

(ccc) is comprised of individuals with a minimum of 3 years underground coal mine experience that shall have occurred within the 10-year period preceding their employment on the contract mine rescue team.

(DD) A State-sponsored team made up of State employees.

(iv) That the operator of each underground coal mine with 36 or less employees shall—

(I) have an employee on each shift who is knowledgeable in mine emergency responses; and

(II) make available two certified mine rescue teams whose members—

(aa) are familiar with the operations of such coal mine;

(bb) participate at least annually in two local mine rescue contests;

(cc) participate at least semi-annually in mine rescue training at the underground coal mine covered by the mine rescue team;

(dd) are available at the mine within one hour ground travel time from the mine rescue station;

(ee) are knowledgeable about the operations and ventilation of the covered mines; and

(ff) are comprised of individuals with a minimum of 3 years underground coal mine experience that shall have occurred within the 10-year period preceding their employment on the contract mine rescue team.

(Pub. L. 91-173, title I, §115, as added Pub. L. 95-164, title II, §201, Nov. 9, 1977, 91 Stat. 1315; amended Pub. L. 109-236, §4, June 15, 2006, 120 Stat. 497.)

#### REFERENCES IN TEXT

For the effective date of the Federal Mine Safety and Health Amendments Act of 1977, referred to in subsecs. (a) and (e)(1), see section 307 of Pub. L. 95-164, set out as an Effective Date of 1977 Amendment note under section 801 of this title.

This chapter, referred to in subsec. (a)(1), (2), was in the original “this Act”, meaning Pub. L. 91-173, Dec. 30, 1969, 83 Stat. 742, known as the Federal Mine Safety and Health Act of 1977, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 801 of this title and Tables.

#### AMENDMENTS

2006—Subsec. (e). Pub. L. 109-236 designated existing provisions as par. (1) and added par. (2).

#### EFFECTIVE DATE

Section effective 120 days after Nov. 9, 1977, see section 307 of Pub. L. 95-164, set out as an Effective Date of 1977 Amendment note under section 801 of this title.

### § 826. Limitation on certain liability for rescue operations

#### (a) In general

No person shall bring an action against any covered individual or his or her regular employer for property damage or an injury (or death) sustained as a result of carrying out activities relating to mine accident rescue or re-

covery operations. This subsection shall not apply where the action that is alleged to result in the property damages or injury (or death) was the result of gross negligence, reckless conduct, or illegal conduct or, where the regular employer (as such term is used in this chapter) is the operator of the mine at which the rescue activity takes place. Nothing in this section shall be construed to preempt State workers’ compensation laws.

#### (b) Covered individual

For purposes of subsection (a), the term “covered individual” means an individual—

(1) who is a member of a mine rescue team or who is otherwise a volunteer with respect to a mine accident; and

(2) who is carrying out activities relating to mine accident rescue or recovery operations.

#### (c) Regular employer

For purposes of subsection (a), the term “regular employer” means the entity that is the covered employee’s legal or statutory employer pursuant to applicable State law.

(Pub. L. 91-173, title I, §116, as added Pub. L. 109-236, §3, June 15, 2006, 120 Stat. 496.)

#### REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original “this Act”, meaning Pub. L. 91-173, Dec. 30, 1969, 83 Stat. 742, known as the Federal Mine Safety and Health Act of 1977, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 801 of this title and Tables.

### SUBCHAPTER II—INTERIM MANDATORY HEALTH STANDARDS

#### § 841. Mandatory health standards for underground mines; enforcement; review; purpose

(a) The provisions of sections 842 through 846 of this title and the applicable provisions of section 878 of this title shall be interim mandatory health standards applicable to all underground coal mines until superseded in whole or in part by improved mandatory health standards promulgated by the Secretary under the provisions of section 811 of this title, and shall be enforced in the same manner and to the same extent as any mandatory health standard promulgated under the provisions of section 811 of this title. Any orders issued in the enforcement of the interim standards set forth in this subchapter shall be subject to review as provided in subchapter I of this chapter.

(b) Among other things, it is the purpose of this subchapter to provide, to the greatest extent possible, that the working conditions in each underground coal mine are sufficiently free of respirable dust concentrations in the mine atmosphere to permit each miner the opportunity to work underground during the period of his entire adult working life without incurring any disability from pneumoconiosis or any other occupation-related disease during or at the end of such period.

(Pub. L. 91-173, title II, §201, Dec. 30, 1969, 83 Stat. 760.)

#### EFFECTIVE DATE

Subchapter operative six months after Dec. 30, 1969, except to the extent an earlier date is specifically pro-

vided for in Pub. L. 91-173, see section 509 of Pub. L. 91-173, set out as a note under section 801 of this title.

**§ 842. Dust concentration and respiratory equipment**

**(a) Samples; procedures; transmittal; notice of excess concentration; periodic reports to Secretary; contents**

Each operator of a coal mine shall take accurate samples of the amount of respirable dust in the mine atmosphere to which each miner in the active workings of such mine is exposed. Such samples shall be taken by any device approved by the Secretary and the Secretary of Health and Human Services and in accordance with such methods, at such locations, at such intervals, and in such manner as the Secretaries shall prescribe in the Federal Register within sixty days from December 30, 1969 and from time to time thereafter. Such samples shall be transmitted to the Secretary in a manner established by him, and analyzed and recorded by him in a manner that will assure application of the provisions of section 814(i) of this title when the applicable limit on the concentration of respirable dust required to be maintained under this section is exceeded. The results of such samples shall also be made available to the operator. Each operator shall report and certify to the Secretary at such intervals as the Secretary may require as to the conditions in the active workings of the coal mine, including, but not limited to, the average number of working hours worked during each shift, the quantity and velocity of air regularly reaching the working faces, the method of mining, the amount and pressure of the water, if any, reaching the working faces, and the number, location, and type of sprays, if any, used.

**(b) Standards; noncompliance permit; renewal; procedures; limitations; extension period**

Except as otherwise provided in this subsection—

(1) Effective on the operative date of this subchapter, each operator shall continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift to which each miner in the active workings of such mine is exposed at or below 3.0 milligrams of respirable dust per cubic meter of air.

(2) Effective three years after December 30, 1969, each operator shall continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift to which each miner in the active workings of such mine is exposed at or below 2.0 milligrams of respirable dust per cubic meter of air.

(3) Any operator who determines that he will be unable, using available technology, to comply with the provisions of paragraph (1) of this subsection, or the provisions of paragraph (2) of this subsection, as appropriate, may file with the Panel, no later than sixty days prior to the effective date of the applicable respirable dust standard established by such paragraphs, an application for a permit for noncompliance. If, in the case of an application for a permit for noncompliance with the

3.0 milligram standard established by paragraph (1) of this subsection, the application satisfies the requirements of subsection (c) of this section, the Panel shall issue a permit for noncompliance to the operator. If, in the case of an application for a permit for noncompliance with the 2.0 milligram standard established by paragraph (2) of this subsection, the application satisfies the requirements of subsection (c) of this section and the Panel determines that the applicant will be unable to comply with such standard, the Panel shall issue to the operator a permit for noncompliance.

(4) In any case in which an operator, who has been issued a permit (including a renewal permit) for noncompliance under this section, determines, not more than ninety days prior to the expiration date of such permit, that he still is unable to comply with the standard established by paragraph (1) of this subsection or the standard established by paragraph (2) of this subsection, as appropriate, he may file with the Panel an application for renewal of the permit. Upon receipt of such application, the Panel, if it determines, after all interested persons have been notified and given an opportunity for a public hearing under section 804 of this title, that the application is in compliance with the provisions of subsection (c) of this section, and that the applicant will be unable to comply with such standard, may renew the permit.

(5) Any such permit or renewal thereof so issued shall be in effect for a period not to exceed one year and shall entitle the permittee during such period to maintain continuously the average concentration of respirable dust in the mine atmosphere during each shift in the working places of such mine to which the permit applies at a level specified by the Panel, which shall be at the lowest level which the application shows the conditions, technology applicable to such mine, and other available and effective control techniques and methods will permit, but in no event shall such level exceed 4.5 milligrams of dust per cubic meter of air during the period when the 3.0 milligram standard is in effect, or 3.0 milligrams of dust per cubic meter of air during the period when the 2.0 milligram standard is in effect.

(6) No permit or renewal thereof for noncompliance shall entitle any operator to an extension of time beyond eighteen months from December 30, 1969 to comply with the 3.0 milligram standard established by paragraph (1) of this subsection, or beyond seventy-two months from December 30, 1969 to comply with the 2.0 milligram standard established by paragraph (2) of this subsection.

**(c) Applications for noncompliance; contents**

Any application for an initial or renewal permit made pursuant to this section shall contain—

(1) a representation by the applicant and the engineer conducting the survey referred to in paragraph (2) of this subsection that the applicant is unable to comply with the standard applicable under subsection (b)(1) or (b)(2) of this section at specified working places because