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of Columbia (see section 421(b)(2)(f) of the Act).

§ 722.150 Reports.

The Secretary shall from time to time require that each State which has been included on the Secretary's list submit reports, data, or other information to the Secretary concerning the administration and operation of the State's workmen's compensation law with respect to total disability or death due to pneumoconiosis.

§ 722.151 Removal from the Secretary's list.

At any time after a State's workmen's compensation law has been included on the Secretary's list such State's law may be removed from the list if it appears that under such law adequate coverage for total disability or death due to pneumoconiosis is not being provided. Such removal action shall be taken only after notice and an opportunity to be heard has been afforded such State. In the event a State's workmen's compensation law is removed from the Secretary's list the consequences of such removal on claims for pneumoconiosis benefits filed in that State shall be determined by the Secretary.

§ 722.152 The Secretary's list.

(a) In order to provide a ready reference source for any person interested in knowing at any given time which, if any, States' laws met the currently applicable criteria for approval, it has been determined that provision should be made for listing such States in the Code of Federal Regulations. Accordingly, the Secretary's list of those States having in effect a workmen's compensation law which provides adequate coverage for total disability or death due to pneumoconiosis, as published in the FEDERAL REGISTER pursuant to section 421(b)(1) of the Act, appears in paragraph (b) of this section. When first published on September 7, 1972 (37 FR 18076; see also 37 FR 21429), as provided by the Act, the document listed no such State because there was no State workmen's compensation law which had been found to provide adequate coverage for total disability or death due to pneumoconiosis. The Sec-

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retary's list shall be republished in the FEDERAL REGISTER with amendments from time to time as is necessary.

(b) The Secretary, upon examination of State workmen's compensation laws pursuant to the provisions of section 421 of the Federal Coal Mine Health and Safety Act of 1969, as amended, and §§ 722.101—722.151, has found that the workmen's compensation law of each of the following listed States, for the period from the date shown in the list until such date as the Secretary may make a contrary determination, provides adequate coverage for pneumoconiosis:

<i>State</i>	<i>Period commencing</i>
None	_____

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AUTHORITY: 5 U.S.C. 301, Reorganization Plan No. 6 of 1950, 15 FR 3174, 30 U.S.C. 901 et seq., 902(f), 925, 932, 934, 936, 945; 33 U.S.C. 901 et seq., Secretary's Order 7-87, 52 FR 48466, Employment Standards Order No. 90-02.

SOURCE: 43 FR 36772, Aug. 18, 1978, unless otherwise noted.

Subpart A—General

§ 725.1 Statutory provisions.

(a) *General.* Title IV of the Federal Mine Safety and Health Act of 1977, as amended by the Black Lung Benefits Reform Act of 1977, the Black Lung Benefits Revenue Act of 1977, the Black Lung Benefits Revenue Act of 1981 and the Black Lung Benefits Amendments of 1981, provides for the payment of benefits to a coal miner who is totally disabled due to pneumoconiosis (black lung disease) and to certain survivors of a miner who dies due to pneumoconiosis. For claims filed prior to January 1, 1982, certain survivors could receive benefits if the miner was totally (or for claims filed prior to June 30, 1982, in accordance with section 411(c)(5) of the Act, partially) disabled due to pneumoconiosis, or if the miner died due to pneumoconiosis.

(b) *Part B.* Part B of title IV of the Act provided that all claims filed between December 30, 1969, and June 30, 1973, are to be filed with, processed, and paid by the Secretary of Health, Education, and Welfare through the Social Security Administration; claims filed by the survivor of a miner before January 1, 1974, or within 6 months of the miner's death if death occurred before January 1, 1974, and claims filed by the survivor of a miner who was receiving benefits under part B of title IV of the Act at the time of death, if filed within

6 months of the miner's death, are also adjudicated and paid by the Social Security Administration.

(c) *Section 415.* Claims filed by a miner between July 1 and December 31, 1973, are adjudicated and paid under section 415. Section 415 provides that a claim filed between the appropriate dates shall be filed with and adjudicated by the Secretary of Labor under certain incorporated provisions of the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 901 et seq.). A claim approved under section 415 is paid under part B of title IV of the Act for periods of eligibility occurring between July 1 and December 31, 1973, by the Secretary of Labor and for periods of eligibility thereafter, is paid by a coal mine operator which is determined liable for the claim or the Black Lung Disability Trust Fund if no operator is identified or if the miner's last coal mine employment terminated prior to January 1, 1970. An operator which may be found liable for a section 415 claim is notified of the claim and allowed to participate fully in the adjudication of such claim. A claim filed under section 415 is for all purposes considered as if it were a part C claim (see paragraph (d) of this section) and the provisions of part C of title IV of the Act are fully applicable to a section 415 claim except as is otherwise provided in section 415.

(d) *Part C.* Claims filed by a miner or survivor on or after January 1, 1974, are filed, adjudicated, and paid under the provisions of part C of title IV of the Act. Part C requires that a claim filed on or after January 1, 1974, shall be filed under an applicable approved State workers' compensation law, or if no such law has been approved by the Secretary of Labor, the claim may be filed with the Secretary of Labor under section 422 of the Act. Claims filed with the Secretary of Labor under part C are processed and adjudicated by the Secretary and paid by a coal mine operator. If the miner's last coal mine employment terminated before January 1, 1970, or if no responsible operator can be identified, benefits are paid by the Black Lung Disability Trust Fund. Claims adjudicated under part C are

subject to certain incorporated provisions of the Longshoremen's and Harbor Workers' Compensation Act.

(e) *Section 435.* Section 435 of the Act affords each person who filed a claim for benefits under part B, section 415, or part C, and whose claim had been denied or was still pending as of March 1, 1978, the effective date of the Black Lung Benefits Reform Act of 1977, the right to have his or her claim reviewed on the basis of the 1977 amendments to the Act, and under certain circumstances to submit new evidence in support of the claim.

(f) *Changes made by the Black Lung Benefits Reform Act of 1977.* In addition to those changes which are reflected in paragraphs (a)-(e) of this section, the Black Lung Benefits Reform Act of 1977 contains a number of significant amendments to the Act's standards for determining eligibility for benefits. Among these are:

(1) A provision which clarifies the definition of "pneumoconiosis" to include any "chronic dust disease of the lung and its sequelae, including respiratory and pulmonary impairments, arising out of coal mine employment";

(2) A provision which defines "miner" to include any person who works or has worked in or around a coal mine or coal preparation facility, and in coal mine construction or coal transportation under certain circumstances;

(3) A provision which limits the denial of a claim solely on the basis of employment in a coal mine;

(4) A provision which authorizes the Secretary of Labor to establish standards and develop criteria for determining total disability or death due to pneumoconiosis with respect to a part C claim;

(5) A new presumption which requires the payment of benefits to the survivors of a miner who was employed for 25 or more years in the mines under certain conditions;

(6) Provisions relating to the treatment to be accorded a survivor's affidavit, certain X-ray interpretations, and certain autopsy reports in the development of a claim; and

(7) Other clarifying, procedural, and technical amendments.

(g) *Changes made by the the Black Lung Benefits Revenue Act of 1977.* The

Black Lung Benefits Revenue Act of 1977 established the Black Lung Disability Trust Fund which is financed by a specified tax imposed upon each ton of coal (except lignite) produced and sold or used in the United States after March 31, 1978. The Secretary of the Treasury is the managing trustee of the fund and benefits are paid from the fund upon the direction of the Secretary of Labor. The fund was made liable for the payment of all claims approved under section 415, part C and section 435 of the Act for all periods of eligibility occurring on or after January 1, 1974, with respect to claims where the miner's last coal mine employment terminated before January 1, 1970, or where individual liability can not be assessed against a coal mine operator due to bankruptcy, insolvency, or the like. The fund was also authorized to pay certain claims which a responsible operator has refused to pay within a reasonable time, and to seek reimbursement from such operator. The purpose of the Fund and the Black Lung Benefits Revenue Act of 1977 was to insure that coal mine operators, or the coal industry, will fully bear the cost of black lung disease for the present time and in the future. The Black Lung Benefits Revenue Act of 1977 also contained other provisions relating to the fund and authorized a coal mine operator to establish its own trust fund for the payment of certain claims.

(h) *Changes made by the Black Lung Benefits Amendments of 1981.* In addition to the change reflected in paragraph (a) of this section, the Black Lung Benefits Amendments of 1981 made a number of significant changes in the Act's standards for determining eligibility for benefits and concerning the payment of such benefits. The following changes are all applicable to claims filed on or after January 1, 1982:

(1) The Secretary of Labor may re-read any X-ray submitted in support of a claim and may rely upon a second opinion concerning such an X-ray as a means of auditing the validity of the claim;

(2) The rebuttable presumption that the death of a miner with ten or more years employment in the coal mines, who died of a respirable disease, was

due to pneumoconiosis is no longer applicable;

(3) The rebuttable presumption that the total disability of a miner with fifteen or more years employment in the coal mines, who has demonstrated a totally disabling respiratory or pulmonary impairment, is due to pneumoconiosis is no longer applicable;

(4) In the case of deceased miners, where no medical or other relevant evidence is available, only affidavits from persons not eligible to receive benefits as a result of the adjudication of the claim will be considered sufficient to establish entitlement to benefits;

(5) Unless the miner was found entitled to benefits as a result of a claim filed prior to January 1, 1982, benefits are payable on survivors' claims filed on and after January 1, 1982, only when the miner's death was due to pneumoconiosis;

(6) Benefits payable under this part are subject to an offset on account of excess earnings by the miner; and

(7) Other technical amendments.

(i) *Changes made by the Black Lung Benefits Revenue Act of 1981.* The Black Lung Benefits Revenue Act of 1981 temporarily doubles the amount of the tax upon coal until the Trust Fund shall have repaid all advances received from the United States Treasury and the interest on all such advances. The Fund is also made liable for the payment of certain claims previously denied under the 1972 version of the Act and subsequently approved under section 435 and for the reimbursement of operators and insurers for benefits previously paid by them on such claims. With respect to claims filed on or after January 1, 1982, the Fund's authorization for the payment of interim benefits is limited to the payment of prospective benefits only. These changes also define the rates of interest to be paid to and by the Fund.

(j) *Longshoremen's Act provisions.* The adjudication of claims filed under sections 415, 422 and 435 of the Act is governed by various procedural and other provisions contained in the Longshoremen's and Harbor Workers' Compensation Act (LHWCA), as amended from time to time, which are incorporated within the Act by sections 415 and 422. The incorporated LHWCA provisions

are applicable under the Act except as is otherwise provided by the Act or as provided by regulations of the Secretary. Although occupational disease benefits are also payable under the LHWCA, the primary focus of the procedures set forth in that Act is upon a time definite of traumatic injury or death. Because of this and other significant differences between a black lung and longshore claim, it is determined, in accordance with the authority set forth in section 422 of the Act, that certain of the incorporated procedures prescribed by the LHWCA must be altered to fit the circumstances ordinarily confronted in the adjudication of a black lung claim. The changes made are based upon the Department's experience in processing black lung claims since July 1, 1973, and all such changes are specified in this part or part 727 of this subchapter. No other departure from the incorporated provisions of the LHWCA is intended.

[43 FR 36772, Aug. 18, 1978, as amended at 48 FR 24289, May 31, 1983]

§ 725.2 Purpose and applicability of this part.

(a) It is the purpose of this part to set forth the procedures to be followed and standards to be applied in the filing, processing, adjudication, and payment of claims filed under part C of title IV of the Act.

(b) This part is applicable to all claims filed under part C of title IV of the Act on or after the effective date of this part and shall also be applicable to claims pending on the effective date of this part as provided in part 727 of this subchapter. This part is applicable to claims considered under section 435 of the Act and part 727 of this subchapter.

§ 725.3 Contents of this part.

(a) This subpart describes the statutory provisions which relate to claims considered under this part, the purpose and scope of this part, definitions and usages of terms applicable to this part, and matters relating to the availability of information collected by the Department of Labor in connection with the processing of claims.

(b) Subpart B contains criteria for determining who may be found entitled to benefits under this part and other

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provisions relating to the conditions and duration of eligibility of a particular individual.

(c) Subpart C describes the procedures to be followed and action to be taken in connection with the filing of a claim under this part.

(d) Subpart D of this part sets forth the duties and powers of the persons designated by the Secretary of Labor to adjudicate claims, provisions relating to the rights of parties and representatives of parties, and the procedure to be followed in the informal processing and adjudication of a claim under this part.

(e) Subpart E describes the procedures to be followed if a hearing is required with respect to a claim.

(f) Subpart F contains provisions governing the identification of a coal mine operator which may be liable for the payment of a claim under this part.

(g) Subpart G contains provisions governing the payment of benefits with respect to an approved claim.

(h) Subpart H describes the statutory mechanisms provided for the enforcement of a coal mine operator's liability, sets forth the penalties which may be applied in the case of a defaulting coal mine operator, and describes the obligation of coal operators and their insurance carriers to file certain reports.

(i) Subpart I describes the right of certain beneficiaries to receive medical treatment benefits and vocational rehabilitation under the Act.

§ 725.4 Applicability of other parts in this title.

(a) *Part 718.* Part 718 of this subchapter, which contains the criteria and standards to be applied in determining whether a miner is or was totally disabled due to pneumoconiosis, or whether a miner died due to pneumoconiosis, shall be applicable to the determination of claims under this part. Claims filed after March 31, 1980, are subject to the revised part 718 as promulgated by the Secretary in accordance with section 402(f)(1) of the Act on February 29, 1980. The criteria contained in subpart C of part 727 of this subchapter are applicable in determining claims filed prior to April 1, 1980, under this part, and such criteria

shall be applicable at all times with respect to claims filed under this part and under section 11 of the Black Lung Benefits Reform Act of 1977.

(b) *Parts 715, 717, and 720.* Parts 715, 717, and 720 of this subchapter, which established the procedures for the filing, processing, and payment of claims filed under section 415 of the Act, are repealed and pertinent provisions of these parts which retain significance are incorporated within this part as appropriate.

(c) *Part 726.* Part 726 of this subchapter, which sets forth the obligations imposed upon a coal operator to insure or self-insure its liability for the payment of benefits to certain eligible claimants, is applicable to this part as appropriate.

(d) *Part 727.* Part 727 of this subchapter, which governs the review, adjudication and payment of pending and denied claims under section 435 of the Act, is applicable to this part as provided in such part 727. The criteria contained in subpart C of part 727 for determining a claimant's eligibility for benefits shall be applicable under this part with respect to all claims filed before April 1, 1980, and to all claims filed under this part and under section 11 of the Black Lung Benefits Reform Act of 1977.

(e) *Part 410.* Part 410 of this title, which sets forth provisions relating to a claim for black lung benefits under part B of title IV of the Act, is inapplicable to this part except as is provided in this part, or in part 718 of this subchapter.

[43 FR 36772, Aug. 18, 1978, as amended at 48 FR 24290, May 31, 1983]

§ 725.101 Definitions and use of terms.

(a) *Definitions.* For purposes of this subchapter, except where the content clearly indicates otherwise, the following definitions apply:

(1) The *Act* means the Federal Coal Mine Health and Safety Act, Pub. L. 91-173, 83 Stat. 742, 30 U.S.C. 801-960, as amended by the Black Lung Benefits Act of 1972, the Mine Safety and Health Act of 1977, the Black Lung Benefits Reform Act of 1977, the Black Lung Benefits Revenue Act of 1977, the Black Lung Benefits Revenue Act of 1981, and

the Black Lung Benefits Amendments of 1981.

(2) The *Longshoremen's Act* or *LHWCA* means the Longshoremen's and Harbor Workers' Compensation Act of March 4, 1927, c. 509, 44 Stat. 1424, 33 U.S.C. 901-950, as amended from time to time.

(3) The *Social Security Act* means the Social Security Act, Act of August 14, 1935, c. 531, 49 Stat. 620, 42 U.S.C. 301-431, as amended from time to time.

(4) A *workers' compensation law* means a law providing for payment of benefits to employees, and their dependents and survivors, for disability on account of injury, including occupational disease, or death, suffered in connection with their employment.

(5) *State* includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Trust Territory of the Pacific Islands, and prior to January 3, 1959, and August 21, 1959, respectively, the territories of Alaska and Hawaii.

(6) *Department* means the United States Department of Labor.

(7) *Secretary* means the Secretary of Labor, United States Department of Labor, or a person, authorized by him or her to perform his or her functions under title IV of the Act.

(8) *Office* or *OWCP* means the Office of Workers' Compensation Programs, United States Department of Labor.

(9) *Director* means the Director, OWCP, or his or her designee.

(10) *Division* or *DCMWC* means the Division of Coal Mine Workers' Compensation in the OWCP, United States Department of Labor.

(11) *District Director* means a person appointed as provided in sections 39 and 40 of the LHWCA, or his or her designee, who is authorized to develop and adjudicate claims as provided in this subchapter (see § 725.350). These regulations substitute this term for the term Deputy Commissioner which is used in the statute. This substitution is for administrative purposes only and in no way affects the power or authority of the position as established in the statute.

(12) *Office of Administrative Law Judges* means the Office of Administrative Law Judges, U.S. Department of Labor.

(13) *Chief Administrative Law Judge* means the Chief Administrative Law Judge of the Office of Administrative Law Judges, U.S. Department of Labor, 800 K Street, NW., suite 400, Washington, DC 20001-8002.

(14) *Administrative law judge* means a person qualified under 5 U.S.C. 3105 to conduct hearings and adjudicate claims for benefits filed pursuant to section 415 and part C of the Act. Until March 1, 1979, it shall also mean an individual appointed to conduct such hearings and adjudicate such claims under Pub. L. 94-504.

(15) *Benefits Review Board* or *Board* means the Benefits Review Board, U.S. Department of Labor, an appellate tribunal appointed by the Secretary of Labor pursuant to the provisions of section 21(b)(1) of the LHWCA. See parts 801, 802 of this title.

(16) *Claim* means a written assertion of entitlement to benefits under section 415 or part C of title IV of the Act, submitted in a form and manner authorized by the provisions of this subchapter.

(17) *Claimant* means an individual who files a claim for benefits under this part.

(18) *Benefits* means all money or other benefits paid or payable under section 415 or part C of title IV of the Act on account of disability or death due to pneumoconiosis.

(19) *Beneficiary* means a miner or any surviving spouse, divorced spouse, child, parent, brother or sister, who is entitled to benefits under either section 415 or part C of title IV of the Act.

(20) *Pneumoconiosis* means a chronic dust disease of the lung and its sequelae, including respiratory and pulmonary impairments, arising out of coal mine employment (see part 718 of this subchapter).

(21) *Total disability* and *partial disability*, for purposes of this part, have the meaning given them as provided in part 718 of this subchapter.

(22) *The Nation's coal mines* means all coal mines located in any State.

(23) *Coal mine* means an area of land and all structures, facilities, machinery, tools, equipment, shafts, slopes, tunnels, excavations and other property, real or personal, placed upon, under or above the surface of such land

by any person, used in, or to be used in, or resulting from, the work of extracting in such area bituminous coal, lignite or anthracite from its natural deposits in the earth by any means or method, and in the work of preparing the coal so extracted, and includes custom coal preparation facilities.

(24) *Underground coal mine* means a coal mine in which the earth and other materials which lie above and around the natural deposit of coal (i.e., overburden) are not removed in mining; including all land, structures, facilities, machinery, tools, equipment, shafts, slopes, tunnels, excavations and other property, real or personal, appurtenant thereto.

(25) *Coal preparation* means the breaking, crushing, sizing, cleaning, washing, drying, mixing, storing and loading of bituminous coal, lignite or anthracite, and such other work of preparing coal as is usually done by the operator of a coal mine.

(26) *Miner* or *coal 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. The 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 (see § 725.202(a)).

(27) *Operator* means any owner, lessee, or other person who operates, controls or supervises a coal mine, including a prior or successor operator as defined in section 422 of the Act and certain transportation and construction employers (see subpart F of this part).

(28) *Responsible operator* means an operator which has been determined to be liable for the payment of benefits to a claimant for periods of eligibility after December 31, 1973, with respect to a claim filed under section 415 or part C of title IV of the Act or reviewed under section 435 of the Act.

(29) *Person* means an individual, partnership, association, corporation, firm, subsidiary or parent of a corporation, or other organization or business entity.

(30) *Insurer* or *carrier* means any private company, corporation, mutual association, reciprocal or interinsurance

exchange, or any other person or fund, including any State fund, authorized under the laws of a State to insure employers' liability under workers' compensation laws. The term also includes the Secretary of Labor in the exercise of his or her authority under section 433 of the Act.

(31) *Black Lung Disability Trust Fund* or the *Fund* means the Black Lung Disability Trust Fund established by the Black Lung Benefits Revenue Act of 1977, as amended by the Black Lung Benefits Revenue Act of 1981, for the payment of certain claims adjudicated under this part (see subpart G of this part).

(b) *Statutory terms.* The definitions contained in this section shall not be construed in derogation of terms of the Act.

(c) *Dependents and survivors.* Dependents and survivors are those persons described in subpart B of this part.

[43 FR 36772, Aug. 18, 1978, as amended at 48 FR 24290, May 31, 1983; 55 FR 28606, July 12, 1990, 56 FR 54708, Oct. 22, 1991]

§ 725.102 Disclosure of program information.

(a) All reports, records, or other documents filed with the OWCP with respect to claims are the records of the OWCP. The Director or his or her designee shall be the official custodian of those records maintained by the OWCP at its national office. The Deputy Commissioner shall be the official custodian of those records maintained at a district office.

(b) The official custodian of any record sought to be inspected shall permit or deny inspection in accordance with the Department of Labor's regulations pertaining thereto (see 29 CFR part 70). The original record in any such case shall not be removed from the Office of the custodian for such inspection. The custodian may, in his or her discretion, deny inspection of any record or part thereof which is of a character specified in 5 U.S.C. 552(b) if in his or her opinion such inspection may result in damage, harm, or harassment to the beneficiary or to any other

person. For special provisions concerning release of information regarding injured employees undergoing vocational rehabilitation, see §702.508, of this title.

(c) Any person may request copies of records he or she has been permitted to inspect. Such requests shall be addressed to the official custodian of the records sought to be copied. The official custodian shall provide the requested copies under the terms and conditions specified in the Department of Labor's regulations relating thereto (see 29 CFR part 70).

(d) Any party to a claim (§725.360) or his or her duly authorized representative shall be permitted upon request to inspect the file which has been compiled in connection with such claim. Any party to a claim or representative of such party shall upon request be provided with a copy of any or all material contained in such claim file. A request for information by a party or representative made under this paragraph shall be answered within a reasonable time after receipt by the Office. Internal documents prepared by the deputy commissioner which do not constitute evidence of a fact which must be established in connection with a claim shall not be routinely provided or presented for inspection in accordance with a request made under this paragraph.

[43 FR 36772, Aug. 18, 1978, as amended at 48 FR 24290, May 31, 1983]

Subpart B—Persons Entitled to Benefits, Conditions, and Duration of Entitlement

§ 725.201 Who is entitled to benefits; contents of this subpart.

(a) Section 415 and part C of the Act provide for the payment of periodic benefits in accordance with this part to:

(1) A miner (see §725.202) who is determined to be totally disabled due to pneumoconiosis; or

(2) The surviving spouse or surviving divorced spouse or, where neither exists, the child of a deceased miner, where the deceased miner;

(i) Was receiving benefits under section 415 or part C of title IV of the Act

as a result of a claim filed prior to January 1, 1982; or

(ii) Is determined as a result of a claim filed prior to January 1, 1982, to have been totally disabled due to pneumoconiosis at the time of death, or to have died due to pneumoconiosis. Survivors of miners whose claims are filed on or after January 1, 1982, must establish that the deceased miner's death was due to pneumoconiosis in order to establish their entitlement to benefits, except where entitlement is established under §718.306 of part 718 on a survivor's claim filed prior to June 30, 1982, or;

(3) The child of a miner's surviving spouse who was receiving benefits under section 415 or part C of title IV of the Act at the time of such spouse's death; or

(4) The surviving dependent parents, where there is no surviving spouse or child, or the surviving dependent brothers or sisters, where there is no surviving spouse, child, or parent, of a miner, where the deceased miner;

(i) Was receiving benefits under section 415 or part C of title IV of the Act as a result of a claim filed prior to January 1, 1982; or

(ii) Is determined as a result of a claim filed prior to January 1, 1982, to have been totally disabled due to pneumoconiosis at the time of death, or to have died due to pneumoconiosis. Survivors of miners whose claims are filed on or after January 1, 1982, must establish that the deceased miner's death was due to pneumoconiosis in order to establish their entitlement to benefits, except where entitlement is established under §718.306 of part 718 on a survivor's claim filed prior to June 30, 1982.

(b) Section 411(c)(5) of the Act provides for the payment of benefits to the eligible survivors of a miner employed for 25 or more years in the mines prior to June 30, 1971, if the miner's death occurred on or before March 1, 1978, and if the claim was filed prior to June 30, 1982, unless it is established that at the time of death, the miner was not totally or partially disabled due to pneumoconiosis. For the purposes of this part the term "total disability" shall mean partial disability with respect to

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a claim for which eligibility is established under section 411(c)(5) of the Act. See § 718.306 of part 718 which implements this provision of the Act.

(c) The provisions contained in this subpart describe the conditions of entitlement to benefits applicable to a miner, or a surviving spouse, child, parent, brother, or sister, and the events which establish or terminate entitlement to benefits.

(d) In order for an entitled miner or surviving spouse to qualify for augmented benefits because of one or more dependents, such dependents must meet relationship and dependency requirements with respect to such beneficiary prescribed by or pursuant to the Act. Such requirements are also set forth in this subpart.

[43 FR 36772, Aug. 18, 1978, as amended at 48 FR 24290, May 31, 1983]

CONDITIONS AND DURATION OF ENTITLEMENT

§ 725.202 Miner defined; condition of entitlement, miner.

(a) *Miner defined.* A “miner” for the purposes of this part is any person who works or has worked in or around a coal mine or coal preparation facility in the extraction, preparation, or transportation of coal, and any person who works or has worked in coal mine construction or maintenance in or around a coal mine or coal preparation facility. A coal mine construction or transportation worker shall be considered a miner to the extent such individual is or was exposed to coal mine dust as a result of employment in or around a coal mine or coal preparation facility. In the case of an individual employed in coal transportation or coal mine construction, there shall be a rebuttable presumption that such individual was exposed to coal mine dust during all periods of such employment occurring in or around a coal mine or coal preparation facility for purposes of:

- (1) Determining whether such individual is or was a miner; (2) establishing the applicability of any of the presumptions described in section 411(c) of the Act and part 718 of this subchapter; and (3) determining the identity of a coal mine operator liable

for the payment of benefits in accordance with § 725.493. The presumption may be rebutted by evidence which demonstrates:

- (i) That the individual was not regularly exposed to coal mine dust during his or her employment in or around a coal mine or preparation facility; or
- (ii) that the individual was not regularly employed in or around a coal mine or coal preparation facility. An individual employed by a coal mine operator, regardless of the nature of such individual’s employment, shall be considered a miner unless such individual was not employed in or around a coal mine or coal preparation facility.

A person who is or was a self-employed miner or independent contractor, and who otherwise meets the requirements of this paragraph, shall be considered a miner for the purposes of this part (see § 725.494).

(b) *Conditions of entitlement; miner.* An individual is eligible for benefits under this subchapter if the individual:

- (1) Is a miner as defined in this section; and
- (2) Is totally disabled due to pneumoconiosis (see part 718 of this subchapter; see also § 725.503A); and
- (3) Has filed a claim for benefits in accordance with the provisions of this part.

§ 725.203 Duration of entitlement; miner.

(a) An individual is entitled to benefits as a miner for each month beginning with the first month in which all of the conditions for entitlement prescribed in § 725.202 are satisfied.

(b) The last month for which such individual is entitled to benefits is the month before the month during which either of the following events first occurs:

- (1) The miner dies; or
- (2) The miner’s total disability ceases (see § 725.503A).

BENEFITS ON ACCOUNT OF LIVING DEPENDENTS (AUGMENTED BENEFITS)

§ 725.204 Determination of relationship; spouse.

For the purpose of augmenting benefits, an individual will be considered to be the spouse of a miner if:

(a) The courts of the State in which the miner is domiciled would find that such individual and the miner validly married; or

(b) The courts of the State in which the miner is domiciled would find, under the law they would apply in determining the devolution of the miner's intestate personal property, that the individual is the miner's spouse; or

(c) Under State law, such individual would have the right of a spouse to share in the miner's intestate personal property; or

(d)(1) Such individual went through a marriage ceremony with the miner resulting in a purported marriage between them and which, but for a legal impediment, would have been a valid marriage, unless the individual entered into the purported marriage with knowledge that it was not a valid marriage, or if such individual and the miner were not living in the same household in the month in which a request is filed that the miner's benefits be augmented because such individual qualifies as the miner's spouse. The provisions of this paragraph shall not apply, however, if the miner's benefits are or have been augmented under § 725.520(c) because another person qualifies or has qualified as the miner's spouse and such other person is, or is considered to be, the spouse of such miner under paragraph (a), (b), or (c) of this section at the time such request is filed.

(2) The qualification of an individual for augmentation purposes under this paragraph shall end with the month before the month in which:

(i) The Office determines that the benefits of the miner should be augmented on account of another person, if such other person is (or is considered to be) the spouse of the miner under paragraph (a), (b), or (c) of this section, or

(ii) If the individual who previously qualified as a spouse for purposes of § 725.520(c), entered into a valid marriage without regard to this paragraph, with a person other than the miner.

§ 725.205 Determination of dependency; spouse.

For the purposes of augmenting benefits, an individual who is the miner's

spouse (see § 725.204) will be determined to be dependent upon the miner if:

(a) The individual is a member of the same household as the miner (see § 725.232); or

(b) The individual is receiving regular contributions from the miner for support (see § 725.233(c)); or

(c) The miner has been ordered by a court to contribute to such individual's support (see § 725.233(e)); or

(d) The individual is the natural parent of the son or daughter of the miner; or

(e) The individual was married to the miner (see § 725.204) for a period of not less than 1 year.

[43 FR 36772, Aug. 18, 1978, as amended at 48 FR 24290, May 31, 1983]

§ 725.206 Determination of relationship; divorced spouse.

For the purposes of augmenting benefits with respect to any claim considered or reviewed under this part or part 727 of this subchapter, an individual will be considered to be the divorced spouse of a miner if the individual's marriage to the miner has been terminated by a final divorce on or after the 10th anniversary of the marriage unless, if such individual was married to and divorced from the miner more than once, such individual was married to the miner in each calendar year of the period beginning 10 years immediately before the date on which any divorce became final.

§ 725.207 Determination of dependency; divorced spouse.

For the purpose of augmenting benefits, an individual who is the miner's divorced spouse (§ 725.206) will be determined to be dependent upon the miner if:

(a) The individual is receiving at least one-half of his or her support from the miner (see § 725.233(g)); or

(b) The individual is receiving substantial contributions from the miner pursuant to a written agreement (see § 725.233 (c), (f)); or

(c) A court order requires the miner to furnish substantial contributions to the individual's support (see § 725.233 (c), (e)).

[43 FR 36772, Aug. 18, 1978, as amended at 48 FR 24290, May 31, 1983]

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§ 725.208 Determination of relationship; child.

As used in this section, the term “beneficiary” means only a surviving spouse entitled to benefits at the time of death (see § 725.212), or a miner. An individual will be considered to be the child of a beneficiary if:

(a) The courts of the State in which the beneficiary is domiciled (see § 725.231) would find, under the law they would apply, that the individual is the beneficiary’s child; or

(b) The individual is the legally adopted child of such beneficiary; or

(c) The individual is the stepchild of such beneficiary by reason of a valid marriage of the individual’s parent or adopting parent to such beneficiary; or

(d) The individual does not bear the relationship of child to such beneficiary under paragraph (a), (b), or (c) of this section, but would, under State law, have the same right as a child to share in the beneficiary’s intestate personal property; or

(e) The individual is the natural son or daughter of a beneficiary but is not a child under paragraph (a), (b), or (c) of this section, and is not considered to be the child of the beneficiary under paragraph (d) of this section if the beneficiary and the mother or the father, as the case may be, of the individual went through a marriage ceremony resulting in a purported marriage between them which but for a legal impediment (see § 725.230) would have been a valid marriage; or

(f) The individual is the natural son or daughter of a beneficiary but is not a child under paragraph (a), (b), or (c) of this section, and is not considered to be the child of the beneficiary under paragraph (d) or (e) of this section, such individual shall nevertheless be considered to be the child of the beneficiary if:

(1) The beneficiary, prior to his or her entitlement to benefits, has acknowledged in writing that the individual is his or her son or daughter, or has been decreed by a court to be the parent of the individual, or has been ordered by a court to contribute to the support of the individual (see § 725.233(e)) because the individual is his or her son or daughter; or

(2) Such beneficiary is shown by satisfactory evidence to be the father or mother of the individual and was living with or contributing to the support of the individual at the time the beneficiary became entitled to benefits.

[43 FR 36772, Aug. 18, 1978, as amended at 48 FR 24290, May 31, 1983]

§ 725.209 Determination of dependency; child.

(a) For purposes of augmenting the benefits of a miner or surviving spouse, the term “beneficiary” as used in this section means only a miner or surviving spouse entitled to benefits (see § 725.202 and § 725.212). An individual who is the beneficiary’s child (§ 725.208) will be determined to be, or to have been dependent on the beneficiary, if the child:

(1) Is unmarried; and

(2)(i) Is under 18 years of age; or

(ii) Is 18 years of age or older and is under a disability as defined in section 223(d) of the Social Security Act, 42 U.S.C. 423(d); or

(iii) Is 18 years of age or older and is a student.

(b)(1) The term “student” means a “full-time student” as defined in section 202(d)(7) of the Social Security Act, 42 U.S.C. 402(d)(7) (see § 404.320(c) of this title), or an individual under 23 years of age who has not completed 4 years of education beyond the high school level and who is regularly pursuing a full-time course of study or training at an institution which is:

(i) A school, college, or university operated or directly supported by the United States, or by a State or local government or political subdivision thereof; or

(ii) A school, college, or university which has been accredited by a State or by a State-recognized or nationally-recognized accrediting agency or body; or

(iii) A school, college, or university not so accredited but whose credits are accepted, on transfer, by at least three institutions which are so accredited; or

(iv) A technical, trade, vocational, business, or professional school accredited or licensed by the Federal or a State government or any political subdivision thereof, providing courses of not less than 3 months’ duration that

prepare the student for a livelihood in a trade, industry, vocation, or profession.

(2) A student will be considered to be "pursuing a full-time course of study or training at an institution" if the student is enrolled in a noncorrespondence course of at least 13 weeks duration and is carrying a subject load which is considered full-time for day students under the institution's standards and practices. A student beginning or ending a full-time course of study or training in part of any month will be considered to be pursuing such course for the entire month.

(3) A child is considered not to have ceased to be a student:

(i) During any interim between school years, if the interim does not exceed 4 months and the child shows to the satisfaction of the office that he or she has a bona fide intention of continuing to pursue a full-time course of study or training; or

(ii) During periods of reasonable duration in which, in the judgment of the office, the child is prevented by factors beyond the child's control from pursuing his or her education.

(4) A student whose 23d birthday occurs during a semester or other enrollment period in which such student is pursuing a full-time course of study or training shall continue to be considered a student until the end of such period, unless eligibility is otherwise terminated.

§ 725.210 Duration of augmented benefits.

Augmented benefits payable on behalf of a spouse or divorced spouse, or a child, shall begin with the first month in which the dependent satisfies the conditions of relationship and dependency set forth in this subpart. Augmentation of benefits on account of a dependent continues through the month before the month in which the dependent ceases to satisfy these conditions, except in the case of a child who qualifies as a dependent because such child is a student. In the latter case, benefits continue to be augmented through the month before the first month during no part of which such child qualifies as a student.

§ 725.211 Time of determination of relationship and dependency of spouse or child for purposes of augmentation of benefits.

With respect to the spouse or child of a miner entitled to benefits, and with respect to the child of a surviving spouse entitled to benefits, the determination as to whether an individual purporting to be a spouse or child is related to or dependent upon such miner or surviving spouse shall be based on the facts and circumstances present in each case, at the appropriate time.

SURVIVORS' ENTITLEMENT

§ 725.212 Condition of entitlement; surviving spouse or surviving divorced spouse.

(a) An individual who is the surviving spouse or surviving divorced spouse of a miner is eligible for benefits if such individual:

(1) Is not married;

(2) Was dependent on the miner at the pertinent time; and

(3) The deceased miner either:

(i) Was receiving benefits under section 415 or part C of title IV of the Act at the time of death as a result of a claim filed prior to January 1, 1982; or

(ii) Is determined as a result of a claim filed prior to January 1, 1982, to have been totally disabled due to pneumoconiosis at the time of death or to have died due to pneumoconiosis. A surviving spouse or surviving divorced spouse of a miner whose claim is filed on or after January 1, 1982, must establish that the deceased miner's death was due to pneumoconiosis in order to establish entitlement to benefits, except where entitlement is established under § 718.306 of part 718 on a claim filed prior to June 30, 1982.

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(Pub. L. No. 96-511)

[48 FR 24291, May 31, 1983, as amended at 49 FR 18295, Apr. 30, 1984]

§ 725.213 Duration of entitlement; surviving spouse or surviving divorced spouse.

(a) An individual is entitled to benefits as a surviving spouse, or as a surviving divorced spouse, for each month beginning with the first month in

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which all of the conditions of entitlement prescribed in § 725.212 are satisfied.

(b) The last month for which such individual is entitled to such benefits is the month before the month in which either of the following events first occurs:

- (1) The surviving spouse or surviving divorced spouse marries; or
- (2) The surviving spouse or surviving divorced spouse dies; or
- (3) Where the individual qualifies as the surviving spouse of a miner under § 725.204(d), such individual ceases to qualify as provided in that paragraph.

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(Pub. L. No. 96-511)

[43 FR 36772, Aug. 18, 1978, as amended at 48 FR 24291, May 31, 1983; 49 FR 18295, Apr. 30, 1984]

§ 725.214 Determination of relationship; surviving spouse.

An individual shall be considered to be the surviving spouse of a miner if:

- (a) The courts of the State in which the miner was domiciled (see § 725.231) at the time of his or her death would find that the individual and the miner were validly married; or
- (b) The courts of the State in which the miner was domiciled (see § 725.231) at the time of the miner's death would find that the individual was the miner's surviving spouse; or
- (c) Under State law, such individual would have the right of the spouse to share in the miner's intestate personal property; or
- (d) Such individual went through a marriage ceremony with the miner resulting in a purported marriage between them and which but for a legal impediment (see § 725.230) would have been a valid marriage, unless such individual entered into the purported marriage with knowledge that it was not a valid marriage, or if such individual and the miner were not living in the same household at the time of the miner's death. The provisions of this paragraph shall not apply if another person is or has been entitled to benefits as the surviving spouse of the miner and such other person is, or is considered to be, the surviving spouse of such miner under paragraph (a), (b), or (c) of this

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section at the time such individual files a claim for benefits.

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[43 FR 36772, Aug. 18, 1978, as amended at 48 FR 24291, May 31, 1983; 49 FR 18295, Apr. 30, 1984]

§ 725.215 Determination of dependency; surviving spouse.

An individual who is the miner's surviving spouse (see § 725.214) shall be determined to have been dependent on the miner if, at the time of the miner's death:

- (a) The individual was living with the miner (see § 725.232); or
- (b) The individual was dependent upon the miner for support or the miner has been ordered by a court to contribute to such individual's support (see § 725.233); or
- (c) The individual was living apart from the miner because of the miner's desertion or other reasonable cause; or
- (d) The individual is the natural parent of the miner's son or daughter; or
- (e) The individual had legally adopted the miner's son or daughter while the individual was married to the miner and while such son or daughter was under the age of 18; or
- (f) The individual was married to the miner at the time both of them legally adopted a child under the age of 18; or
- (g) (1) The individual was married to the miner for a period of not less than 9 months immediately before the day on which the miner died, unless the miner's death:
 - (i) Is accidental (as defined in paragraph (g)(2) of this section), or
 - (ii) Occurs in line of duty while the miner is a member of a uniformed service serving on active duty (as defined in § 404.1013(f) (2) and (3) of this title), and the surviving spouse was married to the miner for a period of not less than 3 months immediately prior to the day on which such miner died.
- (2) For purposes of paragraph (g) (1) (i) of this section, the death of a miner is accidental if such individual received bodily injuries solely through violent, external, and accidental means, and as a direct result of the bodily injuries and independently of all other causes, dies not later than 3 months after the

day on which such miner receives such bodily injuries. The term "accident" means an event that was unpremeditated and unforeseen from the standpoint of the deceased individual. To determine whether the death of an individual did, in fact, result from an accident the adjudication officer will consider all the circumstances surrounding the casualty. An intentional and voluntary suicide will not be considered to be death by accident; however, suicide by an individual who is so incompetent as to be incapable of acting intentionally and voluntarily will be considered to be a death by accident. In no event will the death of an individual resulting from violent and external causes be considered a suicide unless there is direct proof that the fatal injury was self-inflicted.

(3) The provisions of this section shall not apply if the adjudication officer determines that at the time of the marriage involved, the miner would not reasonably have been expected to live for 9 months.

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(Pub. L. No. 96-511)

[43 FR 36772, Aug. 18, 1978, as amended at 49 FR 18295, Apr. 30, 1984]

§ 725.216 Determination of a relationship; surviving divorced spouse.

An individual will be considered to be the surviving divorced spouse of deceased miner in a claim considered under this part or reviewed under part 727 of this subchapter, if such individual's marriage to the miner had been terminated by a final divorce on or after the 10th anniversary of the marriage unless, if such individual was married to and divorced from the miner more than once, such individual was married to such miner in each calendar year of the period beginning 10 years immediately before the date on which any divorce became final and ending with the year in which the divorce became final.

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(Pub. L. No. 96-511)

[43 FR 36772, Aug. 18, 1978, as amended at 49 FR 18295, Apr. 30, 1984]

§ 725.217 Determination of dependency; surviving divorced spouse.

(a) An individual who is the miner's surviving divorced spouse (see § 725.216) shall be determined to have been dependent on the miner if, for the month before the month in which the miner died:

(1) The individual was receiving at least one-half of his or her support from the miner (see § 725.233(g)); or

(2) The individual was receiving substantial contributions from the miner pursuant to a written agreement (see § 725.233 (e) and (f)); or

(3) A court order required the miner to furnish substantial contributions to the individual's support (see § 725.233 (c) and (e)).

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[43 FR 36772, Aug. 18, 1978, as amended at 48 FR 24291, May 31, 1983; 49 FR 18295, Apr. 30, 1984]

§ 725.218 Conditions of entitlement; child.

(a) An individual is entitled to benefits where he or she meets the required standards of relationship and dependency under this subpart (see § 725.220 and § 725.221) and is the child of a deceased miner who:

(1) Was receiving benefits under section 415 or part C of title IV of the Act as a result of a claim filed prior to January 1, 1982, or

(2) Is determined as a result of a claim filed prior to January 1, 1982, to have been totally disabled due to pneumoconiosis at the time of death, or to have died due to pneumoconiosis. A surviving dependent child of a miner whose claim is filed on or after January 1, 1982, must establish that the miner's death was due to pneumoconiosis in order to establish entitlement to benefits, except where entitlement is established under § 718.306 of part 718 on a claim filed prior to June 30, 1982.

(b) A child is not entitled to benefits for any month for which a miner, or

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the surviving spouse or surviving divorced spouse of a miner, establishes entitlement to benefits.

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(Pub. L. No. 96-511)

[43 FR 36772, Aug. 18, 1978, as amended at 48 FR 24291, May 31, 1983; 49 FR 18295, Apr. 30, 1984]

§ 725.219 Duration of entitlement; child.

(a) An individual is entitled to benefits as a child for each month beginning with the first month in which all of the conditions of entitlement prescribed in § 725.218 are satisfied.

(b) The last month for which such individual is entitled to such benefits is the month before the month in which any one of the following events first occurs:

- (1) The child dies;
- (2) The child marries;
- (3) The child attains age 18; and

(i) Is not under a disability at that time, and

(ii) Is not a student (as defined in § 725.209(b)) during any part of the month in which the child attains age 18;

(4) If the child's entitlement is based on his or her status as a student, the earlier of:

(i) The first month during no part of which the individual is a student; or

(ii) The month in which the individual attains age 23 and is not under a disability at that time;

(5) If a child's entitlement is based on disability, the first month in no part of which such individual is under a disability.

(c) A child whose entitlement to benefits terminated with the month before the month in which the child attained age 18, or later, may thereafter (provided such individual is not married) again become entitled to such benefits upon filing application for such reentitlement, beginning with the first month after termination of benefits in which such individual is a student and has not attained the age of 23.

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(Pub. L. No. 96-511)

[43 FR 36772, Aug. 18, 1978, as amended at 48 FR 24291, May 31, 1983; 49 FR 18295, Apr. 30, 1984]

§ 725.220 Determination of relationship; child.

For purposes of determining whether an individual may qualify for benefits as the child of a deceased miner, the provisions of § 725.208 shall be applicable. As used in this section, the term "beneficiary" means only a surviving spouse entitled to benefits at the time of such surviving spouse's death (see § 725.212), or a miner. For purposes of a survivor's claim, an individual will be considered to be a child of a beneficiary if:

(a) The courts of the State in which such beneficiary is domiciled (see § 725.231) would find, under the law they would apply in determining the devolution of the beneficiary's intestate personal property, that the individual is the beneficiary's child; or

(b) Such individual is the legally adopted child of such beneficiary; or

(c) Such individual is the stepchild of such beneficiary by reason of a valid marriage of such individual's parent or adopting parent to such beneficiary; or

(d) Such individual does not bear the relationship of child to such beneficiary under paragraph (a), (b), or (c) of this section, but would, under State law, have the same right as a child to share in the beneficiary's intestate personal property; or

(e) Such individual is the natural son or daughter of a beneficiary but does not bear the relationship of child to such beneficiary under paragraph (a), (b), or (c) of this section, and is not considered to be the child of the beneficiary under paragraph (d) of this section, such individual shall nevertheless be considered to be the child of such beneficiary if the beneficiary and the mother or father, as the case may be, of such individual went through a marriage ceremony resulting in a purported marriage between them which but for a legal impediment (see § 725.230) would have been a valid marriage; or

(f) Such individual is the natural son or daughter of a beneficiary but does not have the relationship of child to

such beneficiary under paragraph (a), (b), or (c) of this section, and is not considered to be the child of the beneficiary under paragraph (d) or (e) of this section, such individual shall nevertheless be considered to be the child of such beneficiary if:

(1) Such beneficiary, prior to his or her entitlement to benefits, has acknowledged in writing that the individual is his or her son or daughter, or has been decreed by a court to be the father or mother of the individual, or has been ordered by a court to contribute to the support of the individual (see §725.233(a)) because the individual is a son or daughter; or

(2) Such beneficiary is shown by satisfactory evidence to be the father or mother of the individual and was living with or contributing to the support of the individual at the time such beneficiary became entitled to benefits.

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[43 FR 36772, Aug. 18, 1978, as amended at 48 FR 24291, May 31, 1983; 49 FR 18295, Apr. 30, 1984]

§ 725.221 Determination of dependency; child.

For the purposes of determining whether a child was dependent upon a deceased miner, the provisions of §725.209 shall be applicable, except that for purposes of determining the eligibility of a child who is under a disability as defined in section 223(d) of the Social Security Act, such disability must have begun before the child attained age 18, or in the case of a student, before the child ceased to be a student.

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(Pub. L. No. 96-511)

[43 FR 36772, Aug. 18, 1978, as amended at 49 FR 18295, Apr. 30, 1984]

§ 725.222 Conditions of entitlement; parent, brother, or sister.

(a) An individual is eligible for benefits as a surviving parent, brother or sister if all of the following requirements are met:

(1) The individual is the parent, brother, or sister of a deceased miner;

(2) The individual was dependent on the miner at the pertinent time;

(3) Proof of support is filed within 2 years after the miner's death, unless the time is extended for good cause (§725.226);

(4) In the case of a brother or sister, such individual also:

(i) Is under 18 years of age; or

(ii) Is 18 years of age or older and is under a disability as defined in section 223(d) of the Social Security Act, 42 U.S.C. 423(d), which began before such individual attained age 18, or in the case of a student, before the student ceased to be a student; or

(iii) Is a student (see §725.209(b)); or

(iv) Is under a disability as defined in section 223(d) of the Social Security Act, 42 U.S.C. 423(d), at the time of the miner's death;

(5) The deceased miner:

(i) Was entitled to benefits under section 415 or part C of title IV of the Act as a result of a claim filed prior to January 1, 1982; or

(ii) Is determined as a result of a claim filed prior to January 1, 1982, to have been totally disabled due to pneumoconiosis at the time of death or to have died due to pneumoconiosis. A surviving dependent parent, brother or sister of a miner whose claim is filed on or after January 1, 1982, must establish that the miner's death was due to pneumoconiosis in order to establish entitlement to benefits, except where entitlement is established under §718.306 of part 718 on a claim filed prior to June 30, 1982.

(b)(1) A parent is not entitled to benefits if the deceased miner was survived by a spouse or child at the time of such miner's death.

(2) A brother or sister is not entitled to benefits if the deceased miner was survived by a spouse, child, or parent at the time of such miner's death.

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[43 FR 36772, Aug. 18, 1978, as amended at 48 FR 24291, May 31, 1983; 49 FR 18295, Apr. 30, 1984]

§ 725.223 Duration of entitlement; parent, brother, or sister.

(a) A parent, sister, or brother is entitled to benefits beginning with the

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month all the conditions of entitlement described in § 725.222 are met.

(b) The last month for which such parent is entitled to benefits is the month in which the parent dies.

(c) The last month for which such brother or sister is entitled to benefits is the month before the month in which any of the following events first occurs:

(1) The individual dies;

(2)(i) The individual marries or remarries; or

(ii) If already married, the individual received support in any amount from his or her spouse;

(3) The individual attains age 18, and

(i) Is not under a disability at that time, and (ii) Is not a student (see § 725.209(b)) during any part of the month in which such individual attains age 18;

(4) If the individual's entitlement is based on his or her status as a student, the earlier of:

(i) The first month during no part of which he or she is a student; or

(ii) The month in which he or she attains age 23 and is not under a disability at that time;

(5) If the individual's entitlement is based on disability, the first month in no part of which the individual is under a disability.

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(Pub. L. No. 96-511)

[43 FR 36772, Aug. 18, 1978, as amended at 49 FR 18295, Apr. 30, 1984]

§ 725.224 Determination of relationship; parent, brother, or sister.

(a) An individual will be considered to be the parent, brother, or sister of a miner if the courts of the State in which the miner was domiciled (see § 225.231) at the time of death would find, under the law they would apply, that the individual is the miner's parent, brother, or sister.

(b) Where, under State law, the individual is not the miner's parent, brother, or sister, but would, under State law, have the same status (i.e., right to share in the miner's intestate personal property) as a parent, brother, or sister, the individual will be considered to

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be the parent, brother, or sister as appropriate.

§ 725.225 Determination of dependency; parent, brother, or sister.

An individual who is the miner's parent, brother, or sister will be determined to have been dependent on the miner if, during the 1-year period immediately prior to the miner's death:

(a) The individual and the miner were living in the same household (see § 725.232); and

(b) The individual was totally dependent on the miner for support (see § 725.233(h)).

[43 FR 36772, Aug. 18, 1978, as amended at 48 FR 24291, May 31, 1983]

§ 725.226 "Good cause" for delayed filing of proof of support.

(a) *What constitutes "good cause."* "Good cause" may be found for failure to file timely proof of support where the parent, brother, or sister establishes to the satisfaction of the Office that such failure to file was due to:

(1) Circumstances beyond the individual's control, such as extended illness, mental, or physical incapacity, or communication difficulties; or

(2) Incorrect or incomplete information furnished the individual by the Office; or

(3) Efforts by the individual to secure supporting evidence without a realization that such evidence could be submitted after filing proof of support.

(b) *What does not constitute "good cause."* "Good cause" for failure to file timely proof of support (see § 725.222(a)(3)) does not exist when there is evidence of record in the Office that the individual was informed that he or she should file within the prescribed period and he or she failed to do so deliberately or through negligence.

§ 725.227 Time of determination of relationship and dependency of survivors.

The determination as to whether an individual purporting to be an entitled survivor of a miner or beneficiary was related to, or dependent upon, the miner is made after such individual files a claim for benefits as a survivor. Such determination is based on the facts and circumstances with respect

to a reasonable period of time ending with the miner's death. A prior determination that such individual was, or was not, a dependent for the purposes of augmenting the miner's benefits for a certain period, is not determinative of the issue of whether the individual is a dependent survivor of such miner.

§ 725.228 Effect of conviction of felonious and intentional homicide on entitlement to benefits.

An individual who has been convicted of the felonious and intentional homicide of a miner or other beneficiary shall not be entitled to receive any benefits payable because of the death of such miner or other beneficiary, and such person shall be considered non-existent in determining the entitlement to benefits of other individuals.

TERMS USED IN THIS SUBPART

§ 725.229 Intestate personal property.

References in this subpart to the "same right to share in the intestate personal property" of a deceased miner (or surviving spouse) refer to the right of an individual to share in such distribution in the individual's own right and not the right of representation.

§ 725.230 Legal impediment.

For purposes of this subpart, "legal impediment" means an impediment resulting from the lack of dissolution of a previous marriage or otherwise arising out of such previous marriage or its dissolution or resulting from a defect in the procedure followed in connection with the purported marriage ceremony—for example, the solemnization of a marriage only through a religious ceremony in a country which requires a civil ceremony for a valid marriage.

§ 725.231 Domicile.

(a) For purposes of this subpart, the term "domicile" means the place of an individual's true, fixed, and permanent home.

(b) The domicile of a deceased miner or surviving spouse is determined as of the time of death.

(c) If an individual was not domiciled in any State at the pertinent time, the law of the District of Columbia is applied.

§ 725.232 Member of the same household—"living with," "living in the same household," and "living in the miner's household," defined.

(a) *Defined.* (1) The term "member of the same household" as used in section 402(a)(2) of the Act (with respect to a spouse); the term "living with" as used in section 402(e) of the Act (with respect to a surviving spouse); and the term "living in the same household" as used in this subpart, means that a husband and wife were customarily living together as husband and wife in the same place.

(2) The term "living in the miner's household" as used in section 412(a)(5) of the Act (with respect to a parent, brother, or sister) means that the miner and such parent, brother, or sister were sharing the same residence.

(b) *Temporary absence.* The temporary absence from the same residence of either the miner, or the miner's spouse, parent, brother, or sister (as the case may be), does not preclude a finding that one was "living with" the other, or that they were "members of the same household." The absence of one such individual from the residence in which both had customarily lived shall, in the absence of evidence to the contrary, be considered temporary:

(1) If such absence was due to service in the Armed Forces of the United States; or

(2) If the period of absence from his or her residence did not exceed 6 months and the absence was due to business or employment reasons, or because of confinement in a penal institution or in a hospital, nursing home, or other curative institution; or

(3) In any other case, if the evidence establishes that despite such absence they nevertheless reasonably expected to resume physically living together.

(c) *Relevant period of time.* (1) The determination as to whether a surviving spouse had been "living with" the miner shall be based upon the facts and circumstances as of the time of the death of the miner.

(2) The determination as to whether a spouse is a "member of the same household" as the miner shall be based upon the facts and circumstances with respect to the period or periods of time

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as to which the issue of membership in the same household is material.

(3) The determination as to whether a parent, brother, or sister was “living in the miner’s household” shall take account of the 1-year period immediately prior to the miner’s death.

§ 725.233 Support and contributions.

(a) *Support* defined. The term “support” includes food, shelter, clothing, ordinary medical expenses, and other ordinary and customary items for the maintenance of the person supported.

(b) *Contributions* defined. The term “contributions” refers to contributions actually provided by the contributor from such individual’s property, or the use thereof, or by the use of such individual’s own credit.

(c) *Regular contributions* and *substantial contributions* defined. The terms “regular contributions” and “substantial contributions” mean contributions that are customary and sufficient to constitute a material factor in the cost of the individual’s support.

(d) *Contributions and community property*. When a spouse receives and uses for his or her support income from services or property, and such income, under applicable State law, is the community property of the wife and her husband, no part of such income is a “contribution” by one spouse to the other’s support regardless of the legal interest of the donor. However, when a spouse receives and uses for support, income from the services and the property of the other spouse and, under applicable State law, such income is community property, all of such income is considered to be a contribution by the donor to the spouse’s support.

(e) *Court order for support* defined. References to a support order in this subpart means any court order, judgment, or decree of a court of competent jurisdiction which requires regular contributions that are a material factor in the cost of the individual’s support and which is in effect at the applicable time. If such contributions are required by a court order, this condition is met whether or not the contributions were actually made.

(f) *Written agreement* defined. The term “written agreement” in the phrase “substantial contributions pur-

suant to a written agreement”, as used in this subpart means an agreement signed by the miner providing for substantial contributions by the miner for the individual’s support. It must be in effect at the applicable time but it need not be legally enforceable.

(g) *One-half support* defined. The term “one-half support” means that the miner made regular contributions, in cash or in kind, to the support of a divorced spouse at the specified time or for the specified period, and that the amount of such contributions equalled or exceeded one-half the total cost of such individual’s support at such time or during such period.

(h) *Totally dependent for support* defined. The term “totally dependent for support” as used in § 725.225(b) means that the miner made regular contributions to the support of the miner’s parents, brother, or sister, as the case may be, and that the amount of such contributions at least equalled the total cost of such individual’s support.

Subpart C—Filing of Claims

§ 725.301 Who may file a claim.

(a) Any person who believes he or she may be entitled to benefits under the Act may file a claim in accordance with this subpart.

(b) A claimant who has attained the age of 18, is mentally competent and physically able, may file a claim on his or her own behalf.

(c) If a claimant is unable to file a claim on his or her behalf because of a legal or physical impairment, the following rules shall apply:

(1) A claimant between the ages of 16 and 18 years who is mentally competent and not under the legal custody or care of another person, or a committee or institution, may upon filing a statement to the effect, file a claim on his or her own behalf. In any other case where the claimant is under 18 years of age, only a person, or the manager or principal officer of an institution having legal custody or care of the claimant may file a claim on his or her behalf.

(2) If a claimant over 18 years of age has a legally appointed guardian or

committee, only the guardian or committee may file a claim on his or her behalf.

(3) If a claimant over 18 years of age is mentally incompetent or physically unable to file a claim and is under the care of another person, or an institution, only the person, or the manager or principal officer of the institution responsible for the care of the claimant, may file a claim on his or her behalf.

(4) For good cause shown, the Office may accept a claim executed by a person other than one described in paragraphs (2) or (3) of this section.

(d) Except as provided in § 725.305 of this part, in order for a claim to be considered, the claimant must be alive at the time the claim is filed.

§ 725.302 Evidence of authority to file a claim on behalf of another.

(a) A person filing a claim on behalf of a claimant shall submit evidence of his or her authority to so act at the time of filing or at a reasonable time thereafter in accordance with the following:

(1) A legally appointed guardian or committee shall provide the Office with certification of appointment by a proper official of the court.

(2) Any other person shall provide a statement describing his or her relationship to the claimant, the extent to which he or she has care of the claimant, or his or her position as an officer of the institution of which the claimant is an inmate. The Office may, at any time, require additional evidence to establish the authority of any such person.

§ 725.303 Date and place of filing of claims.

(a) (1) Claims for benefits shall be delivered, mailed to, or presented at, any of the various district offices of the Social Security Administration, or any of the various offices of the Department of Labor authorized to accept claims, or, in the case of a claim filed by or on behalf of a claimant residing outside the United States, mailed or presented to any office maintained by the Foreign Service of the United States. A claim shall be considered filed on the

day it is received by the office in which it is first filed.

(2) A claim submitted to a Foreign Service Office or any other agency or subdivision of the U.S. Government shall be forwarded to the Office and considered filed as of the date it was received at the Foreign Service Office or other governmental agency or unit.

(b) A claim submitted by mail shall be considered filed as of the date of delivery unless a loss or impairment of benefit rights would result, in which case a claim shall be considered filed as of the date of its postmark. In the absence of a legible postmark, other evidence may be used to establish the mailing date.

§ 725.304 Forms and initial processing.

(a) Claims shall be filed on forms prescribed and approved by the Office. The district office at which the claim is filed will assist claimants in completing their forms.

(b) If the place at which a claim is filed is an office of the Social Security Administration, such office shall forward the completed claim form to an office of the DCMWC, which is authorized to process the claim.

§ 725.305 When a written statement is considered a claim.

(a) The filing of a statement signed by an individual indicating an intention to claim benefits shall be considered to be the filing of a claim for the purposes of this part under the following circumstances:

(1) The claimant or a proper person on his or her behalf (see § 725.301) executes and files a prescribed claim form with the Office during the claimant's lifetime within the period specified in paragraph (b) of this section.

(2) Where the claimant dies within the period specified in paragraph (b) of this section without filing a prescribed claim form, and a person acting on behalf of the deceased claimant's estate executes and files a prescribed claim form within the period specified in paragraph (c) of this section.

(b) Upon receipt of a written statement indicating an intention to claim benefits, the Office shall notify the signer in writing that to be considered the claim must be executed by the

claimant or a proper party on his or her behalf on the prescribed form and filed with the Office within six months from the date of mailing of the notice.

(c) If before the notice specified in paragraph (b) of this section is sent, or within six months after such notice is sent, the claimant dies without having executed and filed a prescribed form, or without having had one executed and filed in his or her behalf, the Office shall upon receipt of notice of the claimant's death advise his or her estate, or those living at his or her last known address, in writing that for the claim to be considered, a prescribed claim form must be executed and filed by a person authorized to do so on behalf of the claimant's estate within six months of the date of the later notice.

(d) Claims based upon written statements indicating an intention to claim benefits not perfected in accordance with this section shall not be processed.

§ 725.306 Withdrawal of a claim.

(a) A claimant or an individual authorized to execute a claim on a claimant's behalf or on behalf of claimant's estate under § 725.305, may withdraw a previously filed claim provided that:

(1) He or she files a written request with the appropriate adjudication officer indicating the reasons for seeking withdrawal of the claim;

(2) The appropriate adjudication officer approves the request for withdrawal on the grounds that it is in the best interests of the claimant or his or her estate, and;

(3) Any benefits previously paid with respect to the claim are reimbursed.

(b) When a claim had been withdrawn under paragraph (a) of this section, the claim will be considered not to have been filed.

§ 725.307 Cancellation of a request for withdrawal.

At any time prior to approval, a request for withdrawal may be canceled by a written request of the claimant or a person authorized to act on the claimant's behalf or on behalf of the claimant's estate.

§ 725.308 Time limits for filing claims.

(a) A claim for benefits filed under this part by, or on behalf of, a miner shall be filed within three years after a medical determination of total disability due to pneumoconiosis which has been communicated to the miner or a person responsible for the care of the miner, or within three years after the date of enactment of the Black Lung Benefits Reform Act of 1977, whichever is later. There is no time limit on the filing of a claim by the survivor of a miner.

(b) A miner who is receiving benefits under part B of title IV of the Act and who is notified by HEW of the right to seek medical benefits may file a claim for medical benefits under part C of title IV of the Act and this part. The Secretary of Health, Education, and Welfare is required to notify each miner receiving benefits under part B of this right. Notwithstanding the provisions of paragraph (a) of this section, a miner notified of his or her rights under this paragraph may file a claim under this part on or before December 31, 1980. Any claim filed after that date shall be untimely unless the time for filing has been enlarged for good cause shown.

(c) There shall be a rebuttable presumption that every claim for benefits is timely filed. However, except as provided in paragraph (b) of this section, the time limits in this section are mandatory and may not be waived or tolled except upon a showing of extraordinary circumstances.

[43 FR 36772, Aug. 18, 1978, as amended at 45 FR 44264, July 1, 1980]

§ 725.309 Duplicate claims.

(a) A claimant whose claim for benefits was previously approved under part B of title IV of the Act may file a claim for benefits under this part as provided in §§ 725.308(b) and 725.701A.

(b) A claimant who has filed a claim for benefits under both parts B and C of title IV of the Act or who has filed more than one claim for benefits under part C of title IV of the Act before March 1, 1978, and whose claims are pending or have been denied (§ 727.102 of this subchapter) shall have his or her

claims considered in accordance with § 727.103 of this subchapter.

(c) A claimant who filed a claim for benefits under part B of title IV of the Act or part C of title IV of the Act before March 1, 1978, and whose previous claim(s) are pending or have been finally denied, who files an additional claim under this part, shall have the later claim merged with any earlier claim subject to review under part 727 of this subchapter. If an earlier claim subject to review under part 727 of this subchapter has been denied after review, a new claim filed under this part shall also be denied, on the grounds of the prior denial, unless the deputy commissioner determines that there has been a material change in conditions or the later claim is a request for modification and the requirements of § 725.310 are met. If an earlier survivor's claim subject to review under part 727 of this subchapter has been denied, the new claim filed under this part shall also be denied unless the deputy commissioner determines that the later claim is a request for modification and the requirements of § 725.310 are met.

(d) In the case of a claimant who files more than one claim for benefits under this part, the later claim shall be merged with the earlier claim for all purposes if the earlier claim is still pending. If the earlier miner's claim has been finally denied, the later claim shall also be denied, on the grounds of the prior denial, unless the deputy commissioner determines that there has been a material change in conditions or the later claim is a request for modification and the requirements of § 725.310 are met. If an earlier survivor's claim filed under this part has been finally denied, the new claim filed under this part shall also be denied unless the deputy commissioner determines that the later claim is a request for modification and the requirements of § 725.310 are met.

(e) Notwithstanding any other provision of this part or part 727 of this subchapter, a person may exercise the right of review provided in paragraph (c) of § 727.103 at the same time such person is pursuing an appeal of a previously denied part B claim under the law as it existed prior to March 1, 1978. If the part B claim is ultimately ap-

proved as a result of the appeal, the claimant must immediately notify the Secretary of Labor and, where appropriate, the coal mine operator, and all duplicate payments made under part C shall be considered an overpayment and arrangements shall be made to insure the repayment of such overpayments to the fund or an operator, as appropriate.

(f) In a case involving duplicate claims, under no circumstances are duplicate benefits payable for concurrent periods of eligibility. Any duplicate benefits paid shall be subject to collection or offset under subpart G of this part.

§ 725.310 Modification of awards and denials.

(a) Upon his or her own initiative, or upon the request of any party on grounds of a change in conditions or because of a mistake in a determination of fact, the deputy commissioner may, at any time before one year from the date of the last payment of benefits, or at any time before one year after the denial of a claim, reconsider the terms of an award or denial of benefits.

(b) Modification proceedings shall be conducted in accordance with the provisions of this part as appropriate. Additional evidence may be submitted by any party or requested by the deputy commissioner. Modification proceedings shall not be initiated before an administrative law judge or the Benefits Review Board.

(c) At the conclusion of modification proceedings the deputy commissioner may issue a proposed decision and order (§ 725.418), forward the claim for a hearing (§ 725.421) or, if appropriate, deny the claim by reason of abandonment (§ 725.409).

(d) An order issued following the conclusion of modification proceedings may terminate, continue, reinstate, increase or decrease benefit payments or award benefits. Such order shall not affect any benefits previously paid, except that an order increasing or decreasing the amount of benefits payable may be made effective on the date from which benefits were determined payable by the terms of an earlier award. In the case of an award which is

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decreased, any payment made in excess of the decreased rate shall be subject to collection or offset under subpart G of this part.

§ 725.311 Communications with respect to claims; time computations.

(a) Unless otherwise specified by this part, all requests, responses, notices, decisions, orders, or other communications required or permitted by this part shall be in writing.

(b) If required by this part, any document, brief, or other statement submitted in connection with the adjudication of a claim under this part shall be sent to each party to the claim by the submitting party. If proof of service is required with respect to any communication, such proof of service shall be submitted to the appropriate adjudication officer and filed as part of the claim record.

(c) Whenever any notice, document, brief or other statement is served by mail, 7 days shall be added to the time within which a reply or response is required to be submitted.

(d) In computing any period of time described in this part, by any applicable statute, or by the order of any adjudication officer, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period extends until the next day which is not a Saturday, Sunday, or legal holiday. "Legal holiday" includes New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day and any other day appointed as a holiday by the President or the Congress of the United States.

Subpart D—Adjudication of Claims; Adjudication Officers

§ 725.350 Who are the adjudication officers.

(a) *General.* The persons authorized by the Secretary of Labor to accept evidence and decide claims on the basis of such evidence are called "adjudication officers." This section describes

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the status of black lung claims adjudication officers.

(b) *Deputy commissioner.* The deputy commissioner is that official of the DCMWC or his designee who is authorized to perform functions with respect to the development, processing, and adjudication of claims in accordance with this part.

(c) *Administrative law judge.* An administrative law judge is that official appointed pursuant to 5 U.S.C. 3105 (or Pub. L. 94-504) who is qualified to preside at hearings under 5 U.S.C. 557 and is empowered by the Secretary to conduct formal hearings with respect to, and adjudicate, claims in accordance with this part. A person appointed under Public Law 94-504 shall not be considered an administrative law judge for purposes of this part for any period after March 1, 1979.

§ 725.351 Powers of adjudication officers.

(a) *Deputy commissioner.* The deputy commissioner is authorized to: (1) Make determinations with respect to claims as is provided in this part; (2) conduct conferences and informal discovery proceedings as provided in this part; (3) compel the production of documents by the issuance of a subpoena, with the written approval of the Director; (4) prepare documents for the signature of parties; (5) issue appropriate orders as provided in this part; (6) do all other things necessary to enable him or her to discharge the duties of the office.

(b) *Administrative Law Judge.* An administrative law judge is authorized to: (1) conduct formal hearings in accordance with the provisions of this part; (2) administer oaths and examine witnesses; (3) compel the production of documents and appearance of witnesses by the issuance of subpoenas; (4) issue decisions and orders with respect to claims as provided in this part; and (5) do all other things necessary to enable him or her to discharge the duties of the office.

(c) If any person in proceedings before an adjudication officer disobeys or resists any lawful order or process, or misbehaves during a hearing or so near the place thereof as to obstruct the

same, or neglects to produce, after having been ordered to do so, any pertinent book, paper or document, or refuses to appear after having been subpoenaed, or upon appearing refuses to take the oath as a witness, or after having taken the oath refuses to be examined according to law, the deputy commissioner with the approval of the Director, or the administrative law judge responsible for the adjudication of the claim, shall certify the facts to the Federal district court having jurisdiction in the place in which he or she is sitting (or to the U.S. District Court for the District of Columbia if he or she is sitting in the District) which shall thereupon in a summary manner hear the evidence as to the acts complained of, and, if the evidence so warrants, punish such person in the same manner and to the same extent as for a contempt committed before the court, or commit such person upon the same condition as if the doing of the forbidden act had occurred with reference to the process or in the presence of the court.

§ 725.352 Disqualification of adjudication officer.

(a) No adjudication officer shall conduct any proceedings in a claim in which he or she is prejudiced or partial, or where he or she has any interest in the matter pending for decision. A decision to withdraw from the consideration of a claim shall be within the discretion of the adjudication officer. If that adjudication officer withdraws, another officer shall be designated by the Director or the Chief Administrative Law Judge, as the case may be, to complete the adjudication of the claim.

(b) No adjudication officer shall be permitted to appear or act as a representative of a party under this part while such individual is employed as an adjudication officer. No adjudication officer shall be permitted at any time to appear or act as a representative in connection with any case or claim in which he or she was personally involved. No fee or reimbursement shall be awarded under this part to an individual who acts in violation of this paragraph.

(c) No adjudication officer shall act in any claim involving a party which

employed such adjudication officer within one year before the adjudication of such claim.

(d) Notwithstanding paragraph (a) of this section, no adjudication officer shall be permitted to act in any claim involving a party who is related to the adjudication officer by consanguinity or affinity within the third degree as determined by the law of the place where such party is domiciled. Any action taken by an adjudication officer in knowing violation of this paragraph shall be void.

PARTIES AND REPRESENTATIVES

§ 725.360 Parties to proceedings.

(a) Except as provided in § 725.361, no person other than the Secretary of Labor and authorized personnel of the Department of Labor shall participate at any stage in the adjudication of a claim for benefits under this part, unless such person is determined by the appropriate adjudication officer to qualify under the provisions of this section as a party to the claim. The following persons shall be parties:

- (1) The claimant;
- (2) A person other than a claimant, authorized to execute a claim on such claimant's behalf under § 725.301;
- (3) Any coal mine operator notified under § 725.412 of its possible liability for the claim;
- (4) Any insurance carrier of such operator; and
- (5) The Director in all proceedings relating to a claim for benefits under this part.

(b) A widow, child, parent, brother, or sister, or the representative of a decedent's estate, who makes a showing in writing that his or her rights with respect to benefits may be prejudiced by a decision of an adjudication officer, may be made a party.

(c) Any coal mine operator or prior operator or insurance carrier which has not been notified under § 725.412 and which makes a showing in writing that its rights may be prejudiced by a decision of an adjudication officer may be made a party.

(d) Any other individual may be made a party if that individual's rights with respect to benefits may be prejudiced by a decision to be made.

§ 725.361 Party amicus curiae.

At the discretion of the Chief Administrative Law Judge or the administrative law judge assigned to the case, a person or entity which is not a party may be allowed to participate amicus curiae in a formal hearing only as to an issue of law. A person may participate amicus curiae in a formal hearing upon written request submitted with supporting arguments prior to the hearing. If the request is granted, the administrative law judge hearing the case will inform the party of the extent to which participation will be permitted. The request may, however, be denied summarily and without explanation.

§ 725.362 Representation of parties.

(a) Except for the Secretary of Labor, whose interests shall be represented by the Solicitor of Labor or his or her designee, each of the parties may appoint an individual to represent his or her interest in any proceeding for determination of a claim under this part. Such appointment shall be made in writing or on the record at the hearing. A written notice appointing a representative shall be signed by the party or his or her legal guardian and shall be sent to the Office or, for representation at a formal hearing, to the Chief Administrative Law Judge. In any case, such representative must be qualified under § 725.363. No authorization for representation or agreement between a claimant and representative as to the amount of a fee, filed with the Social Security Administration in connection with a claim under part B of title IV of the Act, shall be valid under this part. A claimant who has previously authorized a person to represent him or her in connection with a claim originally filed under part B of title IV may renew such authorization by filing a statement to such effect with the Office or appropriate adjudication officer.

(b) Any party may waive his or her right to be represented in the adjudication of a claim. If an adjudication officer determines, after an appropriate inquiry has been made, that a claimant who has been informed of his or her right to representation does not wish to obtain the services of a representative, such adjudication officer shall

proceed to consider the claim in accordance with this part, unless it is apparent that the claimant is, for any reason, unable to continue without the help of a representative. However, it shall not be necessary for an adjudication officer to inquire as to the ability of a claimant to proceed without representation in any adjudication taking place without a hearing. The failure of a claimant to obtain representation in an adjudication taking place without a hearing shall be considered a waiver of the claimant's right to representation. However, at any time during the processing or adjudication of a claim, any claimant may revoke such waiver and obtain a representative.

§ 725.363 Qualification of representative.

(a) *Attorney.* Any attorney in good standing who is admitted to practice before a court of a State, territory, district, or insular possession, or before the Supreme Court of the United States or other Federal court and is not, pursuant to any provision of law, prohibited from acting as a representative, may be appointed as a representative.

(b) *Other person.* With the approval of the adjudication officer, any other person may be appointed as a representative so long as that person is not, pursuant to any provision of law, prohibited from acting as a representative.

§ 725.364 Authority of representative.

A representative, appointed and qualified as provided in §§ 725.362 and 725.363, may make or give on behalf of the party he or she represents, any request or notice relative to any proceeding before an adjudication officer, including formal hearing and review, except that such representative may not execute a claim for benefits, unless he or she is a person designated in § 725.301 as authorized to execute a claim. A representative shall be entitled to present or elicit evidence and make allegations as to facts and law in any proceeding affecting the party represented and to obtain information with respect to the claim of such party

to the same extent as such party. Notice given to any party of any administrative action, determination, or decision, or request to any party for the production of evidence shall be sent to the representative of such party and such notice or request shall have the same force and effect as if it had been sent to the party represented.

§ 725.365 Approval of representative's fees; lien against benefits.

No fee charged for representation services rendered to a claimant with respect to any claim under this part shall be valid unless approved under this subpart. No contract or prior agreement for a fee shall be valid. In cases where the obligation to pay the attorney's fee is upon the claimant, the amount of the fee awarded may be made a lien upon the benefits due under an award and the adjudication officer shall fix, in the award approving the fee, such lien and the manner of payment of the fee. Any representative who is not an attorney may be awarded a fee for services under this subpart, except that no lien may be imposed with respect to such representative's fee.

§ 725.366 Fees for representatives.

(a) A representative seeking a fee for services performed on behalf of a claimant shall make application therefor to the deputy commissioner, administrative law judge, or appropriate appellate tribunal, as the case may be, before whom the services were performed. The application shall be filed and served upon the claimant and all other parties within the time limits allowed by the deputy commissioner, administrative law judge, or appropriate appellate tribunal. The application shall be supported by a complete statement of the extent and character of the necessary work done, and shall indicate the professional status (e.g., attorney, paralegal, law clerk, lay representative or clerical) of the person performing such work, and the customary billing rate for each such person. The application shall also include a listing of reasonable unreimbursed expenses, including those for travel, incurred by the representative or an employee of a representative in estab-

lishing the claimant's case. Any fee requested under this paragraph shall also contain a description of any fee requested, charged, or received for services rendered to the claimant before any State or Federal court or agency in connection with a related matter.

(b) Any fee approved under paragraph (a) of this section shall be reasonably commensurate with the necessary work done and shall take into account the quality of the representation, the qualifications of the representative, the complexity of the legal issues involved, the level of proceedings to which the claim was raised, the level at which the representative entered the proceedings, and any other information which may be relevant to the amount of fee requested. No fee approved shall include payment for time spent in preparation of a fee application. No fee shall be approved for work done on claims filed between December 30, 1969, and June 30, 1973, under part B of title IV of the Act, except for services rendered on behalf of the claimant in regard to the review of the claim under section 435 of the Act and part 727 of this subchapter.

(c) In awarding a fee, the appropriate adjudication officer shall consider, and shall add to the fee, the amount of reasonable and unreimbursed expenses incurred in establishing the claimant's case. Reimbursement for travel expenses incurred by an attorney shall be determined in accordance with the provisions of §725.459(a). No reimbursement shall be permitted for expenses incurred in obtaining medical or other evidence which has previously been submitted to the Office in connection with the claim.

(d) Upon receipt of a request for approval of a fee, such request shall be reviewed and evaluated by the appropriate adjudication officer and a fee award issued. Any party may request reconsideration of a fee awarded by the adjudication officer. A revised or modified fee award may then be issued, if appropriate.

(e) Each request for reconsideration or review of a fee award shall be in writing and shall contain supporting statements or information pertinent to any increase or decrease requested. If a fee awarded by a deputy commissioner

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is disputed, such award shall be appealable directly to the Benefits Review Board. In such a fee dispute case, the record before the Board shall consist of the order of the deputy commissioner awarding or denying the fee, the application for a fee, any written statement in opposition to the fee and the documentary evidence contained in the file which verifies or refutes any item claimed in the fee application.

(Approved by the Office of Management and Budget under control number 1215-0115)

[43 FR 36772, Aug. 18, 1978, as amended at 47 FR 14696, Apr. 6, 1982]

§ 725.367 Payment of a claimant's attorney's fee by responsible operator.

(a) If an operator declines to pay any benefits on or before the 30th day after receiving written notice of its liability for a claim on the ground that there is no liability for benefits within the provisions of the Act, and the person seeking benefits shall thereafter have utilized the services of an attorney in the successful prosecution of the claim, there shall be awarded, in addition to the award of benefits, in an order, a reasonable attorney's fee against the operator or carrier in an amount approved by the deputy commissioner, administrative law judge, Board, or court as the case may be, which shall be paid promptly and directly by the operator or carrier to the claimant's attorney in a lump sum after the order becomes final.

(b) Section 205(a) of the Black Lung Benefits Amendments of 1981, Pub. L. 97-119, amended section 422 of the Act and relieved operators and carriers from liability for the payment of benefits on certain claims. Payment of benefits on those claims was made the responsibility of the Trust Fund. The claims subject to this transfer of liability are described in § 725.496 of this part. On claims subject to the transfer of liability described above the Trust Fund will pay all fees and costs which have been or will be awarded to claimant's attorneys which were or would have become the liability of an operator or carrier but for the enactment of the 1981 Amendments and which have not already been paid by such operator or carrier. Section 9501(d)(7) of the In-

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ternal Revenue Code, which was also enacted as a part of the 1981 Amendments to the Act, expressly prohibits the Trust Fund from reimbursing an operator or carrier for any attorney fees or costs which it has paid on cases subject to the transfer of liability provisions.

[48 FR 24291, May 31, 1983]

§ 725.401 Claims development—general.

After a claim has been received by the deputy commissioner, the deputy commissioner shall take such action as is necessary to develop, process, and make determinations with respect to the claim as provided in this subpart.

§ 725.402 Approved State workers' compensation law.

If a deputy commissioner determines that any claim filed under this part is one subject to adjudication under a workers' compensation law approved under part 722 of this subchapter, he or she shall advise the claimant of this determination and of the Act's requirement that the claim must be filed under the applicable State workers' compensation law. The deputy commissioner shall then prepare a proposed decision and order dismissing the claim for lack of jurisdiction pursuant to § 725.418 and proceed as appropriate.

§ 725.403 Requirement to file under State workers' compensation law—Section 415 claims.

(a) No benefits shall be payable to or on behalf of a claimant who has filed a claim under section 415 of part B of title IV of the Act, for any period of eligibility occurring between July 1, and December 31, 1973, unless the claimant has filed and diligently pursued a claim for benefits under an applicable State workers' compensation law. A State workers' compensation claim need not be filed where filing would be futile. It shall be determined that the filing of a State claim would be futile when:

- (1) The period within which the claim may be filed under such law has expired; or
- (2) Pneumoconiosis as defined in part 718 of this subchapter is not compensable under such law; or

(3) The maximum amount of compensation or the maximum number of compensation payments allowable under such law has already been paid; or

(4) The claimant does not meet one or more conditions of eligibility for workers' compensation payments under applicable State law; or

(5) The claimant otherwise establishes to the satisfaction of the Office that the filing of a claim under State law would be futile.

(b) Where the Office determines that a claimant is required to file a State claim under this section, the Office shall so notify the claimant. Such notice shall instruct the claimant to file a State claim within 30 days of such notice. If no such State claim is filed within the 30-day period, no benefits shall be payable under this part to the claimant for any period between July 1, and December 31, 1973.

(c) The failure of a claimant to comply with paragraph (a) of this section shall not absolve any operator of its liability for the payment of benefits to a claimant for periods of eligibility occurring on or after January 1, 1974.

(d) The deputy commissioner may determine that a claimant is ineligible for benefits under section 415 of part B of title IV of the Act without requiring the claimant to file a claim under a State workers' compensation law.

§ 725.404 Development of evidence—general.

(a) *Employment history.* Each claimant shall furnish the deputy commissioner with a complete and detailed history of the coal miner's employment and, upon request, supporting documentation.

(b) *Matters of record.* Where it is necessary to obtain proof of age, marriage or termination of marriage, death, family relationship, dependency (see subpart B of this part), or any other fact which may be proven as a matter of public record, the claimant shall furnish such proof to the deputy commissioner upon request.

(c) *Documentary evidence.* If a claimant is required to submit documents to the deputy commissioner, the claimant shall submit either the original, a certified copy or a clear readable copy thereof. The Deputy commissioner or

administrative law judge may require the submission of an original document or certified copy thereof, if necessary.

(d) *Submission of insufficient evidence.* In the event a claimant submits insufficient evidence regarding any matter, the deputy commissioner shall inform the claimant of what further evidence is necessary and request that such evidence be submitted within a specified reasonable time which may, upon request, be extended for good cause.

§ 725.405 Development of medical evidence; scheduling of medical examinations and tests.

(a) Upon receipt of a claim, the deputy commissioner shall ascertain whether the claim was filed by or on account of a miner as defined in § 725.202(a), and in the case of a claim filed on account of a deceased miner, whether the claim was filed by an eligible survivor of such miner as defined in subpart B of this part.

(b) In the case of a claim filed by or on behalf of a miner, the deputy commissioner shall, where necessary, schedule the claimant for a medical examination and testing under § 725.406.

(c) In the case of a claim filed by or on behalf of a survivor of a miner, the deputy commissioner shall obtain whatever medical evidence is necessary and available for the development and evaluation of the claim.

(d) The deputy commissioner shall, where appropriate, collect other evidence necessary to establish:

(1) The nature and duration of the miner's employment; and

(2) All other matters relevant to the determination of the claim.

(e) If at any time during the processing of the claim by the deputy commissioner, the evidence establishes that the claimant is not entitled to benefits under the Act, the deputy commissioner may terminate evidentiary development of the claim and proceed as appropriate.

§ 725.406 Medical examinations and tests.

(a) Medical examinations and tests authorized by the deputy commissioner shall be conducted, if possible, in the vicinity of the miner's residence by

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physicians or in medical facilities selected from a list compiled by the Secretary, or by a physician or medical facility approved by the deputy commissioner at the miner's request.

(b) If any medical examination or test conducted under paragraph (a) of this section is not administered or reported in compliance with the provisions of part 718 of this subchapter, the deputy commissioner shall schedule the miner for further examination and testing where necessary and appropriate.

(c) The cost of any medical examination or test authorized under this section, including the cost of travel to and from the examination, shall be paid by the fund. No reimbursement for overnight accommodations shall be authorized unless the deputy commissioner determines that an adequate testing facility is unavailable within one day's round trip travel by automobile from the miner's residence. The fund shall be reimbursed for such payments by an operator, if any, found liable for the payment of benefits to the claimant.

§ 725.407 Additional medical evidence.

(a) If, at any time after the completion of initial medical examinations and tests, unresolved medical questions remain, the deputy commissioner may cause the claimant to be examined by a physician selected by the deputy commissioner.

(b) Any miner dissatisfied with the results of the medical examinations or tests conducted under § 725.406 may obtain further medical examinations or tests and submit them to the deputy commissioner. Such further examinations or tests shall be reimbursable by the fund, or by a responsible coal operator where appropriate, if the claimant is finally adjudicated entitled to benefits and if such further examinations or tests were relevant to the determination of the claim.

(c) If additional medical evidence is obtained in accordance with paragraph (a) of this section, the deputy commissioner may order the physician selected to retest or reexamine the miner to do so without the presence or participation of any other physician who previously examined the miner, and without benefit of the conclusions of

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any other physician who has examined the miner.

§ 725.408 Refusal to submit to medical examinations or tests.

If an adjudication officer determines that a miner has unreasonably refused to submit to medical examinations or tests scheduled under §§ 725.406 or 725.407(a), all evidentiary development of the claim shall be suspended and the adjudication officer shall proceed to deny the claim by reason of abandonment (§ 725.409) or by dismissal (§ 725.465) as is appropriate.

§ 725.409 Denial of a claim by reason of abandonment.

(a) A claim may be denied at any time by the deputy commissioner by reason of abandonment where the claimant fails:

- (1) To undergo a required medical examination without good cause; or,
- (2) To submit evidence sufficient to make a determination of the claim; or,
- (3) To pursue the claim with reasonable diligence.

(b) If the deputy commissioner determines that a denial by reason of abandonment is appropriate, he or she shall notify the claimant of the reasons for such denial and of the action which must be taken to avoid a denial by reason of abandonment. If there is no response to the notice within 30 days after such notice is sent, the claim shall be considered denied by reason of abandonment. If the claimant responds in a timely fashion, indicating a desire to pursue the claim, by requesting a hearing or indicating the intent to submit additional evidence, the deputy commissioner shall, if a hearing is requested, proceed in accordance with § 725.412 or allow a reasonable time of not less than 60 days for the claimant to take the specified remedial action. If the claimant completes the action requested within the time allowed, the claim shall be developed, processed and adjudicated as specified in this part. If the claimant does not fully comply with the action requested by the deputy commissioner, the deputy commissioner shall so notify the claimant. If the claimant does not request a hearing or fully comply with the action requested by the deputy commissioner

within 30 days of such notification, the claim shall be considered denied by reason of abandonment, except that a new claim may be filed at any time and new evidence submitted where the requirements of § 725.310 are not met.

ADJUDICATION BY THE DEPUTY
COMMISSIONER

§ 725.410 Initial findings by the deputy commissioner.

(a) Based upon the evidence developed, the deputy commissioner may make an initial finding with respect to the claim.

(b) If the evidence supports an initial finding of eligibility, and it has been determined that a coal mine operator may be liable for the claim, the deputy commissioner shall proceed in accordance with § 725.412. If no operator can be identified, the deputy commissioner shall proceed in accordance with § 725.411.

(c) If the evidence submitted does not support an initial finding of eligibility, the deputy commissioner shall so notify the claimant in writing. This notification shall specify the reasons why the claim cannot be approved, the additional evidence necessary to establish entitlement, the right of the claimant to submit additional evidence, and the right to request a hearing. Within 60 days from the mailing of such notice, unless such period is extended by the deputy commissioner for good cause shown, the claimant may submit new evidence or request a hearing. If the claimant:

(1) Takes no action within the specified 60 day period, the claim shall be considered denied by reason of abandonment (see § 725.409).

(2) Submits new evidence within the specified 60 day period, the deputy commissioner shall reconsider the initial finding, taking into account the additional evidence submitted. If the new evidence supports a finding of entitlement the deputy commissioner shall proceed in accordance with paragraph (b) of this section. If the new evidence does not support a finding of entitlement, the deputy commissioner shall notify the claimant in writing of this fact and the reasons therefor, and that he or she may request a hearing within

60 days after receipt of such notice unless the period is extended by the deputy commissioner for good cause shown. If no hearing is requested, the claim shall be deemed denied by reason of abandonment (see § 725.409).

(d) Unless an earlier operator identification has been made, if a hearing is requested under paragraph (c) of this section, the deputy commissioner shall identify the coal mine operator, if any, which may be liable for the payment of benefits to the claimant and proceed in accordance with § 725.412. If no such operator can be identified, the deputy commissioner may schedule a conference (see § 725.416) or refer the claim to the Office of Administrative Law Judges for appropriate proceedings.

§ 725.411 Adjudication upon initial findings of eligibility and no operator responsibility.

Where the deputy commissioner has found that the claimant is eligible and that there is no operator responsible for the payment of benefits, the deputy commissioner shall issue a proposed decision and order including findings of fact and conclusions of law as required by § 725.418 and authorize the payment of benefits. The claimant shall have 30 days after the date of issuance of the proposed decision and order within which to reject any or all of its terms. If the claimant does not reject the proposed decision and order, either in whole or in part, within this 30-day period, it will become final and effective. If for any reason the claimant rejects a proposed decision and order, the deputy commissioner may take such action as is appropriate including adjustment of the benefits to the level authorized by the uncontested portion of the proposed decision and order, if appropriate.

§ 725.412 Identification and notification of responsible operator.

(a) At any time during the processing of a claim under this part, after sufficient evidence has been made available to the deputy commissioner, the deputy commissioner may identify a coal miner operator (see § 725.491) which may be liable for the payment of the claim in accordance with the criteria contained in subpart F of this part.

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Such identification shall be made as soon after the filing of the claim as the evidence obtained permits. If the claim is subject to review under part 727 of this subchapter, the deputy commissioner may proceed to make initial findings (§725.410) with respect to a claim before identifying a potentially liable coal mine operator. In the case of a claim subject to review under part 727 of the subchapter which is denied by reason of abandonment (see §725.409), the deputy commissioner may decline to identify and notify an operator, unless a timely request for a hearing is made by the claimant.

(b) After the deputy commissioner identifies an operator which may be liable for payment of benefits, the deputy commissioner shall notify such operator in writing. Such notification shall include a copy of the claimant's claim form and a copy of all documentary evidence pertaining to the claim obtained by the deputy commissioner, if any, and the initial findings of the deputy commissioner, if any. All documents sent to an operator in accordance with this paragraph shall also be provided by the deputy commissioner to the claimant or his or her authorized representative.

(c) If within one year after the final adjudication of a claim, the adjudication officer determines that an operator which may be liable for the payment of benefits has not been notified under this section, such adjudication officer shall give notice of possible liability and an opportunity to respond to such operator. The adjudication officer shall then take such further action on the claim as may be appropriate. There shall be no time limit applicable to a later identification of an operator under this paragraph if the operator fraudulently concealed its identity as an operator of the miner.

(d) If, in any case, there is a dispute between two or more operators as to which may be liable for the payment of benefits to the claimant, all such operators shall be notified under this section and the issue of which operator is liable shall be determined by the appropriate adjudication officer.

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§ 725.413 Operator's response to notification.

(a) Within 30 days after receipt of notification issued under §725.412, unless such period is extended by the deputy commissioner for good cause shown, or in the interest of justice, a notified operator shall indicate an intent to accept or contest liability. If notice is given to the operator after initial findings have been made, the operator shall indicate its agreement or disagreement with each such finding. If notice is given to the operator before initial findings have been made, the operator shall indicate agreement or disagreement with the operator's identification as a potentially liable coal mine operator. An operator's response to notification shall be in writing and shall be sent to the deputy commissioner, the claimant, and all other parties to the claim.

(b)(1) If the operator accepts liability for the claim after initial findings have been made, the deputy commissioner shall issue a proposed decision and order under § 725.418.

(2) If the operator contests its liability or any of the initial findings of the deputy commissioner, if any, or if the deputy commissioner has determined the claimant to be ineligible for benefits, the deputy commissioner shall proceed to adjudicate the claim in accordance with this subpart.

(3) If the operator fails to respond within the specified period, such operator shall be deemed to have accepted the initial findings of the deputy commissioner when made and shall not, except as provided in §725.463, be permitted to raise issues or present evidence with respect to issues inconsistent with the initial findings in any further proceeding conducted with respect to the claim. In a case where an operator has failed to respond to notification, such failure shall be considered a waiver of such operator's right to contest the claim, unless the operator's failure to respond to notice is excused for good cause shown, and the deputy commissioner may proceed to issue a proposed decision and order pursuant to §725.418, undertake further development, hold a conference, or refer the claim for a hearing.

(c) Any operator or carrier may in writing designate an office or person authorized to receive notice of a claim on behalf of such operator or carrier. All such notices to the operator or carrier shall thereafter be sent to the designated office or person.

§ 725.414 Development of operator's evidence, claimant's rebuttal evidence.

(a) If an operator notified of its possible liability for a claim after the deputy commissioner has made initial findings (§ 725.410) with respect to the claim contests the claim, such operator shall be allowed a reasonable time, to be determined by the deputy commissioner from the date on which the notice of contest is sent, within which to submit to the deputy commissioner and exchange with all other parties all available evidence relevant to any contested issue in the claim. During this period, a notified operator may have the miner examined by a physician selected by such operator, except that no miner shall be required to travel more than 100 miles from his or her place of residence for the purpose of submitting to a medical examination requested by an operator, unless a trip of greater distance is authorized in writing by the deputy commissioner.

(b) If an operator is notified of its possible liability for a claim before the deputy commissioner has made initial findings with respect to the claim or if no initial findings are made, and such operator indicates its intent to contest the claim, such operator shall promptly undertake the development of its evidence, including any medical evidence which may be obtained, if the operator seeks to have the miner examined by a physician which it selects. Any evidence obtained by an operator shall be sent to the deputy commissioner and all other parties to the claim. On the basis of the operator's evidence and all other evidence submitted to the deputy commissioner, the deputy commissioner may make initial findings with respect to the claim or may take such other action as is appropriate. If the deputy commissioner makes an initial finding that the claimant is ineligible for benefits, the deputy commissioner shall proceed

to consider the claim as provided in § 725.410(c). If the deputy commissioner makes an initial finding that the claimant is eligible for benefits and that the notified operator is liable for such benefits, the parties shall be so notified. Within 30 days from the date on which notice of the deputy commissioner's initial findings of eligibility and liability is sent to the parties, each party shall either accept or contest any or all of such initial findings and shall, except as provided in paragraph (d) of this section, submit any available evidence not previously submitted, to the deputy commissioner. The deputy commissioner shall then proceed to adjudicate the claim under § 725.415. The failure by an operator to respond to initial findings of eligibility made under this paragraph shall have the same consequences as an operator's failure to respond to notice of a claim (see § 725.413(b)(3)).

(c) The report of any medical examination or test conducted under this section, or any other evidence submitted, shall be submitted to the deputy commissioner and sent to the other parties to the claim within the applicable period set forth in this section, unless the deputy commissioner enlarges such period for good cause shown or in the interest of justice.

(d) Upon receipt of a medical report obtained by an operator under this section, a claimant shall, upon request, be allowed a reasonable time, as determined by the deputy commissioner from the date on which the operator's report is received, to obtain additional evidence in support of the claim. Such evidence shall be obtained, submitted to the deputy commissioner, and exchanged with the other parties within the period allowed, unless the period is enlarged by the deputy commissioner for good cause shown.

(e) (1) Any documentary evidence obtained by a party during the time a claim is pending before a deputy commissioner, which is withheld from the deputy commissioner or any other party to the claim, shall not be admitted in any later proceedings held with respect to the claim in the absence of extraordinary circumstances, unless

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the admission of such evidence is requested by the Director or such other party.

(2) If an operator notified of a claim does not undertake a good faith effort to develop its evidence while the claim is pending before the deputy commissioner, the deputy commissioner shall proceed to adjudicate the claim in accordance with § 725.415. A notified operator which does not undertake a good faith effort to develop its evidence before the deputy commissioner shall be considered to have waived its right to either have the claimant examined by a physician of its choosing or have the claimant's evidence submitted for review by a physician of its choosing.

§ 725.415 Action by the deputy commissioner after development of operator's evidence.

(a) At the end of the period permitted under § 725.414 for the submission of evidence, the deputy commissioner shall review the claim on the basis of all evidence submitted.

(b) After review of all evidence submitted, the deputy commissioner may schedule a conference in accordance with § 725.416, issue a proposed decision and order in accordance with § 725.418, forward the claim to the Office of Administrative Law Judges in accordance with § 725.421, or take such other action as the deputy commissioner considers appropriate.

§ 725.416 Conferences.

(a) At the conclusion of the period permitted by § 725.414 for the submission of evidence, the deputy commissioner may conduct an informal conference in any claim where it appears that such conference will assist in the voluntary resolution of any issue raised with respect to the claim. The conference proceedings shall not be stenographically reported and sworn testimony shall not be taken.

(b) The deputy commissioner shall notify the parties of a definite time and place for the conference and may in his or her discretion, or on the motion of any party, cancel or reschedule a conference.

(c) Any representative of an operator, of an operator's insurance carrier, or of a claimant must have sufficient au-

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thority to stipulate facts or issues or agree to a final disposition of the claim.

(d) Procedures to be followed at a conference shall be within the discretion of the deputy commissioner. In the case of a conference involving an unrepresented claimant the deputy commissioner shall fully inform the claimant of the consequences of any agreement the claimant is asked to sign. If it is apparent that the unrepresented claimant does not understand the nature or effect of the proceedings, the deputy commissioner shall not permit the execution of any stipulation or agreement in the claim unless it is clear that the best interests of the claimant are served thereby.

§ 725.417 Action at the conclusion of conference.

(a) At the conclusion of a conference, the deputy commissioner shall prepare a stipulation of contested and uncontested issues which shall be signed by the parties and the deputy commissioner. If a hearing is conducted with respect to the claim, this stipulation shall be submitted to the Office of Administrative Law Judges and placed in claim record.

(b) In any case, where appropriate, the deputy commissioner may permit a reasonable time for the submission of additional evidence following a conference.

(c) Within 20 days after the termination of all conference proceedings, the deputy commissioner shall prepare and send to the parties a memorandum of conference, on a form prescribed by the Office, summarizing the conference and including the following:

(1) Date, time and place of conference;

(2) Names, addresses, telephone numbers, and status (i.e., claimant, attorney, operator, carrier's representative, etc.);

(3) Issues discussed at conference;

(4) Additional material presented (i.e., medical reports, employment reports, marriage certificates, birth certificates, etc.);

(5) Issues resolved at conference; and

(6) Deputy commissioner's recommendation.

(d) Each party shall, in writing, either accept or reject, in whole or in

part, the deputy commissioner's recommendation, stating the reasons for such rejection. If no reply is received within 30 days from the date on which the recommendation was sent to parties, the recommendation shall be deemed accepted.

§ 725.418 Proposed decision and order.

(a) A proposed decision and order is a document, issued by the deputy commissioner after the evidentiary development of the claim is completed and all contested issues, if any, are joined, which purports to resolve a claim on the basis of the evidence submitted to or obtained by the deputy commissioner. A proposed decision and order shall be considered a final adjudication of a claim only as provided in § 725.419. A proposed decision and order may be issued by the deputy commissioner in any claim and at any time during the adjudication of a claim if:

(1) Issuance is authorized or required by this part; or,

(2) The deputy commissioner determines that its issuance will expedite the adjudication of the claim.

(b) A proposed decision and order shall contain findings of fact and conclusions of law and an appropriate order shall be served on all parties to the claim.

§ 725.419 Response to proposed decision and order.

(a) Within 30 days after the date of issuance of a proposed decision and order, any party may, in writing, request a revision of the proposed decision and order or a hearing. If a hearing is requested, the deputy commissioner shall refer the claim to the Office of Administrative Law Judges (see § 725.421).

(b) Any response made by a party to a proposed decision and order shall specify the findings and conclusions with which the responding party disagrees, and shall be served on the deputy commissioner and all other parties to the claim.

(c) If a timely request for revision of a proposed decision and order is made, the deputy commissioner may amend the proposed decision and order, as circumstances require, and serve the revised proposed decision and order on all

parties or take such other action as is appropriate. If a revised proposed decision and order is issued, each party to the claim shall have 30 days from the date of issuance of that revised proposed decision and order within which to request a hearing.

(d) If no response to a proposed decision and order is sent to the deputy commissioner within the period described in paragraph (a) of this section, or if no response to a revised proposed decision and order is sent to the deputy commissioner within the period described in paragraph (c) of this section, the proposed decision and order shall become a final decision and order, which is effective upon the expiration of the applicable 30-day period. Once a proposed decision and order or revised proposed decision and order becomes final and effective, all rights to further proceedings with respect to the claim shall be considered waived, except as provided in § 725.310.

§ 725.420 Initial determinations.

(a) Section 9501(d)(1)(A)(1) of the Internal Revenue Code provides that the Black Lung Disability Trust Fund shall begin the payment of benefits on behalf of an operator in any case in which the operator liable for such payments "has not commenced payment of such benefits within 30 days after the date of an initial determination of eligibility by the Secretary * * *." For claims filed on or after January 1, 1982, the payment of such interim benefits from the Fund is limited to "benefits accruing after the date of such initial determination * * *."

(b) Except as provided in § 725.415 of this subpart, after the deputy commissioner has determined that a claimant is eligible for benefits, on the basis of all evidence submitted by a claimant and operator, and has determined that a hearing will be necessary to resolve the claim, the deputy commissioner shall in writing so inform the parties and direct the operator to begin the payment of benefits to the claimant in accordance with § 725.522. The date on which this writing is sent to the parties shall be considered the date of initial determination of the claim.

(c) If a notified operator refuses to commence payment of a claim within

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30 days from the date on which an initial determination is made under this section, benefits shall be paid by the fund to the claimant in accordance with § 725.522, and the operator shall be liable to the fund, if such operator is determined liable for the claim, for all benefits paid by the fund on behalf of such operator, and, in addition, such penalties and interest as are appropriate.

[43 FR 36772, Aug. 18, 1978, as amended at 48 FR 24292, May 31, 1983]

§ 725.421 Referral of a claim to the Office of Administrative Law Judges.

(a) In any claim for which a formal hearing is requested or ordered, and with respect to which the deputy commissioner has completed development and adjudication without having resolved all contested issues in the claim, the deputy commissioner shall refer the claim to the Office of Administrative Law Judges for a hearing. If the deputy commissioner with jurisdiction over the claim is located at any place outside Washington, DC, such deputy commissioner shall forward a claim with respect to which a hearing is required by this part to the DCMWC in Washington, DC, which shall refer the claim to the Office of Administrative Law Judges for appropriate proceedings.

(b) In any case referred to the Office of Administrative Law Judges under this section, the deputy commissioner shall transmit to that office the following documents, which shall be placed in the record at the hearing subject to the objection of any party:

- (1) Copies of the claim form or forms;
- (2) any statement, document, or pleading submitted by a party to the claim;
- (3) a copy of the notification to an operator of its possible liability for the claim;
- (4) all evidence submitted to the deputy commissioner under this part;
- (5) any written stipulation of law or fact or stipulation of contested and uncontested issues entered into by the parties;
- (6) any pertinent forms submitted to the deputy commissioner;
- (7) the statement by the deputy commissioner of contested and uncontested issues in the claim; and
- (8) the deputy commissioner's initial determination of eligibility or other documents nec-

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essary to establish the right of the fund to reimbursement, if appropriate. Copies of the transmittal notice shall also be sent to all parties to the claim.

(c) A party may at any time request and obtain from the deputy commissioner copies of documents transmitted to the Office of Administrative Law Judges under paragraph (b) of this section. If the party has previously been provided with such documents, additional copies may be sent to the party upon the payment of a copying fee to be determined by the deputy commissioner.

[43 FR 36772, Aug. 18, 1978, as amended at 48 FR 24292, May 31, 1983]

§ 725.422 Legal assistance.

The Secretary or his or her designee may, upon request, provide a claimant with legal assistance in processing a claim under the Act. Such assistance may be made available to a claimant in the discretion of the Solicitor of Labor or his or her designee at any time prior to or during the time in which the claim is being adjudicated and shall be furnished without charge to the claimant. Representation of a claimant in adjudicatory proceedings shall not be provided by the Department of Labor unless it is determined by the Solicitor of Labor that such representation is in the best interests of the black lung benefits program. In no event shall representation be provided to a claimant in a claim with respect to which the claimant's interests are adverse to those of the Secretary of Labor or the fund.

Subpart E—Hearings

§ 725.450 Right to a hearing.

Any party to a claim (see § 725.360) shall have a right to a hearing concerning any contested issue of fact or law unresolved by the deputy commissioner. There shall be no right to a hearing until the processing and adjudication of the claim by the deputy commissioner has been completed. There shall be no right to a hearing in a claim with respect to which a determination of the claim made by the deputy commissioner has become final and effective in accordance with this part.

§ 725.451 Request for hearing.

After the completion of proceedings before the deputy commissioner, or as is otherwise indicated in this part, any party may in writing request a hearing on any contested issue of fact or law. A deputy commissioner may on his or her own initiative refer a case for hearing. If a hearing is requested, or if a deputy commissioner determines that a hearing is necessary to the resolution of any issue, the claim shall be referred to the Chief Administrative Law Judge for a hearing under § 725.421.

§ 725.452 Type of hearing; parties.

(a) A hearing held under this part shall be conducted by an administrative law judge designated by the Chief Administrative Law Judge. Except as otherwise provided by this part, all hearings shall be conducted in accordance with the provisions of 5 U.S.C. 554 et seq.

(b) All parties to a claim shall be permitted to participate fully at a hearing held in connection with such claim.

(c) A full evidentiary hearing need not be conducted if a party moves for summary judgment and the administrative law judge determines that there is no genuine issue as to any material fact and that the moving party is entitled to the relief requested as a matter of law. All parties shall be entitled to respond to the motion for summary judgment prior to decision thereon.

§ 725.453 Notice of hearing.

All parties shall be given at least 30 days written notice of the date and place of a hearing and the issues to be resolved at the hearing. Such notice shall be sent to each party or representative by certified mail.

§ 725.453A Time and place of hearing.

(a) The Chief Administrative Law Judge shall assign a definite time and place for a formal hearing, and shall, where possible, schedule the hearing to be held at a place within 75 miles of the claimant's residence unless an alternate location is requested by the claimant.

(b) If the claimant's residence is not in any State, the Chief Administrative Law Judge may, in his or her discre-

tion, schedule the hearing in the country of the claimant's residence.

(c) The Chief Administrative Law Judge or the administrative law judge assigned the case may in his or her discretion direct that a hearing with respect to a claim shall begin at one location and then later be reconvened at another date and place.

§ 725.454 Change of time and place for hearing; transfer of cases.

(a) The Chief Administrative Law Judge or administrative law judge assigned the case may change the time and place for a hearing, either on his or her own motion or for good cause shown by a party. The administrative law judge may adjourn or postpone the hearing, or reopen the hearing for the receipt of additional evidence, for good cause shown, at any time prior to the mailing to the parties of the decision in the case. Unless otherwise agreed, at least 10 days notice shall be given to the parties of any change in the time or place of hearing.

(b) The Chief Administrative Law Judge may for good cause shown transfer a case from one administrative law judge to another.

§ 725.455 Hearing procedures; generally.

(a) *General.* The purpose of any hearing conducted under this subpart shall be to resolve contested issues of fact or law. Except as provided in § 725.421(b)(8), any findings or determinations made with respect to a claim by a deputy commissioner shall not be considered by the administrative law judge.

(b) *Evidence.* The administrative law judge shall at the hearing inquire fully into all matters at issue, and shall not be bound by common law or statutory rules of evidence, or by technical or formal rules of procedure, except as provided by 5 U.S.C. 554 and this subpart. The administrative law judge shall receive into evidence the testimony of the witnesses and parties, the evidence submitted to the Office of Administrative Law Judges by the deputy commissioner under § 725.421, and such

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additional evidence as may be submitted in accordance with the provisions of this subpart. The administrative law judge may entertain the objections of any party to the evidence submitted under this section.

(c) *Procedure.* The conduct of the hearing and the order in which allegations and evidence shall be presented shall be within the discretion of the administrative law judge and shall afford the parties an opportunity for a fair hearing.

§ 725.456 Introduction of documentary evidence.

(a) All documents transmitted to the Office of Administrative Law Judges under § 725.421 shall be placed into evidence by the administrative law judge as exhibits of the Director, subject to objection by any party.

(b)(1) Any other documentary material, including medical reports, which was not submitted to the deputy commissioner, may be received in evidence subject to the objection of any party, if such evidence is sent to all other parties at least 20 days before a hearing is held in connection with the claim.

(2) Documentary evidence, which is not exchanged with the parties in accordance with this paragraph, may be admitted at the hearing with the written consent of the parties or on the record at the hearing, or upon a showing of good cause why such evidence was not exchanged in accordance with this paragraph. If documentary evidence is not exchanged in accordance with paragraph (b)(1) of this section and the parties do not waive the 20-day requirement or good cause is not shown, the administrative law judge shall either exclude the late evidence from the record or remand the claim to the deputy commissioner for consideration of such evidence.

(3) A medical report which is not made available to the parties in accordance with paragraph (b)(1) of this section shall not be admitted into evidence in any case unless the hearing record is kept open for at least 30 days after the hearing to permit the parties to take such action as each considers appropriate in response to such evidence. If, in the opinion of the administrative law judge, evidence is withheld

from the parties for the purpose of delaying the adjudication of the claim, the administrative law judge may exclude such evidence from the hearing record and close the record at the conclusion of the hearing.

(4) Notwithstanding any other provision of this paragraph, documentary evidence other than medical reports which is presented or discovered in connection with the testimony of a witness at the hearing may be admitted into the hearing record, subject to the objection of any party.

(c) All medical records and reports submitted by any party shall be considered by the administrative law judge in accordance with the quality standards contained in part 718 of this subchapter as amended from time to time.

(d) Documentary evidence which is obtained by any party during the time a claim is pending before the deputy commissioner, and which is withheld by such party until the claim is forwarded to the Office of Administrative Law Judges shall, notwithstanding paragraph (b) of this section, not be admitted into the hearing record in the absence of extraordinary circumstances, unless such admission is requested by any other party to the claim (see § 725.414(e)).

(e) If, during the course of a hearing, it is determined by the administrative law judge that the documentary evidence submitted in accordance with this section is incomplete as to any issue which must be adjudicated, the administrative law judge may, in his or her discretion, remand the claim to the deputy commissioner with instructions to develop only such additional evidence as is required, or allow the parties a reasonable time to obtain and submit such evidence, before the termination of the hearing.

[43 FR 36772, Aug. 18, 1978, as amended at 48 FR 24292, May 31, 1983]

§ 725.457 Witnesses.

(a) Witnesses at the hearing shall testify under oath or affirmation. The administrative law judge and the parties may question witnesses with respect to any matters relevant and material to any contested issue. Any party who intends to present the testimony of an

expert witness at a hearing shall so notify all other parties to the claim at least 10 days before the hearing. The failure to give notice of the appearance of an expert witness in accordance with this paragraph, unless notice is waived by all parties, shall preclude the presentation of testimony by such expert witness.

(b) No person shall be required to appear as a witness in any proceeding before an administrative law judge at a place more than 100 miles from his or her place of residence, unless the lawful mileage and witness fee for 1 day's attendance is paid in advance of the hearing date.

§ 725.458 Deposition; interrogatories.

The testimony of any witness or party may be taken by deposition or interrogatory according to the rules of practice of the Federal district court for the judicial district in which the case is pending (or of the U.S. District Court for the District of Columbia if the case is pending in the District or outside the United States), except that at least 30 days prior notice of any deposition shall be given to all parties unless such notice is waived. No post-hearing deposition or interrogatory shall be permitted unless authorized by the administrative law judge upon the motion of a party to the claim.

§ 725.459 Witness fees.

(a) A witness summoned to hearing before an administrative law judge, or whose deposition is taken, shall receive the same fees and mileage as witnesses in courts of the United States. Except as provided in paragraph (c) of this section, such fees shall be paid by the party summoning the witness.

(b) No claimant shall be required to bear the financial responsibility for producing an expert witness for cross-examination if such expert witness, regardless of his or her availability to attend the hearing, has previously submitted depositions, interrogatories, or medical reports. Such expert witness, if he or she is required to attend the hearing, respond to interrogatories or give a deposition, shall be summoned and shall have his or her expert witness fee paid by the party who summons such witness.

(c) If a claimant is determined entitled to benefits, there may be assessed as costs against a responsible operator, if any, fees and mileage for necessary witnesses attending the hearing at the request of the claimant. Both the necessity for the witness and the reasonableness of the fees of any expert witness shall be approved by the administrative law judge. The amounts awarded against a responsible operator as attorney's fees, or costs, fees and mileage for witnesses, shall not in any respect affect or diminish benefits payable under the Act.

§ 725.459A Oral argument and written allegations.

The parties, upon request, may be allowed a reasonable time for the presentation of oral argument at the hearing. Briefs or other written statements or allegations as to facts or law may be filed by any party with the permission of the administrative law judge. Copies of any brief or other written statement shall be filed with the administrative law judge and served on all parties by the submitting party.

§ 725.460 Consolidated hearings.

When two or more hearings are to be held, and the same or substantially similar evidence is relevant and material to the matters at issue at each such hearing, the Chief Administrative Law Judge may, upon motion by any party or on his or her own motion, order that a consolidated hearing be conducted. Where consolidated hearings are held, a single record of the proceedings shall be made and the evidence introduced in one claim may be considered as introduced in the others, and a separate or joint decision shall be made, as appropriate.

§ 725.461 Waiver of right to appear and present evidence.

(a) If all parties waive their right to appear before the administrative law judge, it shall not be necessary for the administrative law judge to give notice of, or conduct, an oral hearing. A waiver of the right to appear shall be made in writing and filed with the Chief Administrative Law Judge or the administrative law judge assigned to hear the case. Such waiver may be withdrawn

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by a party for good cause shown at any time prior to the mailing of the decision in the claim. Even though all of the parties have filed a waiver of the right to appear, the administrative law judge may, nevertheless, after giving notice of the time and place, conduct a hearing if he or she believes that the personal appearance and testimony of the party or parties would assist in ascertaining the facts in issue in the claim. Where a waiver has been filed by all parties, and they do not appear before the administrative law judge personally or by representative, the administrative law judge shall make a record of the relevant documentary evidence submitted in accordance with this part and any further written stipulations of the parties. Such documents and stipulations shall be considered the evidence of record in the case and the decision shall be based upon such evidence.

(b) Except as provided in § 725.456(a), the unexcused failure of any party to attend a hearing shall constitute a waiver of such party's right to present evidence at the hearing, and may result in a dismissal of the claim (see § 725.465).

§ 725.462 Withdrawal of controversion of issues set for formal hearing; effect.

A party may, on the record, withdraw his or her controversion of any or all issues set for hearing. If a party withdraws his or her controversion of all issues, the administrative law judge shall remand the case to the deputy commissioner for the issuance of an appropriate order.

§ 725.463 Issues to be resolved at hearing; new issues.

(a) Except as otherwise provided in this section, the hearing shall be confined to those contested issues which have been identified by the deputy commissioner (see § 725.421) or any other issue raised in writing before the deputy commissioner.

(b) An administrative law judge may consider a new issue only if such issue was not reasonably ascertainable by the parties at the time the claim was before the deputy commissioner. Such new issue may be raised upon applica-

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tion of any party, or upon an administrative law judge's own motion, with notice to all parties, at any time after a claim has been transmitted by the deputy commissioner to the Office of Administrative Law Judges and prior to decision by an administrative law judge. If a new issue is raised, the administrative law judge may, in his or her discretion, either remand the case to the deputy commissioner with instructions for further proceedings, hear and resolve the new issue, or refuse to consider such new issue.

(c) If a new issue is to be considered by the administrative law judge, a party may, upon request, be granted an appropriate continuance.

§ 725.464 Record of hearing.

All hearings shall be open to the public and shall be mechanically or stenographically reported. All evidence upon which the administrative law judge relies for decision shall be contained in the transcript of testimony, either directly or by appropriate reference. All medical reports, exhibits, and any other pertinent document or record, either in whole or in material part, introduced as evidence, shall be marked for identification and incorporated into the record.

§ 725.465 Dismissals for cause.

(a) The administrative law judge may, at the request of any party, or on his or her own motion, dismiss a claim:

(1) Upon the failure of the claimant or his or her representative to attend a hearing without good cause;

(2) Upon the failure of the claimant to comply with a lawful order of the administrative law judge; or

(3) Where there has been a prior final adjudication of the claim or defense to the claim under the provisions of this subchapter and no new evidence is submitted (except as provided in part 727 of this subchapter).

(b) A party who is not a proper party to the claim (see § 725.360) shall be dismissed by the administrative law judge.

(c) In any case where a dismissal of a claim, defense, or party is sought, the administrative law judge shall issue an order to show cause why the dismissal should not be granted and afford all

parties a reasonable time to respond to such order. After the time for response has expired, the administrative law judge shall take such action as is appropriate to rule on the dismissal, which may include an order dismissing the claim, defense or party.

(d) No claim shall be dismissed in a case with respect to which payments prior to final adjudication have been made to the claimant in accordance with § 725.522, except upon the motion or written agreement of the Director.

§ 725.466 Order of dismissal.

(a) An order dismissing a claim shall be served on the parties in accordance with § 725.477. The dismissal of a claim shall have the same effect as a decision and order disposing of the claim on its merits, except as provided in paragraph (b) of this section. Such order shall advise the parties of their right to request review by the Benefits Review Board.

(b) Where the Chief Administrative Law Judge or the presiding administrative law judge issues a decision and order dismissing the claim after a show cause proceeding, the deputy commissioner shall terminate any payments being made to the claimant under § 725.522, and the order of dismissal shall, if appropriate, order the claimant to reimburse the Fund for all benefits paid to the claimant.

§ 725.475 Termination of hearings.

Hearings are officially terminated when all the evidence has been received, witnesses heard, pleadings and briefs submitted to the administrative law judge, and the transcript of the proceedings has been printed and delivered to the administrative law judge.

§ 725.476 Issuance of decision and order.

Within 20 days after the official termination of the hearing (see § 725.475), the administrative law judge shall issue a decision and order with respect to the claim making an award to the claimant, rejecting the claim, or taking such other action as is appropriate.

§ 725.477 Form and contents of decision and order.

(a) Orders adjudicating claims for benefits shall be designated by the term "decision and order" or "supplemental decision and order" as appropriate, followed by a descriptive phrase designating the particular type of order, such as "award of benefits," "rejection of claim," "suspension of benefits," "modification of award."

(b) A decision and order shall contain a statement of the basis of the order, the names of the parties, findings of fact, conclusions of law, and an award, rejection or other appropriate paragraph containing the action of the administrative law judge, his or her signature and the date of issuance. A decision and order shall be based upon the record made before the administrative law judge.

§ 725.478 Filing and service of decision and order.

On the date of issuance of a decision and order under § 725.477, the administrative law judge shall serve the decision and order on all parties to the claim by certified mail. On the same date, the original record of the claim shall be returned to the DCMWC in Washington, DC, and the decision and order shall be considered to be filed in the office of the deputy commissioner. Immediately upon receipt of a decision and order awarding benefits, the deputy commissioner shall compute the amount of benefits due, including any interest or penalties, and the amount of reimbursement owed the Fund, if any, and so notify the parties. Any computation made by the deputy commissioner under this paragraph shall strictly observe the terms of the award made by the administrative law judge.

§ 725.479 Finality of decisions and orders.

(a) A decision and order shall become effective when filed in the office of the deputy commissioner (see § 725.478), and unless proceedings for suspension or setting aside of such order are instituted within 30 days of such filing, the order shall become final at the expiration of the 30th day after such filing (see § 725.481).

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(b) Any party may, within 30 days after the filing of a decision and order under § 725.478, request a reconsideration of such decision and order by the administrative law judge. The procedures to be followed in the reconsideration of a decision and order shall be determined by the administrative law judge.

(c) The time for appeal to the Benefits Review Board shall be suspended during the consideration of a request for reconsideration. After the administrative law judge has issued and filed a denial of the request for reconsideration, or a revised decision and order in accordance with this part, any dissatisfied party shall have 30 days within which to institute proceedings to set aside the new decision and order or affirmation of the original decision and order.

§ 725.480 Modification of decisions and orders.

(a) A party who is dissatisfied with a decision and order which has become final in accordance with § 725.479 may request a modification of the decision and order if the conditions set forth in § 725.310 are met.

§ 725.481 Right to appeal to the Benefits Review Board.

Any party dissatisfied with a decision and order issued by an administrative law judge may, before the decision and order becomes final (see § 725.479), appeal the decision and order to the Benefits Review Board. A notice of appeal shall be filed with the Board. Proceedings before the Board shall be conducted in accordance with part 802 of this title.

§ 725.482 Judicial review.

(a) Any person adversely affected or aggrieved by a final order of the Benefits Review Board may obtain a review of that order in the U.S. court of appeals for the circuit in which the injury occurred by filing in such court within 60 days following the issuance of such Board order a written petition praying that the order be modified or set aside. The payment of the amounts required by an award shall not be stayed pending final decision in any such proceeding unless ordered by the

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court. No stay shall be issued unless the court finds that irreparable injury would otherwise ensue to an operator or carrier.

(b) The Director, Office of Workers' Compensation Program, as designee of the Secretary of Labor responsible for the administration and enforcement of the Act, shall be considered the proper party to appear and present argument on behalf of the Secretary of Labor in all review proceedings conducted pursuant to this part and the Act, either as petitioner or respondent.

§ 725.483 Costs in proceedings brought without reasonable grounds.

If a United States court having jurisdiction of proceedings regarding any claim or final decision and order, determines that the proceedings have been instituted or continued before such court without reasonable ground, the costs of such proceedings shall be assessed against the party who has so instituted or continued such proceedings.

Subpart F—Responsible Coal Mine Operators

GENERAL PROVISIONS

§ 725.490 Statutory provisions and scope.

(a) One of the major purposes of the black lung benefits amendments of 1977 was to provide a more effective means of transferring the responsibility for the payment of benefits from the Federal government to the coal industry with respect to claims filed under this part. In furtherance of this goal, a Black Lung Disability Trust Fund financed by the coal industry was established by the Black Lung Benefits Revenue Act of 1977. The primary purpose of the Fund is to pay benefits with respect to all claims in which the last coal mine employment of the miner on whose account the claim was filed occurred before January 1, 1970. With respect to most claims in which the miner's last coal mine employment occurred after January 1, 1970, individual coal mine operators will be liable for the payment of benefits. The 1981

amendments to the Act relieved individual coal mine operators from the liability for payment of certain special claims involving coal mine employment on or after January 1, 1970, where the claim was previously denied and subsequently approved under section 435 of the Act. See §725.496 for a detailed description of these special claims. Where no such operator exists or the operator determined to be liable is in default in any case, the Fund shall pay the benefits due and seek reimbursement as is appropriate. See also §725.420 for the Fund's role in the payment of interim benefits in certain contested cases. In addition, the Black Lung Benefits Reform Act of 1977 amended certain provisions affecting the scope of coverage under the Act and describing the effects of particular corporate transactions on the liability of operators.

(b) The provisions of this subpart define the term "operator," prescribe the manner in which the identity of an operator which may be liable for the payment of benefits—referred to herein as a "responsible operator"—will be determined, and briefly describe the obligations of operators to secure the payment of benefits. (See also part 726 of this subchapter.)

[43 FR 36772, Aug. 18, 1978, as amended at 48 FR 24292, May 31, 1983]

§ 725.491 Operator defined.

(a) In accordance with section 3(d) of the Act, an operator for purposes of this part is "any owner, lessee or other person who operates, controls, or supervises a coal mine or any independent contractor performing services or construction at such mine." In accordance with sections 402(d) and 422(b) of the Act, certain other employers, including those engaged in coal mine construction, maintenance, and transportation, shall also be considered to be operators for purposes of this part. An independent contractor or self-employed miner, construction worker, coal preparation worker, or transportation worker may also be considered a coal mine operator for purpose of this part. It is Congress' intent that any employer of a miner as defined in §725.202(a) shall, to the extent appropriate, be considered an operator for

for the purposes of this part, and the provisions of this part shall be construed in accordance with this intent.

(b)(1) In determining which operator or other employer is the employer of a particular miner, primary consideration shall be given to the identity of the employer which is directly responsible for the supervision, operation and control of the mine or mines or other facilities where the miner was employed. However, Congress has made it clear that such supervision or control may be directly or indirectly exercised. Therefore, in appropriate cases where, for example, the individual or business entity most directly connected with the mine site is not capable of assuming liability for the payment of benefits (§725.492(d)) or is no longer in business and such individual or business entity is a subsidiary of a parent company, a member of a joint venture, a partner in a partnership, or is substantially owned or controlled by another business entity, such parent entity or other member of a joint venture or partner or controlling business entity may be considered an operator for purposes of this part, regardless of the nature of its business activities.

(2) Where a coal mine is leased, and the lease empowers the lessor to make decisions with respect to the terms and conditions under which coal is to be extracted or prepared, such as, but not limited to, the manner of extraction or preparation or the amount of coal to be produced, the lessor may be considered an operator with respect to employees of the lessee. An individual land owner or others who lease coal lands or mineral rights, who have never been coal mine operators or are not in the regular business of leasing coal mines, shall not be considered a coal mine operator in accordance with the terms of this section. Where a lessor previously operated a coal mine, it may be considered an operator with respect to employees of any lessee of such mine, particularly where the leasing arrangement was executed or renewed after the effective date of this part and does not require the lessee to secure benefits provided by the Act.

(3) In any claim in which the liability of a lessor for claims arising out of employment with a lessee is brought into

question, the lessee shall be considered primarily liable for the claim, and the liability of the lessor may be established only after it has been determined that the lessee is unable to provide for the payment of benefits to a successful claimant. In any case involving the liability of a lessor for a claim arising out of employment with a lessee, any determination of lessor liability shall be made on the basis of the facts present in the case in consideration of the terms and intent of the act and this part.

(4) A former coal mine operator which has become a lessor of coal miner shall be liable for approved claims arising out of coal mine employment with such lessor during the time the lessor was a coal mine operator, if such employment terminated on or after January 1, 1970, and the conditions for liability contained in § 725.492 are met.

(c) (1) An independent contractor which performs or performed services or engages or engaged in construction at a mine or preparation or transportation facility may be held liable for the payment of benefits under this part as a coal mine operator with respect to its employees who work or have worked in or around a coal mine or coal preparation or transportation facility in the extraction, preparation, or transportation of coal or in coal mine construction in any period during which such employees were exposed to coal dust during their employment with such contractor. Such contractor's status as an operator shall not be contingent upon the amount or percentage of its work or business related to activities in or around a mine, nor upon the number or percentage of its employees engaged in such activities.

(2) (i) Any individual who works or has worked as a sole proprietor, a partner in a partnership, a member of a family business or who is otherwise self-employed in or around a coal mine or coal preparation or transportation facility in the extraction, preparation, or transportation of coal or in coal mine construction during any period such individual was exposed to coal dust may be considered an operator under this part.

(ii) A self-employed operator, depending upon the facts of the case, may be considered an employee of any other operator, person, or business entity which substantially controls, supervises, or is financially responsible for the activities of the self-employed operator.

(iii) For the purposes of this part, a lessor of a coal mine which leases such mine to a self-employed operator shall be considered the employer of such self-employed operator and its employees if the lease or agreement is executed or renewed after the effective date of this part and such lease or agreement does not require the lessee to guarantee the payment of benefits which may be required under this part.

§ 725.492 Responsible operator defined.

(a) A "responsible operator" is the operator which is determined liable for the payment of benefits under this part for any period after December 31, 1973. In order for an employer to be considered a responsible operator in any case, the following shall be established:

(1) The miner's disability or death shall have arisen at least in part out of employment in or around a mine or other facility during a period when the mine or facility was operated by such operator, except as provided in § 725.493(a)(2);

(2) The operator shall have been an operator of a coal mine or other facility for any period after June 30, 1973;

(3) The miner's employment with the operator or other employer shall have included at least 1 working day (§ 725.493(b)) after December 31, 1969; and

(4) The operator or the employer shall be capable of assuming its liability for the payment of continuing benefits under this part, through any of the following means:

(i) By obtaining a policy or contract of insurance under section 423 of the Act and part 726 of this subchapter; or

(ii) By qualifying as a self-insurer under section 423 of the Act and part 726 of this subchapter; or

(iii) By possessing any assets that may be available for the payment of benefits under this part or through an action under subpart H of this part.

(b) In the absence of evidence to the contrary, a showing that a business or corporate entity exists shall be deemed sufficient evidence of an operator's capability of assuming liability under this part.

(c) For the purposes of determining whether an employer is or was an operator or other employer covered by the Act which may be found liable for the payment of benefits to an employee of such employer under this part, there shall be a rebuttable presumption that during the course of an individual's employment such individual was regularly and continuously exposed to coal dust during the course of employment. The presumption may be rebutted by a showing that the employee was not exposed to coal dust for significant periods during such employment.

For purposes of § 725.493(a), a year of coal mine employment may be established by accumulating intermittent periods of coal mine employment.

§ 725.493 Criteria for identifying a responsible operator.

(a)(1) Subject to the provisions of paragraphs (a)(2) and (3) of this section, and provided that the conditions of § 725.492(a)(2) through (a)(4) are met, the operator or other employer with which the miner had the most recent periods of cumulative employment of not less than 1 year, as determined in accordance with paragraph (b) of this section, shall be the responsible operator.

(2)(i) Except as otherwise provided in this paragraph, if the operator described in paragraph (a)(1) of this section was an operator of a mine or mines or the owner of the assets thereof on or after January 1, 1970, (a "prior operator") and on or after January 1, 1970, transferred such mine or mines or substantially all of the assets thereof to another operator (a "successor operator"), such successor operator shall be liable for and shall secure the payment of all benefits which would have been payable by the prior operator 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 a coal mine operator. A lessor of a coal mine may

be considered a prior or successor operator in accordance with this subpart.

(ii) The stated congressional objective supporting section 422(i) of the Act is to prevent a coal operator from circumventing liability under this part by entering into corporate or other business transactions which make the assessment of liability against that operator a financial or legal impossibility. Accordingly, a prior operator under paragraph (a)(2)(i) of this section, which transfers a mine or mines or substantially all the assets thereof, shall remain primarily liable for the payment of benefits under this part predicated on employment with the prior operator if such prior operator meets the conditions of § 725.492(a)(2) and (a)(4). If the conditions in § 725.492(a)(2) and (a)(4) are not met, the successor operator shall, if appropriate, be liable for the payment of such benefits.

(iii) Except as is provided in paragraph (a)(2)(ii) of this section, if the operator described in paragraph (a)(1) of this section is a prior operator which, on or after January 1, 1970, transferred its coal mining business or substantially all the assets thereof to a successor operator, or if such business or assets was subsequently transferred to a successor of such successor operator, such successor operator which has most recently acquired the coal mining operations in question or substantially all of the assets thereof shall be deemed the responsible operator if it meets the conditions of § 725.492(a)(2) and (a)(4). If such successor operator fails to meet such conditions, any prior operator or any operator in the chain of succession, beginning with the most recent operator, which acquired the coal mining business in question or substantially all of the assets thereof on or after January 1, 1970, and which meets the conditions of § 725.492(a)(2) and (a)(4), may be determined to be the responsible operator. Wherever possible the employer of the miner shall be considered the responsible operator. However, any successor operator may be determined to be the responsible operator with respect to a claim whether or not the miner on whose total disability or death the claim is predicated was employed by such successor operator for any period of time.

(3) For purposes of paragraph (a)(2) of this section, the following shall apply to corporate reorganizations, liquidations, and such other transactions as are enumerated in this section, occurring on or after January 1, 1970:

(i) If an operator ceases to exist by reason of a reorganization which involves a change in identity, form, or place of business or organization, however effected, the resulting entity shall be treated as the operator to which this section applies;

(ii) 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 which this section applies;

(iii) If an operator ceases to exist by reason of a sale of substantially all its assets, merger, consolidation, or division, the successor operator or corporation, or business entity shall be treated as the operator to which this section applies.

(4) If there is no operator which meets the conditions of paragraphs (a)(1) or (2) of this section, the responsible operator shall be considered to be the operator with which the miner had the latest periods of cumulative employment of not less than 1 year, subject to the provisions of paragraph (a)(2) of this section and provided that the conditions of § 725.492(a)(2)-(a)(4) are met.

(5) No determination of responsibility made under paragraphs (a)(1)-(b)(4) of this section shall be construed to limit the authority of the Secretary to determine that any individual or business entity is an operator under the Act.

(6) In the event an operator or other employer is determined to be a responsible operator under the provisions of paragraphs (a)(1)-(b)(4) of this section, there shall be a rebuttable presumption that the miner's pneumoconiosis arose in whole or in part out of his or her employment with such operator. Unless this presumption is rebutted, the responsible operator shall be liable to pay benefits to the claimant on account of the disability or death of the miner in accordance with this part. A miner's pneumoconiosis, or disability therefrom, shall be considered to have arisen in whole or in part out of work in or around a mine if such work con-

tributed to or aggravated the progression or advancement of a miner's loss of ability to perform his or her regular coal mine employment or comparable employment.

(b) From the evidence presented, the identity of the operator or other employer with which the miner had the most recent periods of cumulative employment of not less than 1 year and, to the extent the evidence permits, the beginning and ending dates of such periods, shall be ascertained. For purposes of this section, a year of employment means a period of 1 year, or partial periods totalling 1 year, during which the miner was regularly employed in or around a coal mine by the operator or other employer. Regular employment may be established on the basis of any evidence presented, including the testimony of a claimant or other witnesses, and shall not be contingent upon a finding of a specific number of days of employment within a given period. However, if an operator or other employer proves that the miner was not employed by it for a period of at least 125 working days, such operator or other employer shall be determined to have established that the miner was not regularly employed for a cumulative year by such operator or employer for the purposes of paragraph (a) of this section. A "working day" means any day or part of a day for which a miner received pay for work as a miner (see § 725.202(a)).

§ 725.494 Insurance coverage.

(a) Any operator which may be liable for the payment of benefits under this part shall secure such liability pursuant to section 423 of the act by:

(1) Qualifying as a self-insurer or establishing a qualified self-insurance trust as provided in part 726 of this chapter; or

(2) Insuring and keeping insured the payment of such benefits with an authorized insurance carrier or fund in accordance with the provisions of part 726 of this subchapter.

(b) A coal mine construction or transportation employer which is not also a coal mine operator shall not be required to purchase insurance or qualify as a self-insurer in accordance with

this part and part 726 of this subchapter. However, such employer shall be liable for the payment of benefits to any of its employees who are exposed to coal dust in the course of their employment, if eligibility is established under this part or part 727 of this subchapter and it is determined that such employer is a responsible operator within the meaning of this part. An employer other than a coal mine operator which may be liable for the payment of benefits under this part or part 727 of this subchapter shall take such action as may be appropriate to guarantee the discharge of such liability. In connection with the liability of an employer described in this paragraph, the deputy commissioner or other adjudication officer may require a deposit of security in accordance with § 725.606. A coal mine construction or transportation employer which also operates a coal mine or coal preparation facility shall not be excused from its obligation to purchase insurance or self-insure its potential liability under the act with respect to all covered employees, as described in paragraph (a) of this section. Any attempt by a coal mine operator to alter its corporate structure or reassign employees within such structure for the purpose of avoiding the insurance obligations of the act shall be considered void for the purpose of determining whether such operator is in compliance with the insurance requirements of the act, or is the employer of such employees.

§ 725.495 Penalty for failure to insure.

(a) Any employer required to secure the payment of benefits under the act and § 725.494 which fails to secure such benefits shall be subject to a civil penalty to be assessed by the Secretary of Labor of not more than \$1,000 for each day during which such failure occurs; and in any case where such employer is a corporation, the president, secretary, and treasurer thereof shall be also severally liable for such civil penalty as herein provided for the failure of such corporation to secure the payment of benefits; and such president, secretary, and treasurer shall be severally personally liable, jointly with such corporation, for any payments or other benefit which may accrue under the act in re-

spect to any injury which may occur to any employee of such corporation while it shall so fail to secure the payment of benefits as required by the act.

(b) If the Director determines that an operator has not fully discharged its insurance obligations imposed by the act, the Director shall notify the operator of its violation, and if corrective action is not taken within a reasonable time specified by the Director, the Director shall forward the case to the Chief Administrative Law Judge for appropriate proceedings. The administrative law judge assigned the case shall schedule and conduct a hearing with respect to the liability of the operator for the penalty described in this section. A penalty hearing conducted in accordance with this paragraph shall be subject to the provisions of 5 U.S.C. 554 and proceedings shall be determined in the discretion of the administrative law judge.

(c) An action may be commenced under this section at any time after information supporting such action becomes known to the Director.

(d) In determining the amount of any penalty assessed under this section, the administrative law judge shall consider the circumstances of the failure of an operator to comply with paragraph (a) of this section and shall, in the absence of mitigating circumstances, assess the maximum penalty allowed.

(e) Any penalty owed under this section shall be paid to the fund and may be enforced by the Secretary on behalf of the fund as appropriate.

(f) An appeal from a decision issued by an administrative law judge under this section shall be taken in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. 553 *et seq.* The Board shall not have jurisdiction to consider an appeal of a case adjudicated under this part.

§ 725.496 Special claims transferred to the Trust Fund.

(a) The 1981 amendments to the Act amended section 422 of the Act and transferred liability for payment of certain special claims from operators and carriers to the Trust Fund. These provisions apply to claims which were denied before March 1, 1978, and which

have been or will be approved in accordance with section 435 of the Act.

(b) Section 402(i) of the Act defines three classes of denied claims subject to the transfer provisions:

(1) Claims filed with and denied by the Social Security Administration before March 1, 1978:

(2) Claims filed with the Department of Labor in which the claimant was notified by the Department of an administrative or informal denial before March 1, 1977, and in which the claimant did not within one year of such notification either:

(i) Request a hearing; or

(ii) Present additional evidence; or

(iii) Indicate an intention to present additional evidence; or

(iv) Request a modification or reconsideration of the denial on the ground of a change in conditions or because of a mistake in a determination of fact;

(3) Claims filed with the Department of Labor and denied under the law in effect prior to the enactment of the Black Lung Benefits Reform Act of 1977, that is, before March 1, 1978, following a formal hearing before an administrative law judge or administrative review before the Benefits Review Board or review before a United States Court of Appeals.

(c) Where more than one claim was filed with the Social Security Administration and/or the Department of Labor prior to March 1, 1978, by or on behalf of a miner or a surviving dependent of a miner, unless such claims were required to be merged by the agency's regulations, the procedural history of each such claim must be considered separately to determine whether the claim is subject to the transfer of liability provisions.

(d) For a claim filed with and denied by the Social Security Administration prior to March 1, 1978, to come within the transfer provisions, such claim must have been or must be approved under the provisions of section 435 of the Act. No claim filed with and denied by the Social Security Administration is subject to the transfer of liability provisions unless a request was made by or on behalf of the claimant for review of such denied claim under section 435. Such review must have been requested by the filing of a valid election

card or other equivalent document with the Social Security Administration in accordance with section 435(a) and its implementing regulations at 20 CFR 410.700-410.707.

(e) Where a claim filed with the Department of Labor prior to March 1, 1977, was subjected to repeated administrative or informal denials, the last such denial issued during the pendency of the claim determines whether the claim is subject to the transfer of liability provisions.

(f) Where a miner's claim comes within the transfer of liability provisions of the 1981 amendments the Trust Fund is also liable for the payment of any benefits to which the miner's dependent survivors are entitled after the miner's death. However, if the survivor's entitlement was established on a separate claim not subject to the transfer of liability provisions prior to approval of the miner's claim under section 435, the party responsible for the payment of such survivors' benefits shall not be relieved of that responsibility because the miner's claim was ultimately approved and found subject to the transfer of liability provisions.

[48 FR 24292, May 31, 1983]

§ 725.497 Procedures in special claims transferred to the Trust Fund.

(a) *General.* It is the purpose of this section to define procedures to expedite the handling and disposition of claims affected by the benefit liability transfer provisions of section 205 of the Black Lung Benefits Amendments of 1981.

(b) *Action by the Department.* The OWCP shall, in accordance with the criteria contained in § 725.496, review each claim which is or may be affected by the provisions of section 205 of the Black Lung Benefits Amendments of 1981. Any party to a claim, adjudication officer, or adjudicative body may request that such a review be conducted and that the record be supplemented with any additional documentation necessary for an informed consideration of the transferability of the claim. Where the issue of the transferability of the claim can not be resolved by agreement of the parties and the evidence of record is not sufficient

for a resolution of the issue, the hearing record may be reopened or the case remanded for the development of the additional evidence concerning the procedural history of the claim necessary to such resolution. Such determinations shall be made on an expedited basis.

(c) *Dismissal of operators.* If it is determined that a coal mine operator or insurance carrier which previously participated in the consideration or adjudication of any claim, may no longer be found liable for the payment of benefits to the claimant by reason of section 205 of the Black Lung Benefits Amendments of 1981, such operator or carrier shall be promptly dismissed as a party to the claim. The dismissal of an operator or carrier shall be concluded at the earliest possible time and in no event shall an operator or carrier participate as a necessary party in any claim for which only the Trust Fund may be liable.

(d) *Procedure following dismissal of an operator.* After it has been determined that an operator or carrier must be dismissed as a party in any claim in accordance with this section, the Director shall take such action as is authorized by the Act to bring about the proper and expeditious resolution of the claim in light of all relevant medical and other evidence. Action to be taken in this regard by the Director may include, but is not limited to, the assignment of the claim to the Black Lung Disability Trust Fund for the payment of benefits, the reimbursement of benefits previously paid by an operator or carrier if appropriate, the defense of the claim on behalf of the Trust Fund, or proceedings authorized by § 725.310.

(e) Any claimant whose claim has been subsequently denied in a modification proceeding will be entitled to expedited review of the modification decision. Where a formal hearing was previously held, the claimant may waive his right to a further hearing and ask that a decision be made on the record of the prior hearing, as supplemented by any additional documentary evidence which the parties wish to introduce and briefs of the parties, if desired. In any case in which the claimant waives his right to a second hear-

ing, a decision and order must be issued within 30 days of the date upon which the parties agree the record has been completed.

[48 FR 24293, May 31, 1983]

Subpart G—Payment of Benefits

§ 725.501 Payment provisions generally.

The provisions of this subpart govern the payment of benefits to claimants whose claims are approved for payment under section 415 and part C of title IV of the act or approved after review under section 435 of the act and part 727 of this subchapter.

§ 725.502 Manner of payment, payment periods.

(a) Benefits under the act shall be paid periodically, promptly, and directly to the person entitled thereto or his or her representative payee (see § 725.510).

(b) Benefits are payable for monthly periods and shall be paid to an eligible claimant beginning with the month during which eligibility begins and shall terminate with the month before the month during which eligibility terminates. If a claimant dies in the first month during which all requirements for eligibility are met, benefits shall be paid for that month.

(c) Except as is otherwise provided in this part, all past due benefits shall be paid during the month in which the first benefit payment is made.

§ 725.503 Date from which benefits are payable.

(a) In accordance with the provisions of section 6(a) of the Longshoremen's Act as incorporated by section 422(a) of the act, and except as provided in § 725.503A, the provisions of this section shall be applicable in determining the date from which benefits are payable to an eligible claimant.

(b) In the case of a miner who is totally disabled due to pneumoconiosis, benefits are payable to such miner beginning with the month of onset of total disability. Where the evidence does not establish the month of onset, benefits shall be payable to such miner beginning with the month during which the claim was filed, or the

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month during which the claimant elected review under part 727 of this subchapter.

(c) Except as is provided in part 727 of this subchapter, in the case of a survivor of a miner who died due to or while totally disabled by pneumoconiosis, benefits shall be payable beginning with the month of the miner's death, or January 1, 1974, whichever is later.

(d) No benefits shall be payable with respect to a claim filed between July 1 and December 31, 1973 (a section 415 claim), for any period of eligibility prior to July 1, 1973 (or January 1, 1974 if the claim is approved under part 727 of this subpart), nor shall any benefits be payable with respect to such claim pursuant to the provisions of section 415 of part B of title IV of the act for any period of eligibility after December 31, 1973. Where in the case of a section 415 claim, eligibility continues beyond December 31, 1973, benefits for periods of eligibility occurring after such date shall be payable under part C of title IV of the act.

(e) No benefits shall be payable with respect to a claim filed after December 31, 1973 (a part C claim), for any period of eligibility occurring before January 1, 1974.

(f) Each decision and order awarding benefits shall indicate the month from which benefits are payable to the eligible claimant.

§ 725.503A Payments to a claimant employed as a miner.

(a) In the case of a claimant who is employed as a miner (see § 725.202(a)) at the time of a final determination of such miner's eligibility for benefits, no benefits shall be payable unless:

(1) The miner's eligibility is established under section 411(c)(3) of the act; or (2) the miner terminates his or her coal mine employment within 1 year from the date of the final determination of the claim.

(b) If the eligibility of a working miner is established under section 411(c)(3) of the act, benefits shall be payable as is otherwise provided in this part. If eligibility cannot be established under section 411(c)(3), and the miner continues to be employed as a miner in any capacity for a period of

less than 1 year after a final determination of the claim, benefits shall be payable beginning with the month during which the miner ends his or her coal mine employment. If the miner's employment continues for more than 1 year after a final determination of eligibility, such determination shall be considered a denial of benefits on the basis of the miner's continued employment, and the miner may seek benefits only as provided in § 725.310, if applicable, or by filing a new claim under this part. The provisions of subparts D and E of this part shall be applicable to claims considered under this section as is appropriate.

(c) In any case where the miner returns to coal mine or comparable and gainful work, the payments to such miner shall be suspended and no benefits shall be payable (except as provided in section 411(c)(3) of the act) for the period during which the miner continues to work. If the miner again terminates employment, the deputy commissioner may require the miner to submit to further medical examination before authorizing the payment of benefits.

§ 725.504 Payees.

Benefits may be paid, as appropriate, to a beneficiary, to a qualified dependent, or to a representative authorized under this subpart to receive payments on behalf of such beneficiary or dependent.

§ 725.505 Payment on behalf of another; "legal guardian" defined.

Benefits are paid only to the beneficiary, his or her representative payee (see § 725.510) or his or her legal guardian. As used in this section, "legal guardian" means an individual who has been appointed by a court of competent jurisdiction or otherwise appointed pursuant to law to assume control of and responsibility for the care of the beneficiary, the management of his or her estate, or both.

§ 725.506 Guardian for minor or incompetent.

An adjudication officer may require that a legal guardian or representative be appointed to receive benefit payments payable to any person who is

mentally incompetent or a minor and to exercise the powers granted to, or to perform the duties otherwise required of such person under the act.

§ 725.510 Representative payee.

(a) If the deputy commissioner determines that the best interests of a beneficiary are served thereby, the deputy commissioner may certify the payment of such beneficiary's benefits to a representative payee.

(b) Before any amount shall be certified for payment to any representative payee for or on behalf of a beneficiary, such representative payee shall submit to the deputy commissioner such evidence as may be required of his or her relationship to, or his or her responsibility for the care of, the beneficiary on whose behalf payment is to be made, or of his or her authority to receive such a payment. The deputy commissioner may, at any time thereafter, require evidence of the continued existence of such relationship, responsibility, or authority. If a person requesting representative payee status fails to submit the required evidence within a reasonable period of time after it is requested, no further payments shall be certified to him or her on behalf of the beneficiary unless the required evidence is thereafter submitted.

(c) All benefit payments made to a representative payee shall be available only for the use and benefit of the beneficiary, as defined in § 725.511.

§ 725.511 Use and benefit defined.

(a) Payments certified to a representative payee shall be considered as having been applied for the use and benefit of the beneficiary when they are used for the beneficiary's current maintenance—i.e., to replace current income lost because of the disability of the beneficiary. Where a beneficiary is receiving care in an institution, current maintenance shall include the customary charges made by the institution and charges made for the current and foreseeable needs of the beneficiary which are not met by the institution.

(b) Payments certified to a representative payee which are not needed for the current maintenance of the bene-

fiary, except as they may be used under § 725.512, shall be conserved or invested on the beneficiary's behalf. Preferred investments are U.S. savings bonds which shall be purchased in accordance with applicable regulations of the U.S. Treasury Department (31 CFR part 315). Surplus funds may also be invested in accordance with the rules applicable to investment of trust estates by trustees. For example, surplus funds may be deposited in an interest or dividend bearing account in a bank or trust company or in a savings and loan association if the account is either federally insured or is otherwise insured in accordance with State law requirements. Surplus funds deposited in an interest or dividend bearing account in a bank or trust company or in a savings and loan association must be in a form of account which clearly shows that the representative payee has only a fiduciary, and not a personal, interest in the funds. The preferred forms of such accounts are as follows:

Name of beneficiary _____
 by (Name of representative payee) representative payee,
 or (Name of beneficiary)
 by (Name of representative payee) trustee.

U.S. savings bonds purchased with surplus funds by a representative payee for an incapacitated adult beneficiary should be registered as follows: (Name of beneficiary) (Social Security No.), for whom (Name of payee) is representative payee for black lung benefits.

§ 725.512 Support of legally dependent spouse, child, or parent.

If current maintenance needs of a beneficiary are being reasonably met, a relative or other person to whom payments are certified as representative payee on behalf of the beneficiary may use part of the payments so certified for the support of the legally dependent spouse, a legally dependent child, or a legally dependent parent of the beneficiary.

§ 725.513 Accountability; transfer.

(a) The deputy commissioner may require a representative payee to submit periodic reports including a full accounting of the use of all benefit payments certified to a representative payee. If a requested report or accounting is not submitted within the time

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allowed, the deputy commissioner shall terminate the certification of the representative payee and thereafter payments shall be made directly to the beneficiary. A certification which is terminated under this section may be reinstated for good cause, provided that all required reports are supplied to the deputy commissioner.

(b) A representative payee who has conserved or invested funds from payments under this part shall, upon the direction of the deputy commissioner, transfer any such funds (including interest) to a successor payee appointed by the deputy commissioner or, at the option of the deputy commissioner, shall transfer such funds to the Office for recertification to a successor payee or the beneficiary.

§ 725.514 Certification to dependent of augmentation portion of benefit.

(a) If the basic benefit of a miner or of a surviving spouse is augmented because of one or more dependents, and it appears to the deputy commissioner that the best interests of such dependent would be served thereby, or that the augmented benefit is not being used for the use and benefit (as defined in this subpart) of the augmentee, the deputy commissioner may certify payment of the amount of such augmentation (to the extent attributable to such dependent) to such dependent directly, or to a legal guardian or a representative payee for the use and benefit of such dependent.

(b) Any request to the deputy commissioner to certify separate payment of the amount of an augmentation in accordance with paragraph (a) of this section shall be in writing on such form and in accordance with such instructions as are prescribed by the Office.

(c) The deputy commissioner shall specify the terms and conditions of any certification authorized under this section and may terminate any such certification where appropriate.

(d) Any payment made under this section, if otherwise valid under the Act, is a complete settlement and satisfaction of all claims, rights, and interests in and to such payment, except that such payment shall not be construed to abridge the rights of any

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party to recoup any overpayment made.

§ 725.515 Assignment and exemption from claims of creditors.

Except as provided by the act and this part, no assignment, release, or commutation of benefits due or payable under this part shall be valid, and all benefits shall be exempt from claims of creditors and from levy, execution, and attachment or other remedy or recovery or collection of a debt, which exemption may not be waived.

BENEFIT RATES

§ 725.520 Computation of benefits.

(a) *Basic rate.* The amount of benefits payable to a beneficiary for a month is determined, in the first instance, by computing the "basic rate." The basic rate is equal to 37½ percent of the monthly pay rate for Federal employees in GS-2, step 1. That rate for a month is determined by:

(1) Ascertaining the lowest annual rate of pay (step 1) for Grade GS-2 of the General Schedule applicable to such month (see 5 U.S.C. 5332);

(2) Ascertaining the monthly rate thereof by dividing the amount determined in paragraph (a)(1) of this section by 12; and

(3) Ascertaining the basic rate under the Act by multiplying the amount determined in paragraph (a)(2) of this section by 0.375 (that is, by 37½ percent).

(b) *Basic benefit.* When a miner or surviving spouse is entitled to benefits for a month for which he or she has no dependents who qualify under this part and when a surviving child of a miner or spouse, or a parent, brother, or sister of a miner, is entitled to benefits for a month for which he or she is the only beneficiary entitled to benefits, the amount of benefits to which such beneficiary is entitled is equal to the basic rate as computed in accordance with this section (raised, if not a multiple of 10 cents, to the next high multiple of 10 cents). This amount is referred to as the "basic benefit."

(c) *Augmented benefit.* (1) When a miner or surviving spouse is entitled to benefits for a month for which he or she has one or more dependents who qualify under this part, the amount of

benefits to which such miner or surviving spouse is entitled is increased. This increase is referred to as an "augmentation."

(2) The benefits of a miner or surviving spouse are augmented to take account of a particular dependent beginning with the first month in which such dependent satisfies the conditions set forth in this part, and continues to be augmented through the month before the month in which such dependent ceases to satisfy the conditions set forth in this part, except in the case of a child who qualifies as a dependent because he or she is a student. In the latter case, such benefits continue to be augmented through the month before the first month during no part of which he or she qualifies as a student.

(3) The basic rate is augmented by 50 percent for one such dependent, 75 percent for two such dependents, and 100 percent for three or more such dependents.

(d) *Survivor benefits.* As used in this section, "survivor" means a surviving child of a miner or surviving spouse, or a surviving parent, brother, or sister of a miner, who establishes entitlement to benefits under this part.

(e) *Computation and rounding.* (1) Any computation prescribed by this section is made to the third decimal place.

(2) Monthly benefits are payable in multiples of 10 cents. Therefore, a monthly payment of amounts derived under paragraph (c)(3) of this section which is not a multiple of 10 cents is increased to the next higher multiple of 10 cents.

(3) Since a fraction of a cent is not a multiple of 10 cents, such an amount which contains a fraction in the third decimal place is raised to the next higher multiple of 10 cents.

(f) *Eligibility based on the coal mine employment of more than one miner.* Where an individual, for any month, is entitled (and/or qualifies as a dependent for purposes of augmentation of benefits) based on the disability or death due to pneumoconiosis arising out of the coal mine employment of more than one miner, the benefit payable to or on behalf of such individual shall be at a rate equal to the highest rate of benefits for which entitlement is established by reason of eligibility as a ben-

eficiary, or by reason of his or her qualification as a dependent for augmentation of benefit purposes.

[43 FR 36772, Aug. 18, 1978, as amended at 48 FR 24293, May 31, 1983]

§ 725.521 Commutation of payments; lump sum awards.

(a) Whenever the deputy commissioner determines that it is in the interest of justice, the liability for benefits or any part thereof as determined by a final adjudication, may, with the approval of the Director, be discharged by the payment of a lump sum equal to the present value of future benefit payments commuted, computed at 4 percent true discount compounded annually.

(b) Applications for commutation of future payments of benefits shall be made to the deputy commissioner in the manner prescribed by the deputy commissioner. If the deputy commissioner determines that an award of a lump sum payment of such benefits would be in the interest of justice, he or she shall refer such application, together with the reasons in support of such determination, to the Director for consideration.

(c) The Director shall, in his or her discretion, grant or deny the application for commutation of payments. Such decision may be appealed to the Benefits Review Board.

(d) The computation of all commutations of such benefits shall be made by the OWCP. For this purpose the file shall contain the date of birth of the person on whose behalf commutation is sought, as well as the date upon which such commutation shall be effective.

(e) For purposes of determining the amount of any lump sum award, the probability of the death of the disabled miner and/or other persons entitled to benefits before the expiration of the period during which he or she is entitled to benefits, shall be determined in accordance with the most current United States Life Tables, as developed by the Department of Health, Education, and Welfare, and the probability of the remarriage of a surviving spouse shall be determined in accordance with the remarriage tables of the Dutch Royal Insurance Institution. The probability of

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the happening of any other contingency affecting the amount or duration of the compensation shall be disregarded.

(f) In the event that an operator or carrier is adjudicated liable for the payment of benefits, such operator or carrier shall be notified of and given an opportunity to participate in the proceedings to determine whether a lump sum award shall be made. Such operator or carrier shall, in the event a lump sum award is made, tender full and prompt payment of such award to the claimant as though such award were a final payment of monthly benefits. Except as provided in paragraph (g) of this section, such lump sum award shall forever discharge such operator or carrier from its responsibility to make monthly benefit payments under the act to the person who has requested such lump-sum award. In the event that an operator or carrier is adjudicated liable for the payment of benefits, such operator or carrier shall not be liable for any portion of a commuted or lump sum award predicated upon benefits due any claimant prior to January 1, 1974.

(g) In the event a lump-sum award is approved under this section, such award shall not operate to discharge an operator carrier, or the Fund from any responsibility imposed by the act for the payment of medical benefits to an eligible miner.

§ 725.522 Payments prior to final adjudication.

(a) Unless a stay of payments is ordered by the Board or appropriate court under section 21 of the LHWCA, the payment of benefits to a claimant who has been determined eligible therefor by a deputy commissioner, administrative law judge, the Board, or a court shall commence within no more than 30 days following an initial determination of eligibility by such deputy commissioner, or the filing of an award of benefits by such administrative law judge, Board, or court, notwithstanding the pendency of further proceedings before an administrative law judge or an appeal to the Board or court.

(b) If an operator or carrier has been initially determined liable for the pay-

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ment of benefits to an eligible claimant by the deputy commissioner (see § 725.420), or ordered to pay benefits by an administrative law judge, the Board, or an appropriate court, and such operator or carrier fails or refuses to commence the payment of benefits (including all past due benefits and medical expenses) within the 30-day period specified in paragraph (a) of this section, the fund shall commence the payments due and owing and shall continue such payments as appropriate. In the event that the fund undertakes the payment of benefits on behalf of an operator or carrier, the provisions of §§ 725.601-725.608 shall be applicable to such operator or carrier.

(c) If benefit payments are commenced prior to the final adjudication of the claim and it is later determined by an administrative law judge, the Board, or court that the claimant was ineligible to receive such payments, such payments shall be considered overpayments pursuant to § 725.540 of this subpart which may be recovered in accordance with the provisions of this subpart.

SPECIAL PROVISIONS FOR OPERATOR PAYMENTS

§ 725.530 Operator payments; generally.

(a) An operator or carrier which has been determined liable for the payment of benefits to a claimant by the deputy commissioner, or ordered to pay such benefits by an administrative law judge, the Board, or a court, or an operator who has agreed that it is liable for the payment of benefits to a claimant, shall commence the payment of benefits (including past due benefits, medical costs, penalties and interest, if any) within 30 days of such determination, order, or agreement. Thereafter, monthly benefit payments shall be made for the duration of the claimant's eligibility. Arrangements for the payment of medical costs shall be made by such operator or carrier in accordance with the provisions of subpart I of this part.

(b) Benefit payments made by an operator or carrier shall be made directly to the person entitled thereto or a representative payee if authorized by the

deputy commissioner. The payment of a claimant's attorney's fee, if any is awarded, shall be made directly to such attorney. Reimbursement of the fund, including interest, shall be paid directly to the Secretary on behalf of the fund.

§ 725.531 Receipt for payment.

Any individual receiving benefits under the act in his or her own right, or as a representative payee, or as the duly appointed agent for the estate of a deceased beneficiary, shall execute receipts for benefits paid by any operator which shall be produced by such operator for inspection whenever the deputy commissioner requires. A canceled check shall be considered adequate receipt of payment for purposes of this section. No operator or carrier shall be required to retain receipts for payments made for more than 5 years after the date on which such receipt was executed.

(Approved by the Office of Management and Budget under control number 1215-0124)

(Pub. L. No. 96-511, 94 Stat. 2812 (44 U.S.C. 3501 et seq.))

[43 FR 36772, Aug. 18, 1978, as amended at 47 FR 145, Jan. 5, 1982]

§ 725.532 Suspension, reduction, or termination of payments.

(a) No suspension, reduction, or termination in the payment of benefits is permitted unless authorized by the deputy commissioner, administrative law judge, Board, or court. No suspension, reduction, or termination shall be authorized except upon the occurrence of an event which terminates a claimant's eligibility for benefits (see subpart B of this part) or as is otherwise provided in subpart C of this part, §§ 725.306 and 725.310, or this subpart see also §§ 725.533-725.546).

(b) Any unauthorized suspension in the payment of benefits by an operator or carrier shall be treated as provided in subpart H.

(c) Unless suspension, reduction, or termination of benefits payments is required by an administrative law judge, the Benefits Review Board or a court, the deputy commissioner, after receiving notification of the occurrence of an event that would require the suspen-

sion, reduction, or termination of benefits, shall follow the procedures for the determination of claims set forth in subparts D and E.

[43 FR 36772, Aug. 18, 1978, as amended at 48 FR 24293, May 31, 1983]

INCREASES AND REDUCTIONS OF
BENEFITS

§ 725.533 Modification of benefits amounts; general.

(a) Under certain circumstances the amount of monthly benefits as computed in § 725.520 or lump-sum award (§ 725.521) shall be modified to determine the amount actually to be paid to a beneficiary. With respect to any benefits payable for all periods of eligibility after January 1, 1974, a reduction of the amount of benefits payable shall be required on account of:

(1) Any compensation or benefits received under any State workers' compensation law because of death or partial or total disability due to pneumoconiosis; or

(2) Any compensation or benefits received under or pursuant to any Federal law including part B of title IV of the act because of death or partial or total disability due to pneumoconiosis; or

(3) In the case of benefits to a parent, brother, or sister as a result of a claim filed at any time or benefits payable on a miner's claim which was filed on or after January 1, 1982, the excess earnings from wages and from net earnings from self-employment (see § 410.530 of this title) of such parent, brother, sister, or miner, respectively; or

(4) The fact that a claim for benefits from an additional beneficiary is filed, or that such claim is effective for a payment during the month of filing, or a dependent qualifies under this part for an augmentation portion of a benefit of a miner or widow for a period in which another dependent has previously qualified for an augmentation.

(b) With respect to periods of eligibility occurring after June 30, 1973, but before January 1, 1974, benefits shall be reduced in months of eligibility occurring during such period only:

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(1) By an amount equal to any payment received under the workers' compensation, unemployment compensation, or disability insurance laws of any State on account of the disability or death of the miner due to pneumoconiosis; and

(2) On account of excess earnings under section 203 (b) through (l) of the Social Security Act; and

(3) For failure to report earnings from work in employment and self-employment within the prescribed period of time; and

(4) By reason of the fact that a claim for benefits from an additional beneficiary is filed, or that such a claim is effective for a month prior to the month of filing, or a dependent qualifies under this part or this chapter for an augmentation portion of a benefit of a miner or surviving spouse for a month for which another dependent has previously qualified for an augmentation.

(c) With respect to claims filed between July 1 and December 31, 1973, and paid for periods of eligibility occurring during such period, there shall be no retroactive adjustment of benefits paid in light of the amendments enacted by the Black Lung Benefits Reform Act of 1977 insofar as such amendments affect events which cause a reduction in benefits.

(d) An adjustment in a beneficiary's monthly benefit may be required because an overpayment or underpayment has been made to such beneficiary (see §§ 725.540-725.546).

(e) A suspension of a beneficiary's monthly benefits may be required when the Office has information indicating that reductions on account of excess earnings may reasonably be expected.

(f) Monthly benefit rates are payable in multiples of 10 cents. Any monthly benefit rate which, after the applicable computations, augmentations, and reductions is not a multiple of 10 cents, is increased to the next higher multiple of 10 cents. Since a fraction of a cent is not a multiple of 10 cents, a benefit rate which contains such a fraction in the third decimal is raised to the next higher multiple of 10 cents.

(g) Any individual entitled to a benefit, who is aware of any circumstances which could affect entitlement to bene-

fits, eligibility for payment, or the amount of benefits, or result in the termination, suspension, or reduction of benefits, shall promptly report these circumstances to the Office. The Office may at any time require an individual receiving, or claiming entitlement to, benefits, either on his or her own behalf or on behalf of another, to submit a written statement giving pertinent information bearing upon the issue of whether or not an event has occurred which would cause such benefit to be terminated, or which would subject such benefit to reductions or suspension under the provisions of the Act. The failure of an individual to submit any such report or statement, properly executed, to the Office shall subject such benefit to reductions, suspension, or termination as the case may be.

[43 FR 36772, Aug. 18, 1978, as amended at 48 FR 24293, May 31, 1983]

EDITORIAL NOTE: Section 725.533(a)(3) revised at 48 FR 24293, May 31, 1983, contains information collection requirements which are not effective until approved by the Office of Management and Budget. Notice of approval will be published in the Federal Register.

§ 725.534 Reduction of State benefits.

No benefits under section 415 of part B of title IV of the Act shall be payable to the residents of a State which, after December 31, 1969, reduces the benefits payable to persons eligible to receive benefits under section 415 of the Act under State laws applicable to its general work force with regard to workers' compensation (including compensation for occupational disease), unemployment compensation, or disability insurance benefits which are funded in whole or in part out of employer contributions.

§ 725.535 Reduction; receipt of State or Federal benefit.

(a) As used in this section the term "State or Federal benefit" means a payment to an individual on account of total or partial disability or death due to pneumoconiosis only under State or Federal laws relating to workers' compensation. With respect to a claim for which benefits are payable for any month between July 1 and December

31, 1973, "State benefit" means a payment to a beneficiary made on account of disability or death due to pneumoconiosis under State laws relating to workers' compensation (including compensation for occupational disease), unemployment compensation, or disability insurance.

(b) Benefit payments to a beneficiary for any month are reduced (but not below zero) by an amount equal to any payments of State or Federal benefits received by such beneficiary for such month.

(c) Where a State or Federal benefit is paid periodically but not monthly, or in a lump sum as a commutation of or a substitution for periodic benefits, the reduction under this section is made at such time or times and in such amounts as the Office determines will approximate as nearly as practicable the reduction required under paragraph (b) of this section. In making such a determination, a weekly State or Federal benefit is multiplied by $\frac{4}{3}$ and a bi-weekly benefit is multiplied by $\frac{2}{3}$ to ascertain the monthly equivalent for reduction purposes.

(d) Amounts paid or incurred or to be incurred by the individual for medical, legal, or related expenses in connection with this claim for State or Federal benefits (defined in paragraph (a) of this section) are excluded in computing the reduction under paragraph (b) of this section, to the extent that they are consistent with State or Federal Law. Such medical, legal, or related expenses may be evidenced by the State or Federal benefit awards, compromise agreement, or court order in the State or Federal benefit proceedings, or by such other evidence as the Office may require. Such other evidence may consist of:

(1) A detailed statement by the individual's attorney, physician, or the employer's insurance carrier; or

(2) Bills, receipts, or canceled checks; or

(3) Other evidence indicating the amount of such expenses; or

(4) Any combination of the foregoing evidence from which the amount of such expenses may be determinable. Such expenses shall not be excluded unless established by evidence as required by the Office.

§ 725.536 Reductions; excess earnings.

In the case of a surviving parent, brother, or sister, whose claim was filed at any time, or of a miner whose claim was filed on or after January 1, 1982, benefit payments are reduced as appropriate by an amount equal to the deduction which would be made with respect to excess earnings under the provisions of sections 203 (b), (f), (g), (h), (j), and (l) of the Social Security Act (42 U.S.C. 403 (b), (f), (g), (h), (j), and (l)), as if such benefit payments were benefits payable under section 202 of the Social Security Act (42 U.S.C. 402) (see §§ 404.428-404.456 of this title).

[48 FR 24293, May 31, 1983]

EDITORIAL NOTE: Section 725.536 revised at 48 FR 24293, May 31, 1983, contains information collection requirements which are not effective until approved by the Office of Management and Budget. Notice of approval will be published in the FEDERAL REGISTER.

§ 725.537 Reductions; retroactive effect of an additional claim for benefits.

Beginning with the month in which a person other than a miner files a claim and becomes entitled to benefits, the benefits of other persons entitled to benefits with respect to the same miner, are adjusted downward, if necessary, so that no more than the permissible amount of benefits (the maximum amount for the number of beneficiaries involved) will be paid.

§ 725.538 Reductions; effect of augmentation of benefits based on subsequent qualification of individual.

(a) Ordinarily, a written request that the benefits of a miner or surviving spouse be augmented on account of a qualified dependent is made as part of the claim for benefits. However, it may also be made thereafter.

(b) In the latter case, beginning with the month in which such a request is filed on account of a particular dependent and in which such dependent qualifies for augmentation purposes under this part, the augmented benefits attributable to other qualified dependents (with respect to the same miner or surviving spouse), if any, are adjusted downward, if necessary, so that the permissible amount of augmented benefits (the maximum amount for the

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number of dependents involved) will not be exceeded.

(c) Where, based on the entitlement to benefits of a miner or surviving spouse, a dependent would have qualified for augmentation purposes for a prior month of such miner's or surviving spouse's entitlement had such request been filed in such prior month, such request is effective for such prior month. For any month before the month of filing such request, however, otherwise correct benefits previously certified by the Office may not be changed. Rather the amount of the augmented benefit attributable to the dependent filing such request in the later month is reduced for each month of the retroactive period to the extent that may be necessary. This means that for each month of the retroactive period, the amount payable to the dependent filing the later augmentation request is the difference, if any, between:

(1) The total amount of augmented benefits certified for payment for other dependents for that month, and

(2) The permissible amount of augmented benefits (the maximum amount for the number of dependents involved) payable for the month for all dependents, including the dependent filing later.

§ 725.539 More than one reduction event.

If a reduction for receipt of State or Federal benefits and a reduction on account of excess earnings are chargeable to the same month, the benefit for such month is first reduced (but not below zero) by the amount of the State or Federal benefits, and the remainder of the benefit for such month, if any, is then reduced (but not below zero) by the amount of excess earnings chargeable to such month.

OVERPAYMENTS; UNDERPAYMENTS

§ 725.540 Overpayments.

(a) *General.* As used in this subpart, the term "overpayment" includes:

(1) Payment where no amount is payable under this part;

(2) Payment in excess of the amount payable under this part;

(3) A payment under this part which has not been reduced by the amounts required by the Act (see § 725.533);

(4) A payment under this part made to a resident of a State whose residents are not entitled to benefits (see §§ 725.402 and 725.403);

(5) Payment resulting from failure to terminate benefits to an individual no longer entitled thereto;

(6) Duplicate benefits paid to a claimant on account of concurrent eligibility under this part and part 410 or 727 of this title or as provided in § 725.309.

(b) *Overpaid beneficiary is living.* If the beneficiary to whom an overpayment was made is living at the time of a determination of such overpayment, is entitled to benefits at the time of the overpayment, or at any time thereafter becomes so entitled, no benefit for any month is payable to such individual, except as provided in paragraph (c) of this section, until an amount equal to the amount of the overpayment has been withheld or refunded.

(c) *Adjustment by withholding part of a monthly benefit.* Adjustment under paragraph (b) of this section may be effected by withholding a part of the monthly benefit payable to a beneficiary where it is determined that:

(1) Withholding the full amount each month would deprive the beneficiary of income required for ordinary and necessary living expenses;

(2) The overpayment was not caused by the beneficiary's intentionally false statement or representation, or willful concealment of, or deliberate failure to furnish, material information; and

(3) Recoupment can be effected in an amount of not less than \$10 a month and at a rate which would not unreasonably extend the period of adjustment.

(d) *Overpaid beneficiary dies before adjustment.* If an overpaid beneficiary dies before adjustment is completed under the provisions of paragraph (b) of this section, recovery of the overpayment shall be effected through repayment by the estate of the deceased overpaid beneficiary, or by withholding of amounts due the estate of such deceased beneficiary, or both.

§ 725.541 Notice of waiver of adjustment or recovery of overpayment.

Whenever a determination is made that more than the correct amount of payment has been made, notice of the provisions of section 204(b) of the Social Security Act regarding waiver of adjustment or recovery shall be sent to the overpaid individual, to any other individual against whom adjustment or recovery of the overpayment is to be effected, and to any operator or carrier which may be liable to such overpaid individual.

§ 725.542 When waiver of adjustment or recovery may be applied.

There shall be no adjustment or recovery of an overpayment in any case where an incorrect payment has been made with respect to an individual:

- (a) Who is without fault, and where
- (b) Adjustment or recovery would either:
 - (1) Defeat the purpose of title IV of the Act, or
 - (2) Be against equity and good conscience.

§ 725.543 Standards for waiver of adjustment or recovery.

The standards for determining the applicability of the criteria listed in § 725.542 shall be the same as those applied by the Social Security Administration under §§ 410.561-410.561h of this title.

§ 725.544 Collection and compromise of claims for overpayment.

(a) *General effect of the Federal Claims Collection Act of 1966.* In accordance with the Federal Claims Collection Act of 1966 and applicable regulations, claims by the Office against an individual for recovery of an overpayment under this part not exceeding the sum of \$20,000, exclusive of interest, may be compromised, or collection suspended or terminated, where such individual or his or her estate does not have the present or prospective ability to pay the full amount of the claim within a reasonable time (see paragraph (c) of this section), or the cost of collection is likely to exceed the amount of recovery (see paragraph (d) of this section), except as provided under paragraph (b) of this section.

(b) *When there will be no compromise, suspension, or termination of collection of a claim for overpayment.* (1) In any case where the overpaid individual is alive, a claim for overpayment will not be compromised, nor will there be suspension or termination of collection of the claim by the Office, if there is an indication of fraud, the filing of a false claim, or misrepresentation on the part of such individual or on the part of any other party having any interest in the claim.

(2) In any case where the overpaid individual is deceased:

(i) A claim for overpayment in excess of \$5,000 will not be compromised, nor will there be suspension or termination of collection of the claim by the Office if there is an indication of fraud, the filing of a false claim, or misrepresentation on the part of such deceased individual; and

(ii) A claim for overpayment, regardless of the amount, will not be compromised, nor will there be suspension or termination of collection of the claim by the Office if there is an indication that any person other than the deceased overpaid individual had a part in the fraudulent action which resulted in the overpayment.

(c) *Inability to pay claim for recovery of overpayment.* In determining whether the overpaid individual is unable to pay a claim for recovery of an overpayment under this part, the Office shall consider the individual's age, health, present and potential income (including inheritance prospects), assets (e.g., real property, savings account), possible concealment or improper transfer of assets, and assets or income of such individual which may be available in enforced collection proceedings. The Office will also consider exemptions available to such individual under the pertinent State or Federal law in such proceedings. In the event the overpaid individual is deceased, the Office shall consider the available assets of the estate, taking into account any liens or superior claims against the estate.

(d) *Cost of collection or litigative probabilities.* Where the probable costs of recovering an overpayment under this part would not justify enforced collection proceedings for the full amount of

the claim, or where there is doubt concerning the Office's ability to establish its claim as well as the time which it will take to effect such collection, a compromise or settlement for less than the full amount may be considered.

(e) *Amount of compromise.* The amount to be accepted in compromise of a claim for overpayment under this part shall bear a reasonable relationship to the amount which can be recovered by enforced collection proceedings, giving due consideration to the exemption available to the overpaid individual under State or Federal law and the time which collection will take.

(f) *Payment.* Payment of the amount the Office has agreed to accept as a compromise in full settlement of a claim for recovery of an overpayment under this part shall be made within the time and in the manner set by the Office. A claim for the overpayment shall not be considered compromised or settled until the full payment of the compromised amount has been made within the time and manner set by the Office. Failure of the overpaid individual or his or her estate to make such payment as provided shall result in reinstatement of the full amount of the overpayment less any amounts paid prior to such default.

(Approved by the Office of Management and Budget under control number 1215-0144)

(Pub. L. No. 96-511)

[43 FR 36772, Aug. 18, 1978, as amended at 49 FR 18295, Apr. 30, 1984]

§ 725.545 Underpayments.

(a) *General.* As used in this subpart, the term "underpayment" includes a payment in an amount less than the amount of the benefit due for such month, and nonpayment where some amount of such benefits is payable.

(b) *Underpaid individual is living.* If an individual to whom an underpayment was made is living, the deficit represented by such underpayment shall be paid to such individual either in a single payment (if he or she is not entitled to a monthly benefit or if a single payment is requested by the claimant in writing) or by increasing one or more monthly benefit payments to which such individual becomes entitled.

(c) *Underpaid individual dies before adjustment of underpayment.* If an individual to whom an underpayment was made dies before receiving payment of the deficit or negotiating the check or checks representing payment of the deficit, such payment shall be distributed to the living person (or persons) in the highest order of priority as follows:

(1) The deceased individual's surviving spouse who was either:

(i) Living in the same household with the deceased individual at the time of such individual's death; or

(ii) In the case of a deceased miner, entitled for the month of death to black lung benefits as his or her surviving spouse or surviving divorced spouse.

(2) In the case of a deceased miner or spouse his or her child entitled to benefits as the surviving child of such miner or surviving spouse for the month in which such miner or spouse died (if more than one such child, in equal shares to each such child).

(3) In the case of a deceased miner, his parent entitled to benefits as the surviving parent of such miner for the month in which such miner died (if more than one such parent, in equal shares to each such parent).

(4) The surviving spouse of the deceased individual who does not qualify under paragraph (c)(1) of this section.

(5) The child or children of the deceased individual who do not qualify under paragraph (c)(2) of this section (if more than one such child, in equal shares to each such child).

(6) The parent or parents of the deceased individual who do not qualify under paragraph (c)(3) of this section (if more than one such parent, in equal shares to each such parent).

(7) The legal representative of the estate of the deceased individual as defined in paragraph (e) of this section.

(d) *Deceased beneficiary.* In the event that a person, who is otherwise qualified to receive payments as the result of a deficit caused by an underpayment under the provisions of paragraph (c) of this section, dies before receiving payment or before negotiating the check or checks representing such payment, his or her share of the underpayment shall be divided among the remaining living person(s) in the same order or

priority. In the event that there is (are) no other such person(s), the underpayment shall be paid to the living person(s) in the next lower order of priority under paragraph (c) of this section.

(e) *Definition of legal representative.* The term "legal representative," for the purpose of qualifying for receipt of an underpayment, generally means the executor or the administrator of the estate of the deceased beneficiary. However, it may also include an individual, institution or organization acting on behalf of an unadministered estate, provided the person can give the Office good acquittance (as defined in paragraph (f) of this section). The following persons may qualify as legal representative for purposes of this section, provided they can give the Office good acquittance:

(1) A person who qualifies under a State's "small estate" statute; or

(2) A person resident in a foreign country who under the laws and customs of that country, has the right to receive assets of the estate; or

(3) A public administrator; or

(4) A person who has the authority under applicable law to collect the assets of the estate of the deceased beneficiary.

(f) *Definition of "good acquittance."* A person is considered to give the Office "good acquittance" when payment to that person will release the Office from further liability for such payment.

§ 725.546 Relation to provisions for reductions or increases.

The amount of an overpayment or an underpayment is the difference between the amount to which the beneficiary was actually entitled and the amount paid. Overpayment and underpayment simultaneously outstanding against the same beneficiary shall first be adjusted against one another before adjustment pursuant to the other provisions of this subpart.

§ 725.547 Applicability of overpayment and underpayment provisions to operator or carrier.

(a) The provisions of this subpart relating to overpayments and underpayments shall be applicable to overpayments and underpayments made by re-

sponsible operators or their insurance carriers, as appropriate. However, if an overpayment has been made by an operator, the provisions of §§ 725.541-725.544 shall not be applicable.

(b) No operator or carrier may make an adjustment of an overpayment without prior application to, and approval by, the Office which shall exercise full supervisory authority over the adjustment of all overpayments.

(c) In any case involving either overpayments or underpayments, the Office may take any necessary action, and deputy commissioners may issue appropriate orders to protect the rights of the parties.

(d) Disputes arising out of orders so issued shall be resolved by the procedures set out in subpart E of this part.

Subpart H—Enforcement of Liability; Reports

§ 725.601 Enforcement generally.

(a) The Act, together with certain incorporated provisions from the Longshoremen's and Harbor Workers' Compensation Act, contains a number of provisions which subject an operator or other employer, claimants and others to penalties for failure to comply with certain provisions of the Act, or failure to commence and continue prompt periodic payments to a beneficiary.

(b) It is the policy and intent of the Department to vigorously enforce the provisions of this part through the use of the remedies provided by the Act. Accordingly, if an operator refuses to pay benefits with respect to a claim for which the operator has been adjudicated liable, the Director shall invoke and execute the lien on the property of the operator as described in § 725.603. Enforcement of this lien shall be pursued in an appropriate U.S. district court. If the Director determines that the remedy provided by § 725.603 may not be sufficient to guarantee the continued compliance with the terms of an award or awards against the operator, the Director shall in addition seek an injunction in the U.S. district court to prohibit future noncompliance by the operator and such other relief as the court considers appropriate (see § 725.604). If an operator unlawfully suspends or terminates the payment of

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benefits to a claimant, the deputy commissioner shall declare the award in default and proceed in accordance with § 725.605. In all cases payments in addition to compensation (see § 725.607) and interest (see § 725.608) shall be sought by the Director or awarded by the deputy commissioner.

(c) In certain instances the remedies provided by the Act are concurrent; that is, more than one remedy might be appropriate in any given case. In such a case, the Director shall select the remedy or remedies appropriate for the enforcement action. In making this selection, the Director shall consider the best interests of the claimant as well as those of the Fund.

§ 725.602 Reimbursement of the fund.

(a) In any case in which the fund has paid benefits, including medical benefits, on behalf of an operator or other employer which is determined liable therefore, or liable for a part thereof, such operator or other employer shall simultaneously with the first payment of benefits made to the beneficiary, reimburse the fund (with interest) for the full amount of all benefit payments made by the fund with respect to the claim.

(b) In any case where benefit payments have been made by the fund, the fund shall be subrogated to the rights of the beneficiary. The Secretary of Labor may, as appropriate, exercise such subrogation rights.

§ 725.603 Payments by the fund on behalf of an operator; liens.

(a) If an amount is paid out of the fund to an individual entitled to benefits under this part or part 727 of this subchapter on behalf of an operator or other employer which is or was required to pay or secure the payment of all or a portion of such amount (see § 725.522), the operator or other employer shall be liable to the United States for repayment to the fund of the amount of benefits properly attributable to such operator or other employer.

(b) If an operator or other employer liable to the fund refuses to pay, after demand, the amount of such liability, there shall be a lien in favor of the United States upon all property and

rights to property, whether real or personal, belonging to such operator or other employer. 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.

(c) (1) Except as otherwise provided under this section, the priority of the lien shall be determined in the same manner as under section 6323 of the Internal Revenue Code of 1954.

(2) In the case of a bankruptcy or insolvency proceeding, the lien imposed under this section 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 3466 of the Revised Statutes (31 U.S.C. 191).

(3) For purposes of applying section 6323(a) of the Internal Revenue Code of 1954 to determine the priority between the lien imposed under this section 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.

(4) For purposes of the section, notice of the lien imposed hereunder shall be filed in the same manner as under section 6323(f) (disregarding paragraph (4) thereof) and (g) of the Internal Revenue Code of 1954.

(5) In any case where there has been a refusal or neglect to pay the liability imposed under this section, the Secretary of Labor 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 it has any right, title, or interest, to the payment of such liability.

(6) The liability imposed by this paragraph may be collected at a proceeding in court if the proceeding is commenced within 6 years after the date upon which the liability was finally determined, or prior to 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. This period of limitation 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.

§ 725.604 Enforcement of final awards.

Notwithstanding the provisions of § 725.603, if an operator or other employer or its officers or agents fails to comply with an order awarding benefits that has become final, any beneficiary of such award or the deputy commissioner may apply for the enforcement of the order to the Federal district court for the judicial district in which the injury occurred (or to the U.S. District Court for the District of Columbia if the injury occurred in the District). If the court determines that the order was made and served in accordance with law, and that such operator or other employer or its officers or agents have failed to comply therewith, the court shall enforce obedience to the order by writ of injunction or by other proper process, mandatory or otherwise, to enjoin upon such operator or other employer and its officers or agents compliance with the order.

§ 725.605 Defaults.

(a) Except as is otherwise provided in this part, no suspension, termination or other failure to pay benefits awarded to a claimant is permitted. If an employer found liable for the payment of such benefits fails to make such payments within 30 days after any date on which such benefits are due and payable, the person to whom such benefits are payable may, within one year after such default, make application to the deputy commissioner for a supplementary order declaring the amount of the default.

(b) If after investigation, notice and hearing as provided in subparts D and E of this part, a default is found, the deputy commissioner or the administrative law judge, if a hearing is requested, shall issue a supplementary order declaring the amount of the default, if any. In cases where a lump-sum award has been made, if the payment in default is an installment, the deputy commissioner or administrative law judge, may, in his or her discre-

tion, declare the whole of the award as the amount in default. The applicant may file a certified copy of such supplementary order with the clerk of the Federal district court for the judicial district in which the operator has its principal place of business or maintains an office or for the judicial district in which the injury occurred. In case such principal place of business or office is in the District of Columbia, a copy of such supplementary order may be filed with the clerk of the U.S. District Court for the District of Columbia. Such supplementary order shall be final and the court shall, upon the filing of the copy, enter judgment for the amount declared in default by the supplementary order if such supplementary order is in accordance with law. Review of the judgment may be had as in civil suits for damages at common law. Final proceedings to execute the judgment may be had by writ of execution in the form used by the court in suits at common law in actions of assumpsit. No fee shall be required for filing the supplementary order nor for entry of judgment thereon, and the applicant shall not be liable for costs in a proceeding for review of the judgment unless the court shall otherwise direct. The court shall modify such judgment to conform to any later benefits order upon presentation of a certified copy thereof to the court.

(c) In cases where judgment cannot be satisfied by reason of the employer's insolvency or other circumstances precluding payment, the deputy commissioner shall make payment from the fund, and in addition, provide any necessary medical, surgical, and other treatment required by subpart I of this part. A defaulting employer shall be liable to the Fund for payment of the amounts paid by the fund under this section; and for the purpose of enforcing this liability, the fund shall be subrogated to all the rights of the person receiving such payments or benefits.

§ 725.606 Security for the payment of benefits.

Whenever an adjudication officer deems it advisable, he or she may require any operator or other employer to make a deposit with the Treasurer of the United States to secure the

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prompt and convenient payment of benefits to eligible claimants. Payments may be made from such deposit, or such deposit may be returned to an operator or other employer, only upon the order of such adjudication officer. The adjudication officer shall require the deposit of security pursuant to this section in any case where an operator or other liable employer is uninsured or has failed to secure the payment of benefits.

§ 725.607 Payments in addition to compensation.

(a) If any benefits payable under the terms of (1) an award by a deputy commissioner (§725.419(d)), (2) a decision and order filed and served by an administrative law judge (§725.478), or (3) a decision filed by the Board or a U.S. court of appeals, are not paid by an operator or other employer ordered to make such payments within 10 days after such payments become due, there shall be added to such unpaid benefits an amount equal to 20 percent thereof, which shall be paid to the claimant at the same time as, but in addition to, such benefits, unless review of the order making such award is sought as provided in section 21 of the LHWCA and an order staying payments has been issued.

(b) If, on account of an operator's or other employer's failure to pay benefits as provided in paragraph (a) of this section, benefit payments are made by the fund, the eligible claimant shall nevertheless be entitled to receive such additional compensation to which he or she may be eligible under paragraph (a) of this section, with respect to all amounts paid by the fund on behalf of such operator or other employer.

(c) The fund shall not be liable for payments in addition to compensation under any circumstances.

§ 725.608 Interest.

(a) If an operator or other employer fails or refuses to pay any or all benefits due under the terms of an initial determination by a deputy commissioner (§725.420), a decision and order filed and served by an administrative law judge (§725.478) or a decision filed by the Board or a United States court of appeals, including any penalty

awarded in addition to benefits in accordance with §725.607, such operator shall be liable for simple annual interest on all past due benefits computed from the date on which such benefits were due and payable, in addition to such operator's or other employer's liability as is otherwise provided in this part. On claims filed on or after January 1, 1982, in which the payment of retroactive benefits has been withheld pending final adjudication of liability in accordance with section 422(d) of the Act as amended, interest on such withheld retroactive benefit payments shall begin to accumulate 30 days after the date of the first determination that such an award should be made. The first determination that such an award should be made may be a deputy commissioner's initial determination of entitlement, an award made by an administrative law judge or a decision by the Board or a court, whichever is the first such determination of entitlement made upon the claim. Except as provided in paragraph (b) of this section, interest payments owed under this paragraph shall be made directly to the beneficiary. However, an operator or other employer shall have no obligation to pay interest except with respect to benefits which it has either agreed to pay or it has been directed to pay by an order which has become final.

(b) If an operator or other employer fails or refuses to pay any or all benefits due pursuant to an award of benefits or an initial determination of eligibility made by the deputy commissioner and the Fund undertakes such payments, such operator or other employer shall be liable to the Fund for simple annual interest on all payments made by the Fund for which such operator is determined liable, computed from the first date on which such benefits are paid by the Fund, in addition to such operator's liability to the Fund, as is otherwise provided in this part. Interest payments owed pursuant to this paragraph shall be paid directly to the Fund.

(c) The rates of interest applicable to paragraphs (a) and (b) of this section shall be computed as follows:

(1) For all amounts outstanding prior to January 1, 1982, the rate shall be 6% simple annual interest;

(2) For all amounts outstanding for any period during calendar year 1982 the rate shall be 15% simple annual interest; and

(3) For all amounts outstanding during any period after calendar year 1982 the rate shall be simple annual interest at the rate established by section 6621 of the Internal Revenue Code of 1954 which is in effect for such period.

(d) The Fund shall not be liable for the payment of interest under any circumstances, other than the payment of interest on advances from the United States Treasury as provided by section 9501(c) of the Internal Revenue Code of 1954.

[48 FR 24294, May 31, 1983]

§ 725.620 Failure to secure benefits; other penalties.

(a) If an operator fails to discharge its insurance obligations under the Act, the provisions of § 725.495 shall apply.

(b) Any employer who knowingly transfers, sells, encumbers, assigns, or in any manner disposes of, conceals, secretes, or destroys any property belonging to such employer, after one of its employees has been injured within the purview of the Act, and with intent to avoid the payment of benefits under the Act 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 by both. In any case where such employer is a corporation, the president, secretary, and treasurer thereof shall be also severally liable for such penalty or imprisonment as well as jointly liable with such corporation for such fine.

(c) No agreement by a miner to pay any portion of a premium paid to a carrier by such miner's employer or to contribute to a benefit fund or department maintained by such employer for the purpose of providing benefits or medical services and supplies as required by this part shall be valid; and any employer who makes a deduction for such purpose from the pay of a miner entitled to benefits under the Act shall be guilty of a misdemeanor and upon conviction thereof shall be

punished by a fine of not more than \$1,000.

(d) No agreement by a miner to waive his or her right to benefits under the Act and the provisions of this part shall be valid.

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

§ 725.621 Reports.

(a) Upon making the first payment of benefits and upon suspension, reduction, or increase of payments, the operator or other employer responsible for making payments shall immediately notify the deputy commissioner of the action taken, in accordance with a form prescribed by the Office.

(b) Within 16 days after final payment of benefits has been made by an employer, such employer shall so notify the deputy commissioner, in accordance with a form prescribed by the Office, stating that such final payment, has been made, the total amount of benefits paid, the name of the beneficiary, and such other information as the Office deems pertinent.

(c) The Director may from time to time prescribe such additional reports to be made by operators, other employers, or carriers as the Director may consider necessary for the efficient administration of the Act.

(d) Any employer who fails or refuses to file any report required of such employer under this section shall be subject to a civil penalty not to exceed \$500 for each failure or refusal, which penalty shall be determined in accordance with the procedures set forth in § 725.495, as appropriate.

(e) No request for information or response to such request shall be considered a report for purposes of this section or the Act, unless it is so designated by the Director or by this section.

(Approved by the Office of Management and Budget under control number 1215-0064)

(Pub. L. No. 96-511)

[43 FR 36772, Aug. 18, 1978, as amended at 49 FR 18295, Apr. 30, 1984]

Subpart I—Medical Benefits and Vocational Rehabilitation

§ 725.701 Availability of medical benefits.

(a) A miner who is determined to be eligible for benefits under this part or part 727 of this subchapter is entitled to medical benefits as set forth in this subpart as of the date of his or her claim, but in no event before January 1, 1974. No medical benefits shall be provided to the survivor or dependent of a miner under this part.

(b) A responsible operator, other employer, or where there is neither, the Fund, shall furnish a miner entitled to benefits under this part with such medical, surgical, and other attendance and treatment, nursing and hospital services, medicine and apparatus, and any other medical service or supply, for other periods as the nature of the miner's pneumoconiosis and ancillary pulmonary conditions and disability require.

(c) The medical benefits referred to in paragraphs (a) and (b) of this section shall include palliative measures useful only to prevent pain or discomfort associated with the miner's pneumoconiosis or attendant disability.

(d) The costs recoverable under this subpart shall include the reasonable cost of travel necessary for medical treatment (to be determined in accordance with prevailing United States government mileage rates) and the reasonable documented cost to the miner or medical provider incurred in communicating with the employer, carrier, or district director on matters connected with medical benefits.

§ 725.701A Claims for medical benefits only under section 11 of the Reform Act.

(a) Section 11 of the Reform Act directs the Secretary of Health, Education and Welfare to notify each miner receiving benefits under part B of title IV of the Act that he or she may file a claim for medical treatment benefits described in this subpart. Section 725.308(b) of this subpart provides that a claim for medical treatment benefits shall be filed on or before December 31, 1980, unless the period is enlarged for good cause shown. This sec-

tion sets forth the rules governing the processing adjudication, and payment of claims filed under section 11.

(b) (1) A claim filed pursuant to the notice described in paragraph (a) of this section shall be considered a claim for medical benefits only, and shall be filed, processed, and adjudicated in accordance with the provisions of this part, except as provided in this section. While a claim for medical benefits must be treated as any other claim filed under part C of title IV of the Act, the Department shall accept the Social Security Administration's finding of entitlement as its initial determination.

(2) In the case of a part B beneficiary whose coal mine employment terminated before January 1, 1970, the Secretary shall make an immediate award of medical benefits. Where the part B beneficiary's coal mine employment terminated on or after January 1, 1970, the Secretary shall immediately authorize the payment of medical benefits and thereafter inform the responsible operator, if any, of the operator's right to contest the claimant's entitlement for medical benefits.

(c) A miner on whose behalf a claim is filed under this section (see § 725.301) must have been alive on March 1, 1978, in order for the claim to be considered.

(d) The criteria contained in subpart C of part 727 of this subchapter are applicable to claims for medical benefits filed under this section.

(e) No determination made with respect to a claim filed under this section shall affect any determination previously made by the Social Security Administration. The Social Security Administration may, however, reopen a previously approved claim if the conditions set forth in § 410.672(c) of this chapter are present. These conditions are generally limited to fraud or concealment.

(f) If medical benefits are awarded under this section, such benefits shall be payable by a responsible coal mine operator (see §§ 725.491-725.493), if the miner's last employment occurred on or after January 1, 1970, and in all other cases by the fund. An operator which may be required to provide medical treatment benefits to a miner under this section shall have the right

to participate in the adjudication of the claim as is otherwise provided in this part.

(g) Any miner whose coal mine employment terminated after January 1, 1970, may be required to submit to a medical examination requested by an identified operator. The unreasonable refusal to submit to such an examination shall have the same consequences as are provided under § 725.408.

(h) If a miner is determined eligible for medical benefits in accordance with this section, such benefits shall be provided from the date of filing, except that such benefits may also include payments for any unreimbursed medical treatment costs incurred personally by such miner during the period from January 1, 1974, to the date of filing which are attributable to medical care required as a result of the miner's total disability due to pneumoconiosis. No reimbursement for health insurance premiums, taxes attributable to any public health insurance coverage, or other deduction or payments made for the purpose of securing third party liability for medical care costs is authorized by this section. If a miner seeks reimbursement for medical care costs personally incurred before the filing of a claim under this section, the deputy commissioner shall require documented proof of the nature of the medical service provided, the identity of the medical provider, the cost of the service, and the fact that the cost was paid by the miner, before reimbursement before such cost may be awarded.

[43 FR 36772, Aug. 18, 1978, as amended at 45 FR 44264, July 1, 1980]

§ 725.702 Physician defined.

The term "physician" includes only doctors of medicine (MD) and osteopathic practitioners within the scope of their practices as defined by State law. No treatment or medical services performed by any other practitioner of the healing arts is authorized by this part, unless such treatment or service is authorized and supervised both by a physician as defined in this section and the district director.

§ 725.703 Notification of right to medical benefits; authorization of treatment.

(a) Upon notification to a miner of such miner's entitlement to benefits, the Office shall provide the miner with a list of authorized treating physicians and medical facilities in the area of the miner's residence. The miner may select a physician from this list or may select another physician with approval of the Office. Where emergency services are necessary and appropriate, authorization by the Office shall not be required.

(b) The Office may, on its own initiative, or at the request of a responsible operator, order a change of physicians or facilities, but only where it has been determined that the change is desirable or necessary in the best interest of the miner. The miner may change physicians or facilities subject to the approval of the Office.

(c) If adequate treatment cannot be obtained in the area of the claimant's residence, the Office may authorize the use of physicians or medical facilities outside such area as well as reimbursement for travel expenses and overnight accommodations.

§ 725.704 Arrangements for medical care.

(a) *Operator liability.* If an operator has been determined liable for the payment of benefits to a miner, the Office shall notify such operator or insurer of the names, addresses, and telephone numbers of the authorized providers of medical benefits chosen by an entitled miner, and shall require the operator or insurer to:

(1) Notify the miner and the providers chosen that such operator will be responsible for the cost of medical services provided to the miner on account of the miner's total disability due to pneumoconiosis;

(2) Designate a person or persons with decisionmaking authority with whom the Office, the miner and authorized providers may communicate on matters involving medical benefits provided under this subpart and notify the Office, miner and providers of such designation;

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(3) Make arrangements for the direct reimbursement of providers for their services.

(b) *Fund liability.* If there is no operator found liable for the payment of benefits, the Office shall make necessary arrangements to provide medical care to the miner, notify the miner and medical care facility selected of the liability of the fund, designate a person or persons with whom the miner or provider may communicate on matters relating to medical care, and make arrangements for the direct reimbursement of the medical provider.

§ 725.705 Authorization to provide medical services.

(a) Except as provided in paragraph (b) of this section, medical services from an authorized provider which are payable under § 725.701 shall not require prior approval of the Office or the responsible operator.

(b) Except where emergency treatment is required, prior approval of the Office or the responsible operator shall be obtained before any hospitalization or surgery, or before ordering an apparatus for treatment where the purchase price exceeds \$100. A request for approval of non-emergency hospitalization or surgery shall be acted upon expeditiously, and approval or disapproval will be given by telephone if a written response cannot be given within 7 days following the request. No employee of the Department of Labor, other than a district director or the Chief, Branch of Medical Analysis and Services, DCMWC, is authorized to approve a request for hospitalization or surgery by telephone.

(c) Payment for medical services, treatment, or an apparatus shall be made at no more than the rate prevailing in the community in which the providing physician, medical facility or supplier is located.

§ 725.706 Reports of physicians and supervision of medical care.

(a) Within 30 days following the first medical or surgical treatment provided under § 725.701, the treating physician or facility shall furnish to the Office and the responsible operator, if any, a report of such treatment.

(b) In order to permit continuing supervision of the medical care provided to the miner with respect to the necessity, character and sufficiency of any medical care furnished or to be furnished, the treating physician, facility, employer or carrier shall provide such reports in addition to those required by paragraph (a) of this section as the Office may from time to time require. Within the discretion of the district director, payment may be refused to any medical provider who fails to submit any report required by this section.

§ 725.707 Disputes concerning medical benefits.

(a) Whenever a dispute develops concerning medical services under this part, the district director shall attempt to informally resolve such dispute. In this regard the district director may, on his or her own initiative or at the request of the responsible operator order the claimant to submit to an examination by a physician selected by the district director.

(b) If no informal resolution is accomplished, the district director shall refer the case to the Office of Administrative Law Judges for hearing in accordance with this part. Any such hearing shall be scheduled at the earliest possible time and shall take precedence over all other requests for hearing except for prior requests for hearing arising under this section and as provided by § 727.405 of this subchapter. During the pendency of such adjudication, the Director may order the payment of medical benefits prior to final adjudication under the same conditions applicable to benefits awarded under § 725.522.

(c) In the development or adjudication of a dispute over medical benefits, the adjudication officer is authorized to take whatever action may be necessary to protect the health of a totally disabled miner.

(d) Any interested medical provider may, if appropriate, be made a party to a dispute over medical benefits.

§ 725.710 Objective of vocational rehabilitation.

The objective of vocational rehabilitation is the return of a miner who is totally disabled for work in or around

a coal mine and who is unable to utilize those skills which were employed in the miner's coal mine employment to gainful employment commensurate with such miner's physical impairment. This objective may be achieved through a program of re-evaluation and redirection of the miner's abilities, or retraining in another occupation, and selective job placement assistance.

§ 725.711 Requests for referral to vocational rehabilitation assistance.

Each miner who has been determined entitled to receive benefits under part C of title IV of the Act shall be informed by the OWCP of the availability and advisability of vocational rehabilitation services. If such miner chooses to avail himself or herself of vocational rehabilitation, his or her request shall be processed and referred by OWCP vocational rehabilitation advisors pursuant to the provisions of §§ 702.501-702.508 of this chapter as is appropriate.

PART 726—BLACK LUNG BENEFITS; REQUIREMENTS FOR COAL MINE OPERATOR'S INSURANCE

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REPORTS BY CARRIER

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AUTHORITY: 5 U.S.C. 301, Reorganization Plan No. 6 of 1950, 15 FR 3174, 30 U.S.C. 901 et seq., 902(f), 925, 932, 934, 936, 945; 33 U.S.C. 901 et seq., Secretary's Order 7-87, 52 FR 48466, Employment Standards Order No. 90-02.

SOURCE: 38 FR 12494, May 11, 1973, unless otherwise noted.

Subpart A—General

§ 726.1 Statutory insurance requirements for coal mine operators.

Section 423 of title IV of the Federal Coal Mine Health and Safety Act as amended (hereinafter the Act) requires each coal mine operator who is operating or has operated a coal mine in a State which is not included in the list published by the Secretary (see part 722 of this chapter) to secure the payment of benefits for which he may be found liable under section 422 of the Act and the provisions of this subchapter by either (a) qualifying as a self-insurer, or