

**TITLE 30--MINERAL LANDS AND MINING
CHAPTER 22--MINE SAFETY AND HEALTH
SUBCHAPTER IV--BLACK LUNG BENEFITS**

Part A--General Provisions

Sec. 901. Congressional findings and declaration of purpose; short title

(a) Congress finds and declares that there are a significant number of coal miners living today who are totally disabled due to pneumoconiosis arising out of employment in one or more of the Nation's coal mines; that there are a number of survivors of coal miners whose deaths were due to this disease; and that few States provide benefits for death or disability due to this disease to coal miners or their surviving dependents. It is, therefore, the purpose of this subchapter to provide benefits, in cooperation with the States, to coal miners who are totally disabled due to pneumoconiosis and to the surviving dependents of miners whose death was due to such disease; and to ensure that in the future adequate benefits are provided to coal miners and their dependents in the event of their death or total disability due to pneumoconiosis.

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

Sec. 902. Definitions

For purposes of this subchapter--

(a) The term "dependent" means--

(1) a child as defined in subsection (g) of this section without regard to subparagraph (2)(B)(ii) thereof; or

(2) a wife who is a member of the same household as the miner, or is receiving regular contributions from the miner for her support, or whose husband is a miner who has been ordered by a court to contribute to her support, or who meets the requirements of section 416(b)(1) or (2) of title 42. The determination of an individual's status as the "wife" of a miner shall be made in accordance with section 416(h)(1) of title 42 as if such miner were the "insured individual" referred to therein. The term "wife" also includes a "divorced wife" as defined in section 416(d)(1) of title 42 who is receiving at least one-half of her support, as determined in accordance with regulations prescribed by the Secretary, from the miner, or is receiving substantial contributions from the miner (pursuant to a written agreement), or there is in effect a court order for substantial contributions to her support from such miner.

(b) The term "pneumoconiosis" means a chronic dust disease of the lung and its sequelae, including respiratory and pulmonary impairments, arising out of coal mine employment.

(c) The term "Secretary" where used in part C means the Secretary of Labor.

(d) The term "miner" means any individual who works or has worked in or around a coal

mine or coal preparation facility in the extraction or preparation of coal. Such term also includes an individual who works or has worked in coal mine construction or transportation in or around a coal mine, to the extent such individual was exposed to coal dust as a result of such employment.

(e) The term "widow" includes the wife living with or dependent for support on the miner at the time of his death, or living apart for reasonable cause or because of his desertion, or who meets the requirements of section 416(c)(1), (2), (3), (4), or (5), and section 416(k) of title 42, who is not married. The determination of an individual's status as the "widow" of a miner shall be made in accordance with section 416(h)(1) of title 42 as if such miner were the "insured individual" referred to therein. Such term also includes a "surviving divorced wife" as defined in section 416(d)(2) of title 42 who for the month preceding the month in which the miner died, was receiving at least one-half of her support, as determined in accordance with regulations prescribed by the Secretary,¹ from the miner, or was receiving substantial contributions from the miner (pursuant to a written agreement) or there was in effect a court order for substantial contributions to her support from the miner at the time of his death.

(f) (1) The term "total disability" has the meaning given it by regulations of the Secretary of Health and Human Services for claims under part B of this subchapter, and by regulations of the Secretary of Labor for claims under part C of this subchapter, subject to the relevant provisions of subsections (b) and (d) of section 923 of this title, except that-

(A) in the case of a living miner, such regulations shall provide that a miner shall be considered totally disabled when pneumoconiosis prevents him or her from engaging in gainful employment requiring the skills and abilities comparable to those of any employment in a mine or mines in which he or she previously engaged with some regularity and over a substantial period of time;

(B) such regulations shall provide that

(i) a deceased miner's employment in a mine at the time of death shall not be used as conclusive evidence that the miner was not totally disabled; and

(ii) in the case of a living miner, if there are changed circumstances of employment indicative of reduced ability to perform his or her usual coal mine work, such miner's employment in a mine shall not be used as conclusive evidence that the miner is not totally disabled;

(C) such regulations shall not provide more restrictive criteria than those applicable under section 423(d) of title 42; and

(D) the Secretary of Labor, in consultation with the Director of the

¹So in original. Probably should be "Commissioner of Social Security".

National Institute for Occupational Safety and Health, shall establish criteria for all appropriate medical tests under this subsection which accurately reflect total disability in coal miners as defined in subparagraph (A).

(2) Criteria applied by the Secretary of Labor in the case of--

(A) any claim which is subject to review by the Secretary of Health and Human Services, or subject to a determination by the Secretary of Labor, under section 945(a) of this title;

(B) any claim which is subject to review by the Secretary of Labor under section 945(b) of this title; and

(C) any claim filed on or before the effective date of regulations promulgated under this subsection by the Secretary of Labor shall not be more restrictive than the criteria applicable to a claim filed on June 30, 1973, whether or not the final disposition of any such claim occurs after the date of such promulgation of regulations by the Secretary of Labor.

(g) The term "child" means a child or a step-child who is--

(1) unmarried; and

(2) (A) under eighteen years of age, or

(B) (i) under a disability as defined in section 423(d) of title 42,

(ii) which began before the age specified in section 402(d)(1)(B)(ii) of title 42, or, in the case of a student, before he ceased to be a student; or

(C) a student.

The term "student" means a "full-time student" as defined in section 402(d)(7) of title 42, or a "student" as defined in section 8101(17) of title 5. The determination of an individual's status as the "child" of the miner or widow, as the case may be, shall be made in accordance with section 416(h)(2) or (3) of title 42 as if such miner or widow were the "insured individual" referred to therein.

(h) The term "fund" means the Black Lung Disability Trust Fund established by section 9501 of title 26.

(i) For the purposes of subsections (c) and (j) of section 932 of this title, and for the purposes of paragraph (7) of subsection (d) of section 9501 of title 26, the term "claim denied" means a claim--

(1) denied by the Social Security Administration; or

(2) in which

(A) the claimant was notified by the Department of Labor of an administrative or informal denial more than 1 year prior to March 1, 1978, and did not, within 1 year from the date of notification of such denial, request a hearing, present additional evidence or indicate an intention to present additional evidence, or

(B) the claim was denied under the law in effect prior to March 1, 1978, following a formal hearing or administrative or judicial review proceeding.

Sec. 903. Field offices

(a) The Secretary of Labor shall establish and operate such field offices as may be necessary to assist miners and survivors of miners in the filing and processing of claims under this subchapter. Such field offices shall, to the extent feasible, be reasonably accessible to such miners and survivors. The Secretary, in connection with the establishment and operation of field offices, may enter into arrangements with other Federal departments and agencies, and with State agencies, for the use of existing facilities operated by such departments and agencies. Where the establishment of separate facilities is not feasible the Secretary may enter into such arrangements as he deems necessary with the heads of Federal departments, agencies, and instrumentalities and with State agencies for the use of existing facilities and personnel under their control.

(b) There are authorized to be appropriated for the purposes of subsection (a) of this section such sums as may be necessary.

(Pub. L. 95-239, Sec. 18, Mar. 1, 1978, 92 Stat. 105.)

Sec. 904. Information to potential beneficiaries of changes made by Black Lung Benefits Reform Act of 1977

The Secretary of Health and Human Services and the Secretary of Labor shall disseminate to interested persons and groups the changes in this subchapter made by this Act, together with an explanation of such changes, and shall undertake, through appropriate organizations, groups, and coal mine operators, to notify individuals who are likely to have become eligible for benefits by reason of such changes. Individual assistance in preparing and processing claims shall be offered by the Secretary of Health and Human Services and the Secretary of Labor and provided to potential beneficiaries.

Sec. 921. Regulations and presumptions

(a) Promulgation; payment of benefits

The Commissioner of Social Security shall, in accordance with the provisions of this part, and the regulations promulgated by him under this part, make payments of benefits in respect of

total disability of any miner due to pneumoconiosis, and in respect of the death of any miner whose death was due to pneumoconiosis or, except with respect to a claim filed under part C of this subchapter on or after the effective date of the Black Lung Benefits Amendments of 1981, who at the time of his death was totally disabled by pneumoconiosis.

(b) Promulgation of standards determining total disability

The Commissioner of Social Security shall by regulation prescribe standards for determining for purposes of subsection (a) of this section whether a miner is totally disabled due to pneumoconiosis and for determining whether the death of a miner was due to pneumoconiosis. Regulations required by this subsection shall be promulgated and published in the Federal Register at the earliest practicable date after December 30, 1969, and in no event later than the end of the third month following December 1969. Final regulations required for implementation of any amendments to this subchapter shall be promulgated and published in the Federal Register at the earliest practicable date after the date of enactment of such amendments, and in no event later than the end of the fourth month following the month in which such amendments are enacted. Such regulations may be modified or additional regulations promulgated from time to time thereafter.

(c) Presumptions

For purposes of this section-

- (1) If a miner who is suffering or suffered from pneumoconiosis was employed for ten years or more in one or more coal mines there shall be a rebuttable presumption that his pneumoconiosis arose out of such employment.
- (2) If a deceased miner was employed for ten years or more in one or more coal mines and died from a respirable disease there shall be a rebuttable presumption that his death was due to pneumoconiosis. The provisions of this paragraph shall not apply with respect to claims filed on or after the effective date of the Black Lung Benefits Amendments of 1981.
- (3) If a miner is suffering or suffered from a chronic dust disease of the lung which
 - (A) when diagnosed by chest roentgenogram, yields one or more large opacities (greater than one centimeter in diameter) and would be classified in category A, B, or C in the International Classification of Radiographs of the Pneumoconioses by the International Labor Organization,
 - (B) when diagnosed by biopsy or autopsy, yields massive lesions in the lung, or
 - (C) when diagnosis is made by other means, would be a condition which could reasonably be expected to yield results described in clause (A) or (B) if diagnosis had been made in the manner prescribed in clause (A) or (B), then there shall be an irrebuttable presumption that he is totally disabled

due to pneumoconiosis or that his death was due to pneumoconiosis or that at the time of his death he was totally disabled by pneumoconiosis, as the case may be.

(4) If a miner was employed for fifteen years or more in one or more underground coal mines, and if there is a chest roentgenogram submitted in connection with such miner's, his widow's, his child's, his parent's, his brother's, his sister's, or his dependent's claim under this subchapter and it is interpreted as negative with respect to the requirements of paragraph (3) of this subsection, and if other evidence demonstrates the existence of a totally disabling respiratory or pulmonary impairment, then there shall be a rebuttable presumption that such miner is totally disabled due to pneumoconiosis, that his death was due to pneumoconiosis, or that at the time of his death he was totally disabled by pneumoconiosis. In the case of a living miner, a wife's affidavit may not be used by itself to establish the presumption. The Commissioner of Social Security shall not apply all or a portion of the requirement of this paragraph that the miner work in an underground mine where he determines that conditions of a miner's employment in a coal mine other than an underground mine were substantially similar to conditions in an underground mine. The Commissioner of Social Security may rebut such presumption only by establishing that (A) such miner does not, or did not, have pneumoconiosis, or that (B) his respiratory or pulmonary impairment did not arise out of, or in connection with, employment in a coal mine. The provisions of this paragraph shall not apply with respect to claims filed on or after the effective date of the Black Lung Benefits Amendments of 1981.

(5) In the case of a miner who dies on or before March 1, 1978, who was employed for 25 years or more in one or more coal mines before June 30, 1971, the eligible survivors of such miner shall be entitled to the payment of benefits, at the rate applicable under section 922(a)(2) of this title, unless it is established that at the time of his or her death such miner was not partially or totally disabled due to pneumoconiosis. Eligible survivors shall, upon request by the Commissioner of Social Security, furnish such evidence as is available with respect to the health of the miner at the time of his or her death. The provisions of this paragraph shall not apply with respect to claims filed on or after the day that is 180 days after the effective date of the Black Lung Benefits Amendments of 1981.

(d) Applicability of presumptions

Nothing in subsection (c) of this section shall be deemed to affect the applicability of subsection (a) of this section in the case of a claim where the presumptions provided for therein are inapplicable.

Sec. 922. Payment of benefits

(a) Schedules

Subject to the provisions of subsection (b) of this section, benefit payments shall be made

by the Commissioner of Social Security under this part as follows:

(1) In the case of total disability of a miner due to pneumoconiosis, the disabled miner shall be paid benefits during the disability at a rate equal to 37½ per centum of the monthly pay rate for Federal employees in grade GS-2, step 1.

(2) In the case of death of a miner due to pneumoconiosis or, except with respect to a claim filed under part C of this subchapter on or after the effective date of the Black Lung Benefits Amendments of 1981, of a miner receiving benefits under this part, benefits shall be paid to his widow (if any) at the rate the deceased miner would receive such benefits if he were totally disabled.

(3) In the case of the child or children of a miner whose death is due to pneumoconiosis or, except with respect to a claim filed under part C of this subchapter on or after the effective date of the Black Lung Benefits Amendments of 1981, of a miner who is receiving benefits under this part at the time of his death or who was totally disabled by pneumoconiosis at the time of his death, in the case of the child or children of a widow who is receiving benefits under this part at the time of her death, and in the case of any child or children entitled to the payment of benefits under paragraph (5) of section 921(c) of this title, benefits shall be paid to such child or children as follows: If there is one such child, he shall be paid benefits at the rate specified in paragraph (1). If there is more than one such child, the benefits paid shall be divided equally among them and shall be paid at a rate equal to the rate specified in paragraph (1), increased by 50 per centum of such rate if there are two such children, by 75 per centum of such rate if there are three such children, and by 100 per centum of such rate if there are more than three such children: Provided, That benefits shall only be paid to a child for so long as he meets the criteria for the term "child" contained in section 902(g) of this title: And provided further, That no entitlement to benefits as a child shall be established under this paragraph (3) for any month for which entitlement to benefits as a widow is established under paragraph (2).

(4) In the case of an individual entitled to benefit payments under clause (1) or (2) of this subsection who has one or more dependents, the benefit payments shall be increased at the rate of 50 per centum of such benefit payments, if such individual has one dependent, 75 per centum if such individual has two dependents, and 100 per centum if such individual has three or more dependents.

(5) In the case of the dependent parent or parents of a miner whose death is due to pneumoconiosis, or, except with respect to a claim filed under part C of this subchapter on or after the effective date of the Black Lung Benefits Amendments of 1981, of a miner who is receiving benefits under this part at the time of his death or who was totally disabled by pneumoconiosis at the time of death, and who is not survived at the time of his death by a widow or a child, in the case of the dependent surviving brother(s) or sister(s) of such a miner who is not survived at the time of his death by a widow, child, or parent, in the case of the dependent parent or parents of a miner (who is not survived at the time of his or her death by

a widow or a child) who are entitled to the payment of benefits under paragraph (5) of section 921(c) of this title, or in the case of the dependent surviving brother(s) or sister(s) of a miner (who is not survived at the time of his or her death by a widow, child, or parent) who are entitled to the payment of benefits under paragraph (5) of section 921(c) of this title, benefits shall be paid under this part to such parent(s), or to such brother(s), or sister(s), at the rate specified in paragraph (3) (as if such parent(s) or such brother(s) or sister(s), were the children of such miner). In determining for purposes of this paragraph whether a claimant bears the relationship as the miner's parent, brother, or sister, the Commissioner of Social Security shall apply legal standards consistent with those applicable to relationship determination under title II of the Social Security Act [42 U.S.C. 401 et seq.]. No benefits to a sister or brother shall be payable under this paragraph for any month beginning with the month in which he or she receives support from his or her spouse, or marries. Benefits shall be payable under this paragraph to a brother only if he is-

(1) (A) under eighteen years of age, or

(B) under a disability as defined in section 223(d) of the Social Security Act [42 U.S.C. 423(d)] which began before the age specified in section 202(d)(1)(B)(ii) of such Act [42 U.S.C. 402(d)(1)(B)(ii)], or in the case of a student, before he ceased to be a student, or

(C) a student as defined in section 902(g) of this title; or

(2) who is, at the time of the miner's death, disabled as determined in accordance with section 223(d) of the Social Security Act [42 U.S.C. 423(d)], during such disability. Any benefit under this paragraph for a month prior to the month in which a claim for such benefit is filed shall be reduced to any extent that may be necessary, so that it will not render erroneous any benefit which, before the filing of such claim, the Commissioner of Social Security has certified for payment for such prior months. As used in this paragraph, "dependent" means that during the one year period prior to and ending with such miner's death, such parent, brother, or sister was living in the miner's household, and was, during such period, totally dependent on the miner for support. Proof of such support shall be filed by such claimant within two years after May 1972, or within two years after the miner's death, whichever is the later. Any such proof which is filed after the expiration of such period shall be deemed to have been filed within such period if it is shown to the satisfaction of the Commissioner of Social Security that there was good cause for failure to file such proof within such period. The determination of what constitutes "living in the miner's household", "totally dependent upon the miner for support," and "good cause," shall for purposes of this paragraph be made in accordance with regulations of the Commissioner of Social Security. Benefit payments under this paragraph to a parent, brother, or sister, shall

be reduced by the amount by which such payments would be reduced on account of excess earnings of such parent, brother, or sister, respectively, under section 203(b)-(l) of the Social Security Act [42 U.S.C. 403(b)-(l)], as if the benefit under this paragraph were a benefit under section 202 of such Act [42 U.S.C. 402].

(6) If an individual's benefits would be increased under paragraph (4) of this subsection because he or she has one or more dependents, and it appears to the Commissioner of Social Security that it would be in the interest of any such dependent to have the amount of such increase in benefits (to the extent attributable to such dependent) certified to a person other than such individual, then the Commissioner of Social Security may, under regulations prescribed by him, certify the amount of such increase in benefits (to the extent so attributable) not to such individual but directly to such dependent or to another person for the use and benefit of such dependent; and any payment made under this clause, if otherwise valid under this subchapter, shall be a complete settlement and satisfaction of all claims, rights, and interests in and to such payment.

(b) Reduction of benefits

Notwithstanding subsection (a) of this section, benefit payments under this section to a miner or his widow, child, parent, brother, or sister shall be reduced, on a monthly or other appropriate basis, by an amount equal to any payment received by such miner or his widow, child, parent, brother, or sister under the workmen's compensation, unemployment compensation, or disability insurance laws of his State on account of the disability of such miner due to pneumoconiosis, and the amount by which such payment would be reduced on account of excess earnings of such miner under section 203(b) through (l) of the Social Security Act [42 U.S.C. 403(b) to (l)] if the amount paid were a benefit payable under section 202 of such Act [42 U.S.C. 402]. This part shall not be considered a workmen's compensation law or plan for purposes of section 224 of such Act [42 U.S.C. 424a].

(c) Reporting of income

Benefits payable under this part shall be deemed not to be income for purposes of the Internal Revenue Code of 1986.

(Pub. L. 91-173, title IV, Sec. 412, Dec. 30, 1969, 83 Stat. 794; Pub. L. 92-303, Secs. 1(b)(1), (2), (c)(1), 2(a), May 19, 1972, 86 Stat. 150, 151, 153; Pub. L. 95-239, Secs. 3(b)(1), 4, Mar. 1, 1978, 92 Stat. 96, 97; Pub. L. 97-119, title II, Sec. 203(a)(1)-(3), (d), Dec. 29, 1981, 95 Stat. 1643, 1644; Pub. L. 99-514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 103-296, title I, Sec. 108(i)(2), Aug. 15, 1994, 108 Stat. 1488.)

Sec. 923. Filing of notice of claim

(a) Promulgation of regulations; time requirement

Except as otherwise provided in section 924 of this title, no payment of benefits shall be

made under this part except pursuant to a claim filed therefor on or before December 31, 1973, in such manner, in such form, and containing such information, as the Commissioner of Social Security shall by regulation prescribe.

(b) Utilization of personnel and procedures; evidence required to establish claim; medical evidence; affidavits; autopsy reports; reimbursement of expenses

In carrying out the provisions of this part, the Commissioner of Social Security shall to the maximum extent feasible (and consistent with the provisions of this part) utilize the personnel and procedures he uses in determining entitlement to disability insurance benefit payments under section 223 of the Social Security Act [42 U.S.C. 423], but no claim for benefits under this part shall be denied solely on the basis of the results of a chest roentgenogram. In determining the validity of claims under this part, all relevant evidence shall be considered, including, where relevant, medical tests such as blood gas studies, X-ray examination, electrocardiogram, pulmonary function studies, or physical performance tests, and any medical history, evidence submitted by the claimant's physician, or his wife's affidavits, and in the case of a deceased miner, other appropriate affidavits of persons with knowledge of the miner's physical condition, and other supportive materials. Where there is no medical or other relevant evidence in the case of a deceased miner, such affidavits, from persons not eligible for benefits in such case with respect to claims filed on or after the effective date of the Black Lung Benefits Amendments of 1981, shall be considered to be sufficient to establish that the miner was totally disabled due to pneumoconiosis or that his or her death was due to pneumoconiosis. In any case, other than that involving a claim filed on or after the effective date of the Black Lung Benefits Amendments of 1981, in which there is other evidence that a miner has a pulmonary or respiratory impairment, the Commissioner of Social Security shall accept a board certified or board eligible radiologist's interpretation of a chest roentgenogram which is of a quality sufficient to demonstrate the presence of pneumoconiosis submitted in support of a claim for benefits under this subchapter if such roentgenogram has been taken by a radiologist or qualified technician, except where the Commissioner of Social Security has reason to believe that the claim has been fraudulently represented. In order to insure that any such roentgenogram is of adequate quality to demonstrate the presence of pneumoconiosis, and in order to provide for uniform quality in the roentgenograms, the Secretary of Labor may, by regulation, establish specific requirements for the techniques used to take roentgenograms of the chest. Unless the Commissioner of Social Security has good cause to believe that an autopsy report is not accurate, or that the condition of the miner is being fraudulently misrepresented, the Commissioner of Social Security shall accept such autopsy report concerning the presence of pneumoconiosis and the stage of advancement of pneumoconiosis. Claimants under this part shall be reimbursed for reasonable medical expenses incurred by them in establishing their claims. For purposes of determining total disability under this part, the provisions of subsections (a), (b), (c), (d), and (g) of section 221 of such Act [42 U.S.C. 421(a) to (d), (g)] shall be applicable. The provisions of sections 204, 205(a), (b), (d), (e), (g), (h), (j), (k), (l), and (n), 206, 207, and 208 of the Social Security Act [42 U.S.C. 404, 405(a), (b), (d), (e), (g), (h), (j), (k), (l), and (n), 406, 407, 408] shall be applicable under this part with respect to a miner, widow, child, parent, brother, sister, or dependent, as if benefits under this part were benefits under title II of such Act [42 U.S.C. 401 et seq.]. Each miner who files a claim for benefits under this subchapter shall upon request be provided an opportunity to substantiate his or her claim by means of a complete pulmonary evaluation.

(c) Filing of claim for workmen's compensation; necessity; exceptions

No claim for benefits under this section shall be considered unless the claimant has also filed a claim under the applicable State workmen's compensation law prior to or at the same time his claim was filed for benefits under this section; except that the foregoing provisions of this paragraph shall not apply in any case in which the filing of a claim under such law would clearly be futile because the period within which such a claim may be filed thereunder has expired or because pneumoconiosis is not compensable under such law, or in any other situation in which, in the opinion of the Commissioner of Social Security, the filing of a claim would clearly be futile.

(d) Employment termination and benefits entitlement

No miner who is engaged in coal mine employment shall (except as provided in section 921(c)(3) of this title) be entitled to any benefits under this part while so employed. Any miner who has been determined to be eligible for benefits pursuant to a claim filed while such miner was engaged in coal mine employment shall be entitled to such benefits if his or her employment terminates within one year after the date such determination becomes final.

(Pub. L. 91-173, title IV, Sec. 413, Dec. 30, 1969, 83 Stat. 794; Pub. L. 92-303, Secs. 1(c)(5)(A), 4(f), 5(2), May 19, 1972, 86 Stat. 152, 154, 155; Pub. L. 95-239, Sec. 5, Mar. 1, 1978, 92 Stat. 97; Pub. L. 97-119, title II, Sec. 202(a), (c), Dec. 29, 1981, 95 Stat. 1643; Pub. L. 103-296, title I, Sec. 108(i)(2), Aug. 15, 1994, 108 Stat. 1488.)

Sec. 924. Time for filing claims

(a) Claims filed before December 31, 1973

(1) No claim for benefits under this part on account of total disability of a miner shall be considered unless it is filed on or before December 31, 1973, or, in the case of a claimant who is a widow, within six months after the death of her husband or by December 31, 1973, whichever is the later.

(2) In the case of a claim by a child this paragraph shall apply notwithstanding any other provision of this part.

(A) If such claim is filed within six months following May 1972, and if entitlement to benefits is established pursuant to such claim, such entitlement shall be effective retroactively from December 30, 1969, or from the date such child would have been first eligible for such benefit payments had section 922(a)(3) of this title been applicable since December 30, 1969, whichever is the lesser period. If on the date such claim is filed the claimant is not eligible for benefit payments, but was eligible at any period of time during the period from December 30, 1969, to the date such claim is filed, entitlement shall be effective for the duration of eligibility during such period.

(B) If such claim is filed after six months following May 1972, and if

entitlement to benefits is established pursuant to such claim, such entitlement shall be effective retroactively from a date twelve months preceding the date such claim is filed, or from the date such child would have been first eligible for such benefit payments had section 922(a)(3) of this title been applicable since December 30, 1969, whichever is the lesser period. If on the date such claim is filed the claimant is not eligible for benefit payments, but was eligible at any period of time during the period from a date twelve months preceding the date such claim is filed, to the date such claim is filed, entitlement shall be effective for the duration of eligibility during such period.

(C) No claim for benefits under this part, in the case of a claimant who is a child shall be considered unless it is filed within six months after the death of his father or mother (whichever last occurred) or by December 31, 1973, whichever is the later.

(D) Any benefit under subparagraph (A) or (B) for a month prior to the month in which a claim is filed shall be reduced, to any extent that may be necessary, so that it will not render erroneous any benefit which, before the filing of such claim, the Commissioner of Social Security has certified for payment for such prior month.

(3) No claim for benefits under this part, in the case of a claimant who is a parent, brother, or sister shall be considered unless it is filed within six months after the death of the miner or by December 31, 1973, whichever is the later.

(b) Filing of claims after June 30, 1973

No benefits shall be paid under this part after December 31, 1973, if the claim therefor was filed after June 30, 1973.

(c) Effective date of claims

No benefits under this part shall be payable for any period prior to the date a claim therefor is filed.

(d) Reduction of State benefits

No benefits shall be paid under this part to the residents of any State which, after December 30, 1969, reduces the benefits payable to persons eligible to receive benefits under this part, under its State laws which are applicable to its general work force with regard to workmen's compensation, unemployment compensation, or disability insurance.

(e) Conditions upon payment

No benefits shall be payable to a widow, child, parent, brother, or sister under this part on account of the death of a miner unless

- (1) benefits under this part were being paid to such miner with respect to disability due to pneumoconiosis prior to his death,
- (2) the death of such miner occurred prior to January 1, 1974, or
- (3) any such individual is entitled to benefits under paragraph (5) of section 921(c) of this title.

Sec. 924a. Notification to miners of eligibility for medical services and supplies; period for filing claim

The Secretary of Health and Human Services shall notify each miner receiving benefits under this part on account of his or her total disability who such Secretary has reason to believe became eligible for medical services and supplies on January 1, 1974, of his or her possible eligibility for such benefits. Where such Secretary so notifies a miner, the period during which he or she may file a claim for medical services and supplies under part C of this subchapter shall not terminate before six months after such notification is made.

(Pub. L. 95-239, Sec. 11, Mar. 1, 1978, 92 Stat. 101; Pub. L. 96-88, title V, Sec. 509(b), Oct. 17, 1979, 93 Stat. 695.)

Sec. 925. Procedure for the determination of claims during transition period

(a) Notwithstanding any other provision in this subchapter, for the purpose of assuring the uninterrupted receipt of benefits by claimants at such time as responsibility for administration of the benefits program is assumed by either a State workmen's compensation agency or the Secretary of Labor, any claim for benefits under this part filed during the period from July 1, 1973 to December 31, 1973, shall be considered and determined in accordance with the procedures of this section. With respect to any such claim-

- (1) Such claim shall be determined and, where appropriate under this part or section 9501(d) of title 26, benefits shall be paid with respect to such claim by the Secretary of Labor.
- (2) The manner and place of filing such claim shall be in accordance with regulations issued jointly by the Commissioner of Social Security and the Secretary of Labor, which regulations shall provide, among other things, that such claims may be filed in district offices of the Social Security Administration and thereafter transferred to the jurisdiction of the Department of Labor for further consideration.
- (3) The Secretary of Labor shall promptly notify any operator who he believes, on the basis of information contained in the claim, or any other information available to him, may be liable to pay benefits to the claimant under part C of this subchapter for any month after December 31, 1973.
- (4) In determining such claims, the Secretary of Labor shall, to the extent

appropriate, follow the procedures described in subsections (b), (c), and (d) of section 919 of title 33.

(5) Any operator who has been notified of the pendency of a claim under paragraph 4 of this subsection shall be bound by the determination of the Secretary of Labor on such claim as if the claim had been filed pursuant to part C of this subchapter and section 932 of this title had been applicable to such operator. Nothing in this paragraph shall require any operator to pay any benefits for any month prior to January 1, 1974.

(b) The Secretary of Labor, after consultation with the Commissioner of Social Security, may issue such regulations as are necessary or appropriate to carry out the purpose of this section.

(Pub. L. 91-173, title IV, Sec. 415, as added Pub. L. 92-303, Sec. 7, May 19, 1972, 86 Stat. 156; amended Pub. L. 97-119, title I, Sec. 104(b)(2), Dec. 29, 1981, 95 Stat. 1639; Pub. L. 99-514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 103-296, title I, Sec. 108(i)(2), Aug. 15, 1994, 108 Stat. 1488.)

Sec. 931. Benefits under State workmen's compensation laws

(a) Filing

On and after January 1, 1974, any claim for benefits for death or total disability due to pneumoconiosis shall be filed pursuant to the applicable State workmen's compensation law, except that during any period when miners or their surviving widows, children, parents, brothers, or sisters, as the case may be, are not covered by a State workmen's compensation law which provides adequate coverage for pneumoconiosis, and in any case in which benefits based upon eligibility under paragraph (5) of section 921(c) of this title are involved.² They shall be entitled to claim benefits under this part.

(b) Adequacy of compensation; listing of States providing adequate compensation; requisites for listing

(1) For purposes of this section, a State workmen's compensation law shall not be deemed to provide adequate coverage for pneumoconiosis during any period unless it is included in the list of State laws found by the Secretary to provide such adequate coverage during such period. The Secretary shall, no later than October 1, 1972, publish in the Federal Register a list of State workmen's compensation laws which provide adequate coverage for pneumoconiosis and shall revise and republish in the Federal Register such list from time to time, as may be appropriate to reflect changes in such State laws due to legislation or judicial or administrative interpretation.

²So in original. The period probably should be a comma.

(2) The Secretary shall include a State workmen's compensation law on such list during any period only if he finds that during such period under such law-

(A) benefits must be paid for total disability or death of a miner due to pneumoconiosis, except that

(i) such law shall not be required to provide such benefits where the miner's last employment in a coal mine terminated before the Secretary's approval of the State law pursuant to this section; and

(ii) each operator of a coal mine shall secure the payment of benefits pursuant to section 933 of this title with respect to any miner whose last employment in a coal mine terminated before the Secretary's approval of the State law pursuant to this section;

(B) the amount of such cash benefits is substantially equivalent to or greater than the amount of benefits prescribed by section 922(a) of this title;

(C) the standards for determining death or total disability due to pneumoconiosis are substantially equivalent to section 902(f) of this title and to those standards established under this part, and by the regulations of the Secretary promulgated under this part;

(D) any claim for benefits on account of total disability of a miner due to pneumoconiosis is deemed to be timely filed if such claim is filed within three years after a medical determination of total disability due to pneumoconiosis;

(E) there are in effect provisions with respect to prior and successor operators which are substantially equivalent to the provisions contained in section 932(i) of this title; and

(F) there are applicable such other provisions, regulations or interpretations, which are consistent with the provisions contained in Public Law 803, 69th Congress (44 Stat. 1424, approved March 4, 1927), as amended [33 U.S.C. 901 et seq.], which are applicable under section 932(a) of this title, but are not inconsistent with any of the criteria set forth in subparagraphs (A) through (E) of this paragraph, as the Secretary, in accordance with regulations promulgated by him, determines to be necessary or appropriate to assure adequate compensation for total disability or death due to pneumoconiosis.

The action of the Secretary in including or failing to include any State workmen's compensation law on such list shall be subject to judicial review exclusively in the United States court of appeals for the circuit in which the State is located or the United States Court of Appeals for the District of Columbia.

(c) Publication in Federal Register; review of listings

Final regulations required for implementation of any amendments to this part shall be promulgated and published in the Federal Register at the earliest practicable date after the date of enactment of such amendments, and in no event later than the end of the sixth month following the month in which such amendments are enacted.

(Pub. L. 91-173, title IV, Sec. 421, Dec. 30, 1969, 83 Stat. 795; Pub. L. 92-303, Secs. 1(c)(1), 4(e), 5(3), (5), May 19, 1972, 86 Stat. 151, 154, 155; Pub. L. 95-239, Secs. 3(b)(3), 6, Mar. 1, 1978, 92 Stat. 97, 98.)

Sec. 932. Failure to meet workmen's compensation requirements

(a) Benefits; applicability of Longshore and Harbor Workers' Compensation Act; promulgation of regulations

Subject to section 28(h)(1) of the Longshore and Harbor Workers' Compensation Act Amendments of 1984, during any period after December 31, 1973, in which a State workmen's compensation law is not included on the list published by the Secretary under section 931(b) of this title, the provisions of Public Law 803, 69th Congress (44 Stat. 1424, approved March 4, 1927), as amended [33 U.S.C. 901 et seq.], and as it may be amended from time to time (other than the provisions contained in sections 1, 2, 3, 4,³ 8, 9, 10, 12, 13, 29, 30, 31, 32, 33, 37, 38, 41, 43, 44, 45, 46, 47, 48, 49, 50, and 51 thereof) [33 U.S.C. 901, 902, 903, 904, 908, 909, 910, 912, 913, 929, 930, 931, 932, 933, 937, 938, 941, 943, 944, 945, 946, 947, 948, 948a, 949, 950], shall (except as otherwise provided in this subsection or by regulations of the Secretary and except that references in such Act to the employer shall be considered to refer to the trustees of the fund, as the Secretary considers appropriate and as is consistent with the provisions of section 9501(d) of title 26), be applicable to each operator of a coal mine in such State with respect to death or total disability due to pneumoconiosis arising out of employment in such mine, or with respect to entitlements established in paragraph (5) of section 921(c) of this title. In administering this part, the Secretary is authorized to prescribe in the Federal Register such additional provisions, not inconsistent with those specifically excluded by this subsection, as he deems necessary to provide for the payment of benefits by such operator to persons entitled thereto as provided in this part and thereafter those provisions shall be applicable to such operator.

(b) Liability of operators

During any such period each such operator shall be liable for and shall secure the payment of benefits, as provided in this section and section 933 of this title. An employer, other than an operator of a coal mine, shall not be required to secure the payment of such benefits with respect to any employee of such employer to the extent such employee is engaged in the transportation of coal or in coal mine construction. Upon determination by the Secretary of the eligibility of the

³So in original.

employee, the Secretary may require such employer to secure a bond or otherwise guarantee the payment of such benefits to the employee.

(c) Persons entitled to benefits

Benefits shall be paid during such period by each such operator under this section to the categories of persons entitled to benefits under section 922(a) of this title in accordance with the regulations of the Secretary applicable under this section: Provided, That, except as provided in subsection (i) of this section, no benefit shall be payable by any operator on account of death or total disability due to pneumoconiosis

(1) which did not arise, at least in part, out of employment in a mine during a period after December 31, 1969, when it was operated by such operator; or

(2) which was the subject of a claim denied before March 1, 1978, and which is or has been approved in accordance with the provisions of section 945 of this title.

(d) Monthly payments; amounts; accrual of interest

Benefits payable under this section shall be paid on a monthly basis and, except as otherwise provided in this section, such payments shall be equal to the amounts specified in section 922(a) of this title. If payment is not made within the time required, interest shall accrue to such amounts at the rates set forth in section 934(b)(5) of this title for interest owed to the fund. With respect to payments withheld pending final adjudication of liability, in the case of claims filed on or after the effective date of the Black Lung Benefits Amendments of 1981, such interest shall commence to accumulate 30 days after the date of the determination that such an award should be made.

(e) Conditions upon payment

No payment of benefits shall be required under this section:

(1) except pursuant to a claim filed therefor in such manner, in such form, and containing such information, as the Secretary shall by regulation prescribe; or

(2) for any period prior to January 1, 1974.

(f) Limitation on filing of claims

Any claim for benefits by a miner under this section shall be filed within three years after whichever of the following occurs later-

(1) a medical determination of total disability due to pneumoconiosis; or

(2) March 1, 1978.

(g) Reduction of monthly benefits

The amount of benefits payable under this section shall be reduced, on a monthly or other appropriate basis, by the amount of any compensation received under or pursuant to any Federal or State workmen's compensation law because of death or disability due to pneumoconiosis. In addition, the amount of benefits payable under this section with respect to any claim filed on or after the effective date of the Black Lung Benefits Amendments of 1981 shall be reduced, on a monthly or other appropriate basis, by the amount by which such benefits would be reduced on account of excess earnings of such miner under section 403(b) through (l) of title 42 if the amount paid were a benefit payable under section 402 of title 42.

(h) Promulgation of regulations

The Secretary of Labor shall by regulation establish standards, which may include appropriate presumptions, for determining whether pneumoconiosis arose out of employment in a particular coal mine or mines. The Secretary may also, by regulation, establish standards for apportioning liability for benefits under this subsection among more than one operator, where such apportionment is appropriate.

(i) Subsequent operators' liability for benefit payments

(1) During any period in which this section is applicable to the operator of a coal mine who on or after January 1, 1970, acquired such mine or substantially all the assets thereof, from a person (hereinafter in this subsection referred to as a "prior operator") who was an operator of such mine, or owner of such assets on or after January 1, 1970, such operator shall be liable for and shall, in accordance with section 933 of this title, secure the payment of all benefits which would have been payable by the prior operator under this section with respect to miners previously employed by such prior operator as if the acquisition had not occurred and the prior operator had continued to be an operator of a coal mine.

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

(3) (A) For purposes of paragraph (1) of this subsection, the provisions of this paragraph shall apply to corporate reorganizations, liquidations, and such other transactions as are specified in this paragraph.

(B) If an operator ceases to exist by reason of a reorganization or other transaction or series of transactions which involves a change in identity, form, or place of business or organization, however effected, the successor operator or other corporate or business entity resulting from such reorganization or other change shall be treated as the operator to whom this section applies.

(C) If an operator ceases to exist by reason of a liquidation into a parent or successor corporation, the parent or successor corporation shall be treated as the operator to whom this section applies.

(D) If an operator ceases to exist by reason of a sale of substantially all his or her assets, or as the result of a merger, consolidation, or division, the successor operator, corporation, or other business entity shall be treated as the operator to whom this section applies.

(4) In any case in which there is a determination under section 9501(d) of title 26 that no operator is liable for the payment of benefits to a claimant, nothing in this subsection may be construed to require the payment of benefits to a claimant by or on behalf of any operator.

(j) Failure of operators to secure benefits

Notwithstanding the provisions of this section, section 9501 of title 26 shall govern the payment of benefits in cases-

(1) described in section 9501(d)(1) of title 26;

(2) in which the miner's last coal mine employment was before January 1, 1970; or

(3) in which there was a claim denied before March 1, 1978, and such claim is or has been approved in accordance with the provisions of section 945 of this title.

(k) Secretary as party in claim proceedings

The Secretary shall be a party in any proceeding relative to a claim for benefits under this part.

(l) Filing of new claims or refiling or revalidation of claims of miners already determined eligible at time of death

In no case shall the eligible survivors of a miner who was determined to be eligible to receive benefits under this subchapter at the time of his or her death be required to file a new claim for benefits, or refile or otherwise revalidate the claim of such miner, except with respect to a claim filed under this part on or after the effective date of the Black Lung Benefits Amendments of 1981,⁴

(Pub. L. 91-173, title IV, Sec. 422, Dec. 30, 1969, 83 Stat. 796; Pub. L. 92-303, Secs. 3(a), (b), 5(2)-(4), (9), 8, May 19, 1972, 86 Stat. 153, 155-157; Pub. L. 95-239, Secs. 3(b)(4), 7(a)-(h), Mar. 1, 1978, 92 Stat. 97-99; Pub. L. 97-119, title I, Sec. 104(b)(3)-(5), title II, Secs. 203(a)(6), (b), 204, 205(a), Dec. 29, 1981, 95 Stat. 1639, 1644, 1645; Pub. L. 98-426, Sec. 28(h)(2), Sept. 28, 1984, 98 Stat. 1655; Pub. L. 99-514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095.)

Sec. 932a. Appointment of qualified individuals to hear and determine claims for

⁴So in original.

benefits

Qualified individuals appointed by the Secretary of Labor may hear and determine claims for benefits under part C of title IV of the Federal Coal Mine Health and Safety Act of 1969 [30 U.S.C. 931 et seq.] and under section 415 of such Act [30 U.S.C. 925]. For purposes of this section, the term "qualified individual" means such an individual, regardless of whether that individual is a hearing examiner appointed under section 3105 of title 5. Nothing in this section shall be deemed to imply that there is or is not in effect any authority for such individuals to hear and determine such claims under any provision of law other than this section.

(Pub. L. 94-504, Oct. 15, 1976, 90 Stat. 2428.)

Sec. 933. Duties of operators in States not qualifying under workmen's compensation laws

(a) Securing of benefits for miners; self-insurers; mutual companies

During any period in which a State workmen's compensation law is not included on the list published by the Secretary under section 931(b) of this title each operator of a coal mine in such State shall secure the payment of benefits for which he is liable under section 932 of this title by

(1) qualifying as a self-insurer in accordance with regulations prescribed by the Secretary, or

(2) insuring and keeping insured the payment of such benefits with any stock company or mutual company or association, or with any other person or fund, including any State fund, while such company, association, person or fund is authorized under the laws of any State to insure workmen's compensation.

(b) Required provisions of insurance contracts

In order to meet the requirements of clause (2) of subsection (a) of this section, every policy or contract of insurance must contain—

(1) a provision to pay benefits required under section 932 of this title, notwithstanding the provisions of the State workmen's compensation law which may provide for lesser payments;

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

(3) such other provisions as the Secretary, by regulation, may require.

(c) Cancellation of insurance contracts

No policy or contract of insurance issued by a carrier to comply with the requirements of

clause (2) of subsection (a) of this subsection⁵ shall be canceled prior to the date specified in such policy or contract for its expiration until at least thirty days have elapsed after notice of cancellation has been sent by registered or certified mail to the Secretary and to the operator at his last known place of business.

(d) Penalties for failure to secure payment of benefits

(1) Any employer required to secure the payment of benefits under this section who fails to secure such benefits shall be subject to a civil penalty assessed by the Secretary of not more than \$1,000 for each day during which such failure occurs. In any case where such employer is a corporation, the president, secretary, and treasurer thereof also shall be severally liable to such civil penalty as provided in this subsection for the failure of such corporation to secure the payment of benefits. Such president, secretary, and treasurer shall be severally personally liable, jointly with such corporation, for any benefit which may accrue under this subchapter in respect to any disability which may occur to any employee of such corporation while it shall so fail to secure the payment of benefits as required by this section.

(2) Any employer of a miner who knowingly transfers, sells, encumbers, assigns, or in any manner disposes of, conceals, secrets,⁶ or destroys any property belonging to such employer, after any miner employed by such employer has filed a claim under this subchapter, and with intent to avoid the payment of benefits under this subchapter to such miner or his or her dependents, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than \$1,000, or by imprisonment for not more than one year, or both. In any case where such employer is a corporation, the president, secretary, and treasurer thereof also shall be severally liable for such penalty of imprisonment as well as jointly liable with such corporation for such fine.

(3) This subsection shall not affect any other liability of the employer under this part.

(Pub. L. 91-173, title IV, Sec. 423, Dec. 30, 1969, 83 Stat. 797; Pub. L. 92-303, Sec. 3(b), May 19, 1972, 86 Stat. 153; Pub. L. 95-239, Sec. 8, Mar. 1, 1978, 92 Stat. 100.)

Sec. 934. "Fund" defined; liability of operators to United States for repayments to fund; procedures applicable; rate of interest

(a) For purposes of this section, the term "fund" has the meaning set forth in section 902(h) of this title.

(1) If--

⁵So in original. Probably should be "section".

⁶So in original. Probably should be "secretes,".

(A) an amount is paid out of the fund to an individual entitled to benefits under section 932 of this title, and

(B) the Secretary determines, under the provisions of sections 932 and 933 of this title, that an operator was required to secure the payment of all or a portion of such benefits, then the operator is liable to the United States for repayment to the fund of the amount of such benefits the payment of which is properly attributed to him plus interest thereon. No operator or representative of operators may bring any proceeding, or intervene in any proceeding, held for the purpose of determining claims for benefits to be paid by the fund, except that nothing in this section shall affect the rights, duties, or liabilities of any operator in proceedings under section 932 or section 933 of this title. In a case where no operator responsibility is assigned pursuant to sections 932 and 933 of this title, a determination by the Secretary that the fund is liable for the payment of benefits shall be final.

(2) If any operator liable to the fund under paragraph (1) refuses to pay, after demand, the amount of such liability (including interest), then there shall be a lien in favor of the United States for such amount upon all property and rights to property, whether real or personal, belonging to such operator. The lien arises on the date on which such liability is finally determined, and continues until it is satisfied or becomes unenforceable by reason of lapse of time.

(3) (A) Except as otherwise provided under this subsection, the priority of the lien shall be determined in the same manner as under section 6323 of title 26. That section shall be applied for such purposes-

(i) by substituting "lien imposed by section 424(b)(2) of the Federal Mine Safety and Health Act of 1977" for "lien imposed by section 6321"; "operator liability lien" for "tax lien"; "operator" for "taxpayer"; "lien arising under section 424(b)(2) of the Federal Mine Safety and Health Act of 1977" for "assessment of the tax"; "payment of the liability is made to the Black Lung Disability Trust Fund" for "satisfaction of a levy pursuant to section 6332(b)"; and "satisfaction of operator liability" for "collection of any tax under this title" each place such terms appear; and

(ii) by treating all references to the "Secretary" as references to the Secretary of Labor.

(B) In the case of a bankruptcy or insolvency proceeding, the lien imposed under paragraph (2) shall be treated in the same manner as a lien for taxes due and owing to the United States for purposes of the Bankruptcy Act or section 3713(a) of title 31.

(C) For purposes of applying section 6323(a) of title 26 to determine the

priority between the lien imposed under paragraph (2) and the Federal tax lien, each lien shall be treated as a judgment lien arising as of the time notice of such lien is filed.

(D) For purposes of this subsection, notice of the lien imposed under paragraph (2) shall be filed in the same manner as under subsections (f) and (g) of section 6323 of title 26.

(4) (A) In any case where there has been a refusal or neglect to pay the liability imposed under paragraph (2), the Secretary may bring a civil action in a district court of the United States to enforce the lien of the United States under this section with respect to such liability or to subject any property, of whatever nature, of the operator, or in which he has any right, title, or interest, to the payment of such liability.

(B) The liability imposed by paragraph (1) may be collected at a proceeding in court if the proceeding is commenced within 6 years after the date on which the liability was finally determined, or before the expiration of any period for collection agreed upon in writing by the operator and the United States before the expiration of such 6-year period. The running of the period of limitation provided under this subparagraph shall be suspended for any period during which the assets of the operator are in the custody or control of any court of the United States, or of any State, or the District of Columbia, and for 6 months thereafter, and for any period during which the operator is outside the United States if such period of absence is for a continuous period of at least 6 months.

(5) The rate of interest under this subsection-

(A) for any period during calendar year 1982, shall be 15 percent, and

(B) for any period after calendar year 1982, shall be the rate established by section 6621 of title 26 which is in effect for such period.

(Pub. L. 91-173, title IV, Sec. 424, Dec. 30, 1969, 83 Stat. 798; Pub. L. 92-303, Sec. 1(c)(1), May 19, 1972, 86 Stat. 151; Pub. L. 95-227, Sec. 3(d), Feb. 10, 1978, 92 Stat. 13; Pub. L. 96-222, title I, Sec. 108(b)(2)(A), Apr. 1, 1980, 94 Stat. 226; Pub. L. 97-119, title I, Sec. 104(a)(1), (2), (b)(6), Dec. 29, 1981, 95 Stat. 1639; Pub. L. 99-514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095.)

Sec. 934a. Repealed. Pub. L. 97-119, Title I, Sec. 103(b), Dec. 29, 1981, 95 Stat. 1638

Effective Date of Repeal

Repeal effective Jan. 1, 1982, see section 103(d)(1) of Pub. L. 97-119, set out as an Effective Date note under section 9501 of Title 26, Internal Revenue Code.

Provisions Relating to Payment of Benefits to Miners and Eligible Survivors of Miners To

Take Effect as Rules and Regulations of Secretary of Labor Pub. L. 95-239, Sec. 20(b), Mar. 1, 1978, 92 Stat. 106, provided that in the event that the payment of benefits to miners and to eligible survivors of miners cannot be made from the Black Lung Disability Trust Fund established by section 3(a) of the Black Lung Benefits Revenue Act of 1977 [former subsec. (a) of this section], the provisions of the Act relating to the payment of benefits to miners and to eligible survivors of miners, as in effect immediately before the date of the enactment of this Act [Mar. 1, 1978], shall take effect, as rules and regulations of the Secretary of Labor until such provisions are revoked, amended, or revised by law, and that the Secretary of Labor may promulgate additional rules and regulations to carry out such provisions and shall make benefit payments to miners and to eligible survivors of miners in accordance with such provisions.

Sec. 935. Utilization of services of State and local agencies

With the consent and cooperation of State agencies charged with administration of State workmen's compensation laws, the Secretary may, for the purpose of carrying out his functions and duties under section 932 of this title, utilize the services of State and local agencies and their employees and, notwithstanding any other provision of law, may advance funds to or reimburse such State and local agencies and their employees for services rendered for such purposes.

(Pub. L. 91-173, title IV, Sec. 425, Dec. 30, 1969, 83 Stat. 798.)

Sec. 936. Regulations and reports

(a) Promulgation; applicability of section 553 of title 5

The Secretary of Labor, the Commissioner of Social Security, and the Secretary of Health and Human Services are authorized to issue such regulations as each deems appropriate to carry out the provisions of this subchapter. Such regulations shall be issued in conformity with section 553 of title 5, notwithstanding subsection (a) thereof.

(b) Annual reports to Congress

At the end of each fiscal year, the Commissioner of Social Security shall submit to the Congress an annual report upon the subject matter of part B of this subchapter, and, after January 1, 1974, the Secretary of Labor shall also submit such a report upon the subject matter of this part. Each such report shall be prepared and submitted to Congress in accordance with the requirement with respect to submission under section 942 of title 33.

(c) Compliance with State workmen's compensation laws; conflicts between State and Federal provisions

Nothing in this subchapter shall relieve any operator of the duty to comply with any State workmen's compensation law, except insofar as such State law is in conflict with the provisions of this subchapter and the Secretary by regulation, so prescribes. The provisions of any State workmen's compensation law which provide greater benefits than the benefits payable under this subchapter shall not thereby be construed or held to be in conflict with the provisions of this

subchapter.

(Pub. L. 91-173, title IV, Sec. 426, Dec. 30, 1969, 83 Stat. 798; Pub. L. 92-303, Sec. 5(3), May 19, 1972, 86 Stat. 155; Pub. L. 103-296, title I, Sec. 108(i)(3), Aug. 15, 1994, 108 Stat. 1488; Pub. L. 104-66, title I, Sec. 1102(b)(2), Dec. 21, 1995, 109 Stat. 723.)

Sec. 937. Contracts and grants

(a) Construction, purchase, and operation of fixed-site and mobile clinical facilities

The Secretary of Health and Human Services is authorized to enter into contracts with, and make grants to, public and private agencies and organizations and individuals for the construction, purchase, and operation of fixed-site and mobile clinical facilities for the analysis, examination, and treatment of respiratory and pulmonary impairments in active and inactive coal miners. The Secretary shall coordinate the making of such contracts and grants with the Appalachian Regional Commission.

(b) Research activities

The Secretary of Health and Human Services shall initiate research within the National Institute for Occupational Safety and Health, and is authorized to make research grants to public and private agencies and organizations and individuals for the purpose of devising simple and effective tests to measure, detect, and treat respiratory and pulmonary impairments in active and inactive coal miners. Any grant made pursuant to this subsection shall be conditioned upon all information, uses, products, processes, patents, and other developments resulting from such research being available to the general public, except to the extent of such exceptions and limitations as the Secretary of Health and Human Services may deem necessary in the public interest.

(c) Authorization of appropriations

There is hereby authorized to be appropriated for the purpose of subsection (a) of this section \$10,000,000 for each fiscal year. There are hereby authorized to be appropriated for the purposes of subsection (b) of this section such sums as are necessary.

(Pub. L. 91-173, title IV, Sec. 427, as added Pub. L. 92-303, Sec. 5(6), May 19, 1972, 86 Stat. 155; amended Pub. L. 95-239, Sec. 9, Mar. 1, 1978, 92 Stat. 100; Pub. L. 96-88, title V, Sec. 509(b), Oct. 17, 1979, 93 Stat. 695.)

Sec. 938. Miners suffering from pneumoconiosis; discrimination prohibited

(a) Mine operators

No operator shall discharge or in any other way discriminate against any miner employed by him by reason of the fact that such miner is suffering from pneumoconiosis. No person shall cause or attempt to cause an operator to violate this section. For the purposes of this subsection

the term "miner" shall not include any person who has been found to be totally disabled.

(b) Determination by Secretary; procedure

Any miner who believes that he has been discharged or otherwise discriminated against by any person in violation of subsection (a) of this section, or any representative of such miner may, within ninety days after such violation occurs, apply to the Secretary for a review of such alleged discharge or discrimination. A copy of the application shall be sent to such person who shall be the respondent. Upon receipt of such application, the Secretary shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of any party to enable the parties to present information relating to such violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to section 554 of title 5. Each administrative law judge presiding under this section and under the provisions of subchapters I, II and III of this chapter shall receive compensation at a rate determined under section 5372 of title 5. Upon receiving the report of such investigation, the Secretary shall make findings of fact. If he finds that such violation did occur, he shall issue a decision, incorporating an order therein, requiring the person committing such violation to take such affirmative action as the Secretary deems appropriate, including, but not limited to, the rehiring or reinstatement of the miner to his former position with back pay. If he finds that there was no such violation, he shall issue an order denying the application. Such order shall incorporate the Secretary's findings therein.

(c) Costs and penalties

Whenever an order is issued under this subsection granting relief to a miner at the request of such miner, a sum equal to the aggregate amount of all costs and expenses (including the attorney's fees) as determined by the Secretary to have been reasonably incurred by such miner for, or in connection with, the institution and prosecution of such proceedings, shall be assessed against the person committing the violation.

(Pub. L. 91-173, title IV, Sec. 428, as added Pub. L. 92-303, Sec. 5(7), May 19, 1972, 86 Stat. 155; amended Pub. L. 95-251, Sec. 2(a)(9), Mar. 27, 1978, 92 Stat.183; Pub. L. 101-509, title V, Sec. 529 [title I, Sec. 104(d)(3)], Nov. 5, 1990, 104 Stat. 1427, 1447.)

Sec. 939. Authorization of appropriations

There is authorized to be appropriated to the Secretary of Labor such sums as may be necessary to carry out his responsibilities under this subchapter. Such sums shall remain available until expended.

(Pub. L. 91-173, title IV, Sec. 429, as added Pub. L. 92-303, Sec. 5(8), May 19, 1972, 86 Stat. 156.)

Sec. 940. Applicability of amendments to part B of this subchapter to this part

The amendments made by the Black Lung Benefits Act of 1972, the Black Lung Benefits

Reform Act of 1977 and the Black Lung Benefits Amendments of 1981 to part B of this subchapter shall, to the extent appropriate, also apply to this part.

(Pub. L. 91-173, title IV, Sec. 430, as added Pub. L. 92-303, Sec. 5(10), May 19, 1972, 86 Stat. 156; amended Pub. L. 95-239, Sec. 10, Mar. 1, 1978, 92 Stat. 100; Pub. L. 97-119, title II, Sec. 202(d), Dec. 29, 1981, 95 Stat. 1643.)

Sec. 941. Penalty for false statements or representations

Any person who willfully makes any false or misleading statement or representation for the purpose of obtaining any benefit or payment under this subchapter shall be guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not more than \$1,000, or by imprisonment for not more than one year, or both.

(Pub. L. 91-173, title IV, Sec. 431, as added Pub. L. 92-303, Sec. 6, May 19, 1972, 86 Stat. 156; amended Pub. L. 95-239, Sec. 12(a), Mar. 1, 1978, 92 Stat. 101.)

Sec. 942. Miner benefit entitlement reports; penalty for failure or refusal to file

(a) The Secretary may by regulation require employers to file reports concerning miners who may be or are entitled to benefits under this part, including the date of commencement and cessation of benefits and the amount of such benefits. Any such report shall not be evidence of any fact stated therein in any proceeding relating to death or total disability due to pneumoconiosis of any miner to which such report relates.

(b) Any employer who fails or refuses to file any report required of such employer under this section shall be subject to a civil penalty of not more than \$500 for each such failure or refusal.

(Pub. L. 91-173, title IV, Sec. 432, as added Pub. L. 95-239, Sec. 12(b), Mar. 1, 1978, 92 Stat. 101.)

Sec. 943. Black lung insurance program

(a) Authorization to establish and carry out

The Secretary is authorized to establish and carry out a black lung insurance program which will enable operators of coal mines to purchase insurance covering their obligations under section 932 of this title.

(b) Non-availability of other insurance coverage

The Secretary may exercise his or her authority under this section only if, and to the extent that, insurance coverage is not otherwise available, at reasonable cost, to operators of coal mines.

(c) Agreements with coal mine operators; reinsurance agreements

(1) The Secretary may enter into agreements with operators of coal mines who may be liable for the payment of benefits under section 932 of this title, under which the Black Lung Compensation Insurance Fund established under subsection (a) of this section (hereinafter in this section referred to as the "insurance fund") shall assume all or part of the liability of such operator in return for the payment of premiums to the insurance fund, and on such terms and conditions as will fully protect the financial solvency of the insurance fund. During any period in which such agreement is in effect the operator shall be deemed in compliance with the requirements of section 933 of this title with respect to the risks covered by such agreement.

(2) The Secretary may also enter into reinsurance agreements with one or more insurers or pools of insurers under which, in return for the payment of premiums to the insurance fund, and on such terms and conditions as will fully protect the financial solvency of the insurance fund, the insurance fund shall provide reinsurance coverage for benefits required to be paid under section 932 of this title.

(d) Terms and conditions of insurability

The Secretary may by regulation provide for general terms and conditions of insurability as applicable to operators of coal mines or insurers eligible for insurance or reinsurance under this section, including-

(1) the types, classes, and locations of operators or facilities which shall be eligible for such insurance or reinsurance;

(2) the classification, limitation, and rejection of any operator or facility which may be advisable;

(3) appropriate premiums for different classifications of operators or facilities;

(4) appropriate loss deductibles;

(5) experience rating; and

(6) any other terms and conditions relating to insurance or reinsurance coverage or exclusion which may be appropriate to carry out the purposes of this section.

(e) Premium schedule studies and investigations

The Secretary may undertake and carry out such studies and investigations, and receive or exchange such information, as may be necessary to formulate a premium schedule which will enable the insurance and reinsurance authorized by this section to be provided on a basis which is

(1) in accordance with accepted actuarial principles; and

(2) fair and equitable.

(f) Regulations relating to premium rates

(1) On the basis of estimates made by the Secretary in formulating a premium schedule under subsection (e) of this section, and such other information as may be available, the Secretary shall from time to time prescribe by regulation the chargeable premium rates for types and classes of insurers, operators of coal mines, and facilities for which insurance or reinsurance coverage shall be available under this section and the terms and conditions under which, and the area within which, such insurance or reinsurance shall be available and such rates shall apply.

(2) Such premium rates shall be (A) based on a consideration of the risks involved, taking into account differences, if any, in risks based on location, type of operations, facilities, type of coal, experience, and any other matter which may be considered under accepted actuarial principles; and (B) adequate, on the basis of accepted actuarial principles, to provide reserves for anticipated losses.

(3) All premiums received by the Secretary shall be paid into the insurance fund.

(g) Black Lung Compensation Insurance Fund

(1) The Secretary may establish in the Department of Labor a Black Lung Compensation Insurance Fund which shall be available, without fiscal year limitation-

(A) to pay claims of miners for benefits covered by insurance or reinsurance issued under this section;

(B) to pay the administrative expenses of carrying out the black lung compensation insurance program under this section; and

(C) to repay to the Secretary of the Treasury such sums as may be borrowed in accordance with the authority provided in subsection (i) of this section.

(2) The insurance fund shall be credited with-

(A) premiums, fees, or other charges which may be collected in connection with insurance or reinsurance coverage provided under this section;

(B) such amounts as may be advanced to the insurance fund from appropriations in order to maintain the insurance fund in an operative condition adequate to meet its liabilities; and

(C) income which may be earned on investments of the insurance fund pursuant to paragraph (3).

(3) If, after all outstanding current obligations of the insurance fund have been liquidated and any outstanding amounts which may have been advanced to the insurance fund from appropriations authorized under subsection (i) of this section have been credited to the appropriation from which advanced, the Secretary determines that the moneys of the insurance fund are in excess of current needs, he or she may request the investment of such amounts as he or she deems advisable by the Secretary of the Treasury in public debt securities with maturities suitable for the needs of the insurance fund and bearing interest at prevailing market rates.

(h) Annual report to Congress

The Secretary shall report to the Congress not later than the first day of April of each year on the financial condition of the insurance fund and the results of the operations of the insurance fund during the preceding fiscal year and on its expected condition and operations during the fiscal year in which the report is made.

(i) Authorization of appropriations

There are authorized to be appropriated to the insurance fund, as repayable advances, such sums as may be necessary to meet obligations incurred under subsection (g) of this section. All such sums shall remain available without fiscal year limitation. Advances made pursuant to this subsection shall be repaid, with interest, to the general fund of the Treasury when the Secretary determines that moneys are available in the insurance fund for such repayments. Interest on such advances shall be computed in the same manner as provided in subsection (b)(2) of section 934a⁷ of this title.

(Pub. L. 91-173, title IV, Sec. 433, as added Pub. L. 95-239, Sec. 13, Mar. 1, 1978, 92 Stat. 101.)

Sec. 944. Statement of reasons for denial of claim

Any individual whose claim for benefits under this subchapter is denied shall receive from the Secretary a written statement of the reasons for denial of such claim, and a summary of the administrative hearing record or, upon good cause shown, a copy of any transcript thereof.

(Pub. L. 91-173, title IV, Sec. 434, as added Pub. L. 95-239, Sec. 14, Mar. 1, 1978, 92 Stat. 103.)

Sec. 945. Review of claims pending on, or denied on or before, March 1, 1978

(a) Notification to claimants; review by Commissioner of Social Security taking into account amendments made by Black Lung Benefits Reform Act of 1977; referral

(1) The Commissioner of Social Security shall promptly notify each claimant who

⁷See References in Text note below.

has filed a claim for benefits under part B of this subchapter and whose claim is either pending on March 1, 1978, or has been denied on or before that date, that, upon the request of the claimant, the claim shall be either-

(A) reviewed by the Commissioner of Social Security under paragraph (2) for a determination based on the evidence on file, taking into account the amendments made by the Black Lung Benefits Reform Act of 1977; or

(B) referred directly by the Commissioner of Social Security to the Secretary of Labor for a determination under paragraph (3), with an opportunity for the claimant to present additional medical or other evidence in accordance with that paragraph, taking into account the amendments made by the Black Lung Benefits Reform Act of 1977.

(2) (A) The Commissioner of Social Security shall approve forthwith each claim for which review is requested under paragraph (1)(A) if, based upon the evidence on file, the provisions of part B of this subchapter, as amended by the Black Lung Benefits Reform Act of 1977, require such approval. The Commissioner of Social Security shall certify such approval to the Secretary of Labor and such approval shall be binding upon the Secretary of Labor as an initial determination of eligibility. Upon receipt of that certification, the Secretary of Labor shall immediately make or otherwise provide for the payment of the claim in accordance with this part.

(B) (i) The Commissioner of Social Security shall refer to the Secretary of Labor any claim not approved under subparagraph (A) for a determination under paragraph (3), and shall notify the claimant of that referral to the Secretary of Labor for such a determination.

(ii) The Commissioner of Social Security shall notify each claimant whose claim has been approved under subparagraph (A) that, if the claimant disputes the scope or terms of the award, such dispute shall be referred to the Secretary of Labor for a determination under paragraph (3).

(C) Upon the completion of the review of any claim by the Commissioner of Social Security under this paragraph, the responsibility for further action with respect to such claim shall be transferred to the Secretary of Labor. The Secretary of Labor shall consider each such claim in accordance with paragraph (3).

(3) (A) Except as provided in this section, the Secretary of Labor shall treat each claim referred by the Commissioner of Social Security under paragraph (1)(B) or (2)(B) as if it were a claim filed under this part. The provisions of subsection (b) of this section shall apply to any determination of the Secretary with respect to any such claim referred to the Secretary.

(B) The Commissioner of Social Security shall promptly furnish to the Secretary of Labor all pertinent information in the possession of the Department of Health and Human Services⁸ relating to claims referred to the Secretary of Labor under this subsection.

(4) For the purposes of any determination by the Secretary of Labor under paragraph (3), the date of the request under paragraph (1) shall be considered the date of filing of the claim.

(b) Review by Secretary of Labor

(1) The Secretary of Labor shall review each claim which has been denied under this part (or under section 925 of this title) on or before March 1, 1978, and each claim which is pending under this part (or under section 925 of this title) on such date, taking into account the amendments made to this part by the Black Lung Benefits Reform Act of 1977. The Secretary shall approve any such claim forthwith if the provisions of this part, as so amended, require that approval, and the Secretary shall immediately make or otherwise provide for the payment of the claim in accordance with this part.

(2) (A) The Secretary, in carrying out the review of any claim under paragraph (1) and in making any determination under subsection (a)(3) of this section, shall not require any additional medical or other evidence to be submitted if the evidence on file is sufficient for approval of the claim, taking into account the amendments made to this part by the Black Lung Benefits Reform Act of 1977.

(B) If the evidence on file is not sufficient for approval of the claim, the Secretary shall provide an opportunity for the claimant to present additional medical or other evidence to substantiate his or her claim and shall notify each claimant of that opportunity.

(c) Award of benefits on retroactive basis

Any individual whose claim is approved pursuant to this section shall be awarded benefits on a retroactive basis for a period which begins no earlier than January 1, 1974.

(Pub. L. 91-173, title IV, Sec. 435, as added Pub. L. 95-239, Sec. 15, Mar. 1, 1978, 92 Stat. 103; amended Pub. L. 96-88, title V, Sec. 509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 103-296, title I, Sec. 108(i)(4), Aug. 15, 1994, 108 Stat. 1488.)

Sec. 951. Studies and research

⁸So in original. Probably should be "Social Security Administration".

(a) Appropriate projects

The Secretary of the Interior and the Secretary of Health and Human Services, as appropriate, shall conduct such studies, research, experiments, and demonstrations as may be appropriate--

(1) to improve working conditions and practices in coal or other mines, and to prevent accidents and occupational diseases originating in the coal or other mining industry;

(2) to develop new or improved methods of recovering persons in coal or other mines after an accident;

(3) to develop new or improved means and methods of communication from the surface to the underground area of a coal or other mine;

(4) to develop new or improved means and methods of reducing concentrations of respirable dust in the mine atmosphere of active workings of the coal or other mine;

(5) to develop epidemiological information to

(A) identify and define positive factors involved in occupational diseases of miners,

(B) provide information on the incidence and prevalence of pneumoconiosis and other respiratory ailments of miners, and

(C) improve mandatory health standards;

(6) to develop techniques for the prevention and control of occupational diseases of miners, including tests for hypersusceptibility and early detection;

(7) to evaluate the effect on bodily impairment and occupational disability of miners afflicted with an occupational disease;

(8) to prepare and publish from time to time, reports on all significant aspects of occupational diseases of miners as well as on the medical aspects of injuries, other than diseases, which are revealed by the research carried on pursuant to this subsection;

(9) to study the relationship between coal or other mine environments and occupational diseases of miners;

(10) to develop new and improved underground equipment and other sources of power for such equipment which will provide greater safety;

(11) to determine, upon the written request by any operator or authorized

representative of miners, specifying with reasonable particularity the grounds upon which such request is made, whether any substance normally found in a coal or other mine has potentially toxic effects in the concentrations normally found in the coal or other mine or whether any physical agents or equipment found or used in a coal or other mine has potentially hazardous effects, and shall submit such determinations to both the operators and miners as soon as possible; and

(12) for such other purposes as they deem necessary to carry out the purposes of this chapter.

(b) Responsibility for carrying out prescribed activities

Activities under this section in the field of coal or other mine health shall be carried out by the Secretary of Health and Human Services through the National Institute for Occupational Safety and Health established under the Occupational Safety and Health Act of 1970 [29 U.S.C. 651 et seq.], and activities under this section in the field of coal or other mine safety shall be carried out by the Secretary of the Interior in coordination with the Secretary.

(c) Contracting with and grants to public and private agencies; availability of information; exceptions

In carrying out the provisions for research, demonstrations, experiments, studies, training, and education under this section and sections 861(b) and 952(a) of this title, the Secretary of the Interior and the Secretary of Health and Human Services in coordination with the Secretary may enter into contracts with, and make grants to, public and private agencies and organizations and individuals. No research, demonstrations, or experiments shall be carried out, contracted for, sponsored, cosponsored, or authorized under authority of this chapter, unless all information, uses, products, processes, patents, and other developments resulting from such research, demonstrations, or experiments will (with such exception and limitation, if any, as the Secretary of the Interior or the Secretary of Health and Human Services in coordination with the Secretary may find to be necessary in the public interest) be available to the general public.

(d) Prevention of diseases affecting persons working with mine products

The Secretary of Health and Human Services shall also conduct studies and research into matters involving the protection of life and the prevention of diseases in connection with persons, who although not miners, work with, or around the products of, coal or other mines in areas outside of such mines and under conditions which may adversely affect the health and well-being of such persons.

(e) Authorization of appropriations

There is authorized to be appropriated to the Secretary of the Interior such sums as may be necessary to carry out his responsibilities under this section and section 861(b) of this title at an annual rate of not to exceed \$20,000,000 for the fiscal year ending June 30, 1970, \$25,000,000 for the fiscal year ending June 30, 1971, and \$60,000,000 for the fiscal year ending June 30, 1972, and for each succeeding fiscal year thereafter. There is authorized to be appropriated annually to

the Secretary of Health and Human Services such sums as may be necessary to carry out his responsibilities under this chapter. Such sums shall remain available until expended.

(f) Exceptions to mandatory health and safety standards for improving techniques and equipment

The Secretary is authorized to grant on a mine-by-mine basis an exception to any mandatory health or safety standard under this chapter for the purpose of permitting, under such terms and conditions as he may prescribe, accredited educational institutions the opportunity for experimenting with new and improved techniques and equipment to improve the health and safety of miners. No such exception shall be granted unless the Secretary finds that the granting of the exception will not adversely affect the health and safety of miners and publishes his findings.

(g) Grants for research and development of respiratory equipment

The Secretary of Health and Human Services is authorized to make grants to any public or private agency, institution, or organization, and operators or individuals for research and experiments to develop effective respiratory equipment.

(Pub. L. 91-173, title V, Sec. 501, Dec. 30, 1969, 83 Stat. 798; Pub. L. 95-164, title III, Sec. 303(a), Nov. 9, 1977, 91 Stat. 1320; Pub. L. 96-88, title V, Sec. 509(b), Oct. 17, 1979, 93 Stat. 695.)

Sec. 951a. Health, Safety, and Mining Technology Research program

(a) Health, Safety, and Mining Technology Research Plan

(1) Every 5 years, the Secretary of the Interior, acting through the Director of the Bureau of Mines (hereinafter in this section referred to as the "Director"), shall develop a Plan for Health, Safety, and Mining Technology Research (hereinafter in this subsection referred to as the "Plan").

(2) The Plan shall identify the goals and objectives of the Health, Safety, and Mining Technology program of the Bureau of Mines, and shall guide research and technology development under such program, over each 5-year period.

(3) In preparing the proposed Plan referred to in paragraph (1), the Director shall solicit suggestions, comments and proposals for research and technology development projects from the mining industry, labor, academia and other concerned groups and individuals.

(b) Technical amendment

For the purposes of section 951(b) of this title, as amended, activities in the field of coal or other mine health under such section shall also be carried out by the Secretary of the Interior acting through the Director of the Bureau of Mines. Nothing in this subsection is intended to preclude or duplicate the ongoing research activities of the Bureau of Mines on health hazards

safety technology or research conducted by the National Institute of Occupational Safety and Health on coal mine safety and health effects.

(Pub. L. 102-486, title XXV, Sec. 2512, Oct. 24, 1992, 106 Stat. 3111.)

Sec. 952. Training and education

(a) Programs for operators, agents, and miners

The Secretary shall expand programs for the education and training of operators and agents thereof, and miners in—

- (1) the recognition, avoidance, and prevention of accidents or unsafe or unhealthful working conditions in coal or other mines; and
- (2) in the use of flame safety lamps, permissible methane detectors, and other means approved by the Secretary for detecting methane and other explosive gases accurately.

(b) Technical assistance to operators

The Secretary shall, to the greatest extent possible, provide technical assistance to operators in meeting the requirements of this chapter and in further improving the health and safety conditions and practices in coal or other mines.

(c) National Mine Health and Safety Academy

(1) The National Mine Health and Safety Academy shall be maintained as an agency of the Department of Labor. The Academy shall be responsible for the training of mine safety and health inspectors under section 954 of this title, and in training of technical support personnel of the Mine Safety and Health Administration established under section 557a of title 29; and for any other training programs for mine inspectors, mining personnel, or other persons as the Secretary of Labor shall designate. In performing this function, the Academy shall have the authority to enter into cooperative educational and training agreements with educational institutions, State governments, labor organizations, and mine operators and related industries. Such training shall be conducted by the Academy in accordance with curriculum needs and assignment of instructional personnel established by the user.

(2) Repealed. Pub. L. 96-38, title I, Sec. 100, July 25, 1979, 93 Stat. 111.

(3) The Secretary of the Interior shall conduct his safety research responsibilities under section 951 of this title in coordination with the Secretary of Labor, and the Secretaries of Labor and the Interior are authorized to enter into contractual or other agreements for the performance of such safety related research.

(Pub. L. 91-173, title V, Sec. 502, Dec. 30, 1969, 83 Stat. 800; Pub. L. 95-164, title III, Sec. 303(b), (h), Nov. 9, 1977, 91 Stat. 1320, 1321; Pub. L. 96-38, title I, Sec. 100, July 25, 1979, 93 Stat. 111.)

Sec. 953. Assistance to States

(a) Development and enforcement of health and safety regulations; improvement of workmen's compensation and occupational disease laws; promotion of Federal-State coordination in mine safety

The Secretary, in coordination with the Secretary of Health and Human Services and the Secretary of the Interior, is authorized to make grants in accordance with an application approved under this section to any State in which coal or other mining takes place-

(1) to assist such State in developing and enforcing effective coal or other mine health and safety laws and regulations consistent with the provisions of section 955 of this title;

(2) to improve State workmen's compensation and occupational disease laws and programs related to coal or other mine employment; and

(3) to promote Federal-State coordination and cooperation in improving the health and safety conditions in the coal or other mines.

(b) Application for grants; contents

The Secretary shall approve any application or any modification thereof, submitted under this section by a State, through its official coal or other mine inspection or safety agency, which-

(1) sets forth the programs, policies, and methods to be followed in carrying out the application in accordance with the purposes of subsection (a) of this section;

(2) provides research and planning studies to carry out plans designed to improve State workmen's compensation and occupational disease laws and programs, as they relate to compensation to miners for occupationally caused diseases and injuries arising out of employment in any coal or other mine;

(3) designates such State coal or other mine inspection or safety agency as the sole agency responsible for administering grants under this section throughout the State, and contains satisfactory evidence that such agency will have the authority to carry out the purposes of this section;

(4) gives assurances that such agency has or will employ an adequate and competent staff of trained inspectors qualified under the laws of such State to make coal or other mine inspections within such State;

(5) provides for the extension and improvement of the State program for the

improvement of coal or other mine health and safety in the State, and provides that no advance notice of an inspection will be provided anyone;

(6) provides such fiscal control and fund accounting procedures as may be appropriate to assure proper disbursement and accounting of grants made to the States under this section;

(7) provides that the designated agency will make such reports to the Secretary in such form and containing such information as the Secretary may from time to time require;

(8) contains assurances that grants provided under this section will supplement, not supplant, existing State coal or other mine health and safety programs; and

(9) meets additional conditions which the Secretary may prescribe in furtherance of, and consistent with, the purposes of this section.

(c) Approval by Secretary; notice and hearing

The Secretary shall not finally disapprove any State application or modification thereof without first affording the State agency reasonable notice and opportunity for a public hearing.

(d) Review by Court of Appeals; conclusiveness of findings of Secretary; filing of petition

Any State aggrieved by a decision of the Secretary under subsection (b) or (c) of this section may file within thirty days from the date of such decision with the United States Court of Appeals for the District of Columbia a petition praying that such action be modified or set aside in whole or in part. The court shall hear such appeal on the record made before the Secretary. The decision of the Secretary incorporating his findings of fact therein, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The court may affirm, vacate, or remand the proceedings to the Secretary for such further action as it directs. The filing of a petition under this subsection shall not stay the application of the decision of the Secretary, unless the court so orders. The provisions of section 816(a), (b), and (c) of this title shall not be applicable to this section.

(e) Programs to train State inspectors

Any State application or modification thereof submitted to the Secretary under this section may include a program to train State inspectors.

(f) Cooperation in implementation of programs; exchange of reports between States

The Secretary shall cooperate with such State in carrying out the application or modification thereof and shall, as appropriate, develop and, where appropriate, construct facilities for, and finance a program of, training of Federal and State inspectors jointly. The Secretary shall

also cooperate with such State in establishing a system by which State and Federal inspection reports of coal or other mines located in the State are exchanged for the purpose of improving health and safety conditions in such mines.

(g) Limitation on grants

The amount granted to any coal or other mining State for a fiscal year under this section shall not exceed 80 per centum of the amount expended by such State in such year for carrying out such application.

(h) Authorization of appropriations

There is authorized to be appropriated \$3,000,000 for fiscal year 1970, and \$10,000,000 annually in each succeeding fiscal year to carry out the provisions of this section, which shall remain available until expended. The Secretary shall provide for an equitable distribution of sums appropriated for grants under this section to the States where there is an approved application, except that no less than one-half of such sum shall be allocated to coal-producing States.

(Pub. L. 91-173, title V, Sec. 503, Dec. 30, 1969, 83 Stat. 800; Pub. L. 95-164, title III, Sec. 303(c), Nov. 9, 1977, 91 Stat. 1320; Pub. L. 96-88, title V, Sec. 509(b), Oct. 17, 1979, 93 Stat. 695.)

Sec. 954. Appointment of administrative personnel and inspectors; qualifications; training programs

The Secretary may, subject to the civil service laws, appoint such employees as he deems requisite for the administration of this chapter and prescribe their duties. Persons appointed as authorized representatives of the Secretary shall be qualified by practical experience in mining or by experience as a practical mining engineer or by education: Provided, however, That, to the maximum extent feasible, in the selection of persons for appointment as mine inspectors, no person shall be so selected unless he has the basic qualification of at least five years practical mining experience and in assigning mine inspectors to the inspection and investigation of individual mines, due consideration shall be given to the extent possible to their previous experience in the particular type of mining operation where such inspections are to be made. Persons appointed to assist such representatives in the taking of samples of respirable dust for the purpose of enforcing subchapter II of this chapter shall be qualified by training, experience, or education. The provisions of section 201 of the Revenue and Expenditure Control Act of 1968 (82 Stat. 251, 270) shall not apply with respect to the appointment of such authorized representatives of the Secretary or to persons appointed to assist such representatives and to carry out the provisions of this chapter, and, in applying the provisions of such section to other agencies under the Secretary and to other agencies of the Government, such appointed persons shall not be taken into account. Such persons shall be adequately trained by the Secretary. The Secretary shall develop programs with educational institutions and operators designed to enable persons to qualify for positions in the administration of this chapter. In selecting persons and training and retraining persons to carry out the provisions of this chapter, the Secretary shall work with appropriate educational institutions, operators, and representatives of miners in developing and maintaining adequate programs for the training and continuing education of persons, particularly

inspectors, and where appropriate, the Secretary shall cooperate with such institutions in carrying out the provisions of this section by providing financial and technical assistance to such institutions.

(Pub. L. 91-173, title V, Sec. 505, Dec. 30, 1969, 83 Stat. 802; Pub. L. 95-164, title III, Sec. 303(d), Nov. 9, 1977, 91 Stat. 1320.)

Sec. 955. State laws

(a) No State law in effect on December 30, 1969 or which may become effective thereafter shall be superseded by any provision of this chapter or order issued or any mandatory health or safety standard, except insofar as such State law is in conflict with this chapter or with any order issued or any mandatory health or safety standard.

(b) The provisions of any State law or regulation in effect upon the operative date of this chapter, or which may become effective thereafter, which provide for more stringent health and safety standards applicable to coal or other mines than do the provisions of this chapter or any order issued or any mandatory health or safety standard shall not thereby be construed or held to be in conflict with this chapter. The provisions of any State law or regulation in effect December 30, 1969, or which may become effective thereafter, which provide for health and safety standards applicable to coal or other mines for which no provision is contained in this chapter or in any order issued or any mandatory health or safety standard, shall not be held to be in conflict with this chapter.

(Pub. L. 91-173, title V, Sec. 506, Dec. 30, 1969, 83 Stat. 803; Pub. L. 95-164, title III, Sec. 303(e), Nov. 9, 1977, 91 Stat. 1321.)

Sec. 956. Applicability of administrative procedure provisions

Except as otherwise provided in this chapter, the provisions of sections 551 to 559 and sections 701 to 706 of title 5 shall not apply to the making of any order, notice, or decision made pursuant to this chapter, or to any proceeding for the review thereof.

(Pub. L. 91-173, title V, Sec. 507, Dec. 30, 1969, 83 Stat. 803.)

Sec. 957. Promulgation of regulations

The Secretary, the Secretary of Health and Human Services, the Commissioner of Social Security, and the Panel are authorized to issue such regulations as each deems appropriate to carry out any provision of this chapter.

(Pub. L. 91-173, title V, Sec. 508, Dec. 30, 1969, 83 Stat. 803; Pub. L. 103-296, title I, Sec. 108(i)(5), Aug. 15, 1994, 108 Stat. 1488.)

Sec. 958. Annual reports to Congress; contents

(a) Within one hundred and twenty days following the convening of each session of

Congress the Secretary shall submit through the President to the Congress and to the Office of Science and Technology an annual report upon the subject matter of this chapter, the progress concerning the achievement of its purposes, the needs and requirements in the field of coal or other mine health and safety, the amount and status of each loan made pursuant to this chapter, a description and the anticipated cost of each project and program he has undertaken under sections 861(b) and 951 of this title, and any other relevant information, including any recommendations he deems appropriate.

(b) Repealed. Pub. L. 96-470, title I, Sec. 106(f), Oct. 19, 1980, 94 Stat. 2238.

(Pub. L. 91-173, title V, Sec. 511, Dec. 30, 1969, 83 Stat. 803; Pub. L. 95-164, title III, Sec. 303(f), Nov. 9, 1977, 91 Stat. 1321; Pub. L. 96-470, title I, Sec. 106(f), Oct. 19, 1980, 94 Stat. 2238.)

Sec. 959. Study of coordination of Federal and State activities; report

(a) The Secretary shall make a study to determine the best manner to coordinate Federal and State activities in the field of coal or other mine health and safety so as to achieve

- (1) maximum health and safety protection for miners,
- (2) an avoidance of duplication of effort,
- (3) maximum effectiveness,
- (4) a reduction of delay to a minimum, and
- (5) most effective use of Federal inspectors.

(b) The Secretary shall make a report of the results of his study to the Congress as soon as practicable after December 30, 1969.

(Pub. L. 91-173, title V, Sec. 512, Dec. 30, 1969, 83 Stat. 804; Pub. L. 95-164, title III, Sec. 303(g), Nov. 9, 1977, 91 Stat. 1321.)

Sec. 960. Limitation on issuance of temporary restraining order or preliminary injunction

In any proceeding in which the validity of any interim mandatory health or safety standard set forth in subchapter II and III of this chapter is in issue, no justice, judge, or court of the United States shall issue any temporary restraining order or preliminary injunction restraining the enforcement of such standard pending a determination of such issue on its merits.

(Pub. L. 91-173, title V, Sec. 513, Dec. 30, 1969, 83 Stat. 804.)

Sec. 961. Functions transferred under 1977 amendments

(a) Transfer of functions to Secretary of Labor

Except with respect to the functions assigned to the Secretary of the Interior pursuant to section 501 of the Federal Coal Mine Health and Safety Act of 1969 [30 U.S.C. 951], the functions of the Secretary of the Interior under the Federal Coal Mine Health and Safety Act of 1969, as amended [30 U.S.C. 801 et seq.], and the Federal Metal and Nonmetallic Mine Safety Act [30 U.S.C. 721 et seq.] are transferred to the Secretary of Labor, except those which are expressly transferred to the Commission by this Act. Effective on the date of enactment of this Act, Health⁹ and Safety Academy is transferred to the Secretary of Labor.

(b) Existing mandatory standards; review by advisory committee; recommendations

(1) The mandatory standards relating to mines, issued by the Secretary of the Interior under the Federal Metal and Nonmetallic Mine Safety Act [30 U.S.C. 721 et seq.] and standards and regulations under the Federal Coal Mine Health and Safety Act of 1969 [30 U.S.C. 801 et seq.] which are in effect on November 9, 1977, shall remain in effect as mandatory health or safety standards applicable to metal and nonmetallic mines and to coal mines respectively under the Federal Mine Safety and Health Act of 1977 [30 U.S.C. 801 et seq.] until such time as the Secretary of Labor shall issue new or revised mandatory health or safety standards applicable to metal and nonmetallic mines and new or revised mandatory health or safety standards applicable to coal mines.

(2) Within 60 days after November 9, 1977, the Secretary of Labor in consultation with the Secretary of the Interior shall establish an advisory committee under section 102 of the Federal Mine Safety and Health Act of 1977 [30 U.S.C. 812] which shall, within 180 days after the date of the establishment of such advisory committee, review the advisory health and safety standards issued by the Secretary of the Interior under the Federal Metal and Nonmetallic Mine Safety Act and recommend to the Secretary of Labor which of those standards (or any modifications of such standards which do not substantially diminish the health and safety of miners) should be promulgated as mandatory health or safety standards. The Secretary of Labor shall publish, within 60 days after any recommendations of the advisory committee under this paragraph, each of the standards so recommended for adoption with or without modifications as a proposed mandatory health or safety standard under this section by publication of such standard in the Federal Register, and afford interested persons a period of 25 days after publication to submit written data or comment. Within 30 days after the close of the comment period specified in the preceding sentence, the Secretary of Labor shall promulgate by publication in the Federal Register mandatory health or safety standards based upon the advisory committee recommendation with or without modification, and the data and comments received thereon, unless the Secretary of Labor determines that such standards will not promote the health and safety of

⁹So in original. Probably should be "the Health".

miners and publishes an explanation of that determination in the Federal Register.

(c) Unexpended appropriations; personnel; property; records; obligations; commitments; savings provisions; pending proceedings and suits

(1) All unexpended balances of appropriations, personnel, property, records, obligations, and commitments which are used primarily with respect to any functions transferred under the provisions of subsection (a) of this section to the Secretary of Labor shall be transferred to the Department of Labor or the Commission, as appropriate. The transfer of personnel pursuant to this paragraph shall be without reduction in classification or compensation for one year after such transfer, except that the Secretary of Labor shall have full authority to assign personnel during such one-year period in order to efficiently carry out functions transferred to him under this Act.

(2) All orders, decisions, determinations, rules, regulations, permits, contracts, certificates, licenses, and privileges

(A) which have been issued, made, granted, or allowed to become effective in the exercise of functions which are transferred under this section by any department or agency, any functions of which are transferred by this section, and

(B) which are in effect at the time this section takes effect, shall continue in effect according to their terms until modified, terminated, superseded, set aside, revoked, or repealed by the Secretary of Labor, the Federal Mine Safety and Health Review Commission or other authorized officials, by any court of competent jurisdiction, or by operation of law.

(3) The provisions of this section shall not affect any proceedings pending at the time this section takes effect before any department, agency, or component thereof, functions of which are transferred by this section, except that such proceedings, to the extent that they relate to functions so transferred, shall be continued before the Secretary of Labor or the Federal Mine Safety and Health Review Commission. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this section had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, revoked, or repealed by the Secretary of Labor, the Federal Mine Safety and Health Review Commission, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be deemed to prohibit the discontinuance or modification of any proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued if this section had not been enacted.

(4) The provisions of this section shall not affect suits commenced prior to the date this section takes effect and in all such suits proceedings shall be had, appeals taken, and judgments rendered, in the same manner and effect as if this section had

not been enacted; except that if before the date on which this section takes effect, any department or agency (or officer thereof in his official capacity) is a party to a suit involving functions transferred to the Secretary, then such suit shall be continued by the Secretary of Labor. No cause of action, and no suit, action, or other proceeding, by or against any department or agency (or officer thereof in his official capacity) functions of which are transferred by this section, shall abate by reason of the enactment of this section. Causes of actions, suits, actions, or other proceedings may be asserted by or against the United States or the Secretary as may be appropriate and, in any litigation pending when this section takes effect, the court may at any time, on its own motion or that of any party, enter an order which will give effect to the provisions of this paragraph.

(d) "Function" defined

For purposes of this section,

(1) the term "function" includes power and duty, and

(2) the transfer of a function, under any provision of law, of an agency or the head of a department shall also be a transfer of all functions under such law which are exercised by any officer¹⁰ or officer of such agency or department.

(e) Determinations by Director of Office of Management and Budget

The Director of the Office of Management and Budget in consultation with the Secretary of Labor and the Secretary of the Interior is authorized and directed to make such determinations as may be necessary with regard to the dispositions of personnel, personnel positions, property, records, assets, liabilities, contracts, obligations, commitments, unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available or to be made available, in connection with the functions transferred by this Act as he may deem necessary to accomplish the purposes of this Act.

(Pub. L. 95-164, title III, Sec. 301, Nov. 9, 1977, 91 Stat. 1317; Pub. L. 96-38, title I, Sec. 100, July 25, 1979, 93 Stat. 111.)

Sec. 962. Acceptance of contributions and prosecution of projects; cooperative programs to promote health and safety education and training; use of funds for costs of mine rescue and survival operations

The Secretary is authorized to accept lands, buildings, equipment, and other contributions from public and private sources and to prosecute projects in cooperation with other agencies, Federal, State, or private; the Mine Safety and Health Administration is authorized to promote health and safety education and training in the mining community through cooperative programs with States, industry, and safety associations; and any funds available to the Department may be

¹⁰ So in original. Probably should be "office".

used, with the approval of the Secretary, to provide for the costs of mine rescue and survival operations in the event of a major disaster.

(Pub. L. 105-277, div. A, Sec. 101(f) [title I], Oct. 21, 1998, 112 Stat. 2681-337, 2681-344.