

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) of this section (hereinafter in this section referred to as the "insurance fund") shall assume all or part of the liability of such operator in return for the payment of premiums to the insurance fund, and on such terms and conditions as will fully protect the financial solvency of the insurance fund. During any period in which such agreement is in effect the operator shall be deemed in compliance with the requirements of section 933 of this title with respect to the risks covered by such agreement.

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

(d) Terms and conditions of insurability

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

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

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

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

(4) appropriate loss deductibles;

(5) experience rating; and

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

(e) Premium schedule studies and investigations

The Secretary may undertake and carry out such studies and investigations, and receive or exchange such information, as may be necessary to formulate a premium schedule which will enable the insurance and reinsurance authorized by this section to be provided on a basis which is (1) in accordance with accepted actuarial principles; and (2) fair and equitable.

(f) Regulations relating to premium rates

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

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

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

(g) Black Lung Compensation Insurance Fund

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

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

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

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

(2) The insurance fund shall be credited with—

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

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