinafter defined;
- (2) Shall certify:
 - (b) To the local assessor in the respective counties in which any of the property included in 1 (c) is situated, the value of such property, found and determined as hereinafter provided;

(3) The actual value so determined, when certified by the commission, shall be final and binding upon all tax officials of the state. Each assessor shall place the actual value so certified upon the assessment roll of his county for the year for which determined, and taxes shall be levied thereon in the same manner as in case of other property.

(4) Every person, firm, association and corporation, the owner or lessee of property subject to valuation by the commission, shall, on or before the first Monday of February in each year, make a return, under oath, to the commission, in such form and setting out such facts and information as the commission shall prescribe and require.

(5) The commission shall, after determining, and before certifying, the valuation of property fixed under the provisions of this section, mail to the owner a notice of his valuation so fixed, and the commission shall, upon written application therefor, filed with it within fifteen days after the date of mailing such notice, grant a hearing thereon to such owner, and give him reasonable notice of the date fixed therefor. [L. '25, Ch. 102, § 33, amending L. '21, Ch. 133, § 502.

141-505. Method of valuing mineral property. (1) "Mineral property" as used in this act shall can and include all mineral property in this state, any interest therein; and any products thereof, and all improvements, equipment, materials, supplies, and personal property held or used in connection therewith, and the surface value of all mineral lands for grazing, timber, agricultural or other purposes when held in the same ownership as the mineral rights therein.

(2) Mineral property, any interest therein, and any products thereof, for the purposes of taxation, shall be divided into the three following classes:

Class One: Mineral lands held in fee in private ownership and mineral rights and interests therein.

Class Two): The severed mineral products from mineral lands held by possessory title under the laws of the United States

Class Three: The severed mineral products from leasehold and contract mineral rights in lands, the fee of which is in the United States or the state of New Mexico.

(3) Mineral properties falling in Class One shall be sub-classified into either productive or non-productive. Productive properties shall be such as are mined or operated in good faith for the mineral values therein, with a reasonable degree of continuity during the year for which the return, hereinafter required, is made, and to an extent in keeping with the market demand and conditions affecting the extraction and disposition of the product. Non-productive properties shall be such as are known to contain minerals in commercially workable quantities, of such character as add present value to the land in addition to its value for other purposes, and are not operated so as to fall in the class of productive properties as above defined.

(4) The word "person" as used in this chapter shall mean and include any individual, corporation, co-partnership, trust, or association of persons.

(5) Every person owning or holding any mineral property, subject to valuation by the commission, shall make a return to the commission on or before February 1st of each year, showing such facts and in such form as the commission may determine and prescribe. In addition thereto every owner or operator of any productive mineral property and every Owner or operator of any mineral property falling in Classes Two and Three shall, between the first day of January and the first day of February in each year, make and forward to the commission at its office in Santa Fe, New Mexico, a sworn return or statement showing, in such form and detail as the commission shall prescribe, the total quantities and kinds of ores, metals, coal, coke, petroleum, natural gas, and other valuable minerals or metals produced and sold during, and on hand at the end of the next preceding calendar year, together with the name and post office address of the owner and operator and such information as to the description, location and area of

such mineral property and the cost of production, value and amount realized from such output and such other facts as may be required by the commission. Every person engaged in mining or operating any such property shall keep and preserve at such mine, mineral property, or at the principal office of such person in this state, accurate books and accounts showing in such detail as may be prescribed by the commission, all facts relating to the quantities and kinds of minerals and metals produced, the cost of production, milling, reduction, treatment transportation and sale thereof, the quantities sold, the amount realized therefrom and the quantities and value of such mineral and metal produced and not disposed of.

(6) From such returns and statements, and such other information as may be available, the commission shall ascertain and determine the market value of the average annual output of such productive mineral property, less the actual cost of producing and bringing the output to the surface and of milling, treating, reducing, transporting and selling the same, over the period of five years (or so much of such period as the property has been in operation) next preceding the year in which such return is required to be made. But there shall not be included as part of such cost any amounts paid for salaries of any persons not actually engaged in the operation of such property or the milling, treatment, reduction, transportation, or selling such output; or in the immediate management or superintendence of such operations; nor shall there be included as part of such cost any amounts paid for improvements or the purchase of machinery, equipment, appliances, or for construction of mills, reduction works, transportation facilities or other buildings or structures:

(7) The commission shall determine a reasonable quantity or area of reserves of ores or minerals in lands owned or held by each person operating a productive property, to be operated by the same works, based upon the estimated life of such mine or mineral property, its average annual production, the market demand for the output, and other conditions surrounding such property, and shall allocate such reserves to each productive mineral property.

(8) For the purpose of the exercise of the option hereinafter provided for, as to the method of determining the ad valorem value of productive properties, such properties are hereby divided into the following two classes:

1. Gas and oil wells.
2. All other properties.

The commission shall between the date when this act takes effect and the third Monday in February, 1922, cause an appraisal of the productive mineral properties falling within Class 2 of this subsection, for the purpose of comparison with the result of using the output method mentioned in subsection 10 hereof. The data, facts, and figures gathered by the commission in making

the above appraisal shall be a public record open to inspection at all reasonable times.

(9) The commission may, in any particular year, determine the ad valorem value of the mineral in all productive mineral properties falling in any one of the two classes enumerated in subsection 2 hereof, with the respective allocated reserves, by appraisal thereof. In such case the commission shall use all factors and elements which reasonably enter in and are necessary to determine such value, and the commission shall make specific findings of facts in writing, setting out in detail the factors, elements and method of calculation used in determining the value of each specific productive mineral property. Such findings shall be preserved in the official records of the commission and certified copies thereof shall be furnished to the taxpayer on request.

(10) The commission may, in any particular year, determine such average annual output value, being the market value of such average annual output, less the deductions provided for in subsection 6 hereof, to be the ad valorem value of the mineral in all productive mineral properties, and the respective reserves allocated thereto, falling in any one of the two classes enumerated in subsection 8 hereof for the purpose of taxation for such year.

(11) The commission shall determine the ad valorem value of mineral in non-productive mineral property by appraisal thereof. In determining the value of such properties the commission shall take into consideration the distance from railroad, the condition for extracting and disposing of the minerals and the probable length of time before transportation facilities and market demand will warrant production and sale thereof.

(12) The commission shall, in each year, determine such average annual output value, being the market value of such average annual output, less the deductions provided for in sub-section 6 hereof, to be the taxable value for such year of all properties falling in classes (2) and (3) enumerated in subsection (2) hereof. In calculating the average annual output value of the severed product falling in class 3, the commission shall first deduct from the gross product any royalties belonging to the state or United States.

(13) In case any productive mineral property shall, for the period for which market value of average annual output is being calculated in a given year, fail to produce an average annual output of a value above actual cost, as defined in this act, commensurate with the opportunities and difficulty of producing and disposing of the same, the commission may, in its discretion, determine the taxable valuation of such property for the taxing year on the same basis as for non-productive property.

(14) All improvements, equipment, materials, supplies and personal property held or used in connection with, and the surface values for grazing, timber, agricultural or other purposes, when held in the same ownership as the mineral rights, of all mineral

property falling within class 1 enumerated in subsection (2) hereof shall be valued and assessed by an appraisal thereof in addition to the valuation of the mineral therein.

(15) All improvements, equipment, materials, supplies and personal property held or used in connection with all mineral property falling within classes numbered two and three enumerated in subsection (2) hereof shall be valued and assessed by the commission by an appraisal thereof in addition to the values provided to be determined in subsection (12) hereof.

(16) The taxes upon mineral property, other than upon classes two and three as defined in subsection (2) hereof, are hereby made a lien upon such mineral property, from the first day of January of the year in which the same are levied and assessed.

In case of a mining claim not patented or entered for patent such lien shall be upon the right of possession and the improvements, and if such mining claim be sold for taxes such sale shall pass to the purchaser the title and right of possession, together with the improvements.

In any case where the minerals or mineral rights in land belong to a person or persons other than the owner of the land, taxes upon such minerals or mineral rights shall not be a lien upon the separately owned land, and taxes upon such separately owned land shall not be a lien upon the separately owned mineral or mineral rights. [L. '21, Ch. 133, § 505.

NOTE : Excise taxes on gasoline, and on other refined petroleum products are considered to represent business taxes, rather than taxes on mineral production or on mineral-producing properties; they are not included in this bulletin, being considered as outside its proper scope. Statutes pertaining to gasoline and kindred substances may be found in Chapter 60, New Mexico Statutes Annotated, 1929 compilation and 1938 supplement, and in the session laws published since 1938.

CHAPTER 105 PROCEDURE

Article

18. Ejectment, § 105-1802.

20. Suits to quiet title, § 105-2009.

ARTICLE 18. EJECTMENT

Section

105-1802. Mining claims.

105-1802. Mining claims. The action of ejectment will lie for the recovery of the possession of a mining claim, as well also of any real estate, where the party suing has been wrongfully ousted from the possession thereof, and the possession wrong-fully detained. [L. '07, Ch. 107, § 1; Code '15, § 4361. .

ARTICLE 20. SUITS TO QUIET TITLE

Section

105-2009. Mines.

105-2009. Mines. For the purpose of, this. article and for all other purposes, mines shall be deemed and taken to be real estate. [L. '07, Ch. 107, § 1 ; Code '15, § 4395.

CHAPTER 35 CRIMES

Article

16. Larceny, §§ 35-1602 and 35-1603.
 17. Receiving Stolen Property, § 35-1705.
 19. Cheats—Frauds—False Pretenses, §§ 35-1908, 35-1915 to 35-1917.

ARTICLE 16. LARCENY

Section

- 35-1602. Larceny of ores.
 35-1603. Breaking ore with intent to steal.

35-1602. Larceny of ores. Any person wrongfully extracting or carrying away or concealing or selling or attempting to sell ores from any mine, being the property of another, shall be deemed guilty of felony, and on conviction thereof shall be punished as for grand larceny, and the defendant or defendants shall be liable to the owner or owners of said ore for the value thereof, recoverable by an action at law. [L. '91, Ch. 74, § 1; C. L. '97, §. 2316 Code '15, § 1526.

35-1603. Breaking ore with intent to steal. If any person, lessee, licensee or employee in or about any mine in this state, shall break and sever, with intent to steal, the ore or mineral from any mine, lode, ledge or deposit in this state, or shall take, remove or conceal the ore or mineral from any mine, lode, ledge or deposit, with intent to defraud the person or persons rightfully entitled to any such mine, lode, ledge or deposit, such offender shall be deemed guilty of felony, and on conviction shall be punished as for grand larceny. [L. '89, Ch. 103, § 8 C. L. '97, § 2325; Code '15, § 1527.

ARTICLE 17. RECEIVING STOLEN PROPERTY

Section

- 35-1705. Purchasing stolen ore.

37-1705. Purchasing stolen ore. Any person or persons who shall knowingly purchase, or contract to purchase, or make any payment for, or on account of, any ore which shall have been wrongfully extracted or stolen from any mine, shall be considered an accessory after the fact to the unlawful extracting or stealing of such ore, and upon conviction, shall be subjected to the same punishment to which the principals may be liable. [L. '91, Ch. 74, § 2 C. L. '97, § 2317 Code '15, § 1542.

ARTICLE 19. CHEATS—FRAUDS—FALSE PRETENSES

Section

- 35-1908. False statements to prevent sale of property.

35-1916. Cheats in ore purchases.

35-1917. False representations as to mines.

35-1908. False statements to prevent sale of property. That any person or persons who shall hereafter knowingly make any false or malicious statement or statements regarding the title or ownership of any mining claims, real estate or other property within this state, or shall knowingly make any false or malicious statements claiming to have an unsatisfied lien, mortgage or other unsatisfied claim against any mining claim, real estate or other property, with the intent or for the purpose of defeating or injuring the sale of said property or with any other evil intent, shall be deemed and held to be guilty of felony and upon conviction thereof, shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the state penitentiary for not more than three years, or both such fine and imprisonment, in the discretion of the court trying such case. [L. '89, Ch. 16, § 1; C. L. '97, § 1136; Code '15, § 1558.

35-1915. Keeping false ore scales, etc. Any person, association, or corporation, or the agent of any person, association or corporation engaged in the business of milling, sampling, concentrating, reducing, shipping or purchasing ores, as aforesaid, who shall keep or use any false or fraudulent scales or weights for weighing ore, or who shall keep or use any false or fraudulent assay scales or weights for ascertaining the assay value of ore, knowing them to be false, every person so offending shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in a sum not exceeding one thousand dollars, nor less than one hundred dollars, or imprisonment not more than one year, or both, at the discretion of the court. [L. '89, Ch. 103, § 6 C. L. '97, § 2323; Code '15, § 1564.

35-1916. Cheats in ore purchases. Any person, corporation, or association, or the agent of any person, corporation or association engaged in the milling, sampling, concentrating, reducing, shipping or purchasing of ores in this state, who shall in any manner knowingly alter or change the true value of any ores delivered to him or them, so as to deprive the seller of the result of the correct value of the same, or who shall substitute other ores for that delivered to him or them, or who shall issue any bill of sale or certificate of purchase that does not exactly and truthfully state the actual weight, assay value and total amount paid for any lot or lots of ore purchased, or who, by any secret understanding or agreement with another, shall issue a bill of sale or certificate of purchase that does not truthfully and correctly set forth the weight, assay value and total amount paid for any lot or lots of ore purchased by him or them, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in a sum not exceeding one thousand dollars, nor less than one hun-

dred dollars, or imprisonment not more than one year, or both, at the discretion of the court. [L. '89, Ch. 103, § 7; C. L. '97, § 2324 Code '15, § 1565.

35-1917. False representations as to mines. Any person or persons who shall falsely or fraudulently misrepresent the character or quality of any mine or the ores, minerals or deposits therein with fraudulent intent to injure the owner or owners of such mine or to depreciate the value of the same, or to prevent a sale thereof, shall be deemed guilty of blackmail, and upon conviction thereof shall be fined in a sum not to exceed one thousand dollars, nor less than five hundred, or to be imprisoned in the county jail not exceeding ninety days, or with both such fine and imprisonment, in the discretion of the court. [L. '89, Ch. 103, § 9 C. L. '97, § 2326 Code '15, § 1566.

NOTE: See §§ 88-305, 88-612, 88-613, and various penal provisions in the foregoing compilation.

CHAPTER 130 STATE INSTITUTIONS

Article

5. Miners' Hospital, § 130-501.

ARTICLE 5. MINERS' HOSPITAL

Section

130-501. Miners' hospital—Free treatment.

130-501. Miners' Hospital—Free treatment. The miners' hospital of New Mexico is intended and meant to be for the free treatment and care of resident miners of the state of New Mexico, who may become sick or injured in the line of their occupation and all lodging and medical care shall be free of charge, as shall all other expenses incurred by the patient, except in cases where such patient is possessed of property and means sufficient to enable him to pay the actual costs and charges incurred by his attendance at such hospital, in which case the board of trustees may make provision for his being charged and paying such expenses incurred.

Provided, however, that said trustees, may take in other patients for treatment and care, upon the payment of all expenses therefor, by said patients, when the same may be so received and treated without excluding any miners from said hospital. [L. '03, Ch. 2, § 9, as amended by L. '07, Ch. 48, § 1; Code '15, § 5106.

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