

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.

§ 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 em-

¹ So in original.

ployment 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 945² 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.

² See References in Text note below.

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

In no case shall the eligible survivors of a miner who was determined to be eligible to receive benefits under this subchapter at the time of his or her death be required to file a new claim for benefits, or refile or otherwise revalidate the claim of such miner, except with respect to a claim filed under this part on or after the effective date of the Black Lung Benefits Amendments of 1981.³

(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.)

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), (g), and (I), 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

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 adju-

dication 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. (I). 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 (I). Pub. L. 95-239, §7(h), added subsecs. (j) to (I).

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,

³ So in original.

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 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.

§ 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 1969¹ [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.

§ 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

¹ See References in Text note below.

¹ So in original. Probably should be “section”.