

SUBCHAPTER IV—BLACK LUNG BENEFITS

Part A—General Provisions

§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".

(Pub. L. 91–173, title IV, §401, Dec. 30, 1969, 83 Stat. 792; Pub. L. 92–303, §§3(a), 4(b)(2), May 19, 1972, 86 Stat. 153, 154; Pub. L. 95–239, §16, Mar. 1, 1978, 92 Stat. 105; Pub. L. 97–119, title II, §203(a)(4), Dec. 29, 1981, 95 Stat. 1644.)

AMENDMENTS

1981—Subsec. (a). Pub. L. 97–119 struck out "or who were totally disabled by this disease at the time of their deaths" after "due to this disease" and "due to such disease".

1978—Pub. L. 95–239 designated existing provisions as subsec. (a) and added subsec. (b).

1972—Pub. L. 92–303, §3(a), inserted "or who were totally disabled by this disease at the time of their deaths" after "disease" the first and third times it appeared and struck out "underground" before "coal mines".

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–119, title II, §206(a), Dec. 29, 1981, 95 Stat. 1645, provided that: "Except as otherwise provided, the provisions of this title [see Short Title of 1981 Amendment note set out under section 801 of this title] shall take effect on January 1, 1982."

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–239, §20(a), Mar. 1, 1978, 92 Stat. 106, provided that: "The provisions of this Act [see Short Title of 1978 Amendment note set out under section 801 of this title] shall take effect on the date of enactment of this Act [Mar. 1, 1978]."

EFFECTIVE DATE OF 1972 AMENDMENT

Pub. L. 92–303, §3(c), May 19, 1972, 86 Stat. 153, provided that: "The amendments made by this section [amending this section and sections 902, 921, 932, and 933 of this title] shall be effective as of December 30, 1969."

Amendment by section 4(b)(2) of Pub. L. 92–303 effective Dec. 30, 1969, see section 4(g) of Pub. L. 92–303, set out as a note under section 921 of this title.

EFFECTIVE DATE

Subchapter effective Dec. 30, 1969, see section 509 of Pub. L. 91–173, set out as a note under section 801 of this title.

SEPARABILITY

Pub. L. 97-119, title II, §206(b), Dec. 29, 1981, 95 Stat. 1645, provided that: "If any provision of this title [see Short Title of 1981 Amendment note, set out under section 801 of this title], or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this title, or the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby."

SPECIAL BENEFITS FOR DISABLED COAL MINERS

Pub. L. 102-394, title II, Oct. 6, 1992, 106 Stat. 1806, provided that: "For carrying out title IV of the Federal Mine Safety and Health Act of 1977 [30 U.S.C. 901 et seq.], including for fiscal year 1993 and thereafter the payment of travel expenses on an actual cost or commuted basis, to an individual, for travel incident to medical examinations, and when travel of more than 75 miles is required, to parties, their representatives, and all reasonably necessary witnesses for travel within the United States, Puerto Rico and the Virgin Islands, to reconsideration interviews and to proceedings before administrative law judges, \$601,313,000, to remain available until expended: *Provided*, That monthly benefit payments for fiscal year 1993 and thereafter shall be paid consistent with section 215(g) of the Social Security Act [42 U.S.C. 415(g)]."

STUDY OF CURRENT MEDICAL METHODS FOR DIAGNOSIS OF PNEUMOCONIOSIS AND NATURE AND EXTENT OF IMPAIRMENT ATTRIBUTABLE TO SIMPLE AND COMPLICATED PNEUMOCONIOSIS; REPORT TO CONGRESS

Pub. L. 97-119, title II, §202(e), Dec. 29, 1981, 95 Stat. 1643, directed Secretary of Labor, in consultation with Secretary of Health and Human Services, to undertake a study of current medical methods for diagnosis of pneumoconiosis, and of nature and extent of impairment and disability that are attributable to the existence of both simple and complicated pneumoconiosis, with study, together with appropriate recommendations, to be transmitted to Congress no later than eighteen months after Jan. 1, 1982.

STUDY OF BENEFITS UNDER THIS SUBCHAPTER, OTHER BENEFITS RECEIVED, AND BENEFITS IF STATE WORKERS' COMPENSATION PROGRAMS APPLICABLE; REPORT TO CONGRESS

Pub. L. 97-119, title II, §203(c), Dec. 29, 1981, 95 Stat. 1644, directed Secretary of Labor to undertake a study of the benefits provided by this subchapter, other benefits received by individuals who receive benefits under this subchapter, and benefits which would be received were State workers' compensation programs applicable in lieu of benefits under this subchapter, with study, together with appropriate recommendations, to be transmitted to Congress no later than eighteen months after Jan. 1, 1982.

§902. Definitions

For purposes of this subchapter—

(a) The term "dependent" means—

- (1) a child as defined in subsection (g) 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", except where expressly otherwise provided, 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),¹ 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, 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, which were in effect on November 2, 2002, 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 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 arising under part B of this subchapter or subject to a determination by the Secretary of Labor under section 945(a)¹ of this title;

(B) any claim which is subject to review by the Secretary of Labor under section 945(b)¹ 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) for benefits under part B of this subchapter that was denied by the official responsible for administration of such part; 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.

(Pub. L. 91–173, title IV, §402, Dec. 30, 1969, 83 Stat. 792; Pub. L. 92–303, §§1(c)(2)–(4), 3(b), 4(a), May 19, 1972, 86 Stat. 151–153; Pub. L. 95–239, §2, Mar. 1, 1978, 92 Stat. 95; Pub. L. 96–88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 97–119, title I, §104(b)(1), title II, §205(b), Dec. 29, 1981, 95 Stat. 1639, 1645; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 103–296, title I, §108(i)(1), Aug. 15, 1994, 108 Stat. 1488; Pub. L. 107–275, §2(b)(1), Nov. 2, 2002, 116 Stat. 1925.)

REFERENCES IN TEXT

Section 416(c)(1), (2), (3), (4), or (5) of title 42, referred to in subsec. (e), was redesignated section 416(c)(1)(A), (B), (C), (D), and (E) by Pub. L. 108–203, title IV, §414(a)(2), (4), Mar. 2, 2004, 118 Stat. 529.

Section 945 of this title, referred to in subsec. (f)(2)(A), (B), was repealed by Pub. L. 107–275, §2(c)(1), Nov. 2, 2002, 116 Stat. 1926.

AMENDMENTS

2002—Subsec. (c). Pub. L. 107–275, §2(b)(1)(A), substituted ", except where expressly otherwise provided," for "where used in part C".

Subsec. (f)(1). Pub. L. 107–275, §2(b)(1)(B), inserted ", which were in effect on November 2, 2002," after "Secretary of Health and Human Services".

Subsec. (f)(2)(A). Pub. L. 107–275, §2(b)(1)(C)(ii), struck out comma after "Secretary of Labor".

Pub. L. 107–275, §2(b)(1)(C)(i), substituted "arising under part B of this subchapter" for "which is subject to review by the Secretary of Health and Human Services,".

Subsec. (i)(1). Pub. L. 107–275, §2(b)(1)(D), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "denied by the Social Security Administration; or".

1994—Subsec. (c). Pub. L. 103–296 substituted "where used in part C means the Secretary of Labor" for "where used in part B means the Secretary of Health, Education, and Welfare, and where used in part C means the Secretary of Labor".

1986—Subsecs. (h), (i). Pub. L. 99–514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

1981—Subsec. (h). Pub. L. 97–119, §104(b)(1), substituted "by section 9501 of title 26" for "in section 934a(a)(1) of this title".

Subsec. (i). Pub. L. 97–119, §205(b), added subsec. (i).

1978—Subsec. (b). Pub. L. 95–239, §2(a), substituted "a chronic dust disease of the lung and its sequelae, including respiratory and pulmonary impairments, arising out of coal mine employment" for "a chronic dust disease of the lung arising out of employment in a coal mine".

Subsec. (d). Pub. L. 95–239, §2(b), substituted "any individual who works or has worked in or around a coal mine or coal preparation facility in the extraction or preparation of coal" for "any individual who is or was employed in a coal mine" and inserted provisions that extended to definition of the term "miner" so as to include also an individual who works or has worked in coal mine construction or transportation in or around a coal mine, to the extent that such individual was exposed to coal dust as a result of such employment.

Subsec. (f). Pub. L. 95–239, §2(c), designated existing provisions as pars. (1)(A) and (1)(C), inserted references in the provisions preceding par. (1)(A) to regulations promulgated by the Secretary of Labor for claims under part C of this subchapter and to the relevant provisions of subsecs. (b) and (d) of section 923 of this title, and added pars. (1)(B), (1)(D), and (2).

Subsec. (h). Pub. L. 95–239, §2(d), added subsec. (h).

1972—Subsec. (a). Pub. L. 92–303, §1(c)(2), expanded definition of "dependent" to include children and wife without reference to section 8110 of title 5.

Subsecs. (b), (d). Pub. L. 92–303, §3(b), substituted "a coal mine" for "an underground coal mine".

Subsec. (e). Pub. L. 92–303, §1(c)(3), expanded definition of "widow" by reference to title 42 and provided procedure for the determination of the status.

Subsec. (f). Pub. L. 92–303, §4(a), expanded definition of "total disability" to include a miner prevented from engaging in gainful employment by pneumoconiosis.

Subsec. (g). Pub. L. 92–303, §1(c)(4), added subsec. (g).

CHANGE OF NAME

"Secretary of Health and Human Services" substituted for "Secretary of Health, Education, and Welfare" in subsec. (f) pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–275, §4, Nov. 2, 2002, 116 Stat. 1928, provided that: "This Act [amending this section and sections 921 to 924, 925, 932a, and 936 of this title, repealing sections 904, 924a, and 945 of this title, and enacting provisions set out as notes under sections 801 and 921 of this title], and the amendments made by this Act, shall take effect 90 days after the date of enactment of this Act [Nov. 2, 2002]."

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 205(b) of Pub. L. 97–119 effective Jan. 1, 1982, except as otherwise provided, see section 206(a) of Pub. L. 97–119, set out as a note under section 901 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–239 effective Mar. 1, 1978, see section 20(a) of Pub. L. 95–239, set out as a note under section 901 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by section 3(b) of Pub. L. 92–303 effective Dec. 30, 1969, see section 3(c) of Pub. L. 92–303, set out as a note under section 901 of this title.

Amendment by section 4(a) of Pub. L. 92–303 effective Dec. 30, 1969, see section 4(g) of Pub. L. 92–303, set out as a note under section 921 of this title.

¹ See References in Text note below.

§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) such sums as may be necessary.

(Pub. L. 95–239, §18, Mar. 1, 1978, 92 Stat. 105.)

CODIFICATION

Section was enacted as part of the Black Lung Benefits Reform Act of 1977, and not as part of the Federal Mine Safety and Health Act of 1977 which comprises this chapter or the Black Lung Benefits Act which comprises this subchapter.

EFFECTIVE DATE

Section effective Mar. 1, 1978, see section 20(a) of Pub. L. 95–239, set out as an Effective Date of 1978 Amendment note under section 901 of this title.

§904. Repealed. Pub. L. 107–275, §2(c)(2), Nov. 2, 2002, 116 Stat. 1926

Section, Pub. L. 95–239, §19, Mar. 1, 1978, 92 Stat. 106, related to providing information to potential beneficiaries of changes made by Black Lung Benefits Reform Act of 1977.

EFFECTIVE DATE OF REPEAL

Repeal effective 90 days after Nov. 2, 2002, see section 4 of Pub. L. 107–275, set out as an Effective Date of 2002 Amendment note under section 902 of this title.

Part B—Claims for Benefits Filed on or Before December 31, 1973

§921. Regulations and presumptions

(a) Promulgation; payment of benefits

The Secretary 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 Secretary shall by regulation prescribe standards for determining for purposes of subsection (a) 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.¹ as the case may be.

(4) if ² 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 Secretary 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 Secretary 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.

(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 Secretary, 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) shall be deemed to affect the applicability of subsection (a) in the case of a claim where the presumptions provided for therein are inapplicable.

(Pub. L. 91-173, title IV, §411, Dec. 30, 1969, 83 Stat. 793; Pub. L. 92-303, §§3(a), 4(b)(1), (3), (c), (d), May 19, 1972, 86 Stat. 153, 154; Pub. L. 95-239, §3(a), Mar. 1, 1978, 92 Stat. 96; Pub. L. 97-119, title II, §§202(b), 203(a)(5), Dec. 29, 1981, 95 Stat. 1643, 1644; Pub. L. 103-296, title I, §108(i)(2), Aug. 15, 1994, 108 Stat. 1488; Pub. L. 107-275, §2(a), Nov. 2, 2002, 116 Stat. 1925; Pub. L. 111-148, title I, §1556(a), Mar. 23, 2010, 124 Stat. 260.)

REFERENCES IN TEXT

The effective date of the Black Lung Benefits Amendments of 1981, referred to in subsecs. (a) and (c)(2), (5), is Jan. 1, 1982, except as otherwise provided. See section 206(a) of Pub. L. 97-119, set out as an Effective Date of 1981 Amendment note under section 901 of this title.

AMENDMENTS

2010—Subsec. (c)(4). Pub. L. 111-148 struck out at end "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."

2002—Subsecs. (a), (b), (c)(4), (5). Pub. L. 107-275 substituted "Secretary" for "Commissioner of Social Security" wherever appearing.

1994—Subsecs. (a), (b), (c)(4), (5). Pub. L. 103–296 substituted "Commissioner of Social Security" for "Secretary" wherever appearing.

1981—Subsec. (a). Pub. L. 97–119, §203(a)(5), inserted ", 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," after "pneumoconiosis or".

Subsec. (c)(2), (4). Pub. L. 97–119, §202(b)(1), inserted provision that this paragraph not apply with respect to claims filed on or after the effective date of the Black Lung Benefits Amendments of 1981.

Subsec. (c)(5). Pub. L. 97–119, §202(b)(2), inserted provision that this paragraph 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.

1978—Subsec. (c). Pub. L. 95–239 capitalized and repunctuated the existing paragraphs to change their construction from that of uncapitalized clauses to complete sentences, and added par. (5).

1972—Subsec. (a). Pub. L. 92–303, §4(b)(1), substituted "pneumoconiosis or who at the time of his death was totally disabled by pneumoconiosis" for "pneumoconiosis".

Subsec. (b). Pub. L. 92–303, §4(d), inserted provision for the promulgation and publication in the Federal Register of final regulations and their amendments and for time limits for publication.

Subsec. (c)(1), (2). Pub. L. 92–303, §3(a), substituted "coal mines" for "underground coal mines".

Subsec. (c)(3). Pub. L. 92–303, §4(b)(3), inserted presumption that at the time of death the miner was totally disabled by pneumoconiosis.

Subsec. (c)(4). Pub. L. 92–303, §4(c), added par. (4).

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–148, title I, §1556(c), Mar. 23, 2010, 124 Stat. 260, provided that: "The amendments made by this section [amending this section and section 932 of this title] shall apply with respect to claims filed under part B or part C of the Black Lung Benefits Act (30 U.S.C. 921 et seq., 931 et seq.) after January 1, 2005, that are pending on or after the date of enactment of this Act [Mar. 23, 2010]."

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–275 effective 90 days after Nov. 2, 2002, see section 4 of Pub. L. 107–275, set out as a note under section 902 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–119 effective Jan. 1, 1982, except as otherwise provided, see section 206(a) of Pub. L. 97–119, set out as a note under section 901 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–239 effective Mar. 1, 1978, see section 20(a) of Pub. L. 95–239, set out as a note under section 901 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by section 3(a) of Pub. L. 92–303 effective Dec. 30, 1969, see section 3(c) of Pub. L. 92–303, set out as a note under section 901 of this title.

Pub. L. 92–303, §4(g), May 19, 1972, 86 Stat. 154, provided that: "The amendments made by this section [amending this section and sections 901, 902, 923, and 931 of this title] shall be effective as of December 30, 1969."

TRANSITIONAL PROVISIONS

Pub. L. 107–275, §3, Nov. 2, 2002, 116 Stat. 1926, provided that:

"(a) Applicability.—This section shall apply to the transfer of all functions relating to the administration of part B of subchapter IV (30 U.S.C. 901 et seq.) [probably means 30 U.S.C. 921 et seq.] from the Commissioner of Social Security (hereinafter in this section referred to as the 'Commissioner') to the Secretary of Labor, as provided by this Act [see Short Title of 2002 Amendment note set out under section 801 of this title].

"(b) Transfer of Assets, Liabilities, etc.—

"(1) The Commissioner shall transfer to the Secretary of Labor all property and records that the Director of the Office of Management and Budget determines relate to the functions transferred to the Secretary of Labor by this Act or amendments made by this Act.

"(2) Section 1531 of title 31, United States Code, shall apply in carrying out this Act and amendments made by this Act, except that, for purposes of carrying out this Act and amendments made by this Act, the functions of the President under section 1531(b) shall be performed by the Director of the Office of Management and Budget unless otherwise directed by the President.

"(c) Continuation of Orders, Determinations, etc.—

"(1) This Act shall not affect the validity of any order, determination, rule, regulation, operating procedure (to the extent applicable to the Secretary of Labor), or contract that—

"(A) relates to a function transferred by this Act; and

"(B) is in effect on the date this Act takes effect [see Effective Date of 2002 Amendment note set out under section 902 of this title].

"(2) Any order, determination, rule, regulation, operating procedure, or contract described in paragraph (1) shall—

"(A) apply on and after the effective date of this Act to the Secretary of Labor; and

"(B) continue in effect, according to its terms, until it is modified, superseded, terminated, or otherwise deprived of legal effect by the Secretary of Labor, a court of competent jurisdiction, or operation of law.

"(d) Continuation of Administrative Proceedings.—

"(1) Any proceeding before the Commissioner involving the functions transferred by this Act that is pending on the date this Act takes effect shall continue before the Secretary of Labor, except as provided in paragraph (2).

"(2) Any proceeding pending before an Administrative Law Judge or the Appeals Council pursuant to part B and the applicable regulations of the Secretary of Health and Human Services shall continue before the Commissioner consistent with the following provisions:

"(A) Any proceeding described in this paragraph shall continue as if this Act had not been enacted, and shall include all rights to hearing, administrative review, and judicial review available under part B and the applicable regulations of the Secretary of Health and Human Services.

"(B) Any decision, order, or other determination issued in any proceeding described in this subsection shall apply to the Secretary of Labor and continue in effect, according to its terms, until it is modified, superseded, terminated, or otherwise deprived of legal effect by the Secretary of Labor, a court of competent jurisdiction, or operation of law.

"(C) Nothing in this paragraph shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this Act had not been enacted.

"(3) Any proceeding before the Secretary of Labor involving the functions transferred by this Act shall be subject to the statutory requirements for notice, hearing, action upon the record,

administrative review, and judicial review that apply to similar proceedings before the Commissioner conducted prior to the enactment of this Act.

"(e) Continuation of Actions and Causes of Action.—

"(1) Except as provided in paragraphs (2) and (3), this Act shall not abrogate, terminate, or otherwise affect any action or cause of action, that—

"(A) relates to a function transferred by this Act; and

"(B) is pending or otherwise in existence on the date this Act takes effect [see Effective Date of 2002 Amendment note set out under section 902 of this title].

"(2) Any action pending before the Commissioner or any court on the date this Act takes effect that involves a function transferred by this Act shall continue before the Commissioner or court consistent with the following provisions:

"(A) Any proceeding described in this paragraph shall continue as if this Act had not been enacted.

"(B) Any decision, order, or other determination issued in any proceeding subject to this paragraph shall apply to the Secretary of Labor and continue in effect, according to its terms, until it is modified, superseded, terminated, or otherwise deprived of legal effect by the Secretary of Labor, a court of competent jurisdiction, or operation of law.

"(3) Any cause of action by or against the Commissioner that exists on the date this Act takes effect and involves any function transferred by this Act may be asserted by or against the Secretary of Labor or the United States.

"(f) Continuation of Actions Against Officers.—No suit, action, or other proceeding commenced by or against any officer in his official capacity as an officer of the Social Security Administration, and relating to a function transferred by this Act, shall abate by reason of the enactment of this Act. No cause of action by or against the Social Security Administration, or by or against any officer thereof in his official capacity, relating to a function transferred by this Act, shall abate by reason of enactment of this Act.

"(g) Preservation of Penalties, etc.—The transfer of functions under this Act shall not release or extinguish any penalty, forfeiture, liability, prosecution, investigation, or right to initiate a future investigation or prosecution involving any function transferred by this Act."

¹ So in original. The period probably should be a comma.

² So in original. Probably should be capitalized.

§922. Payment of benefits

(a) Schedules

Subject to the provisions of subsection (b) of this section, benefit payments shall be made by the Secretary 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 Secretary 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 Secretary 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 Secretary 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 Secretary. 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 Secretary 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 Secretary 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), 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, §412, Dec. 30, 1969, 83 Stat. 794; Pub. L. 92-303, §§1(b)(1), (2), (c)(1), 2(a), May 19, 1972, 86 Stat. 150, 151, 153; Pub. L. 95-239, §§3(b)(1), 4, Mar. 1, 1978, 92 Stat. 96, 97; Pub. L. 97-119, title II, §203(a)(1)-(3), (d), Dec. 29, 1981, 95 Stat. 1643, 1644; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 103-296, title I, §108(i)(2), Aug. 15, 1994, 108 Stat. 1488; Pub. L. 107-275, §2(a), Nov. 2, 2002, 116 Stat. 1925.)

REFERENCES IN TEXT

Grade GS-2, referred to in subsec. (a)(1), is contained in the General Schedule which is set out under section 5332 of Title 5, Government Organization and Employees.

The effective date of the Black Lung Benefits Amendments of 1981, referred to in subsec. (a)(2), (3), and (5), is Jan. 1, 1982, except as otherwise provided. See section 206(a) of Pub. L. 97-119, set out as an Effective Date of 1981 Amendment note under section 901 of this title.

The Social Security Act, referred to in subsec. (a)(5), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of that Act is classified generally to subchapter II (§401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Internal Revenue Code of 1986, referred to in subsec. (c), is classified to Title 26, Internal Revenue Code.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107-275 substituted "Secretary" for "Commissioner of Social Security" wherever appearing.

1994—Subsec. (a). Pub. L. 103-296 substituted "Commissioner of Social Security" for "Secretary" wherever appearing.

1986—Subsec. (c). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

1981—Subsec. (a)(1). Pub. L. 97-119, §203(d), substituted "37½ per centum of the monthly pay rate for Federal employees in grade GS-2, step 1" for "50 per centum of the minimum monthly payment to which a Federal employee in grade GS-2, who is totally disabled, is entitled at the time of payment under chapter 81 of title 5".

Subsec. (a)(2). Pub. L. 97–119, §203(a)(1), inserted ", except with respect to a claim filed under part C of this subchapter on or after the effective date of the Black Lung Amendments of 1981," after "pneumoconiosis or".

Subsec. (a)(3). Pub. L. 97–119, §203(a)(2), inserted ", 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," after "pneumoconiosis or" and substituted "time of his death or" for "time of his death, or".

Subsec. (a)(5). Pub. L. 97–119, §203(a)(3), inserted ", 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," after "pneumoconiosis, or" and substituted "time of his death or who was totally" for "time of his death, or of a miner who was totally".

1978—Subsec. (a)(3). Pub. L. 95–239, §3(b)(1)(A), inserted reference to any child or children entitled to the payment of benefits under paragraph (5) of section 921(c) of this title.

Subsec. (a)(5). Pub. L. 95–239, §3(b)(1)(B), inserted references to the payment of benefits under par. (5) of section 921(c) of this title.

Subsec. (b). Pub. L. 95–239, §4, substituted "on account of the disability of such miner due to pneumoconiosis" for "on account of the disability of such miner".

1972—Subsec. (a)(3), (4). Pub. L. 92–303, §1(b)(1), added par. (3) and redesignated former par. (3) as par. (4).

Subsec. (a)(5), (6). Pub. L. 92–303, §1(b)(2), added pars. (5) and (6).

Subsec. (b). Pub. L. 92–303, §§1(c)(1), 2(a), substituted "widow, child, parent, brother, or sister" for "widow" wherever appearing, and inserted provision that this part would not be considered as a workmen's compensation law or plan for purposes of section 224 of such Act.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–275 effective 90 days after Nov. 2, 2002, see section 4 of Pub. L. 107–275, set out as a note under section 902 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–119 effective Jan. 1, 1982, except as otherwise provided, see section 206(a) of Pub. L. 97–119, set out as a note under section 901 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–239 effective Mar. 1, 1978, see section 20(a) of Pub. L. 95–239, set out as a note under section 901 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Pub. L. 92–303, §2(b), May 19, 1972, 86 Stat. 153, provided that: "The amendment made by this section [amending this section] shall be effective as of December 30, 1969."

CALCULATION OF MONTHLY BENEFIT PAYMENTS

Pub. L. 103–333, title V, §512, Sept. 30, 1994, 108 Stat. 2573, provided that: "Notwithstanding any other provision of law, monthly benefit rates during fiscal year 1995 and thereafter under part B or part C of the Black Lung Benefits Act [30 U.S.C. 921 et seq., 931 et seq.] shall continue to be based on the benefit rates in effect in September, 1994 and be paid in accordance with the Act, until exceeded by the benefit rate specified in section 412(a)(1) of the Act [30 U.S.C. 922(a)(1)]."

Pub. L. 103–112, title V, §508(a), Oct. 21, 1993, 107 Stat. 1113, provided that: "Notwithstanding any other provision of law, monthly benefit payments under part B or part C of the Black Lung Benefits Act [30

U.S.C. 921 et seq., 931 et seq.] for months after December 1993 and before October 1994 shall be calculated as though the provisions of Federal law prescribing pay rates for Federal employees continued in effect, without amendment to or limitation of such provisions, after January 1993."

§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 Secretary shall by regulation prescribe.

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

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 Secretary 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 Secretary 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 Secretary has good cause to believe that an autopsy report is not accurate, or that the condition of the miner is being fraudulently misrepresented, the Secretary 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 Secretary, 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, §413, Dec. 30, 1969, 83 Stat. 794; Pub. L. 92–303, §§1(c)(5)(A), 4(f), 5(2), May 19, 1972, 86 Stat. 152, 154, 155; Pub. L. 95–239, §5, Mar. 1, 1978, 92 Stat. 97; Pub. L. 97–119, title II, §202(a), (c), Dec. 29, 1981, 95 Stat. 1643; Pub. L. 103–296, title I, §108(i)(2), Aug. 15, 1994, 108 Stat. 1488; Pub. L. 107–275, §2(a), (b)(2), Nov. 2, 2002, 116 Stat. 1925.)

REFERENCES IN TEXT

The effective date of the Black Lung Benefits Amendments of 1981, referred to in subsec. (b), is Jan. 1, 1982, except as otherwise provided. See section 206(a) of Pub. L. 97–119, set out as an Effective Date of 1981 Amendment note under section 901 of this title.

The Social Security Act, referred to in subsec. (b), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of this Act is classified generally to subchapter II (§401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–275, §2(a), substituted "Secretary" for "Commissioner of Social Security".

Subsec. (b). Pub. L. 107–275, §2(b)(2), substituted "No" for "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, but no".

Pub. L. 107–275, §2(a), substituted "Secretary has" for "Commissioner of Social Security has" in two places and "Secretary shall" for "Commissioner of Social Security shall" in two places.

Subsec. (c). Pub. L. 107–275, §2(a), substituted "Secretary" for "Commissioner of Social Security".

1994—Subsecs. (a) to (c). Pub. L. 103–296 substituted "Commissioner of Social Security" for "Secretary" wherever appearing, except in reference to Secretary of Labor.

1981—Subsec. (b). Pub. L. 97–119, §202(a), (c), inserted ", 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," after "such affidavits" and ", other than that involving a claim filed on or after the effective date of the Black Lung Benefits Amendments of 1981," after "In any case".

1978—Subsec. (b). Pub. L. 95–239, §5(a), (b), (c), provided that, in the case of a deceased miner where there is no medical or other relevant evidence, the affidavits be considered sufficient to establish that the miner was totally disabled due to pneumoconiosis or that death was due to pneumoconiosis, directed the Secretary to accept a board certified or board eligible radiologist's interpretation of a chest roentgenogram in cases in which there is other evidence that a miner has a pulmonary or respiratory impairment, provided for regulations covering roentgenogram techniques, provided for acceptance by the Secretary of an autopsy report concerning the presence of pneumoconiosis and the stage of advancement of that pneumoconiosis, directed that each miner who files a claim for benefits under this subchapter be provided upon request an opportunity to substantiate the claim by means of a complete pulmonary evaluation, and, in the reference to the various subsections of section 405 of Title 42, struck out reference to subsec. (f) and inserted reference to subsec. (n).

Subsec. (d). Pub. L. 95–239, §5(d), added subsec. (d).

1972—Subsec. (a). Pub. L. 92–303, §5(2), substituted "1973" for "1972".

Subsec. (b). Pub. L. 92–303, §§1(c)(5)(A), 4(f), inserted provisions making sections 404 to 408 of title 42 applicable, and for a more liberal consideration of claims for benefits.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendments by Pub. L. 107–275 effective 90 days after Nov. 2, 2002, see section 4 of Pub. L. 107–275, set out as a note under section 902 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–119 effective Jan. 1, 1982, except as otherwise provided, see section 206(a) of Pub. L. 97–119, set out as a note under section 901 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–239 effective Mar. 1, 1978, see section 20(a) of Pub. L. 95–239, set out as a note under section 901 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by section 4(f) of Pub. L. 92–303 effective Dec. 30, 1969, see section 4(g) of Pub. L. 92–303, set out as a note under section 921 of this title.

EFFECTIVE DATE FOR THE APPLICATION OF SECTION 405 OF TITLE 42

Pub. L. 92–303, §1(c)(5)(B), May 19, 1972, 86 Stat. 152, provided that: "Only section 205(b), (g), and (h) of those sections of the Social Security Act [section 405(b), (g), and (h) of Title 42, The Public Health and Welfare] recited in subparagraph (A) of this paragraph [amending this section] shall be effective as of the date provided in subsection (d) of this section."

[There is no subsec. (d) in section 1 of Pub. L. 92–303 as it was enacted. However, Senate Report No. 92–743, at page 30, refers to such a subsec. (d) applying the provisions of section of Pub. L. 92–303 retroactively to Dec. 30, 1969.]

§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 Secretary 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.

(Pub. L. 91-173, title IV, §414, Dec. 30, 1969, 83 Stat. 795; Pub. L. 92-303, §§1(c)(1), (6), 5(1)-(3), May 19, 1972, 86 Stat. 151, 152, 155; Pub. L. 95-239, §3(b)(2), Mar. 1, 1978, 92 Stat. 97; Pub. L. 103-296, title I, §108(i)(2), Aug. 15, 1994, 108 Stat. 1488; Pub. L. 107-275, §2(a), Nov. 2, 2002, 116 Stat. 1925.)

AMENDMENTS

2002—Subsec. (a)(2)(D). Pub. L. 107-275 substituted "Secretary" for "Commissioner of Social Security".

1994—Subsec. (a)(2)(D). Pub. L. 103-296 substituted "Commissioner of Social Security" for "Secretary".

1978—Subsec. (e). Pub. L. 95-239 added cl. (3) relating to individuals entitled to benefits under par. (5) of section 921(c) of this title.

1972—Subsec. (a). Pub. L. 92-303, §§1(c)(6), 5(2), designated existing provisions as par. (1) and added pars. (2) and (3), and in par. (1) substituted "1973" for "1972" wherever appearing.

Subsec. (b). Pub. L. 92-303, §§5(1), (2), substituted "June 30, 1973" for "December 31, 1971" and "December 31, 1973" for "December 31, 1971".

Subsec. (e). Pub. L. 92-303, §§1(c)(1), 5(3), substituted "widow, child, parent, brother, or sister" for "widow" and "1974" for "1973".

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-275 effective 90 days after Nov. 2, 2002, see section 4 of Pub. L. 107-275, set out as a note under section 902 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103-296, set out as a note under section 401 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-239 effective Mar. 1, 1978, see section 20(a) of Pub. L. 95-239, set out as a note under section 901 of this title.

§924a. Repealed. Pub. L. 107-275, §2(c)(2), Nov. 2, 2002, 116 Stat. 1926

Section, Pub. L. 95-239, §11, Mar. 1, 1978, 92 Stat. 101, related to notification to miners of eligibility for medical services and supplies and the period for filing a claim.

EFFECTIVE DATE OF REPEAL

Repeal effective 90 days after Nov. 2, 2002, see section 4 of Pub. L. 107–275, set out as an Effective Date of 2002 Amendment note under section 902 of this title.

§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 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.

(3) 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.

(4) Any operator who has been notified of the pendency of a claim under paragraph (2) 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 may issue such regulations as are necessary or appropriate to carry out the purpose of this section.

(Pub. L. 91–173, title IV, §415, as added Pub. L. 92–303, §7, May 19, 1972, 86 Stat. 156; amended Pub. L. 97–119, title I, §104(b)(2), Dec. 29, 1981, 95 Stat. 1639; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 103–296, title I, §108(i)(2), Aug. 15, 1994, 108 Stat. 1488; Pub. L. 107–275, §2(b)(3), Nov. 2, 2002, 116 Stat. 1925.)

AMENDMENTS

2002—Subsec. (a)(2) to (5). Pub. L. 107–275, §2(b)(3)(A), redesignated pars. (3) to (5) as (2) to (4), respectively, substituted "paragraph (2)" for "paragraph 4" in par. (4), and struck out former par. (2) which read as follows: "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."

Subsec. (b). Pub. L. 107–275, §2(b)(3)(B), struck out ", after consultation with the Commissioner of Social Security," after "Secretary of Labor".

1994—Subsecs. (a)(2), (b). Pub. L. 103–296 substituted "Commissioner of Social Security" for "Secretary of Health, Education, and Welfare".

1986—Subsec. (a)(1). Pub. L. 99–514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

1981—Subsec. (a)(1). Pub. L. 97–119 substituted "section 9501(d) of title 26" for "section 934 of this title".

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–275 effective 90 days after Nov. 2, 2002, see section 4 of Pub. L. 107–275, set out as a note under section 902 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of Title 42, The Public Health and Welfare.

Part C—Claims for Benefits After December 31, 1973

§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,¹ 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.

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

REFERENCES IN TEXT

Public Law 803, 69th Congress, referred to in subsec. (b)(2)(F), is act **Mar. 4, 1927, ch. 509, 44 Stat. 1424**, as amended, popularly known as the Longshore and Harbor Workers' Compensation Act, which is classified generally to chapter 18 (§901 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see section 901 of Title 33 and Tables.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95–239, §3(b)(3), inserted reference to cases in which benefits based upon eligibility under par. (5) of section 921(c) of this title are involved.

Subsec. (b)(2)(A). Pub. L. 95–239, §6(a), added the exceptions set out in cls. (i) and (ii).

Subsec. (b)(2)(C). Pub. L. 95–239, §6(b), substituted "established under this part, and by the regulations of the Secretary promulgated under this part" for "established under part B of this subchapter, and by the regulations of the Secretary of Health, Education, and Welfare promulgated thereunder".

Subsec. (b)(2)(D). Pub. L. 95–239, §6(c), substituted "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" for "total disability or death of a miner due to pneumoconiosis is deemed to be timely filed if such claim is filed within three years of the discovery of total disability due to pneumoconiosis, or the date of such death, as the case may be".

1972—Subsec. (a). Pub. L. 92–303, §§1(c)(1), 5(3), substituted "widows, children, parents, brothers, or sisters, as the case may be," for "widows" and "1974" for "1973".

Subsec. (b)(2)(C). Pub. L. 92–303, §4(e), substituted "section 902(f) of this title and to those standards established under part B of this subchapter" for "those established by section 921 of this title".

Subsec. (c). Pub. L. 92–303, §5(5), added subsec. (c).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–239 effective Mar. 1, 1978, see section 20(a) of Pub. L. 95–239, set out as a note under section 901 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by section 4(e) of Pub. L. 92–303 effective Dec. 30, 1969, see section 4(g) of Pub. L. 92–303, set out as a note under section 921 of this title.

¹ So in original. The period probably should be a comma.

§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, 4,¹ 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 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 945² 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 ² 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.³

(Pub. L. 91-173, title IV, §422, Dec. 30, 1969, 83 Stat. 796; Pub. L. 92-303, §§3(a), (b), 5(2)-(4), (9), 8, May 19, 1972, 86 Stat. 153, 155-157; Pub. L. 95-239, §§3(b)(4), 7(a)-(h), Mar. 1, 1978, 92 Stat. 97-99; Pub. L. 97-119, title I, §104(b)(3)-(5), title II, §§203(a)(6), (b), 204, 205(a), Dec. 29, 1981, 95 Stat. 1639, 1644, 1645; Pub. L. 98-426, §28(h)(2), Sept. 28, 1984, 98 Stat. 1655; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 111-148, title I, §1556(b), Mar. 23, 2010, 124 Stat. 260.)

REFERENCES IN TEXT

Section 28(h)(1) of the Longshore and Harbor Workers' Compensation Act Amendments of 1984, referred to in subsec. (a), is section 28(h)(1) of Pub. L. 98-426, which is set out as a note under section 907 of Title 33, Navigation and Navigable Waters.

Public Law 803, 69th Congress, referred to in subsec. (a), is act Mar. 4, 1927, ch. 509, 44 Stat. 1424, as amended, popularly known as the Longshore and Harbor Workers' Compensation Act, which is classified generally to chapter 18 (§901 et seq.) of Title 33. For complete classification of this Act to the Code, see section 901 of Title 33 and Tables.

Section 42 of Public Law 803, referred to in subsec. (a), was repealed by Pub. L. 89-554, §8(a), Sept. 6, 1966, 80 Stat. 647.

Section 43 of Public Law 803, referred to in subsec. (a), was repealed by Pub. L. 89-348, §1(15), Nov. 8, 1965, 79 Stat. 1311.

Sections 45, 46, and 47 of Public Law 803, referred to in subsec. (a), were repealed by Pub. L. 98-426, §25, Sept. 28, 1984, 98 Stat. 1654.

Section 945 of this title, referred to in subsecs. (c), (j)(3), was repealed by Pub. L. 107-275, §2(c)(1), Nov. 2, 2002, 116 Stat. 1926.

The effective date of the Black Lung Benefits Amendments of 1981, referred to in subsecs. (d) and (g), is Jan. 1, 1982, except as otherwise provided. See section 206(a) of Pub. L. 97-119, set out as an Effective Date of 1981 Amendment note under section 901 of this title.

AMENDMENTS

2010—Subsec. (l). Pub. L. 111-148 struck out ", except with respect to a claim filed under this part on or after the effective date of the Black Lung Benefits Amendments of 1981" after "claim of such miner".

1986—Subsecs. (a), (i)(4), (j). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954" wherever appearing, which for purposes of codification was translated as "title 26" thus requiring no change in text.

1984—Subsec. (a). Pub. L. 98-426 substituted "Subject to section 28(h)(1) of the Longshore and Harbor Workers' Compensation Act Amendments of 1984, during" for "During".

1981—Subsec. (a). Pub. L. 97-119, §104(b)(3), substituted "section 9501(d) of title 26" for "section 934 of this title".

Subsec. (c). Pub. L. 97-119, §205(a)(1), substituted "due to pneumoconiosis (1)" for "due to pneumoconiosis" and added cl. (2).

Subsec. (d). Pub. L. 97-119, §204, inserted provision relating to accrual of interest if payment is not made within the time required and accumulation of interest 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.

Subsec. (g). Pub. L. 97-119, §203(b), inserted provision reducing 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.

Subsec. (i)(4). Pub. L. 97-119, §104(b)(4), substituted "section 9501(d) of title 26" for "section 934 of this title".

Subsec. (j). Pub. L. 97-119, §§104(b)(5), 205(a)(2), substituted in provision preceding par. (1) "section 9501 of title 26" for "section 934 of this title" and in par. (1) "section 9501(d)(1) of title 26" for "section 934(a)(1) of this title" and added par. (3).

Subsec. (l). Pub. L. 97-119, §203(a)(6), inserted before period at end ", except with respect to a claim filed under this part on or after the effective date of the Black Lung Benefits Amendments of 1981,".

1978—Subsec. (a). Pub. L. 95-239, §§3(b)(4), 7(a), inserted ", and as it may be amended from time to time" after "as amended", inserted a comma after "and 51 thereof", substituted "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 934 of this title)" for "and except as the Secretary shall by regulation otherwise provide)", and inserted ", or with respect to entitlements established in paragraph (5) of section 921(c) of this title" after "with respect to death or total disability due to pneumoconiosis arising out of employment in such mine".

Subsec. (b). Pub. L. 95-239, §7(b), provided that an employer, other than an operator of a coal mine, shall not be required to secure the payment of benefits with respect to any employee of that employer to the extent that the employee is engaged in the transportation of coal or in coal mine construction and

authorized the Secretary to require an employer to secure a bond or otherwise guarantee the payment of benefits.

Subsec. (c). Pub. L. 95–239, §7(c), struck out reference to regulations of the Secretary of Health, Education, and Welfare and substituted "employment in a mine during a period after December 31, 1969, when it was operated" for "employment in a mine during the period when it was operated".

Subsec. (e)(3). Pub. L. 95–239, §7(d), struck out par. (3) which had provided that no payment of benefits could be required under this section for any period after twelve years after Dec. 30, 1969.

Subsec. (f). Pub. L. 95–239, §7(e), provided that any claim for benefits by a miner under this section be filed within three years after the later of either a medical determination of total disability due to pneumoconiosis or March 1, 1978, and struck out provisions which had set special limitations on the filing of a claim by a widow.

Subsec. (h). Pub. L. 95–239, §7(f), struck out provision under which the regulations of the Secretary of Health, Education, and Welfare promulgated under section 921 of this title had also been applicable to claims under this section.

Subsec. (i)(1). Pub. L. 95–239, §7(g), imposed claim liability on operators who acquired a mine from a prior operator on or after Jan. 1, 1970, with respect to benefits to miners previously employed by a prior operator, as if the acquisition had not occurred.

Subsec. (i)(2). Pub. L. 95–239, §7(g), reenacted par. (2) without change.

Subsec. (i)(3), (4). Pub. L. 95–239, §7(g), added pars. (3) and (4).

Subsecs. (j) to (l). Pub. L. 95–239, §7(h), added subsecs. (j) to (l).

1972—Subsec. (a). Pub. L. 92–303, §§3(b), 5(2), (9), substituted "a coal mine" for "an underground coal mine", "1973" for "1972" and struck out reference to section 7 of Pub. L. 803, 69th Congress (44 Stat. 1424, approved March 4, 1927), respectively,

Subsec. (e)(2). Pub. L. 92–303, §5(3), substituted "January 1, 1974" for "January 1, 1973".

Subsec. (e)(3). Pub. L. 92–303, §5(4), substituted "twelve years" for "seven years".

Subsec. (f). Pub. L. 92–303, §8, designated existing provisions as par. (1) and added par. (2).

Subsec. (h). Pub. L. 92–303, §3(a), substituted "coal mine" for "underground coal mine".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–148 applicable with respect to claims filed under parts B and C of this subchapter after Jan. 1, 2005, that are pending on or after Mar. 23, 2010, see section 1556(c) of Pub. L. 111–148, set out as a note under section 921 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–426 effective Sept. 28, 1984, and applicable both with respect to claims filed after such date and to claims pending on such date, see section 28(a) of Pub. L. 98–426, set out as a note under section 901 of Title 33, Navigation and Navigable Waters.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by sections 203(a)(6), (b), 204, 205(a) of Pub. L. 97–119 effective Jan. 1, 1982, except as otherwise provided, see section 206(a) of Pub. L. 97–119, set out as a note under section 901 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–239 effective Mar. 1, 1978, see section 20(a) of Pub. L. 95–239, set out as a note under section 901 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by section 3(a), (b) of Pub. L. 92–303 effective Dec. 30, 1969, see section 3(c) of Pub. L. 92–303, set out as a note under section 901 of this title.

¹ So in original.

² See References in Text note below.

³ So in original.

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

Qualified individuals appointed by the Secretary of Labor may hear and determine claims for benefits under part B or part C of title IV of the Federal Coal Mine Health and Safety Act of 1969 ¹ [30 U.S.C. 921 et seq., 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; Pub. L. 107–275, §2(b)(5), Nov. 2, 2002, 116 Stat. 1926.)

REFERENCES IN TEXT

The Federal Coal Mine Health and Safety Act of 1969, referred to in text, is Pub. L. 91–173, Dec. 30, 1969, 83 Stat. 742, as amended, which was renamed the Federal Mine Safety and Health Act of 1977 by Pub. L. 95–164, title I, §101, Nov. 9, 1977, 91 Stat. 1290. Parts B and C of title IV of the Federal Mine Safety and Health Act of 1977 are classified generally to part B (§921 et seq.) of this subchapter and to this part (§931 et seq.), respectively. For complete classification of this Act to the Code, see Short Title note set out under section 801 of this title and Tables.

CODIFICATION

Section was not enacted as part of the Federal Mine Safety and Health Act of 1977 which comprises this chapter or the Black Lung Benefits Act which comprises this subchapter.

AMENDMENTS

2002—Pub. L. 107–275 substituted "under part B or part C" for "under part C".

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–275 effective 90 days after Nov. 2, 2002, see section 4 of Pub. L. 107–275, set out as a note under section 902 of this title.

EXTENSION OF ADJUDICATION PERIOD THROUGH MARCH 1, 1979

Pub. L. 95–239, §7(i), Mar. 1, 1978, 92 Stat. 100, authorized individuals appointed to hear and determine claims for benefits under this part and under section 925 of this title pursuant to this section, notwithstanding the provisions of section 932(a) of this title, to continue to adjudicate such claims during the one-year period following Mar. 1, 1978.

¹ See References in Text note below.

§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 subsection¹ 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,² 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, §423, Dec. 30, 1969, 83 Stat. 797; Pub. L. 92-303, §3(b), May 19, 1972, 86 Stat. 153; Pub. L. 95-239, §8, Mar. 1, 1978, 92 Stat. 100.)

AMENDMENTS

1978—Subsec. (d). Pub. L. 95-239 added subsec. (d).

1972—Subsec. (a). Pub. L. 92-303 substituted "a coal mine" for "an underground coal mine".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-239 effective Mar. 1, 1978, see section 20(a) of Pub. L. 95-239, set out as a note under section 901 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92-303 effective Dec. 30, 1969, see section 3(c) of Pub. L. 92-303, set out as a note under section 901 of this title.

¹ So in original. Probably should be "section".

² So in original. Probably should be "secretes."

§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.

(b)(1) If—

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

REFERENCES IN TEXT

Section 424(b)(2) of the Federal Mine Safety and Health Act of 1977, referred to in subsec. (b)(3)(A)(i), is subsec. (b)(2) of this section.

Section 6321, referred to in subsec. (b)(3)(A)(i), means section 6321 of Title 26, Internal Revenue Code.

Section 6332(b), referred to in subsec. (b)(3)(A)(i), means section 6332(b) of Title 26.

The Bankruptcy Act, referred to in subsec. (b)(3)(B), is act July 1, 1898, ch. 541, 30 Stat. 544, as amended, which was classified generally to former Title 11, Bankruptcy. The Act was repealed effective Oct. 1, 1979, by Pub. L. 95–598, §§401(a), 402(a), Nov. 6, 1978, 92 Stat. 2682, section 101 of which enacted revised Title 11.

CODIFICATION

In subsec. (b)(3)(B), "section 3713(a) of title 31" substituted for "section 3466 of the Revised Statutes (31 U.S.C. 191)" on authority of Pub. L. 97–258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

1986—Subsec. (b)(3)(A), (C), (D), (5)(B). Pub. L. 99–514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

1981—Subsec. (a). Pub. L. 97–119, §104(b)(6), substituted provision defining "fund" as used in this section for provision specifying payments, repayments, and reimbursements which funds from the Black Lung Disability Trust Fund would be available to pay.

Subsec. (b)(1). Pub. L. 97–119, §104(a)(2), inserted "plus interest thereon" after "attributed to him".

Subsec. (b)(5). Pub. L. 97–119, §104(a)(1), added par. (5).

1980—Subsec. (b)(3)(A)(i). Pub. L. 96–222 substituted "Federal Mine Safety and Health Act of 1977" for "Federal Coal Mine Health and Safety Act of 1969".

1978—Pub. L. 95–227 added subsec. (a), redesignated existing provisions constituting entire section as subsec. (b) and expanded applicability and set out procedures for enforcement of rights of United States against operators liable to the Fund.

1972—Pub. L. 92–303 substituted "widow, child, parent, brother, or sister" for "widow" wherever appearing.

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–119, title I, §104(a)(3), Dec. 29, 1981, 95 Stat. 1639, provided that: "The amendment made by paragraph (1) [amending this section] shall take effect on January 1, 1982, and shall apply to amounts outstanding on such date or arising thereafter."

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–222 effective as if included in the provisions of Pub. L. 95–227, which amended this section effective Apr. 1, 1978, see section 108(b)(4) of Pub. L. 96–222, set out as a note under section 192 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–227, §3(e), Feb. 10, 1978, 92 Stat. 15, provided that: "This section [enacting section 934a of this title and amending this section] shall take effect on April 1, 1978."

§934a. Repealed. Pub. L. 97–119, title I, §103(b), Dec. 29, 1981, 95 Stat. 1638

Section, Pub. L. 95–227, §3(a)–(c), Feb. 10, 1978, 92 Stat. 12; Pub. L. 96–88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 96–222, title I, §108(b)(2)(A), (3)(A), Apr. 1, 1980, 94 Stat. 226, established a Black Lung Disability Trust Fund, designated trustees for the fund, and provided for operation of the fund. See section 9501 of Title 26, Internal Revenue Code.

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, §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.

§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, §425, Dec. 30, 1969, 83 Stat. 798.)

§936. Regulations and reports

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

The Secretary of Labor 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 fiscal year 2003 and each succeeding fiscal year, the Secretary of Labor shall submit to the Congress an annual report on the subject matter of this part and part B of this subchapter. 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, §426, Dec. 30, 1969, 83 Stat. 798; Pub. L. 92–303, §5(3), May 19, 1972, 86 Stat. 155; Pub. L. 103–296, title I, §108(i)(3), Aug. 15, 1994, 108 Stat. 1488; Pub. L. 104–66, title I, §1102(b)(2), Dec. 21, 1995, 109 Stat. 723; Pub. L. 107–275, §2(b)(4), Nov. 2, 2002, 116 Stat. 1926.)

REFERENCES IN TEXT

Section 942 of title 33, referred to in subsec. (b), was in the original "section 42 of the Longshore Harbor Worker's Compensation Act" and was translated as reading "section 42 of the Longshore and Harbor Workers' Compensation Act" to reflect the probable intent of Congress.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–275, §2(b)(4)(A), struck out ", the Commissioner of Social Security," after "The Secretary of Labor".

Subsec. (b). Pub. L. 107–275, §2(b)(4)(B), amended first sentence generally. Prior to amendment, first sentence read as follows: "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."

1995—Subsec. (b). Pub. L. 104–66 substituted "At the end of each fiscal year, the" for "Within 120 days following the convening of each session of Congress the" and inserted at end "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."

1994—Subsec. (a). Pub. L. 103–296, §108(i)(3)(A), substituted ", the Commissioner of Social Security, and the Secretary of Health and Human Services" for "and the Secretary of Health, Education, and Welfare".

Subsec. (b). Pub. L. 103–296, §108(i)(3)(B), substituted "Commissioner of Social Security" for "Secretary of Health, Education, and Welfare".

1972—Subsec. (b). Pub. L. 92–303 substituted "January 1, 1974" for "January 1, 1973".

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–275 effective 90 days after Nov. 2, 2002, see section 4 of Pub. L. 107–275, set out as a note under section 902 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of Title 42, The Public Health and Welfare.

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

AMENDMENTS

1978—Subsec. (c). Pub. L. 95–239 substituted "\$10,000,000 for each fiscal year" for "\$10,000,000 for each of the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975".

CHANGE OF NAME

"Secretary of Health and Human Services" substituted for "Secretary of Health, Education, and Welfare" in subsecs. (a) and (b) pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–239 effective Mar. 1, 1978, see section 20(a) of Pub. L. 95–239, set out as a note under section 901 of this title.

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

AMENDMENTS

1990—Subsec. (b). Pub. L. 101–509 amended seventh sentence generally, substituting "determined under section 5372 of title 5" for "not less than that prescribed for GS–16 under section 5332 of title 5".

1978—Subsec. (b). Pub. L. 95–251 substituted "administrative law judge" for "hearing examiner".

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, §305] of Pub. L. 101–509, set out as a note under section 5301 of Title 5, Government Organization and Employees.

§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, §429, as added Pub. L. 92–303, §5(8), May 19, 1972, 86 Stat. 156.)

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

REFERENCES IN TEXT

The Black Lung Benefits Act of 1972, referred to in text, is Pub. L. 92–303, May 19, 1972, 86 Stat. 150, as amended, which is classified generally to sections 901, 902, 921 to 925, 931 to 934, and 936 to 941 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 901 of this title and Tables.

The Black Lung Benefits Reform Act of 1977, referred to in text, is Pub. L. 95–239, Mar. 1, 1978, 92 Stat. 95. For complete classification of this Act to the Code, see Short Title of 1978 Amendment note set out under section 801 of this title and Tables.

The Black Lung Benefits Amendments of 1981, referred to in text, is Pub. L. 97–119, title II, Dec. 29, 1981, 95 Stat. 1643, which amended this section and sections 901, 902, 921, 922, 923, and 932 of this title and enacted provisions set out as notes under section 901 of this title. For complete classification of this Act to the Code, see Short Title of 1981 Amendment note set out under section 801 of this title and Tables.

AMENDMENTS

1981—Pub. L. 97–119 inserted ", and the Black Lung Benefits Amendments of 1981".

1978—Pub. L. 95–239 inserted reference to amendments made by the Black Lung Benefits Reform Act of 1977 and struck out provision that, for the purpose of determining the applicability of the presumption established by 921(c)(4) of this title to claims filed under this part, no period of employment after June 30, 1971, could be considered in determining whether a miner was employed at least fifteen years in one or more underground mines.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–119 effective Jan. 1, 1982, except as otherwise provided, see section 206(a) of Pub. L. 97–119, set out as a note under section 901 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–239 effective Mar. 1, 1978, see section 20(a) of Pub. L. 95–239, set out as a note under section 901 of this title.

§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, §431, as added Pub. L. 92–303, §6, May 19, 1972, 86 Stat. 156; amended Pub. L. 95–239, §12(a), Mar. 1, 1978, 92 Stat. 101.)

AMENDMENTS

1978—Pub. L. 95–239 substituted provisions setting the penalty for making false or misleading statements or representations for the purpose of obtaining benefits or payments for provisions relating to the Secretary's duty to disseminate to all persons who filed claims under this subchapter prior to May 19, 1972, information on the review provisions under the Black Lung Benefits Act of 1972.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–239 effective Mar. 1, 1978, see section 20(a) of Pub. L. 95–239, set out as a note under section 901 of this title.

§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, §432, as added Pub. L. 95–239, §12(b), Mar. 1, 1978, 92 Stat. 101.)

EFFECTIVE DATE

Section effective Mar. 1, 1978, see section 20(a) of Pub. L. 95–239, set out as an Effective Date of 1978 Amendment note under section 901 of this title.

§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) (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), 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).

(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) 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) Omitted

(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). 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 934a¹ of this title.

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

REFERENCES IN TEXT

Section 934a of this title, referred to in subsec. (i), was repealed by Pub. L. 97-119, title I, §103(b), Dec. 29, 1981, 95 Stat. 1638. See section 9501(c) of Title 26, Internal Revenue Code.

CODIFICATION

Subsec. (h) of this section, which required the Secretary to report to Congress not later than April 1 of each year on the financial condition and operation of the insurance fund, terminated, effective May 15,

2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, page 124 of House Document No. 103–7.

EFFECTIVE DATE

Section effective Mar. 1, 1978, see section 20(a) of Pub. L. 95–239, set out as an Effective Date of 1978 Amendment note under section 901 of this title.

¹ See References in Text note below.

§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, §434, as added Pub. L. 95–239, §14, Mar. 1, 1978, 92 Stat. 103.)

EFFECTIVE DATE

Section effective Mar. 1, 1978, see section 20(a) of Pub. L. 95–239, set out as an Effective Date of 1978 Amendment note under section 901 of this title.

§945. Repealed. Pub. L. 107–275, §2(c)(1), Nov. 2, 2002, 116 Stat. 1926

Section, Pub. L. 91–173, title IV, §435, as added Pub. L. 95–239, §15, Mar. 1, 1978, 92 Stat. 103; amended Pub. L. 103–296, title I, §108(i)(4), Aug. 15, 1994, 108 Stat. 1488, related to review of claims pending on, or denied on or before, Mar. 1, 1978.

EFFECTIVE DATE OF REPEAL

Repeal effective 90 days after Nov. 2, 2002, see section 4 of Pub. L. 107–275, set out as an Effective Date of 2002 Amendment note under section 902 of this title.