15 of this title, are withdrawn from all forms of entry and appropriation for the term of the estate. The underlying oil, gas, and other leasable minerals of the United States are reserved for exploration and development purposes, but without the right of surface ingress and egress, and may be leased by the Secretary under the mineral leasing laws.

(Pub. L. 87–851, § 7, Oct. 23, 1962, 76 Stat. 1128.)

REFERENCES IN TEXT

The mining laws, referred to in text, are classified generally to this title.

The mineral leasing laws, referred to in text, are defined in sections 351, 505, 530, and 541e of this title.

§ 708. Assignments; succession

Rights and privileges to qualify as an applicant under this chapter shall not be assignable, but may pass through devise or descent.

(Pub. L. 87–851, § 8, Oct. 23, 1962, 76 Stat. 1128.)

§ 709. Disposition of payments and fees

Payments of filing fees and survey costs, and the payments of the purchase price for patents in fee shall be disposed of by the Secretary of the Interior as are such fees, costs, and purchase prices in the disposition of public lands. All payments and fees for occupancy in conveyances of less than the fee, or for permits for life or shorter periods, shall be disposed of by the administering department or agency as are other receipts for the use of the lands involved.

(Pub. L. 87–851, § 9, Oct. 23, 1962, 76 Stat. 1128.)

CHAPTER 21—METAL AND NONMETALLIC MINE SAFETY

§§ 721 to 740. Repealed. Pub. L. 95–164, title III, § 306(a), Nov. 9, 1977, 91 Stat. 1322

This chapter, covering the operation of only metal and nonmetallic mines, is covered by section 801 et seq. of this title following the enactment of Pub. L. 95–164 which brought the operation of all coal and other mines under a single legislative canopy.

Section 721, Pub. L. 89–577, § 2, Sept. 16, 1966, 80 Stat. 772, defined ''commerce'', ''mine'', ''operator'', ''Secretary'', and ''Board''. See section 802 of this title.

Section 722, Pub. L. 89–577, § 3, Sept. 16, 1966, 80 Stat. 773, described mines to be covered and empowered Secretary of the Interior to decline jurisdiction if effect of the mine on commerce was not sufficiently substantial. See section 801 et seq. of this title.

Section 723, Pub. L. 89–577, § 4, Sept. 16, 1966, 80 Stat. 773, related to investigations of metal and nonmetallic mines to obtain information relating to health and safety conditions. See section 811 of this title.

Section 724, Pub. L. 89–577, § 5, Sept. 16, 1966, 80 Stat. 773, related to admission of investigators to mines. See section 813 of this title.

Section 725, Pub. L. 89–577, § 6, Sept. 16, 1966, 80 Stat. 774, related to development of health and safety standards. See section 811 of this title.

Section 726, Pub. L. 89–577, § 7, Sept. 16, 1966, 80 Stat. 775, related to advisory committees. See section 812 of this title.

Section 727, Pub. L. 89–577, § 8, Sept. 16, 1966, 80 Stat. 775, related to findings and orders. See section 814 of this title.

Section 728, Pub. L. 89–577, § 9, Sept. 16, 1966, 80 Stat. 777, related to review of orders by Secretary of the Interior. See section 815 of this title.

Section 729, Pub. L. 89–577, § 10, Sept. 16, 1966, 80 Stat. 778, created Federal Metal and Nonmetallic Mine Safety Board of Review. See section 823 of this title.

Section 730, Pub. L. 89–577, § 11, Sept. 16, 1966, 80 Stat. 779, related to review functions of Federal Metal and Nonmetallic Mine Safety Board of Review. See section 823 of this title.

Section 731, Pub. L. 89–577, § 12, Sept. 16, 1966, 80 Stat. 781, related to judicial review of final orders of Federal Metal and Nonmetallic Mine Safety Board of Review. See section 816 of this title.

Section 732, Pub. L. 89–577, § 13, Sept. 16, 1966, 80 Stat. 782, related to accident and related reports to Secretary of the Interior. See section 813 of this title.

Section 733, Pub. L. 89–577, § 14, Sept. 16, 1966, 80 Stat. 782, related to penalties to be imposed for violations of the chapter. See section 820 of this title.

Section 734, Pub. L. 89–577, § 15, Sept. 16, 1966, 80 Stat. 782, related to programs of education and training for employers and employees. See section 825 of this title.

Section 735, Pub. L. 89–577, § 16, Sept. 16, 1966, 80 Stat. 782, related to State plans and cooperation with State agencies. See section 811 of this title.

Section 736, Pub. L. 89–577, § 17, Sept. 16, 1966, 80 Stat. 783, related to administration of chapter by Bureau of Mines of Department of the Interior. See section 557a of Title 29, Labor.

Section 737, Pub. L. 89–577, § 18, Sept. 16, 1966, 80 Stat. 784, related to non-applicability of Administrative Procedure Act to proceedings under chapter. See section 815 of this title.

Section 738, Pub. L. 89–577, § 19, Sept. 16, 1966, 80 Stat. 784, related to effect of chapter on State laws. See section 811 of this title.

Section 739, Pub. L. 89–577, § 20, Sept. 16, 1966, 80 Stat. 784, related to annual report of Secretary of the Interior to Congress. See section 557a of Title 29, Labor.

Section 740, Pub. L. 89–577, § 21, Sept. 16, 1966, 80 Stat. 784, authorized appropriations necessary to carry out chapter. See section 824 of this title.

EFFECTIVE DATE OF REPEAL

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

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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 961, 1211, 1266, 1292 of this title; title 29 section 557a; title 31 section 1105; title 42 section 6211.

§ 801. Congressional findings and declaration of purpose

Congress declares that—

(a) the first priority and concern of all in the coal or other mining industry must be the health and safety of its most precious resource—the miner;

(b) deaths and serious injuries from unsafe and unhealthful conditions and practices in the coal or other mines cause grief and suffering to the miners and to their families;

(c) there is an urgent need to provide more effective means and measures for improving the working conditions and practices in the Nation's coal or other mines in order to prevent death and serious physical harm, and in order to prevent occupational diseases originating in such mines;

(d) the existence of unsafe and unhealthful conditions and practices in the Nation's coal or other mines is a serious impediment to the future growth of the coal or other mining industry and cannot be tolerated;

(e) the operators of such mines with the assistance of the miners have the primary responsibility to prevent the existence of such conditions and practices in such mines;

(f) the disruption of production and the loss of income to operators and miners as a result of coal or other mine accidents or occupationally caused diseases unduly impedes and burdens commerce; and

(g) it is the purpose of this chapter (1) to establish interim mandatory health and safety standards and to direct the Secretary of Health and Human Services and the Secretary of Labor to develop and promulgate improved mandatory health or safety standards to protect the health and safety of the Nation's coal or other miners; (2) to require that each operator of a coal or other mine and every miner in such mine comply with such standards; (3) to cooperate with, and provide assistance to, the States in the development and enforcement of

effective State coal or other mine health and safety programs; and (4) to improve and expand, in cooperation with the States and the coal or other mining industry, research and development and training programs aimed at preventing coal or other mine accidents and occupationally caused diseases in the industry.

(Pub. L. 91–173, § 2, Dec. 30, 1969, 83 Stat. 742; Pub. L. 95–164, title I, § 102(a), Nov. 9, 1977, 91 Stat. 1290; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

REFERENCES IN TEXT

This chapter, referred to in par. (g), was in the original ''this Act'', meaning Pub. L. 91–173, Dec. 30, 1969, 83 Stat. 742, as amended, known as the Federal Coal Mine Health and Safety Act of 1969 which was redesignated the Federal Mine Safety and Health Act of 1977 by Pub. L. 95–164, title I, § 101, Nov. 9, 1977, 91 Stat. 1290. The Federal Mine Safety and Health Act of 1977 enacted this chapter, amended sections 633 and 636 of Title 15, Commerce and Trade, repealed sections 451 to 460 and 471 to 483 of this title, and enacted provisions set out as notes under this section and section 636 of Title 15. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

AMENDMENTS

1977—Pars. (a) to (d), (f). Pub. L. 95–164, § 102(a)(1), inserted ''or other'' after ''coal'' wherever appearing.

Par. (g). Pub. L. 95–164, § 102(a)(1), (2), inserted ''or other'' after ''coal'' wherever appearing and substituted ''Secretary of Labor'' for ''Secretary of the Interior''.

CHANGE OF NAME

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

EFFECTIVE DATE OF 1977 AMENDMENT

Section 307 of Pub. L. 95–164 provided that: ''Except as otherwise provided, this Act and the amendments made by this Act [see Short Title of 1977 Amendment note below] shall take effect 120 days after the date of enactment of this Act [Nov. 9, 1977]. The Secretary of Labor and the Secretary of the Interior are authorized to establish such rules and regulations as may be necessary for the efficient transfer of functions provided under this Act. The amendment to the Federal Coal Mine Health and Safety Act of 1969 made by section 202 of this Act [amending section 842(e) of this title and repealing subsec. (k) of section 878 of this title] shall be effective on the date of enactment [Nov. 9, 1977].''

EFFECTIVE DATE

Section 509 of Pub. L. 91–173 provided that: ''Except to the extent an earlier date is specifically provided in this Act [see Short Title note below], the provisions of titles I and III of this Act [subchapters I and III of this chapter] shall become operative ninety days after the date of enactment of this Act [Dec. 30, 1969], and the provisions of title II of this Act [subchapter II of this chapter] shall become operative six months after the date of enactment of this Act. The provisions of the Federal Coal Mine Safety Act, as amended [section 451 et seq. of this title], are repealed on the operative date of titles I and III of this Act except that such provisions shall continue to apply to any order, notice, decision, or finding issued under that Act prior to such operative date and to any proceedings related to such order, notice, decision or findings. All other provisions of this Act, shall be effective on the date of enactment of this Act [Dec. 30, 1969].''

SHORT TITLE OF 1981 AMENDMENT

Pub. L. 97–119, title II, § 201(a), Dec. 29, 1981, 95 Stat. 1643, provided that: ''This title [amending sections 901, 902, 921 to 923, 932, and 940 of this title and enacting provisions set out as notes under section 901 of this title] may be cited as the 'Black Lung Benefits Amendments of 1981'.''

SHORT TITLE OF 1978 AMENDMENT

Pub. L. 95–239, § 1, Mar. 1, 1978, 92 Stat. 95, provided that: ''This Act [enacting sections 903, 904, 924a, and 942 to 945 of this title, amending sections 901, 902, 921 to 924, 931, 932, 933, 937, 940, and 941 of this title, and enacting provisions set out as notes under sections 901, 932a, and 934a of this title, section 4121 of Title 26, Internal Revenue Code, and section 675 of Title 29, Labor] may be cited as the 'Black Lung Benefits Reform Act of 1977'.''

SHORT TITLE OF 1977 AMENDMENT

Section 1 of Pub. L. 95–164 provided: ''That this Act [enacting sections 822 to 825 and 961 of this title and section 557a of Title 29, Labor, amending this section, sections 802 to 804, 811 to 821, 842, 861, 878, 951 to 955, 958, and 959 of this title, and sections 5314 and 5315 of Title 5, Government Organization and Employees, repealing sections 721 to 740 of this title and section 1456a of Title 43, Public Lands, and enacting provisions set out as notes under this section, section 954 of this title and section 11 of former Title 31, Money and Finance] may be cited as the 'Federal Mine Safety and Health Amendments Act of 1977'.''

SHORT TITLE OF 1972 AMENDMENT

Pub. L. 92–303, § 1(a), May 19, 1972, 86 Stat. 150, provided: ''That this Act [enacting sections 925 and 937 to 941 of this title, amending sections 901, 902, 921 to 924, 931, 932, 933, 934, and 936 of this title, and enacting provisions set out as notes under sections 921 to 923 of this title] may be cited as the 'Black Lung Benefits Act of 1972'.''

SHORT TITLE

Section 1 of Pub. L. 91–173, as amended by Pub. L. 95–164, title I, § 101, Nov. 9, 1977, 91 Stat. 1290, provided: ''That this Act [which was known as the Federal Coal Mine Health and Safety Act of 1969 prior to the amendment by Pub. L. 95–164 and which enacted this chapter, amended sections 633 and 636 of Title 15, Commerce and Trade, repealed sections 451 to 460 and 471 to 483 of this title, and enacted provisions set out as notes under this section and section 636 of Title 15] may be cited as the 'Federal Mine Safety and Health Act of 1977'.''

For short title of subchapter IV of this chapter as the ''Black Lung Benefits Act'', see section 901(b) of this title.

SEPARABILITY

Section 510 of Pub. L. 91–173 provided that: ''If any provision of this Act [see Short Title note set out above], or the application of such provision to any person or circumstance shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.''

§ 802. Definitions

For the purpose of this chapter, the term—

(a) ''Secretary'' means the Secretary of Labor or his delegate;

(b) ''commerce'' means trade, traffic, commerce, transportation, or communication among the several States, or between a place in a State and any place outside thereof, or within the District of Columbia or a possession of the United States, or between points in the same State but through a point outside thereof;

(c) ''State'' includes a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands;

(d) ''operator'' means any owner, lessee, or other person who operates, controls, or supervises a coal or other mine or any independent contractor performing services or construction at such mine;

(e) ''agent'' means any person charged with responsibility for the operation of all or a part of a coal or other mine or the supervision of the miners in a coal or other mine;

(f) ''person'' means any individual, partnership, association, corporation, firm, subsidiary of a corporation, or other organization;

(g) ''miner'' means any individual working in a coal or other mine;

(h)(1) ''coal or other mine'' means (A) an area of land from which minerals are extracted in nonliquid form or, if in liquid form, are extracted with workers underground, (B) private ways and roads appurtenant to such area, and (C) lands, excavations, underground passageways, shafts, slopes, tunnels and workings, structures, facilities, equipment, machines, tools, or other property including impoundments, retention dams, and tailings ponds, on the surface or underground, used in, or to be used in, or resulting from, the work of extracting such minerals from their natural deposits in nonliquid form, or if in liquid form, with workers underground, or used in, or to be used in, the milling of such minerals, or the work of preparing coal or other minerals, and includes custom coal preparation facilities. In making a determination of what constitutes mineral milling for purposes of this chapter, the Secretary shall give due consideration to the convenience of administration resulting from the delegation to one Assistant Secretary of all authority with respect to the health and safety of miners employed at one physical establishment;

(2) For purposes of subchapters II, III, and IV of this chapter, ''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 the work of preparing the coal so extracted, and includes custom coal preparation facilities;

(i) ''work of preparing the coal'' means the breaking, crushing, sizing, cleaning, washing, drying, mixing, storing, and loading of bituminous coal, lignite, or anthracite, and such other work of preparing such coal as is usually done by the operator of the coal mine;

(j) ''imminent danger'' means the existence of any condition or practice in a coal or other mine which could reasonably be expected to cause death or serious physical harm before such condition or practice can be abated;

(k) ''accident'' includes a mine explosion, mine ignition, mine fire, or mine inundation, or injury to, or death of, any person;

(*l*) ''mandatory health or safety standard'' means the interim mandatory health or safety standards established by subchapters II and III of this chapter, and the standards promulgated pursuant to subchapter I of this chapter;

(m) ''Panel'' means the Interim Compliance Panel established by this chapter; and

(n) ''Administration'' means the Mine Safety and Health Administration in the Department of Labor.

(*o*) ''Commission'' means the Federal Mine Safety and Health Review Commission.

(Pub. L. 91–173, § 3, Dec. 30, 1969, 83 Stat. 743; Pub. L. 95–164, title I, § 102(b), Nov. 9, 1977, 91 Stat. 1290.)

AMENDMENTS

1977—Par. (a). Pub. L. 95–164, § 102(b)(1), substituted ''Secretary of Labor'' for ''Secretary of the Interior''.

Par. (d). Pub. L. 95–164, § 102(b)(2), (4), substituted ''supervises a coal or other mine or any independent contractor performing services or construction at such mine'' for ''supervises a coal mine''.

Pars. (e), (g). Pub. L. 95–164, § 102(b)(4), inserted ''or other'' after ''coal'' wherever appearing.

Par. (h). Pub. L. 95–164, § 102(b)(3), added subpar. (1), designated existing provisions as subpar. (2), and inserted ''For purposes of subchapters II, III, and IV of this chapter,'' after ''(2)''.

Par. (j). Pub. L. 95–164, § 102(b)(4), inserted ''or other'' after ''coal''.

Pars. (n), (*o*). Pub. L. 95–164, § 102(b)(5), added pars. (n) and (*o*).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–164 effective 120 days after Nov. 9, 1977, except as otherwise provided, see section 307 of Pub. L. 95–164, set out as a note under section 801 of this title.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 803. Mines subject to coverage

Each coal or other mine, the products of which enter commerce, or the operations or products of which affect commerce, and each operator of such mine, and every miner in such mine shall be subject to the provisions of this chapter.

(Pub. L. 91–173, § 4, Dec. 30, 1969, 83 Stat. 744; Pub. L. 95–164, title I, § 102(c), Nov. 9, 1977, 91 Stat. 1291.)

AMENDMENTS

1977—Pub. L. 95–164 inserted ''or other'' after ''coal''.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–164 effective 120 days after Nov. 9, 1977, except as otherwise provided, see section 307 of Pub. L. 95–164, set out as a note under section 801 of this title.

§ 804. Interim Compliance Panel

(a) Establishment; composition

There is hereby established the Interim Compliance Panel, which shall be composed of five members as follows:

(1) Assistant Secretary of Labor for Labor Standards, Department of Labor, or his delegate;

(2) Director of the National Institute of Standards and Technology, Department of Commerce, or his delegate;

(3) Administrator of Consumer Protection and Environmental Health Service, Department of Health and Human Services, or his delegate;

(4) Director of the United States Bureau of Mines, Department of the Interior, or his delegate; and

(5) Director of the National Science Foundation, or his delegate.

(b) Compensation; travel and subsistence expenses

Members of the Panel shall serve without compensation in addition to that received in their regular employment, but shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred by them in the performance of duties vested in the Panel.

(c) Cooperation of Federal agencies

Notwithstanding any other provision of law, the Secretary of Health and Human Services, the Secretary of Commerce, the Secretary of the Interior, and the Secretary shall, upon request of the Panel, provide the Panel such personnel and other assistance as the Panel determines necessary to enable it to carry out its functions under this chapter.

(d) Quorum; voting; selection of chairman

Three members of the Panel shall constitute a quorum for doing business. All decisions of the Panel shall be by majority vote. The chairman of the Panel shall be selected by the members from among the membership thereof.

(e) Appointment of administrative law judges; provisions applicable

The Panel is authorized to appoint as many administrative law judges as are necessary for proceedings required to be conducted in accordance with the provisions of this chapter. The provisions applicable to administrative law judges appointed under section 3105 of title 5 shall be applicable to administrative law judges appointed pursuant to this subsection.

(f) Functions; hearings; notice and review; termination; annual report

(1) It shall be the function of the Panel to carry out the duties imposed on it pursuant to this chapter and to provide an opportunity for a public hearing, after notice, at the request of an operator of the affected coal mine or the representative of the miners of such mine. Any operator or representative of miners aggrieved by a final decision of the Panel may file a petition for review of such decision under section 816 of this title. The provisions of this section shall terminate upon completion of the Panel's functions as set forth under this chapter. Any hearing held pursuant to this subsection shall be of record and the Panel shall make findings of fact and shall issue a written decision incorporating its findings therein in accordance with section 554 of title 5.

(2) The Panel shall make an annual report, in writing, to the Secretary for transmittal by him to the Congress concerning the achievement of its purposes, and any other relevant information (including any recommendations) which it deems appropriate.

(Pub. L. 91–173, §5, Dec. 30, 1969, 83 Stat. 744; Pub. L. 95–164, title I, §102(d), Nov. 9, 1977, 91 Stat. 1291; Pub. L. 95–251, §2(a)(9), Mar. 27, 1978, 92 Stat. 183; Pub. L. 96–88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 100–418, title V, §5115(c), Aug. 23, 1988, 102 Stat. 1433; Pub. L. 102–285, §10(b), May 18, 1992, 106 Stat. 172.)

AMENDMENTS

1988—Subsec. (a)(2). Pub. L. 100–418 substituted ''National Institute of Standards and Technology'' for ''Bureau of Standards''.

1978—Subsec. (e). Pub. L. 95–251 substituted ''administrative law judges'' for ''hearing examiners'' wherever appearing.

1977—Subsec. (c). Pub. L. 95–164 substituted ''Secretary of the Interior'' for ''Secretary of Labor''.

CHANGE OF NAME

''United States Bureau of Mines'' substituted for ''Bureau of Mines'' in subsec. (a)(4) pursuant to section 10(b) of Pub. L. 102–285, set out as a note under section 1 of this title.

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

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–164 effective 120 days after Nov. 9, 1977, except as otherwise provided, see section 307 of Pub. L. 95–164, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 865 of this title.

SUBCHAPTER I—GENERAL

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 802, 841, 861, 938 of this title.

§811. Mandatory safety and health standards

(a) Development, promulgation, and revision

The Secretary shall by rule in accordance with procedures set forth in this section and in accordance with section 553 of title 5 (without regard to any reference in such section to sections 556 and 557 of such title), develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal or other mines.

(1) Whenever the Secretary, upon the basis of information submitted to him in writing by an interested person, a representative of any organization of employers or employees, a nationally recognized standards-producing organization, the Secretary of Health and Human Services, the National Institute for Occupational Safety and Health, or a State or political subdivision, or on the basis of information developed by the Secretary or otherwise available to him, determines that a rule should be promulgated in order to serve the objectives of this chapter, the Secretary may request the recommendation of an advisory committee appointed under section

812(c) of this title. The Secretary shall provide such an advisory committee with any proposals of his own or of the Secretary of Health and Human Services, together with all pertinent factual information developed by the Secretary or the Secretary of Health and Human Services, or otherwise available, including the results of research, demonstrations, and experiments. An advisory committee shall submit to the Secretary its recommendations regarding the rule to be promulgated within 60 days from the date of its appointment or within such longer or shorter period as may be prescribed by the Secretary, but in no event for a period which is longer than 180 days. When the Secretary receives a recommendation, accompanied by appropriate criteria, from the National Institute for Occupational Safety and Health that a rule be promulgated, modified, or revoked, the Secretary must, within 60 days after receipt thereof, refer such recommendation to an advisory committee pursuant to this paragraph, or publish such as a proposed rule pursuant to paragraph (2), or publish in the Federal Register his determination not to do so, and his reasons therefor. The Secretary shall be required to request the recommendations of an advisory committee appointed under section 812(c) of this title if the rule to be promulgated is, in the discretion of the Secretary which shall be final, new in effect or application and has significant economic impact.

(2) The Secretary shall publish a proposed rule promulgating, modifying, or revoking a mandatory health or safety standard in the Federal Register. If the Secretary determines that a rule should be proposed and in connection therewith has appointed an advisory committee as provided by paragraph (1), the Secretary shall publish a proposed rule, or the reasons for his determination not to publish such rule, within 60 days following the submission of the advisory committee's recommendation or the expiration of the period of time prescribed by the Secretary in such submission. In either event, the Secretary shall afford interested persons a period of 30 days after any such publication to submit written data or comments on the proposed rule. Such comment period may be extended by the Secretary upon a finding of good cause, which the Secretary shall publish in the Federal Register. Publication shall include the text of such rules proposed in their entirety, a comparative text of the proposed changes in existing rules, and shall include a comprehensive index to the rules, cross-referenced by subject matter.

(3) On or before the last day of the period provided for the submission of written data or comments under paragraph (2), any interested person may file with the Secretary written objections to the proposed mandatory health or safety standard, stating the grounds therefor and requesting a public hearing on such objections. Within 60 days after the last day for filing such objections, the Secretary shall publish in the Federal Register a notice specifying the mandatory health or safety standard to which objections have been filed and a hearing requested, and specifying a time and place for such hearing. Any hearing under this subsection for the purpose of hearing relevant information shall commence within 60 days after the date of publication of the notice of hearing. Hearings required by this subsection shall be conducted by the Secretary, who may prescribe rules and make rulings concerning procedures in such hearings to avoid unnecessary cost or delay. Subject to the need to avoid undue delay, the Secretary shall provide for procedures that will afford interested parties the right to participate in the hearing, including the right to present oral statements and to offer written comments and data. The Secretary may require by subpoena the attendance of witnesses and the production of evidence in connection with any proceeding initiated under this section. If a person refuses to obey a subpoena under this subsection, a United States district court within the jurisdiction of which a proceeding under this subsection is conducted may, upon petition by the Secretary, issue an order requiring compliance with such subpoena. A transcript shall be taken of any such hearing and shall be available to the public.

(4)(A) Within 90 days after certification of the record of the hearing held pursuant to paragraph (3), the Secretary shall by rule promulgate, modify, or revoke such mandatory health or safety standards, and publish his reasons therefor.

(B) In the case of a proposed mandatory health or safety standard to which objections requesting a public hearing have not been filed, the Secretary, within 90 days after the period for filing such objections has expired, shall by rule promulgate, modify, or revoke such mandatory standards, and publish his reasons therefor.

(C) In the event the Secretary determines that a proposed mandatory health or safety standard should not be promulgated he shall, within the times specified in subparagraphs (A) and (B) publish his reasons for his determination.

(5) Any mandatory health or safety standard promulgated as a final rule under this section shall be effective upon publication in the Federal Register unless the Secretary specifies a later date.

(6)(A) The Secretary, in promulgating mandatory standards dealing with toxic materials or harmful physical agents under this subsection, shall set standards which most adequately assure on the basis of the best available evidence that no miner will suffer material impairment of health or functional capacity even if such miner has regular exposure to the hazards dealt with by such standard for the period of his working life. Development of mandatory standards under this subsection shall be based upon research, demonstrations, experiments, and such other information as may be appropriate. In addition to the attainment of the highest degree of health and safety protection for the miner, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws. Whenever practicable, the mandatory health or safety standard promulgated shall be expressed in terms of objective criteria and of the performance desired.

(B) The Secretary of Health and Human Services, as soon as possible after November 9, 1977, but in no event later than 18 months after such

date and on a continuing basis thereafter, shall, for each toxic material or harmful physical agent which is used or found in a mine, determine whether such material or agent is potentially toxic at the concentrations in which it is used or found in a mine. The Secretary of Health and Human Services shall submit such determinations with respect to such toxic substances or harmful physical agents to the Secretary. Thereafter, the Secretary of Health and Human Services shall submit to the Secretary all pertinent criteria regarding any such substances determined to be toxic or any such harmful agents as such criteria are developed. Within 60 days after receiving any criteria in accordance with the preceding sentence relating to a toxic material or harmful physical agent which is not adequately covered by a mandatory health or safety standard promulgated under this section, the Secretary shall either appoint an advisory committee to make recommendations with respect to a mandatory health or safety standard covering such material or agent in accordance with paragraph (1), or publish a proposed rule promulgating such a mandatory health or safety standard in accordance with paragraph (2), or shall publish his determination not to do so.

(7) Any mandatory health or safety standard promulgated under this subsection shall prescribe the use of labels or other appropriate forms of warning as are necessary to insure that miners are apprised of all hazards to which they are exposed, relevant symptoms and appropriate emergency treatment, and proper conditions and precautions of safe use or exposure. Where appropriate, such mandatory standard shall also prescribe suitable protective equipment and control or technological procedures to be used in connection with such hazards and shall provide for monitoring or measuring miner exposure at such locations and intervals, and in such manner so as to assure the maximum protection of miners. In addition, where appropriate, any such mandatory standard shall prescribe the type and frequency of medical examinations or other tests which shall be made available, by the operator at his cost, to miners exposed to such hazards in order to most effectively determine whether the health of such miners is adversely affected by such exposure. Where appropriate, the mandatory standard shall provide that where a determination is made that a miner may suffer material impairment of health or functional capacity by reason of exposure to the hazard covered by such mandatory standard, that miner shall be removed from such exposure and reassigned. Any miner transferred as a result of such exposure shall continue to receive compensation for such work at no less than the regular rate of pay for miners in the classification such miner held immediately prior to his transfer. In the event of the transfer of a miner pursuant to the preceding sentence, increases in wages of the transferred miner shall be based upon the new work classification. In the event such medical examinations are in the nature of research, as determined by the Secretary of Health and Human Services, such examinations may be furnished at the expense of the Secretary of Health and Human Services. The results of examinations or tests made pursuant to the preceding sentence shall be furnished only to the Secretary or the Secretary of Health and Human Services, and, at the request of the miner, to his designated physician.

(8) The Secretary shall, to the extent practicable, promulgate separate mandatory health or safety standards applicable to mine construction activity on the surface.

(9) No mandatory health or safety standard promulgated under this subchapter shall reduce the protection afforded miners by an existing mandatory health or safety standard.

(b) Emergency temporary mandatory standards

(1) The Secretary shall provide, without regard to the requirements of chapter 5 of title 5 for an emergency temporary mandatory health or safety standard to take immediate effect upon publication in the Federal Register if he determines (A) that miners are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful, or to other hazards, and (B) that such emergency standard is necessary to protect miners from such danger.

(2) A temporary mandatory health or safety standard shall be effective until superseded by a mandatory standard promulgated in accordance with the procedures prescribed in paragraph (3) of this subsection.

(3) Upon publication of such standard in the Federal Register, the Secretary shall commence a proceeding in accordance with subsection (a) of this section, and the standards as published shall also serve as a proposed rule for the proceeding. The Secretary shall promulgate a mandatory health or safety standard under this paragraph no later than nine months after publication of the emergency temporary standard as provided in paragraph (2).

(c) Modification of standards

Upon petition by the operator or the representative of miners, the Secretary may modify the application of any mandatory safety standard to a coal or other mine if the Secretary determines that an alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard, or that the application of such standard to such mine will result in a diminution of safety to the miners in such mine. Upon receipt of such petition the Secretary shall publish notice thereof and give notice to the operator or the representative of miners in the affected mine, as appropriate, and shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of such operator or representative or other interested party, to enable the operator or the representative of miners in such mine or other interested party to present information relating to the modification of such standard. Before granting any exception to a mandatory safety standard, the findings of the Secretary or his authorized representative shall be made public and shall be available to the representative of the miners at the affected mine. The Secretary shall issue a decision incorporating his findings of fact therein, and send a copy thereof

to the operator or the representative of the miners, as appropriate. Any such hearing shall be of record and shall be subject to section 554 of title 5.

(d) Judicial review

Any person who may be adversely affected by a mandatory health or safety standard promulgated under this section may, at any time prior to the sixtieth day after such standard is promulgated, file a petition challenging the validity of such mandatory standard with the United States Court of Appeals for the District of Columbia Circuit or the circuit wherein such person resides or has his principal place of business, for a judicial review of such standard. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The filing of such petition shall not, unless otherwise ordered by the court, operate as a stay of the standard. No objection that has not been urged before the Secretary shall be considered by the court, unless the failure or neglect to urge such objection shall be excused for good cause shown. The validity of any mandatory health or safety standard shall not be subject to challenge on the grounds that any of the time limitations in this section have been exceeded. The procedures of this subsection shall be the exclusive means of challenging the validity of a mandatory health or safety standard.

(e) Distribution of copies of proposed standards or regulations

The Secretary shall send a copy of every proposed mandatory health or safety standard or regulation at the time of publication in the Federal Register to the operator of each coal or other mine and the representative of the miners at such mine and such copy shall be immediately posted on the bulletin board of the mine by the operator or his agent, but failure to receive such notice shall not relieve anyone of the obligation to comply with such standard or regulation.

(Pub. L. 91–173, title I, § 101, Dec. 30, 1969, 83 Stat. 745; Pub. L. 95–164, title II, § 201, Nov. 9, 1977, 91 Stat. 1291; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

AMENDMENTS

1977—Subsec. (a). Pub. L. 95–164 substituted provisions revising and setting out in detail the procedures to be followed by the Secretary of Labor in developing, promulgating, and revising mandatory health and safety standards covering coal and other mines for provisions which had charged the Secretary of the Interior with the responsibility of developing standards for the protection of life and the prevention of injuries in coal mines.

Subsec. (b). Pub. L. 95–164 substituted provisions relating to emergency temporary mandatory standards for provisions requiring that improved standards not reduce the previously existing level of health and safety in coal mines.

Subsec. (c). Pub. L. 95–164 substituted provisions relating to the modification of standards for provisions covering the consultative and research steps in the promulgation of safety standards.

Subsec. (d). Pub. L. 95–164 substituted provisions relating to judicial review of standards for provisions covering the consultative and research steps in the promulgation of health standards.

Subsec. (e). Pub. L. 95–164 redesignated subsec. (k) as (e) and substituted ''proposed mandatory health or safety standard or regulation'' for ''proposed standard or regulation'' and ''coal or other mine'' for ''coal mine''.

Subsecs. (f) to (j). Pub. L. 95–164 struck out subsecs. (f) to (j) which had related to the submission of objections to proposed standards, hearings, the effective date of standards, mandatory standards for surface coal mines, and the publication of pre-existing consistent regulations in the Federal Register and the continuing effectiveness of those regulations until modified or superseded, and incorporated those provisions, as altered to apply to coal and other mines and as otherwise revised, into subsec. (a).

Subsec. (k). Pub. L. 95–164 redesignated subsec. (k) as (e).

CHANGE OF NAME

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in subsec. (a)(1), (6)(B), and (7) pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–164 effective 120 days after Nov. 9, 1977, except as otherwise provided, see section 307 of Pub. L. 95–164, set out as a note under section 801 of this title.

EFFECTIVE DATE

Subchapter operative 90 days after Dec. 30, 1969, except to the extent an earlier date is specifically provided for in Pub. L. 91–173, see section 509 of Pub. L. 91–173, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 813, 815, 841, 842, 846, 861 of this title.

§ 812. Advisory committees

(a) Committee on coal or other mine safety research; establishment; membership; chairman; functions; conflicts of interest

(1) The Secretary of the Interior shall appoint an advisory committee on coal or other mine safety research composed of—

(A) the Director of the Office of Science and Technology or his delegate, with the consent of the Director;

(B) the Director of the National Institute of Standards and Technology, Department of Commerce, or his delegate, with the consent of the Director;

(C) the Director of the National Science Foundation, or his delegate, with the consent of the Director; and

(D) such other persons as the Secretary of the Interior may appoint who are knowledgeable in the field of coal or other mine safety research.

The Secretary of the Interior shall designate the chairman of the committee.

(2) The advisory committee shall consult with, and make recommendations to, the Secretary of the Interior on matters involving or relating to coal or other mine safety research. The Secretary of the Interior shall consult with, and consider the recommendations of, such committee in the conduct of such research, the making of any grants, and the entering into of contracts for such research.

(3) The chairman of the committee and a majority of the persons appointed by the Secretary

of the Interior pursuant to paragraph (1)(D) shall be individuals who have no economic interests in the coal or other mining industry, and who are not operators, miners, or officers or employees of the Federal Government or any State or local government.

(b) Committee on coal or other mine health research; establishment; membership; chairman; functions; conflicts of interest

(1) The Secretary of Health and Human Services shall appoint an advisory committee on coal or other mine health research composed of—

(A) the Director, United States Bureau of Mines, or his delegate, with the consent of the Director;

(B) the Director of the National Science Foundation, or his delegate, with the consent of the Director;

(C) the Director of the National Institutes of Health, or his delegate, with the consent of the Director; and

(D) such other persons as the Secretary of Health and Human Services may appoint who are knowledgeable in the field of coal or other mine health research.

The Secretary of Health and Human Services shall designate the chairman of the committee.

(2) The advisory committee shall consult with, and make recommendations to, the Secretary of Health and Human Services on matters involving or relating to coal or other mine health research. The Secretary of Health and Human Services shall consult with, and consider the recommendations of, such committee in the conduct of such research, the making of any grants, and the entering into of contracts for such research.

(3) The chairman of the committee and a majority of the persons appointed by the Secretary of Health and Human Services pursuant to paragraph (1)(D) shall be individuals who have no economic interests in the coal or other mining industry, and who are not operators, miners, or officers or employees of the Federal Government or any State or local government.

(c) Additional advisory committees; chairman; conflicts of interest

The Secretary or the Secretary of Health and Human Services may appoint other advisory committees as he deems appropriate to advise him in carrying out the provisions of this chapter. The Secretary or the Secretary of Health and Human Services, as the case may be, shall appoint the chairman of each such committee. A majority of the members (including the chairman) of any such advisory committee appointed pursuant to this subsection shall be composed of individuals who have no economic interests in the coal or other mining industry, and who are not operators, miners, or officers or employees of the Federal Government or any State or local government.

(d) Compensation; travel and subsistence expenses

Advisory committee members, other than officers or employees of Federal, State, or local governments, shall be, for each day (including traveltime) during which they are performing committee business, entitled to receive compensation at a rate fixed by the appropriate Secretary but not in excess of the maximum rate of pay for grade GS–18 as provided in the General Schedule under section 5332 of title 5, and shall, notwithstanding the limitations of sections 5703 and 5704 of title 5, be fully reimbursed for travel, subsistence, and related expenses.

(Pub. L. 91–173, title I, §102, Dec. 30, 1969, 83 Stat. 747; Pub. L. 95–164, title II, §201, Nov. 9, 1977, 91 Stat. 1295; Pub. L. 96–88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 100–418, title V, §5115(c), Aug. 23, 1988, 102 Stat. 1433; Pub. L. 102–285, §10(b), May 18, 1992, 106 Stat. 172.)

AMENDMENTS

1988—Subsec. (a)(1)(B). Pub. L. 100–418 substituted ''National Institute of Standards and Technology'' for ''National Bureau of Standards''.

1977—Subsec. (a). Pub. L. 95–164 expanded the area of coverage for the committee on mine safety research from ''coal mines'' to ''coal or other mines''.

Subsec. (b). Pub. L. 95–164 expanded the area of coverage for the advisory committee on mine health research from ''coal mines'' to ''coal or other mines''.

Subsec. (c). Pub. L. 95–164 struck out '', who shall be an individual who has no economic interest in the coal mining industry, and who is not an operator, miner, or an officer or employee of the Federal Government or any State or local government'' after ''chairman of each such committee'' and inserted ''(including the chairman)'' after ''A majority of the members''.

Subsec. (d). Pub. L. 95–164 reenacted subsec. (d) without change.

CHANGE OF NAME

''United States Bureau of Mines'' substituted for ''Bureau of Mines'' in subsec. (b)(1)(A) pursuant to section 10(b) of Pub. L. 102–285, set out as a note under section 1 of this title.

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

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–164 effective 120 days after Nov. 9, 1977, except as otherwise provided, see section 307 of Pub. L. 95–164, set out as a note under section 801 of this title.

TRANSFER OF FUNCTIONS

Functions vested by law in Office of Science and Technology and in Director or Deputy Director of Office of Science and Technology transferred to Director of National Science Foundation, and Office of Science and Technology, including offices of Director and Deputy Director, provided for by sections 1 and 2 of Reorg. Plan No. 2, of 1962, eff. June 8, 1962, 27 F.R. 5419, 76 Stat. 1253, abolished by sections 2 and 3(a)(5) of Reorg. Plan No. 1 of 1973, eff. July 1, 1973, 38 F.R. 9579, 87 Stat. 1089, both set out in the Appendix to Title 5, Government Organization and Employees.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year

period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 811, 961 of this title.

§ 813. Inspections, investigations, and recordkeeping

(a) Purposes; advance notice; frequency; guidelines; right of access

Authorized representatives of the Secretary or the Secretary of Health and Human Services shall make frequent inspections and investigations in coal or other mines each year for the purpose of (1) obtaining, utilizing, and disseminating information relating to health and safety conditions, the causes of accidents, and the causes of diseases and physical impairments originating in such mines, (2) gathering information with respect to mandatory health or safety standards, (3) determining whether an imminent danger exists, and (4) determining whether there is compliance with the mandatory health or safety standards or with any citation, order, or decision issued under this subchapter or other requirements of this chapter. In carrying out the requirements of this subsection, no advance notice of an inspection shall be provided to any person, except that in carrying out the requirements of clauses (1) and (2) of this subsection, the Secretary of Health and Human Services may give advance notice of inspections. In carrying out the requirements of clauses (3) and (4) of this subsection, the Secretary shall make inspections of each underground coal or other mine in its entirety at least four times a year, and of each surface coal or other mine in its entirety at least two times a year. The Secretary shall develop guidelines for additional inspections of mines based on criteria including, but not limited to, the hazards found in mines subject to this chapter, and his experience under this chapter and other health and safety laws. For the purpose of making any inspection or investigation under this chapter, the Secretary, or the Secretary of Health and Human Services, with respect to fulfilling his responsibilities under this chapter, or any authorized representative of the Secretary or the Secretary of Health and Human Services, shall have a right of entry to, upon, or through any coal or other mine.

(b) Notice and hearing; subpoenas; witnesses; contempt

For the purpose of making any investigation of any accident or other occurrence relating to health or safety in a coal or other mine, the Secretary may, after notice, hold public hearings, and may sign and issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpoena served upon any person under this section, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(c) Records of employee exposure to toxic materials or harmful physical agents; undue exposure

The Secretary, in cooperation with the Secretary of Health and Human Services, shall issue regulations requiring operators to maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents which are required to be monitored or measured under any applicable mandatory health or safety standard promulgated under this chapter. Such regulations shall provide miners or their representatives with an opportunity to observe such monitoring or measuring, and to have access to the records thereof. Such regulations shall also make appropriate provisions for each miner or former miner to have access to such records as will indicate his own exposure to toxic materials or harmful physical agents. Each operator shall promptly notify any miner who has been or is being exposed to toxic materials or harmful physical agents in concentrations or at levels which exceed those prescribed by an applicable mandatory health or safety standard promulgated under section 811 of this title, or mandated under subchapter II of this chapter, and shall inform any miner who is being thus exposed of the corrective action being taken.

(d) Accident investigations; records

All accidents, including unintentional roof falls (except in any abandoned panels or in areas which are inaccessible or unsafe for inspections), shall be investigated by the operator or his agent to determine the cause and the means of preventing a recurrence. Records of such accidents and investigations shall be kept and the information shall be made available to the Secretary or his authorized representative and the appropriate State agency. Such records shall be open for inspection by interested persons. Such records shall include man-hours worked and shall be reported at a frequency determined by the Secretary, but at least annually.

(e) Collecting information without unreasonable burden on operators

Any information obtained by the Secretary or by the Secretary of Health and Human Services under this chapter shall be obtained in such a manner as not to impose an unreasonable burden upon operators, especially those operating small businesses, consistent with the underlying purposes of this chapter. Unnecessary duplication of effort in obtaining information shall be reduced to the maximum extent feasible.

(f) Participation of representatives of operators and miners in inspections

Subject to regulations issued by the Secretary, a representative of the operator and a representative authorized by his miners shall be given an opportunity to accompany the Secretary or his authorized representative during the physical inspection of any coal or other mine made pursuant to the provisions of subsection (a) of this section, for the purpose of aiding such inspection and to participate in pre- or post-inspection conferences held at the mine. Where there is no authorized miner representative, the Secretary or his authorized representative shall consult with a reasonable number of miners concerning matters of health and safety in such mine. Such representative of miners who is also an employee of the operator shall suffer no loss of pay during the period of his participation in the inspection made under this subsection. To the extent that the Secretary or authorized representative of the Secretary determines that more than one representative from each party would further aid the inspection, he can permit each party to have an equal number of such additional representatives. However, only one such representative of miners who is an employee of the operator shall be entitled to suffer no loss of pay during the period of such participation under the provisions of this subsection. Compliance with this subsection shall not be a jurisdictional prerequisite to the enforcement of any provision of this chapter.

(g) Immediate inspection; notice of violation or danger; determination

(1) Whenever a repersentative[1] of the miners or a miner in the case of a coal or other mine where there is no such representative has reasonable grounds to believe that a violation of this chapter or a mandatory health or safety standard exists, or an imminent danger exists, such miner or representative shall have a right to obtain an immediate inspection by giving notice to the Secretary or his authorized representative of such violation or danger. Any such notice shall be reduced to writing, signed by the representative of the miners or by the miner, and a copy shall be provided the operator or his agent no later than at the time of inspection, except that the operator or his agent shall be notified forthwith if the complaint indicates that an imminent danger exists. The name of the person giving such notice and the names of individual miners referred to therein shall not appear in such copy or notification. Upon receipt of such notification, a special inspection shall be made as soon as possible to determine if such violation or danger exists in accordance with the provisions of this subchapter. If the Secretary determines that a violation or danger does not exist, he shall notify the miner or representative of the miners in writing of such determination.

(2) Prior to or during any inspection of a coal or other mine, any representative of miners or a miner in the case of a coal or other mine where there is no such representative, may notify the Secretary or any representative of the Secretary responsible for conducting the inspection, in writing, of any violation of this chapter or of any imminent danger which he has reason to believe exists in such mine. The Secretary shall, by regulation, establish procedures for informal review of any refusal by a representative of the Secretary to issue a citation with respect to any such alleged violation or order with respect to such danger and shall furnish the representative of miners or miner requesting such review a written statement of the reasons for the Secretary's final disposition of the case.

(h) Records and reports; compilation and publication; availability

In addition to such records as are specifically required by this chapter, every operator of a coal or other mine shall establish and maintain such records, make such reports, and provide such information, as the Secretary or the Secretary of Health and Human Services may reasonably require from time to time to enable him to perform his functions under this chapter. The Secretary or the Secretary of Health and Human Services is authorized to compile, analyze, and publish, either in summary or detailed form, such reports or information so obtained. Except to the extent otherwise specifically provided by this chapter, all records, information, reports, findings, citations, notices, orders, or decisions required or issued pursuant to or under this chapter may be published from time to time, may be released to any interested person, and shall be made available for public inspection.

(i) Spot inspections

Whenever the Secretary finds that a coal or other mine liberates excessive quantities of methane or other explosive gases during its operations, or that a methane or other gas ignition or explosion has occurred in such mine which resulted in death or serious injury at any time during the previous five years, or that there exists in such mine some other especially hazardous condition, he shall provide a minimum of one spot inspection by his authorized representative of all or part of such mine during every five working days at irregular intervals. For purposes of this subsection, ''liberation of excessive quantities of methane or other explosive gases'' shall mean liberation of more than one million cubic feet of methane or other explosive gases during a 24-hour period. When the Secretary finds that a coal or other mine liberates more than five hundred thousand cubic feet of methane or other explosive gases during a 24-hour period, he shall provide a minimum of one spot inspection by his authorized representative of all or part of such mine every 10 working days at irregular intervals. When the Secretary finds

[1] So in original. Probably should be ''representative''.

that a coal or other mine liberates more than two hundred thousand cubic feet of methane or other explosive gases during a 24-hour period, he shall provide a minimum of one spot inspection by his authorized representative of all or part of such mine every 15 working days at irregular intervals.

(j) Accident notification; rescue and recovery activities

In the event of any accident occurring in any coal or other mine, the operator shall notify the Secretary thereof and shall take appropriate measures to prevent the destruction of any evidence which would assist in investigating the cause or causes thereof. In the event of any accident occurring in a coal or other mine, where rescue and recovery work is necessary, the Secretary or an authorized representative of the Secretary shall take whatever action he deems appropriate to protect the life of any person, and he may, if he deems it appropriate, supervise and direct the rescue and recovery activities in such mine.

(k) Safety orders; recovery plans

In the event of any accident occurring in a coal or other mine, an authorized representative of the Secretary, when present, may issue such orders as he deems appropriate to insure the safety of any person in the coal or other mine, and the operator of such mine shall obtain the approval of such representative, in consultation with appropriate State representatives, when feasible, of any plan to recover any person in such mine or to recover the coal or other mine or return affected areas of such mine to normal.

(Pub. L. 91–173, title I, § 103, Dec. 30, 1969, 83 Stat. 749; Pub. L. 95–164, title II, § 201, Nov. 9, 1977, 91 Stat. 1297; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

AMENDMENTS

1977—Subsec. (a). Pub. L. 95–164 inserted provisions authorizing representatives of the Secretary of Health, Education, and Welfare to make inspections, expanded the area of inspection and investigation to include mines other than coal mines, inserted provisions requiring the inspection of surface mines at least two times a year, inserted provisions requiring the development of guidelines for additional inspections of mines, and inserted provisions, formerly contained in subsec. (b), authorizing the entry to, upon, or through, any coal or other mine for the purpose of making inspection or investigation.

Subsec. (b). Pub. L. 95–164 redesignated subsec. (d) as (b) and substituted ''coal or other mine'' for ''coal mine''. Provisions of former subsec. (b) were incorporated into subsec. (a).

Subsecs. (c) to (e). Pub. L. 95–164 added subsecs. (c) to (e), struck out former subsec. (c) which provided for the utilization of facilities and personnel of other Federal agencies, and redesignated former subsecs. (d) and (e) as (b) and (j), respectively.

Subsec. (f). Pub. L. 95–164 redesignated subsec. (h) as (f), inserted provision for a representative of the operator to accompany the Secretary or his representative in the physical inspection of a mine, extended the provisions to cover mines other than coal mines, and inserted provisions relating to the choice of the authorized representative of the miners, the representative's duties, and the choice of more than one representative. Former subsec. (f) redesignated (k).

Subsec. (g). Pub. L. 95–164 designated existing provisions as par. (1), inserted provisions to par. (1) as so designated which extended the right to an immediate inspection to individual miners when there is no representative of the miners, provided for immediate notification to the mine operator or his agent if the complaint indicates that the danger is imminent, kept the name of the person giving the notice and the names of the individual miners off the copy or notification, and required the Secretary to notify the miners or their representatives if he determines that a violation or danger does not exist, and added par. (2).

Subsec. (h). Pub. L. 95–164 added subsec. (h). The provisions of former subsec. (h), relating to the right of the miners' representative to accompany the authorized representative of the Secretary on the inspection, were incorporated into subsec. (f).

Subsec. (i). Pub. L. 95–164 inserted definition of ''liberation of excessive quantities of methane or other explosive gases'' and inserted provisions for a reduced schedule of one spot inspections in mines with liberation rates for methane or other explosive gases lower than that required to qualify as ''excessive''.

Subsecs. (j), (k). Pub. L. 95–164 redesignated former subsecs. (e) and (f) as (j) and (k), respectively.

CHANGE OF NAME

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

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–164 effective 120 days after Nov. 9, 1977, except as otherwise provided, see section 307 of Pub. L. 95–164, set out as a note under section 801 of this title.

CROSS REFERENCES

Witnesses, per diem and mileage, see section 1821 et seq. of Title 28, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 814, 821 of this title.

§ 814. Citations and orders

(a) Issuance and form of citations; prompt issuance

If, upon inspection or investigation, the Secretary or his authorized representative believes that an operator of a coal or other mine subject to this chapter has violated this chapter, or any mandatory health or safety standard, rule, order, or regulation promulgated pursuant to this chapter, he shall, with reasonable promptness, issue a citation to the operator. Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provision of the chapter, standard, rule, regulation, or order alleged to have been violated. In addition, the citation shall fix a reasonable time for the abatement of the violation. The requirement for the issuance of a citation with reasonable promptness shall not be a jurisdictional prerequisite to the enforcement of any provision of this chapter.

(b) Follow-up inspections; findings

If, upon any follow-up inspection of a coal or other mine, an authorized representative of the Secretary finds (1) that a violation described in a citation issued pursuant to subsection (a) of this section has not been totally abated within the period of time as originally fixed therein or as subsequently extended, and (2) that the period

of time for the abatement should not be further extended, he shall determine the extent of the area affected by the violation and shall promptly issue an order requiring the operator of such mine or his agent to immediately cause all persons, except those persons referred to in subsection (c) of this section, to be withdrawn from, and to be prohibited from entering, such area until an authorized representative of the Secretary determines that such violation has been abated.

(c) Exempt persons

The following persons shall not be required to be withdrawn from, or prohibited from entering, any area of the coal or other mine subject to an order issued under this section:

(1) any person whose presence in such area is necessary, in the judgment of the operator or an authorized representative of the Secretary, to eliminate the condition described in the order;

(2) any public official whose official duties require him to enter such area;

(3) any representative of the miners in such mine who is, in the judgment of the operator or an authorized representative of the Secretary, qualified to make such mine examinations or who is accompanied by such a person and whose presence in such area is necessary for the investigation of the conditions described in the order; and

(4) any consultant to any of the foregoing.

(d) Findings of violations; withdrawal order

(1) If, upon any inspection of a coal or other mine, an authorized representative of the Secretary finds that there has been a violation of any mandatory health or safety standard, and if he also finds that, while the conditions created by such violation do not cause imminent danger, such violation is of such nature as could significantly and substantially contribute to the cause and effect of a coal or other mine safety or health hazard, and if he finds such violation to be caused by an unwarrantable failure of such operator to comply with such mandatory health or safety standards, he shall include such finding in any citation given to the operator under this chapter. If, during the same inspection or any subsequent inspection of such mine within 90 days after the issuance of such citation, an authorized representative of the Secretary finds another violation of any mandatory health or safety standard and finds such violation to be also caused by an unwarrantable failure of such operator to so comply, he shall forthwith issue an order requiring the operator to cause all persons in the area affected by such violation, except those persons referred to in subsection (c) of this section to be withdrawn from, and to be prohibited from entering, such area until an authorized representative of the Secretary determines that such violation has been abated.

(2) If a withdrawal order with respect to any area in a coal or other mine has been issued pursuant to paragraph (1), a withdrawal order shall promptly be issued by an authorized representative of the Secretary who finds upon any subsequent inspection the existence in such mine of violations similar to those that resulted in the issuance of the withdrawal order under paragraph (1) until such time as an inspection of such mine discloses no similar violations. Following an inspection of such mine which discloses no similar violations, the provisions of paragraph (1) shall again be applicable to that mine.

(e) Pattern of violations; abatement; termination of pattern

(1) If an operator has a pattern of violations of mandatory health or safety standards in the coal or other mine which are of such nature as could have significantly and substantially contributed to the cause and effect of coal or other mine health or safety hazards, he shall be given written notice that such pattern exists. If, upon any inspection within 90 days after the issuance of such notice, an authorized representative of the Secretary finds any violation of a mandatory health or safety standard which could significantly and substantially contribute to the cause and effect of a coal or other mine safety or health hazard, the authorized representative shall issue an order requiring the operator to cause all persons in the area affected by such violation, except those persons referred to in subsection (c) of this section, to be withdrawn from, and to be prohibited from entering, such area until an authorized representative of the Secretary determines that such violation has been abated.

(2) If a withdrawal order with respect to any area in a coal or other mine has been issued pursuant to paragraph (1), a withdrawal order shall be issued by an authorized representative of the Secretary who finds upon any subsequent inspection the existence in such mine of any violation of a mandatory health or safety standard which could significantly and substantially contribute to the cause and effect of a coal or other mine health or safety hazard. The withdrawal order shall remain in effect until an authorized representative of the Secretary determines that such violation has been abated.

(3) If, upon an inspection of the entire coal or other mine, an authorized representative of the Secretary finds no violations of mandatory health or safety standards that could significantly and substantially contribute to the cause and effect of a coal or other mine health and safety hazard, the pattern of violations that resulted in the issuance of a notice under paragraph (1) shall be deemed to be terminated and the provisions of paragraphs (1) and (2) shall no longer apply. However, if as a result of subsequent violations, the operator reestablishes a pattern of violations, paragraphs (1) and (2) shall again be applicable to such operator.

(4) The Secretary shall make such rules as he deems necessary to establish criteria for determining when a pattern of violations of mandatory health or safety standards exists.

(f) Respirable dust concentrations; dust control person or team

If, based upon samples taken, analyzed, and recorded pursuant to section 842(a) of this title, or samples taken during an inspection by an authorized representative of the Secretary, the applicable limit on the concentration of respirable dust required to be maintained under this chapter is exceeded and thereby violated, the Sec-

retary or his authorized representative shall issue a citation fixing a reasonable time for the abatement of the violation. During such time, the operator of the mine shall cause samples described in section 842(a) of this title to be taken of the affected area during each production shift. If, upon the expiration of the period of time as originally fixed or subsequently extended, the Secretary or his authorized representative finds that the period of time should not be further extended, he shall determine the extent of the area affected by the violation and shall promptly issue an order requiring the operator of such mine or his agent to cause immediately all persons, except those referred to in subsection (c) of this section, to be withdrawn from, and to be prohibited from entering, such area until the Secretary or his authorized representative has reason to believe, based on actions taken by the operator, that such limit will be complied with upon the resumption of production in such mine. As soon as possible after an order is issued, the Secretary, upon request of the operator, shall dispatch to the mine involved a person, or team of persons, to the extent such persons are available, who are knowledgeable in the methods and means of controlling and reducing respirable dust. Such person or team of persons shall remain at the mine involved for such time as they shall deem appropriate to assist the operator in reducing respirable dust concentrations. While at the mine, such persons may require the operator to take such actions as they deem appropriate to insure the health of any person in the coal or other mine.

(g) Untrained miners

(1) If, upon any inspection or investigation pursuant to section 813 of this title, the Secretary or an authorized representative shall find employed at a coal or other mine a miner who has not received the requisite safety training as determined under section 825 of this title, the Secretary or an authorized representative shall issue an order under this section which declares such miner to be a hazard to himself and to others, and requiring that such miner be immediately withdrawn from the coal or other mine, and be prohibited from entering such mine until an authorized representative of the Secretary determines that such miner has received the training required by section 825 of this title.

(2) No miner who is ordered withdrawn from a coal or other mine under paragraph (1) shall be discharged or otherwise discriminated against because of such order; and no miner who is ordered withdrawn from a coal or other mine under paragraph (1) shall suffer a loss of compensation during the period necessary for such miner to receive such training and for an authorized representative of the Secretary to determine that such miner has received the requisite training.

(h) Duration of citations and orders

Any citation or order issued under this section shall remain in effect until modified, terminated or vacated by the Secretary or his authorized representative, or modified, terminated or vacated by the Commission or the courts pursuant to section 815 or 816 of this title.

(Pub. L. 91–173, title I, § 104, Dec. 30, 1969, 83 Stat. 750; Pub. L. 95–164, title II, § 201, Nov. 9, 1977, 91 Stat. 1300.)

AMENDMENTS

1977—Subsec. (a). Pub. L. 95–164 substituted provisions directing the Secretary to issue a citation to the operator based upon the belief of the Secretary or his authorized representative, after inspection or investigation, that there has been a violation of this chapter or any mandatory health or safety standard, rule, order, or regulation for provisions that had related to the issuance of a withdrawal order upon a finding that an imminent danger existed.

Subsec. (b). Pub. L. 95–164 substituted provisions setting out the steps to be taken if, upon any follow-up inspection of a coal or other mine, the authorized representative of the Secretary finds that a citation violation has not been abated and that the time for abatement should not be extended for provisions that had set out the steps to be taken in the case of a violation that did not create an imminent danger.

Subsec. (c). Pub. L. 95–164 redesignated subsec. (d) as (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 95–164 redesignated subsec. (c) as (d) and substituted reference to ''citation'' for reference to ''notice''. Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 95–164 substituted provisions relating to the steps to be taken if an operator has a pattern of violations of mandatory health or safety standards for provisions setting out the requisites of notices and orders issued pursuant to this section.

Subsec. (f). Pub. L. 95–164 redesignated subsec. (i) as (f). Former subsec. (f), relating to the delivery of notices and orders issued under this section, was incorporated into subsec. (a).

Subsec. (g). Pub. L. 95–164 added subsec. (g). Former subsec. (g), relating to the modification and termination of notice, was incorporated into subsec. (h).

Subsec. (h). Pub. L. 95–164 added subsec. (h). Provisions of former subsec. (h), which related to steps to be taken when a condition existed which could not be abated through the use of existing technology, were covered in the general revision of subsecs. (d) and (e).

Subsec. (i). Pub. L. 95–164 redesignated subsec. (i) as (f).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–164 effective 120 days after Nov. 9, 1977, except as otherwise provided, see section 307 of Pub. L. 95–164, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 815, 816, 817, 820, 821, 842, 863 of this title.

§ 815. Procedure for enforcement

(a) Notification of civil penalty; contest

If, after an inspection or investigation, the Secretary issues a citation or order under section 814 of this title, he shall, within a reasonable time after the termination of such inspection or investigation, notify the operator by certified mail of the civil penalty proposed to be assessed under section 820(a) of this title for the violation cited and that the operator has 30 days within which to notify the Secretary that he wishes to contest the citation or proposed assessment of penalty. A copy of such notification shall be sent by mail to the representative of miners in such mine. If, within 30 days from the receipt of the notification issued by the Secretary, the operator fails to notify the Secretary that he intends to contest the citation or the proposed assessment of penalty, and no notice is

filed by any miner or representative of miners under subsection (d) of this section within such time, the citation and the proposed assessment of penalty shall be deemed a final order of the Commission and not subject to review by any court or agency. Refusal by the operator or his agent to accept certified mail containing a citation and proposed assessment of penalty under this subsection shall constitute receipt thereof within the meaning of this subsection.

(b) Failure of operator to correct violation; notification; contest; temporary relief

(1)(A) If the Secretary has reason to believe that an operator has failed to correct a violation for which a citation has been issued within the period permitted for its correction, the Secretary shall notify the operator by certified mail of such failure and of the penalty proposed to be assessed under section 820(b) of this title by reason of such failure and that the operator has 30 days within which to notify the Secretary that he wishes to contest the Secretary's notification of the proposed assessment of penalty. A copy of such notification of the proposed assessment of penalty shall at the same time be sent by mail to the representative of the mine employees. If, within 30 days from the receipt of notification of proposed assessment of penalty issued by the Secretary, the operator fails to notify the Secretary that he intends to contest the notification of proposed assessment of penalty, such notification shall be deemed a final order of the Commission and not subject to review by any court or agency. Refusal by the operator or his agent to accept certified mail containing a notification of proposed assessment of penalty issued under this subsection shall constitute receipt thereof within the meaning of this subsection.

(B) In determining whether to propose a penalty to be assessed under section 820(b) of this title, the Secretary shall consider the operator's history of previous violations, the appropriateness of such penalty to the size of the business of the operator charged, whether the operator was negligent, the effect on the operator's ability to continue in business, the gravity of the violation, and the demonstrated good faith of the operator charged in attempting to achieve rapid compliance after notification of a violation.

(2) An applicant may file with the Commission a written request that the Commission grant temporary relief from any modification or termination of any order or from any order issued under section 814 of this title together with a detailed statement giving the reasons for granting such relief. The Commission may grant such relief under such conditions as it may prescribe, if—

(A) a hearing has been held in which all parties were given an opportunity to be heard;

(B) the applicant shows that there is substantial likelihood that the findings of the Commission will be favorable to the applicant; and

(C) such relief will not adversely affect the health and safety of miners.

No temporary relief shall be granted in the case of a citation issued under subsection (a) or (f) of section 814 of this title. The Commission shall provide a procedure for expedited consideration of applications for temporary relief under this paragraph.

(c) Discrimination or interference prohibited; complaint; investigation; determination; hearing

(1) No person shall discharge or in any manner discriminate against or cause to be discharged or cause discrimination against or otherwise interfere with the exercise of the statutory rights of any miner, representative of miners or applicant for employment in any coal or other mine subject to this chapter because such miner, representative of miners or applicant for employment has filed or made a complaint under or related to this chapter, including a complaint notifying the operator or the operator's agent, or the representative of the miners at the coal or other mine of an alleged danger or safety or health violation in a coal or other mine, or because such miner, representative of miners or applicant for employment is the subject of medical evaluations and potential transfer under a standard published pursuant to section 811 of this title or because such miner, representative of miners or applicant for employment has instituted or caused to be instituted any proceeding under or related to this chapter or has testified or is about to testify in any such proceeding, or because of the exercise by such miner, representative of miners or applicant for employment on behalf of himself or others of any statutory right afforded by this chapter.

(2) Any miner or applicant for employment or representative of miners who believes that he has been discharged, interfered with, or otherwise discriminated against by any person in violation of this subsection may, within 60 days after such violation occurs, file a complaint with the Secretary alleging such discrimination. Upon receipt of such complaint, the Secretary shall forward a copy of the complaint to the respondent and shall cause such investigation to be made as he deems appropriate. Such investigation shall commence within 15 days of the Secretary's receipt of the complaint, and if the Secretary finds that such complaint was not frivolously brought, the Commission, on an expedited basis upon application of the Secretary, shall order the immediate reinstatement of the miner pending final order on the complaint. If upon such investigation, the Secretary determines that the provisions of this subsection have been violated, he shall immediately file a complaint with the Commission, with service upon the alleged violator and the miner, applicant for employment, or representative of miners alleging such discrimination or interference and propose an order granting appropriate relief. The Commission shall afford an opportunity for a hearing (in accordance with section 554 of title 5 but without regard to subsection (a)(3) of such section) and thereafter shall issue an order, based upon findings of fact, affirming, modifying, or vacating the Secretary's proposed order, or directing other appropriate relief. Such order shall become final 30 days after its issuance. The Commission shall have authority in such proceedings to require a person committing a viola-

tion of this subsection to take such affirmative action to abate the violation as the Commission deems appropriate, including, but not limited to, the rehiring or reinstatement of the miner to his former position with back pay and interest. The complaining miner, applicant, or representative of miners may present additional evidence on his own behalf during any hearing held pursuant to his[1] paragraph.

(3) Within 90 days of the receipt of a complaint filed under paragraph (2), the Secretary shall notify, in writing, the miner, applicant for employment, or representative of miners of his determination whether a violation has occurred. If the Secretary, upon investigation, determines that the provisions of this subsection have not been violated, the complainant shall have the right, within 30 days of notice of the Secretary's determination, to file an action in his own behalf before the Commission, charging discrimination or interference in violation of paragraph (1). The Commission shall afford an opportunity for a hearing (in accordance with section 554 of title 5 but without regard to subsection (a)(3) of such section), and thereafter shall issue an order, based upon findings of fact, dismissing or sustaining the complainant's charges and, if the charges are sustained, granting such relief as it deems appropriate, including, but not limited to, an order requiring the rehiring or reinstatement of the miner to his former position with back pay and interest or such remedy as may be appropriate. Such order shall become final 30 days after its issuance. Whenever an order is issued sustaining the complainant's charges under this subsection, a sum equal to the aggregate amount of all costs and expenses (including attorney's fees) as determined by the Commission to have been reasonably incurred by the miner, applicant for employment or representative of miners for, or in connection with, the institution and prosecution of such proceedings shall be assessed against the person committing such violation. Proceedings under this section shall be expedited by the Secretary and the Commission. Any order issued by the Commission under this paragraph shall be subject to judicial review in accordance with section 816 of this title. Violations by any person of paragraph (1) shall be subject to the provisions of sections 818 and 820(a) of this title.

(d) Contest proceedings; hearing; findings of fact; affirmance, modification, or vacatur of citation, order, or proposed penalty; procedure before Commission

If, within 30 days of receipt thereof, an operator of a coal or other mine notifies the Secretary that he intends to contest the issuance or modification of an order issued under section 814 of this title, or citation or a notification of proposed assessment of a penalty issued under subsection (a) or (b) of this section, or the reasonableness of the length of abatement time fixed in a citation or modification thereof issued under section 814 of this title, or any miner or representative of miners notifies the Secretary of an intention to contest the issuance, modification, or termination of any order issued under section 814 of this title, or the reasonableness of the length of time set for abatement by a citation or modification thereof issued under section 814 of this title, the Secretary shall immediately advise the Commission of such notification, and the Commission shall afford an opportunity for a hearing (in accordance with section 554 of title 5, but without regard to subsection (a)(3) of such section), and thereafter shall issue an order, based on findings of fact, affirming, modifying, or vacating the Secretary's citation, order, or proposed penalty, or directing other appropriate relief. Such order shall become final 30 days after its issuance. The rules of procedure prescribed by the Commission shall provide affected miners or representatives of affected miners an opportunity to participate as parties to hearings under this section. The Commission shall take whatever action is necessary to expedite proceedings for hearing appeals of orders issued under section 814 of this title.

(Pub. L. 91–173, title I, § 105, Dec. 30, 1969, 83 Stat. 753; Pub. L. 95–164, title II, § 201, Nov. 9, 1977, 91 Stat. 1303.)

AMENDMENTS

1977—Subsec. (a). Pub. L. 95–164 substituted provisions under which the Secretary must notify the operator of the civil penalty he proposes to assess following the issuance of a citation or order and the operator must give notice that he will contest the citation or proposed assessment for provisions under which an operator was required to apply for review of an order issued under section 814 of this title and under which an investigation was made, hearings held, and information presented.

Subsec. (b). Pub. L. 95–164 substituted provisions relating to the steps to be taken following the failure of the operator to correct violations, including provisions relating to temporary relief formerly contained in subsec. (d), for provisions requiring the Secretary to make findings of fact and to issue a written decision upon receiving the report of an investigation.

Subsec. (c). Pub. L. 95–164 added subsec. (c). Former subsec. (c), directing the Secretary to take action under this section as promptly as possible, was incorporated into a part of par. (3).

Subsec. (d). Pub. L. 95–164 added subsec. (d). Former subsec. (d) redesignated (b)(2).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–164 effective 120 days after Nov. 9, 1977, except as otherwise provided, see section 307 of Pub. L. 95–164, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 814, 816, 820 of this title.

§ 816. Judicial review of Commission orders

(a) Petition by person adversely affected or aggrieved; temporary relief

(1) Any person adversely affected or aggrieved by an order of the Commission issued under this chapter may obtain a review of such order in any United States court of appeals for the circuit in which the violation is alleged to have occurred or in the United States Court of Appeals for the District of Columbia Circuit, by filing in such court within 30 days following the issuance of such order a written petition praying that the order be modified or set aside. A copy of such pe-

[1] So in original. Probably should be "this".

tition shall be forthwith transmitted by the clerk of the court to the Commission and to the other parties, and thereupon the Commission shall file in the court the record in the proceeding as provided in section 2112 of title 28. Upon such filing, the court shall have exclusive jurisdiction of the proceeding and of the questions determined therein, and shall have the power to make and enter upon the pleadings, testimony, and proceedings set forth in such record a decree affirming, modifying, or setting aside, in whole or in part, the order of the Commission and enforcing the same to the extent that such order is affirmed or modified. No objection that has not been urged before the Commission shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Commission with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Commission, the court may order such additional evidence to be taken before the Commission and to be made a part of the record. The Commission may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The Commission may modify or set aside its original order by reason of such modified or new findings of fact. Upon the filing of the record after such remand proceedings, the jurisdiction of the court shall be exclusive and its judgment and degree shall be final, except that the same shall be subject to review by the Supreme Court of the United States, as provided in section 1254 of title 28.

(2) In the case of a proceeding to review any order or decision issued by the Commission under this chapter, except an order or decision pertaining to an order issued under section 817(a) of this title or an order or decision pertaining to a citation issued under section 814(a) or (f) of this title, the court may, under such conditions as it may prescribe, grant such temporary relief as it deems appropriate pending final determination of the proceeding, if—

(A) all parties to the proceeding have been notified and given an opportunity to be heard on a request for temporary relief;

(B) the person requesting such relief shows that there is a substantial likelihood that he will prevail on the merits of the final determination of the proceeding; and

(C) such relief will not adversely affect the health and safety of miners in the coal or other mine.

(3) In the case of a proceeding to review any order or decision issued by the Panel under this chapter, the court may, under such conditions as it may prescribe, grant such temporary relief as it deems appropriate pending final determination of the proceeding, if—

(A) all parties to the proceeding have been notified and given an opportunity to be heard on a request for temporary relief; and

(B) the person requesting such relief shows that there is a substantial likelihood that he will prevail on the merits of the final determination of the proceeding.

(b) Petition by Secretary for review or enforcement of final Commission orders

The Secretary may also obtain review or enforcement of any final order of the Commission by filing a petition for such relief in the United States court of appeals for the circuit in which the alleged violation occurred or in the Court of Appeals for the District of Columbia Circuit, and the provisions of subsection (a) shall govern such proceedings to the extent applicable. If no petition for review, as provided in subsection (a) of this section, is filed within 30 days after issuance of the Commission's order, the Commission's findings of fact and order shall be conclusive in connection with any petition for enforcement which is filed by the Secretary after the expiration of such 30-day period. In any such case, as well as in the case of a noncontested citation or notification by the Secretary which has become a final order of the Commission under subsection (a) or (b) of section 815 of this title, the clerk of the court, unless otherwise ordered by the court, shall forthwith enter a decree enforcing the order and shall transmit a copy of such decree to the Secretary and the operator named in the petition. In any contempt proceeding brought to enforce a decree of a court of appeals entered pursuant to this subsection or subsection (a) of this section, the court of appeals may assess the penalties provided in section 820 of this title, in addition to invoking any other available remedies.

(c) Stay of order or decision of Commission or Panel

The commencement of a proceeding under this section shall not, unless specifically ordered by the court, operate as a stay of the order or decision of the Commission or the Panel.

(Pub. L. 91–173, title I, §106, Dec. 30, 1969, 83 Stat. 754; Pub. L. 95–164, title II, §201, Nov. 9, 1977, 91 Stat. 1306; Pub. L. 98–620, title IV, §402(34), Nov. 8, 1984, 98 Stat. 3360.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98–620 struck out provision that petitions filed under this subsection had to be heard expeditiously.

1977—Subsec. (a)(1). Pub. L. 95–164 added subsec. (a)(1) consisting of a revision of the provisions of former subsecs. (a), (b), (d), and (f) with additions to cover the proceedings in the reviewing court.

Subsec. (a)(2). Pub. L. 95–164 redesignated subsec. (c)(1) as (a)(2) and substituted ''issued by the Commission'' for ''issued by the Secretary'' and ''under section 817(a) of this title or an order or decision pertaining to a citation issued under section 814(a) or (f) of this title'' for ''under section 814(a) of this title or an order or decision pertaining to a notice issued under section 814(b) or (i) of this title'' in the provisions preceding subpar. (A).

Subsec. (a)(3). Pub. L. 95–164 redesignated subsec. (c)(2) as (a)(3).

Subsec. (b). Pub. L. 95–164 added subsec. (b). Provisions of former subsec. (b) were incorporated as revised into subsec. (a)(1).

Subsec. (c). Pub. L. 95–164 redesignated subsec. (e) as (c). Former subsec. (c), which consisted of pars. (1) and (2), redesignated (a)(2) and (3).

Subsec. (d). Pub. L. 95–164 struck out subsec. (d) and incorporated its provisions, relating to review by the Supreme Court, into subsec. (a)(1).

Subsec. (e). Pub. L. 95–164 redesignated subsec. (e) as (c).

Subsec. (f). Pub. L. 95–164 struck out subsec. (f) which related to the appointment of attorneys by the Secretary to represent him in proceedings instituted under this section.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98–620, set out as a note under section 1657 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–164 effective 120 days after Nov. 9, 1977, except as otherwise provided, see section 307 of Pub. L. 95–164, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 804, 814, 815, 817, 953 of this title.

§ 817. Procedures to counteract dangerous conditions

(a) Withdrawal orders

If, upon any inspection or investigation of a coal or other mine which is subject to this chapter, an authorized representative of the Secretary finds that an imminent danger exists, such representative shall determine the extent of the area of such mine throughout which the danger exists, and issue an order requiring the operator of such mine to cause all persons, except those referred to in section 814(c) of this title, to be withdrawn from, and to be prohibited from entering, such area until an authorized representative of the Secretary determines that such imminent danger and the conditions or practices which caused such imminent danger no longer exist. The issuance of an order under this subsection shall not preclude the issuance of a citation under section 814 of this title or the proposing of a penalty under section 820 of this title.

(b) Notice to mine operators; further investigation; findings and decision by Secretary

(1) If, upon any inspection of a coal or other mine, an authorized representative of the Secretary finds (A) that conditions exist therein which have not yet resulted in an imminent danger, (B) that such conditions cannot be effectively abated through the use of existing technology, and (C) that reasonable assurance cannot be provided that the continuance of mining operations under such conditions will not result in an imminent danger, he shall determine the area throughout which such conditions exist, and thereupon issue a notice to the operator of the mine or his agent of such conditions, and shall file a copy thereof, incorporating his findings therein, with the Secretary and with the representative of the miners of such mine. Upon receipt of such copy, the Secretary shall cause such further investigation to be made as he deems appropriate, including an opportunity for the operator or a representative of the miners to present information relating to such notice.

(2) Upon the conclusion of an investigation pursuant to paragraph (1), and an opportunity for a public hearing upon request by any interested party, the Secretary shall make findings of fact, and shall by decision incorporating such findings therein, either cancel the notice issued under this subsection or issue an order requiring the operator of such mine to cause all persons in the area affected, except those persons referred to in subsection (c) of section 814 of this title to be withdrawn from, and be prohibited from entering, such area until the Secretary, after a public hearing affording all interested persons an opportunity to present their views, determines that such conditions have been abated. Any hearing under this paragraph shall be of record and shall be subject to section 554 of title 5.

(c) Form and content of orders

Orders issued pursuant to subsection (a) of this section shall contain a detailed description of the conditions or practices which cause and constitute an imminent danger and a description of the area of the coal or other mine from which persons must be withdrawn and prohibited from entering.

(d) Findings; duration of orders

Each finding made and order issued under this section shall be given promptly to the operator of the coal or other mine to which it pertains by the person making such finding or order, and all of such findings and orders shall be in writing, and shall be signed by the person making them. Any order issued pursuant to subsection (a) of this section may be modified or terminated by an authorized representative of the Secretary. Any order issued under subsection (a) or (b) of this section shall remain in effect until vacated, modified, or terminated by the Secretary, or modified or vacated by the Commission pursuant to subsection (e) of this section, or by the courts pursuant to section 816(a) of this title.

(e) Reinstatement, modification, and vacatur of orders

(1) Any operator notified of an order under this section or any representative of miners notified of the issuance, modification, or termination of such an order may apply to the Commission within 30 days of such notification for reinstatement, modification or vacation of such order. The Commission shall forthwith afford an opportunity for a hearing (in accordance with section 554 of title 5 but without regard to subsection (a)(3) of such section) and thereafter shall issue an order, based upon findings of fact, vacating, affirming, modifying, or terminating the Secretary's order. The Commission and the courts may not grant temporary relief from the issuance of any order under subsection (a) of this section.

(2) The Commission shall take whatever action is necessary to expedite proceedings under this subsection.

(Pub. L. 91–173, title I, § 107, Dec. 30, 1969, 83 Stat. 755; Pub. L. 95–164, title II, § 201, Nov. 9, 1977, 91 Stat. 1307.)

AMENDMENTS

1977—Pub. L. 95–164 substituted provisions relating to the procedures to be followed to counteract dangerous conditions in coal or other mines for provisions relating to the posting of notices, orders, and decisions at coal mines, see section 819 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–164 effective 120 days after Nov. 9, 1977, except as otherwise provided, see section 307 of Pub. L. 95–164, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 816, 820, 821 of this title.

§ 818. Injunctions

(a) Civil action by Secretary

(1) The Secretary may institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order in the district court of the United States for the district in which a coal or other mine is located or in which the operator of such mine has his principal office, whenever such operator or his agent—

(A) violates or fails or refuses to comply with any order or decision issued under this chapter,

(B) interferes with, hinders, or delays the Secretary or his authorized representative, or the Secretary of Health and Human Services or his authorized representative, in carrying out the provisions of this chapter,

(C) refuses to admit such representatives to the coal or other mine,

(D) refuses to permit the inspection of the coal or other mine, or the investigation of an accident or occupational disease occurring in, or connected with, such mine,

(E) refuses to furnish any information or report requested by the Secretary or the Secretary of Health and Human Services in furtherance of the provisions of this chapter, or

(F) refuses to permit access to, and copying of, such records as the Secretary or the Secretary of Health and Human Services determines necessary in carrying out the provisions of this chapter.

(2) The Secretary may institute a civil action for relief, including permanent or temporary injunction, restraining order, or any other appropriate order in the district court of the United States for the district in which the coal or other mine is located or in which the operator of such mine has his principal office whenever the Secretary believes that the operator of a coal or other mine is engaged in a pattern of violation of the mandatory health or safety standards of this chapter, which in the judgment of the Secretary constitutes a continuing hazard to the health or safety of miners.

(b) Jurisdiction; relief; findings of Commission or Secretary

In any action brought under subsection (a) of this section, the court shall have jurisdiction to provide such relief as may be appropriate. In the case of an action under subsection (a)(2) of this section, the court shall in its order require such assurance or affirmative steps as it deems necessary to assure itself that the protection afforded to miners under this chapter shall be provided by the operator. Temporary restraining orders shall be issued in accordance with rule 65 of the Federal Rules of Civil Procedure, as amended, except that the time limit in such orders, when issued without notice, shall be seven days from the date of entry. Except as otherwise provided herein, any relief granted by the court to enforce any order under paragraph (1) of subsection (a) of this section shall continue in effect until the completion or final termination of all proceedings for review of such order under this subchapter, unless prior thereto, the district court granting such relief sets it aside or modifies it. In any action instituted under this section to enforce an order or decision issued by the Commission or the Secretary after a public hearing in accordance with section 554 of title 5, the findings of the Commission or the Secretary, as the case may be, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

(Pub. L. 91–173, title I, § 108, Dec. 30, 1969, 83 Stat. 756; Pub. L. 95–164, title II, § 201, Nov. 9, 1977, 91 Stat. 1309; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

REFERENCES IN TEXT

Rule 65 of the Federal Rules of Civil Procedure, referred to in subsec. (b), is set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

1977—Pub. L. 95–164 redesignated existing provisions as subsecs. (a)(1) and (b), added subsec. (a)(2), and in the redesignated provisions inserted references to findings of the Commission, inserted requirement that in actions brought under subsec. (a)(2) the courts require such assurances or affirmative action as they deem necessary to assure that the protections offered by this chapter to the miners be provided by the operator, and struck out provisions relating to the appointment of attorneys by the Secretary to represent him in actions under this section.

CHANGE OF NAME

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in subsec. (a)(1)(B), (F) pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–164 effective 120 days after Nov. 9, 1977, except as otherwise provided, see section 307 of Pub. L. 95–164, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 815 of this title.

§ 819. Posting of orders and decisions

(a) Mine office; bulletin board

At each coal or other mine there shall be maintained an office with a conspicuous sign designating it as the office of such mine. There shall be a bulletin board at such office or located at a conspicuous place near an entrance of such mine, in such manner that orders, citations, notices and decisions required by law or regulation to be posted, may be posted thereon,

and be easily visible to all persons desiring to read them, and be protected against damage by weather and against unauthorized removal. A copy of any order, citation, notice or decision required by this chapter to be given to an operator shall be delivered to the office of the affected mine, and a copy shall be immediately posted on the bulletin board of such mine by the operator or his agent.

(b) Distribution of orders, citations, notices, and decisions

The Secretary shall (1) cause a copy of any order, citation, notice, or decision required by this chapter to be given to an operator to be mailed immediately to a representative of the miners in the affected coal or other mine, and (2) cause a copy thereof to be mailed to the public official or agency of the State charged with administering State laws, if any, relating to health or safety in such mine. Such notice, order, citation, or decision shall be available for public inspection.

(c) Compliance

In order to insure prompt compliance with any notice, order, citation, or decision issued under this chapter, the authorized representative of the Secretary may deliver such notice, order, citation, or decision to an agent of the operator, and such agent shall immediately take appropriate measures to insure compliance with such notice, order, citation, or decision.

(d) Filing; designation of health and safety officers

Each operator of a coal or other mine subject to this chapter shall file with the Secretary the name and address of such mine and the name and address of the person who controls or operates the mine. Any revisions in such names or addresses shall be promptly filed with the Secretary. Each operator of a coal or other mine subject to this chapter shall designate a responsible official at such mine as the principal officer in charge of health and safety at such mine, and such official shall receive a copy of any notice, order, citation, or decision issued under this chapter affecting such mine. In any case where the mine is subject to the control of any person not directly involved in the daily operations of the coal or other mine, there shall be filed with the Secretary the name and address of such person and the name and address of a principal official of such person who shall have overall responsibility for the conduct of an effective health and safety program at any coal or other mine subject to the control of such person, and such official shall receive a copy of any notice, order, citation, or decision issued affecting any such mine. The mere designation of a health and safety official under this subsection shall not be construed as making such official subject to any penalty under this chapter.

(Pub. L. 91–173, title I, § 109, Dec. 30, 1969, 83 Stat. 756; Pub. L. 95–164, title II, § 201, Nov. 9, 1977, 91 Stat. 1310.)

AMENDMENTS

1977—Pub. L. 95–164 substituted provisions relating to the posting of orders and decisions for provisions setting out an enumeration of penalties, which provisions, as revised, were transferred to section 820 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–164 effective 120 days after Nov. 9, 1977, except as otherwise provided, see section 307 of Pub. L. 95–164, set out as a note under section 801 of this title.

§ 820. Penalties

(a) Civil penalty for violation of mandatory health or safety standards

The operator of a coal or other mine in which a violation occurs of a mandatory health or safety standard or who violates any other provision of this chapter, shall be assessed a civil penalty by the Secretary which penalty shall not be more than $50,000 for each such violation. Each occurrence of a violation of a mandatory health or safety standard may constitute a separate offense.

(b) Civil penalty for failure to correct violation for which citation has been issued

Any operator who fails to correct a violation for which a citation has been issued under section 814(a) of this title within the period permitted for its correction may be assessed a civil penalty of not more than $$5,000[1] for each day during which such failure or violation continues.

(c) Liability of corporate directors, officers, and agents

Whenever a corporate operator violates a mandatory health or safety standard or knowingly violates or fails or refuses to comply with any order issued under this chapter or any order incorporated in a final decision issued under this chapter, except an order incorporated in a decision issued under subsection (a) of this section or section 815(c) of this title, any director, officer, or agent of such corporation who knowingly authorized, ordered, or carried out such violation, failure, or refusal shall be subject to the same civil penalties, fines, and imprisonment that may be imposed upon a person under subsections (a) and (d) of this section.

(d) Criminal penalties

Any operator who willfully violates a mandatory health or safety standard, or knowingly violates or fails or refuses to comply with any order issued under section 814 of this title and section 817 of this title, or any order incorporated in a final decision issued under this subchapter, except an order incorporated in a decision under subsection (a) of this section or section 815(c) of this title, shall, upon conviction, be punished by a fine of not more than $25,000, or by imprisonment for not more than one year, or by both, except that if the conviction is for a violation committed after the first conviction of such operator under this chapter, punishment shall be by a fine of not more than $50,000, or by imprisonment for not more than five years, or both.

(e) Unauthorized advance notice of inspections

Unless otherwise authorized by this chapter, any person who gives advance notice of any inspection to be conducted under this chapter shall, upon conviction, be punished by a fine of

[1] So in original.

not more than $1,000 or by imprisonment for not more than six months, or both.

(f) False statements, representations, or certifications

Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this chapter shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than five years, or both.

(g) Violation by miners of safety standards relating to smoking

Any miner who willfully violates the mandatory safety standards relating to smoking or the carrying of smoking materials, matches, or lighters shall be subject to a civil penalty assessed by the Commission, which penalty shall not be more than $250 for each occurrence of such violation.

(h) Equipment falsely represented as complying with statute, specification, or regulations

Whoever knowingly distributes, sells, offers for sale, introduces, or delivers in commerce any equipment for use in a coal or other mine, including, but not limited to, components and accessories of such equipment, which is represented as complying with the provisions of this chapter, or with any specification or regulation of the Secretary applicable to such equipment, and which does not so comply, shall, upon conviction, be subject to the same fine and imprisonment that may be imposed upon a person under subsection (f) of this section.

(i) Authority to assess civil penalties

The Commission shall have authority to assess all civil penalties provided in this chapter. In assessing civil monetary penalties, the Commission shall consider the operator's history of previous violations, the appropriateness of such penalty to the size of the business of the operator charged, whether the operator was negligent, the effect on the operator's ability to continue in business, the gravity of the violation, and the demonstrated good faith of the person charged in attempting to achieve rapid compliance after notification of a violation. In proposing civil penalties under this chapter, the Secretary may rely upon a summary review of the information available to him and shall not be required to make findings of fact concerning the above factors.

(j) Payment of penalties; interest

Civil penalties owed under this chapter shall be paid to the Secretary for deposit into the Treasury of the United States and shall accrue to the United States and may be recovered in a civil action in the name of the United States brought in the United States district court for the district where the violation occurred or where the operator has its principal office. Interest at the rate of 8 percent per annum shall be charged against a person on any final order of the Commission, or the court. Interest shall begin to accrue 30 days after the issuance of such order.

(k) Compromise, mitigation, and settlement of penalty

No proposed penalty which has been contested before the Commission under section 815(a) of this title shall be compromised, mitigated, or settled except with the approval of the Commission. No penalty assessment which has become a final order of the Commission shall be compromised, mitigated, or settled except with the approval of the court.

(*l*) Inapplicability to black lung benefit provisions

The provisions of this section shall not be applicable with respect to subchapter IV of this chapter.

(Pub. L. 91–173, title I, § 110, Dec. 30, 1969, 83 Stat. 758; Pub. L. 95–164, title II, § 201, Nov. 9, 1977, 91 Stat. 1311; Pub. L. 101–508, title III, § 3102, Nov. 5, 1990, 104 Stat. 1388–29.)

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–508, § 3102(1), substituted ''$50,000'' for ''$10,000''.

Subsec. (b). Pub. L. 101–508, § 3102(2), substituted ''$5,000'' for ''1,000''.

1977—Pub. L. 95–164 substituted provisions setting the civil and criminal penalties with regard to violations of this chapter for provisions relating to claims of idled miners, which provisions, as revised, were transferred to section 821 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–164 effective 120 days after Nov. 9, 1977, except as otherwise provided, see section 307 of Pub. L. 95–164, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 815, 816, 817, 825 of this title.

§ 821. Entitlement of miners to full compensation

If a coal or other mine or area of such mine is closed by an order issued under section 813 of this title, section 814 of this title, or section 817 of this title, all miners working during the shift when such order was issued who are idled by such order shall be entitled, regardless of the result of any review of such order, to full compensation by the operator at their regular rates of pay for the period they are idled, but for not more than the balance of such shift. If such order is not terminated prior to the next working shift, all miners on that shift who are idled by such order shall be entitled to full compensation by the operator at their regular rates of pay for the period they are idled, but for not more than four hours of such shift. If a coal or other mine or area of such mine is closed by an order issued under section 814 of this title or section 817 of this title for a failure of the operator to comply with any mandatory health or safety standards, all miners who are idled due to such order shall be fully compensated after all interested parties are given an opportunity for a public hearing, which shall be expedited in such cases, and after such order is final, by the operator for lost time at their regular rates of pay for such time as the miners are idled by such closing, or for one week, whichever is the lesser. Whenever an operator violates or fails or refuses

to comply with any order issued under section 813 of this title, section 814 of this title, or section 817 of this title, all miners employed at the affected mine who would have been withdrawn from, or prevented from entering, such mine or area thereof as a result of such order shall be entitled to full compensation by the operator at their regular rates of pay, in addition to pay received for work performed after such order was issued, for the period beginning when such order was issued and ending when such order is complied with, vacated, or terminated. The Commission shall have authority to order compensation due under this section upon the filing of a complaint by a miner or his representative and after opportunity for hearing subject to section 554 of title 5.

(Pub. L. 91–173, title I, § 111, Dec. 30, 1969, 83 Stat. 759; Pub. L. 95–164, title II, § 201, Nov. 9, 1977, 91 Stat. 1312.)

AMENDMENTS

1977—Pub. L. 95–164 substituted provisions relating to the entitlement of miners to their full compensation when they are idled as the result of the operation of this chapter for provisions relating to the maintenance of records, which provisions, as revised, were transferred to section 813 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–164 effective 120 days after Nov. 9, 1977, except as otherwise provided, see section 307 of Pub. L. 95–164, set out as a note under section 801 of this title.

§ 822. Representation of Secretary in civil litigation by Solicitor of Labor

Except as provided in section 518(a) of title 28, relating to litigation before the Supreme Court, the Solicitor of Labor may appear for and represent the Secretary in any civil litigation brought under this chapter but all such litigation shall be subject to the direction and control of the Attorney General.

(Pub. L. 91–173, title I, § 112, as added Pub. L. 95–164, title II, § 201, Nov. 9, 1977, 91 Stat. 1313.)

PRIOR PROVISIONS

Provisions similar to this section were contained in section 816(f) of this title prior to the amendment of this subchapter by Pub. L. 95–164.

EFFECTIVE DATE

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

§ 823. Federal Mine Safety and Health Review Commission

(a) Establishment; membership; chairman

The Federal Mine Safety and Health Review Commission is hereby established. The Commission shall consist of five members, appointed by the President by and with the advice and consent of the Senate, from among persons who by reason of training, education, or experience are qualified to carry out the functions of the Commission under this chapter. The President shall designate one of the members of the Commission to serve as Chairman.

(b) Terms; personnel; administrative law judges

(1) The terms of the members of the Commission shall be six years, except that—

(A) members of the Commission first taking office after November 9, 1977, shall serve, as designated by the President at the time of appointment, one for a term of two years, two for a term of four years and two for a term of six years; and

(B) a vacancy caused by the death, resignation, or removal of any member prior to the expiration of the term for which he was appointed shall be filled only for the remainder of such unexpired term.

Any member of the Commission may be removed by the President for inefficiency, neglect of duty, or malfeasance in office.

(2) The Chairman shall be responsible on behalf of the Commission for the administrative operations of the Commission. The Commission shall appoint such employees as it deems necessary to assist in the performance of the Commission's functions and to fix their compensation in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5, relating to classification and general pay rates. Upon the effective date of the Federal Mine Safety and Health Amendments Act of 1977, the administrative law judges assigned to the Arlington, Virginia, facility of the Office of Hearings and Appeals, United States Department of the Interior, shall be automatically transferred in grade and position to the Federal Mine Safety and Health Review Commission. Notwithstanding the provisions of section 559 of title 5, the incumbent Chief Administrative Law Judge of the Office of Hearings and Appeals of the Department of the Interior assigned to the Arlington, Virginia facility shall have the option, on the effective date of the Federal Mine Safety and Health Amendments Act of 1977, of transferring to the Commission as an administrative law judge, in the same grade and position as the other administrative law judges. The administrative law judges (except those presiding over Indian Probate Matters) assigned to the Western facilities of the Office of Hearings and Appeals of the Department of the Interior shall remain with that Department at their present grade and position or they shall have the right to transfer on an equivalent basis to that extended in this paragraph to the Arlington, Virginia administrative law judges in accordance with procedures established by the Director of the Office of Personnel Management. The Commission shall appoint such additional administrative law judges as it deems necessary to carry out the functions of the Commission. Assignment, removal, and compensation of administrative law judges shall be in accordance with sections 3105, 3344, 5362 and 7521 of title 5.

(c) Delegation of powers

The Commission is authorized to delegate to any group of three or more members any or all of the powers of the Commission, except that two members shall constitute a quorum of any group designated pursuant to this paragraph.

(d) Proceedings before administrative law judge; administrative review

(1) An administrative law judge appointed by the Commission to hear matters under this chapter shall hear, and make a determination

upon, any proceeding instituted before the Commission and any motion in connection therewith, assigned to such administrative law judge by the chief administrative law judge of the Commission or by the Commission, and shall make a decision which constitutes his final disposition of the proceedings. The decision of the administrative law judge of the Commission shall become the final decision of the Commission 40 days after its issuance unless within such period the Commission has directed that such decision shall be reviewed by the Commission in accordance with paragraph (2). An administrative law judge shall not be assigned to prepare a recommended decision under this chapter.

(2) The Commission shall prescribe rules of procedure for its review of the decisions of administrative law judges in cases under this chapter which shall meet the following standards for review:

(A)(i) Any person adversely affected or aggrieved by a decision of an administrative law judge, may file and serve a petition for discretionary review by the Commission of such decision within 30 days after the issuance of such decision. Review by the Commission shall not be a matter of right but of the sound discretion of the Commission.

(ii) Petitions for discretionary review shall be filed only upon one or more of the following grounds:

(I) A finding or conclusion of material fact is not supported by substantial evidence.

(II) A necessary legal conclusion is erroneous.

(III) The decision is contrary to law or to the duly promulgated rules or decisions of the Commission.

(IV) A substantial question of law, policy or discretion is involved.

(V) A prejudicial error or procedure was committed.

(iii) Each issue shall be separately numbered and plainly and concisely stated, and shall be supported by detailed citations to the record when assignments of error are based on the record, and by statutes, regulations, or principal authorities relied upon. Except for good cause shown, no assignment of error by any party shall rely on any question of fact or law upon which the administrative law judge had not been afforded an opportunity to pass. Review by the Commission shall be granted only by affirmative vote of two of the Commissioners present and voting. If granted, review shall be limited to the questions raised by the petition.

(B) At any time within 30 days after the issuance of a decision of an administrative law judge, the Commission may in its discretion (by affirmative vote of two of the Commissioners present and voting) order the case before it for review but only upon the ground that the decision may be contrary to law or Commission policy, or that a novel question of policy has been presented. The Commission shall state in such order the specific issue of law, Commission policy, or novel question of policy involved. If a party's petition for discretionary review has been granted, the Commission shall not raise or consider additional issues in such review proceedings except in compliance with the requirements of this paragraph.

(C) For the purpose of review by the Commission under paragraph (A) or (B) of this subsection, the record shall include: (i) all matters constituting the record upon which the decision of the administrative law judge was based; (ii) the rulings upon proposed findings and conclusions; (iii) the decision of the administrative law judge; (iv) the petition or petitions for discretionary review, responses thereto, and the Commission's order for review; and (v) briefs filed on review. No other material shall be considered by the Commission upon review. The Commission either may remand the case to the administrative law judge for further proceedings as it may direct or it may affirm, set aside, or modify the decision or order of the administrative law judge in conformity with the record. If the Commission determines that further evidence is necessary on an issue of fact it shall remand the case for further proceedings before the administrative law judge.

(The provisions of section 557(b) of title 5 with regard to the review authority of the Commission are expressly superseded to the extent that they are inconsistent with the provisions of subparagraphs (A), (B), and (C) of this paragraph.)

(e) Witnesses and evidence; subpoenas; contempt

In connection with hearings before the Commission or its administrative law judges under this chapter, the Commission and its administrative law judges may compel the attendance and testimony of witnesses and the production of books, papers, or documents, or objects, and order testimony to be taken by deposition at any stage of the proceedings before them. Any person may be compelled to appear and depose and produce similar documentary or physical evidence, in the same manner as witnesses may be compelled to appear and produce evidence before the Commission and its administrative law judges. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the United States and at depositions ordered by such courts. In case of contumacy, failure, or refusal of any person to obey a subpoena or order of the Commission or an administrative law judge, respectively, to appear, to testify, or to produce documentary or physical evidence, any district court of the United States or the United States courts of any territory or possession, within the jurisdiction of which such person is found, or resides, or transacts business, shall, upon the application of the Commission, or the administrative law judge, respectively, have jurisdiction to issue to such person an order requiring such person to appear, to testify, or to produce evidence as ordered by the Commission or the administrative law judge, respectively, and any failure to obey such order of the court may be punished by the court as a contempt thereof.

(Pub. L. 91–173, title I, §113, as added Pub. L. 95–164, title II, §201, Nov. 9, 1977, 91 Stat. 1313; 1978 Reorg. Plan No. 2, §102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783.)

REFERENCES IN TEXT

For the effective date of the Federal Mine Safety and Health Amendments Act of 1977, referred to in subsec. (b)(2), see section 307 of Pub. L. 95–164, set out as an Ef-

fective Date of 1977 Amendment note under section 801 of this title.

PRIOR PROVISIONS

Provisions similar to this section were contained in section 729 of this title prior to its repeal by Pub. L. 95–164.

EFFECTIVE DATE

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

TRANSFER OF FUNCTIONS

''Director of the Office of Personnel Management'' substituted for ''Civil Service Commission'' in subsec. (b)(2) pursuant to Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred all functions vested by statute in United States Civil Service Commission to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1–102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

CROSS REFERENCES

Mine Safety and Health Administration, see section 557a of Title 29, Labor.

§ 823a. Principal office in District of Columbia; proceedings held elsewhere

The principal office of the Commission shall be in the District of Columbia. Whenever the Commission deems that convenience of the public or the parties may be promoted, or delay or expense may be minimized, it may hold hearings or conduct other proceedings at any other place.

(Pub. L. 95–164, title III, § 302(d), Nov. 9, 1977, 91 Stat. 1320.)

CODIFICATION

Section was enacted as part of Pub. L. 95–164, known as the Federal Mine Safety and Health Amendments Act of 1977, and not as part of Pub. L. 91–173, Dec. 30, 1969, 83 Stat. 742, known as the Federal Mine Safety and Health Act of 1977 which comprises this chapter.

EFFECTIVE DATE

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

§ 824. Authorization of appropriations

There are authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, such sums as may be necessary to carry out the provisions of this subchapter.

(Pub. L. 91–173, title I, § 114, as added Pub. L. 95–164, title II, § 201, Nov. 9, 1977, 91 Stat. 1315.)

EFFECTIVE DATE

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

§ 825. Mandatory health and safety training

(a) Approved program; regulations

Each operator of a coal or other mine shall have a health and safety training program which shall be approved by the Secretary. The Secretary shall promulgate regulations with respect to such health and safety training programs not more than 180 days after the effective date of the Federal Mine Safety and Health Amendments Act of 1977. Each training program approved by the Secretary shall provide as a minimum that—

(1) new miners having no underground mining experience shall receive no less than 40 hours of training if they are to work underground. Such training shall include instruction in the statutory rights of miners and their representatives under this chapter, use of the self-rescue device and use of respiratory devices, hazard recognition, escapeways, walk around training, emergency procedures, basic ventilation, basic roof control, electrical hazards, first aid, and the health and safety aspects of the task to which he will be assigned;

(2) new miners having no surface mining experience shall receive no less than 24 hours of training if they are to work on the surface. Such training shall include instruction in the statutory rights of miners and their representatives under this chapter, use of the self-rescue device where appropriate and use of respiratory devices where appropriate, hazard recognition, emergency procedures, electrical hazards, first aid, walk around training and the health and safety aspects of the task to which he will be assigned;

(3) all miners shall receive no less than eight hours of refresher training no less frequently than once each 12 months, except that miners already employed on the effective date of the Federal Mine Safety and Health Amendments Act of 1977 shall receive this refresher training no more than 90 days after the date of approval of the training plan required by this section;

(4) any miner who is reassigned to a new task in which he has had no previous work experience shall receive training in accordance with a training plan approved by the Secretary under this subsection in the safety and health aspects specific to that task prior to performing that task;

(5) any training required by paragraphs (1), (2) or (4) shall include a period of training as closely related as is practicable to the work in which the miner is to be engaged.

(b) Training compensation

Any health and safety training provided under subsection (a) of this section shall be provided during normal working hours. Miners shall be paid at their normal rate of compensation while they take such training, and new miners shall be paid at their starting wage rate when they take the new miner training. If such training shall be given at a location other than the normal place of work, miners shall also be compensated for the additional costs they may incur in attending such training sessions.

(c) Certificate

Upon completion of each training program, each operator shall certify, on a form approved by the Secretary, that the miner has received the specified training in each subject area of the approved health and safety training plan. A certificate for each miner shall be maintained by the operator, and shall be available for inspec-

tion at the mine site, and a copy thereof shall be given to each miner at the completion of such training. When a miner leaves the operator's employ, he shall be entitled to a copy of his health and safety training certificates. False certification by an operator that training was given shall be punishable under section 820(a) and (f) of this title; and each health and safety training certificate shall indicate on its face, in bold letters, printed in a conspicuous manner the fact that such false certification is so punishable.

(d) Standards

The Secretary shall promulgate appropriate standards for safety and health training for coal or other mine construction workers.

(e) Proposed regulations

Within 180 days after the effective date of the Federal Mine Safety and Health Amendments Act of 1977, the Secretary shall publish proposed regulations which shall provide that mine rescue teams shall be available for rescue and recovery work to each underground coal or other mine in the event of an emergency. The costs of making advance arrangements for such teams shall be borne by the operator of each such mine.

(Pub. L. 91–173, title I, §115, as added Pub. L. 95–164, title II, §201, Nov. 9, 1977, 91 Stat. 1315.)

REFERENCES IN TEXT

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

EFFECTIVE DATE

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 814 of this title.

SUBCHAPTER II—INTERIM MANDATORY HEALTH STANDARDS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 802, 813, 878, 938, 954, 960 of this title.

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

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

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

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

EFFECTIVE DATE

Subchapter operative six months after Dec. 30, 1969, except to the extent an earlier date is specifically provided for in Pub. L. 91–173, see section 509 of Pub. L. 91–173, set out as a note under section 801 of this title.

§842. Dust concentration and respiratory equipment

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

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

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

Except as otherwise provided in this subsection—

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

(2) Effective three years after December 30, 1969, each operator shall continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift

to which each miner in the active workings of such mine is exposed at or below 2.0 milligrams of respirable dust per cubic meter of air.

(3) Any operator who determines that he will be unable, using available technology, to comply with the provisions of paragraph (1) of this subsection, or the provisions of paragraph (2) of this subsection, as appropriate, may file with the Panel, no later than sixty days prior to the effective date of the applicable respirable dust standard established by such paragraphs, an application for a permit for noncompliance. If, in the case of an application for a permit for noncompliance with the 3.0 milligram standard established by paragraph (1) of this subsection, the application satisfies the requirements of subsection (c) of this section, the Panel shall issue a permit for noncompliance to the operator. If, in the case of an application for a permit for noncompliance with the 2.0 milligram standard established by paragraph (2) of this subsection, the application satisfies the requirements of subsection (c) of this section and the Panel determines that the applicant will be unable to comply with such standard, the Panel shall issue to the operator a permit for noncompliance.

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

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

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

(c) Applications for noncompliance; contents

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

(1) a representation by the applicant and the engineer conducting the survey referred to in paragraph (2) of this subsection that the applicant is unable to comply with the standard applicable under subsection (b)(1) or (b)(2) of this section at specified working places because the technology for reducing the concentration of respirable dust at such places is not available, or because of the lack of other effective control techniques or methods, or because of any combination of such reasons;

(2) an identification of the working places in such mine for which the permit is requested; the results of an engineering survey by a certified engineer of the respirable dust conditions of each working place of the mine with respect to which such application is filed and the ability to reduce such dust to the level required to be maintained in such place under this section; a description of the ventilation system of the mine and its capacity; the quantity and velocity of air regularly reaching the working faces; the method of mining; the amount and pressure of the water, if any, reaching the working faces; the number, location, and type of sprays, if any; action taken to reduce such dust; and such other information as the Panel may require; and

(3) statements by the applicant and the engineer conducting such survey, of the means and methods to be employed to achieve compliance with the applicable standard, the progress made toward achieving compliance, and an estimate of when compliance can be achieved.

(d) Promulgation of new standards; procedures

Beginning six months after the operative date of this subchapter and from time to time thereafter, the Secretary of Health and Human Services shall establish, in accordance with the provisions of section 811 of this title, a schedule reducing the average concentration of respirable dust in the mine atmosphere during each shift to which each miner in the active workings is exposed below the levels established in this section to a level of personal exposure which will prevent new incidences of respiratory disease and the further development of such disease in any person. Such schedule shall specify the minimum time necessary to achieve such levels taking into consideration present and future advancements in technology to reach these levels.

(e) Concentration of respirable dust

References to concentrations of respirable dust in this subchapter mean the average concentration of respirable dust measured with a device approved by the Secretary and the Secretary of Health and Human Services.

(f) Average concentration

For the purpose of this subchapter, the term ''average concentration'' means a determination

which accurately represents the atmospheric conditions with regard to respirable dust to which each miner in the active workings of a mine is exposed (1) as measured, during the 18 month period following December 30, 1969, over a number of continuous production shifts to be determined by the Secretary and the Secretary of Health and Human Services, and (2) as measured thereafter, over a single shift only, unless the Secretary and the Secretary of Health and Human Services find, in accordance with the provisions of section 811 of this title, that such single shift measurement will not, after applying valid statistical techniques to such measurement, accurately represent such atmospheric conditions during such shift.

(g) Compliance inspections

The Secretary shall cause to be made such frequent spot inspections as he deems appropriate of the active workings of coal mines for the purpose of obtaining compliance with the provisions of this subchapter.

(h) Maintenance of respiratory equipment; substitutes for environmental controls

Respiratory equipment approved by the Secretary and the Secretary of Health and Human Services shall be made available to all persons whenever exposed to concentrations of respirable dust in excess of the levels required to be maintained under this chapter. Use of respirators shall not be substituted for environmental control measures in the active workings. Each operator shall maintain a supply of respiratory equipment adequate to deal with occurrences of concentrations of respirable dust in the mine atmosphere in excess of the levels required to be maintained under this chapter.

(Pub. L. 91–173, title II, § 202, Dec. 30, 1969, 83 Stat. 760; Pub. L. 95–164, title II, § 202(a), Nov. 9, 1977, 91 Stat. 1317; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

REFERENCES IN TEXT

For the operative date of this subchapter, referred to in subsecs. (b)(1) and (d), see section 509 of Pub. L. 91–173, set out as a note under section 801 of this title.

AMENDMENTS

1977—Subsec. (e). Pub. L. 95–164 substituted a general reference to an ''approved device'' used to measure the average concentration of respirable dust for provisions which had referred to a specific device known as an ''MRE instrument''.

CHANGE OF NAME

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

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–164 effective Nov. 9, 1977, see section 307 of Pub. L. 95–164, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 814, 841 of this title.

§ 843. Medical examinations

(a) Chest roentgenogram; availability; periodic intervals; other tests; transmittal of results; advice of rights

The operator of a coal mine shall cooperate with the Secretary of Health and Human Services in making available to each miner working in a coal mine the opportunity to have a chest roentgenogram within eighteen months after December 30, 1969, a second chest roentgenogram within three years thereafter, and subsequent chest roentgenograms at such intervals thereafter of not to exceed five years as the Secretary of Health and Human Services prescribes. Each worker who begins work in a coal mine for the first time shall be given, as soon as possible after commencement of his employment, and again three years later if he is still engaged in coal mining, a chest roentgenogram; and in the event the second such chest roentgenogram shows evidence of the development of pneumoconiosis the worker shall be given, two years later if he is still engaged in coal mining, an additional chest roentgenogram. All chest roentgenograms shall be given in accordance with specifications prescribed by the Secretary of Health and Human Services and shall be supplemented by such other tests as the Secretary of Health and Human Services deems necessary. The films shall be read and classified in a manner to be prescribed by the Secretary of Health and Human Services, and the results of each reading on each such person and of such tests shall be submitted to the Secretary and to the Secretary of Health and Human Services, and, at the request of the miner, to his physician. The Secretary shall also submit such results to such miner and advise him of his rights under this chapter related thereto. Such specifications, readings, classifications, and tests shall, to the greatest degree possible, be uniform for all coal mines and miners in such mines.

(b) Evidence of pneumoconiosis; option to transfer; wages

(1) On and after the operative date of this subchapter, any miner who, in the judgment of the Secretary of Health and Human Services based upon such reading or other medical examinations, shows evidence of the development of pneumoconiosis shall be afforded the option of transferring from his position to another position in any area of the mine, for such period or periods as may be necessary to prevent further development of such disease, where the concentration of respirable dust in the mine atmosphere is not more than 2.0 milligrams of dust per cubic meter of air.

(2) Effective three years after December 30, 1969, any miner who, in the judgment of the Secretary of Health and Human Services based upon such reading or other medical examinations, shows evidence of the development of pneumoconiosis shall be afforded the option of transferring from his position to another position in any area of the mine, for such period or periods as may be necessary to prevent further development of such disease, where the concentration of respirable dust in the mine atmosphere is not

more than 1.0 millograms[1] of dust per cubic meter of air, or if such level is not attainable in such mine, to a position in such mine where the concentration of respirable dust is the lowest attainable below 2.0 milligrams per cubic meter of air.

(3) Any miner so transferred shall receive compensation for such work at not less than the regular rate of pay received by him immediately prior to his transfer.

(c) Costs of examinations and tests

No payment may be required of any miner in connection with any examination or test given him pursuant to this subchapter. Where such examinations or tests cannot be given, due to the lack of adequate medical or other necessary facilities or personnel, in the locality where the miner resides, arrangements shall be made to have them conducted, in accordance with the provisions of this subchapter, in such locality by the Secretary of Health and Human Services, or by an appropriate person, agency, or institution, public or private, under an agreement or arrangement between the Secretary of Health and Human Services and such person, agency, or institution. The operator of the mine shall reimburse the Secretary of Health and Human Services, or such person, agency, or institution, as the case may be, for the cost of conducting each examination or test made, in accordance with this subchapter, and shall pay whatever other costs are necessary to enable the miner to take such examinations or tests.

(d) Autopsies

If the death of any active miner occurs in any coal mine, or if the death of any active or inactive miner occurs in any other place, the Secretary of Health and Human Services is authorized to provide for an autopsy to be performed on such miner, with the consent of his surviving widow or, if he has no such widow, then with the consent of his surviving next of kin. The results of such autopsy shall be submitted to the Secretary of Health and Human Services and, with the consent of such survivor, to the miner's physician or other interested person. Such autopsy shall be paid for by the Secretary of Health and Human Services.

(Pub. L. 91–173, title II, § 203, Dec. 30, 1969, 83 Stat. 763; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

REFERENCES IN TEXT

For operative date of this subchapter, referred to in subsec. (b)(1), see section 509 of Pub. L. 91–173, set out as an Effective Date note under section 801 of this title.

CHANGE OF NAME

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 841 of this title.

§ 844. Rock dust and gas hazards; controls

The dust resulting from drilling in rock shall be controlled by the use of permissible dust collectors, or by water or water with a wetting agent, or by ventilation, or by any other method or device approved by the Secretary which is at least as effective in controlling such dust. Respiratory equipment approved by the Secretary and the Secretary of Health and Human Services shall be provided persons exposed for short periods to inhalation hazards from gas, dusts, fumes, or mist. When the exposure is for prolonged periods, other measures to protect such persons or to reduce the hazard shall be taken.

(Pub. L. 91–173, title II, § 204, Dec. 30, 1969, 83 Stat. 764; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

CHANGE OF NAME

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 841 of this title.

§ 845. Dust standards in presence of quartz

In coal mining operations where the concentration of respirable dust in the mine atmosphere of any working place contains more than 5 per centum quartz, the Secretary of Health and Human Services shall prescribe an appropriate formula for determining the applicable respirable dust standard under this subchapter for such working place and the Secretary shall apply such formula in carrying out his duties under this subchapter.

(Pub. L. 91–173, title II, § 205, Dec. 30, 1969, 83 Stat. 765; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

CHANGE OF NAME

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 841 of this title.

§ 846. Noise standards; promulgation of new standards; tests; procedures; protective devices

On and after the operative date of this subchapter, the standards on noise prescribed under the Walsh-Healey Public Contracts Act, as amended [41 U.S.C. 35 et seq.], in effect October 1, 1969, shall be applicable to each coal mine and each operator of such mine shall comply with them. Within six months after December 30, 1969, the Secretary of Health and Human Services shall establish, and the Secretary shall publish, as provided in section 811 of this title, proposed mandatory health standards establishing maximum noise exposure levels for all underground coal mines. Beginning six months after the operative date of this subchapter, and at intervals of at least every six months thereafter, the operator of each coal mine shall conduct, in a manner prescribed by the Secretary of Health and Human Services, tests by a qualified person

[1] So in original. Probably should be ''milligrams''.

of the noise level at the mine and report and certify the results to the Secretary and the Secretary of Health and Human Services. In meeting such standard under this section, the operator shall not require the use of any protective device or system, including personal devices, which the Secretary or his authorized representative finds to be hazardous or cause a hazard to the miners in such mine.

(Pub. L. 91–173, title II, § 206, Dec. 30, 1969, 83 Stat. 765; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

REFERENCES IN TEXT

For the operative date of this subchapter, referred to in text, see section 509 of Pub. L. 91–173, set out as an Effective Date note under section 801 of this title.

The Walsh-Healey Public Contracts Act, as amended, referred to in text, probably means act June 30, 1936, ch. 881, 49 Stat. 2036, as amended, known as the Walsh-Healey Act, which is classified generally to sections 35 to 45 of Title 41, Public Contracts. For complete classification of this Act to the Code, see Short Title note set out under section 35 of Title 41 and Tables. See also section 262 of Title 29, Labor.

CHANGE OF NAME

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 841 of this title.

SUBCHAPTER III—INTERIM MANDATORY SAFETY STANDARDS FOR UNDERGROUND COAL MINES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 802, 938, 960 of this title.

§ 861. Mandatory safety standards for underground mines

(a) Coverage; enforcement; review

The provisions of sections 862 through 878 of this title shall be interim mandatory safety standards applicable to all underground coal mines until superseded in whole or in part by improved mandatory safety standards promulgated by the Secretary under the provisions of section 811 of this title, and shall be enforced in the same manner and to the same extent as any mandatory safety standard promulgated under section 811 of this title. Any orders issued in the enforcement of the interim standards set forth in this subchapter shall be subject to review as provided in subchapter I of this chapter.

(b) Purpose; initiation of studies and research

The purpose of this subchapter is to provide for the immediate application of mandatory safety standards developed on the basis of experience and advances in technology and to prevent newly created hazards resulting from new technology in coal mining. The Secretary of the Interior in coordination with the Secretary shall immediately initiate studies, investigations, and research to further upgrade such standards and to develop and promulgate new and improved standards promptly that will provide increased protection to the miners, particularly in connection with hazards from trolley wires, trolley feeder wires, and signal wires, the splicing and use of trailing cables, and in connection with improvements in vulcanizing of electric conductors, improvement in roof control measures, methane drainage in advance of mining, improved methods of measuring methane and other explosive gases and oxygen concentrations, and the use of improved underground equipment and other sources of power for such equipment.

(Pub. L. 91–173, title III, § 301, Dec. 30, 1969, 83 Stat. 765; Pub. L. 95–164, title II, § 203, Nov. 9, 1977, 91 Stat. 1317.)

AMENDMENTS

1977—Subsec. (b). Pub. L. 95–164, § 203(a), substituted ''The Secretary of the Interior in coordination with the Secretary shall immediately initiate studies'' for ''The Secretary shall immediately initiate studies''.

Subsecs. (c), (d). Pub. L. 95–164, § 203(b), struck out subsec. (c) which related to the modification of standards, and subsec. (d) which related to the applicability of section 553 of title 5 in cases where the provisions of sections 862 to 878 of this title had provided that certain actions, conditions, or requirements be carried out as prescribed by the Secretary or the Secretary of Health, Education, and Welfare.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–164 effective 120 days after Nov. 9, 1977, except as otherwise provided, see section 307 of Pub. L. 95–164, set out as a note under section 801 of this title.

EFFECTIVE DATE

Subchapter operative 90 days after Dec. 30, 1969, except to the extent an earlier date is specifically provided for in Pub. L. 91–173, see section 509 of Pub. L. 91–173, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 951, 958 of this title.

§ 862. Roof support

(a) Roof control plan; contents; review; availability

Each operator shall undertake to carry out on a continuing basis a program to improve the roof control system of each coal mine and the means and measures to accomplish such system. The roof and ribs of all active underground roadways, travelways, and working places shall be supported or otherwise controlled adequately to protect persons from falls of the roof or ribs. A roof control plan and revisions thereof suitable to the roof conditions and mining system of each coal mine and approved by the Secretary shall be adopted and set out in printed form within sixty days after the operative date of this subchapter. The plan shall show the type of support and spacing approved by the Secretary. Such plan shall be reviewed periodically, at least every six months by the Secretary, taking into consideration any falls of roof or ribs or inadequacy of support of roof or ribs. No person shall proceed beyond the last permanent support unless adequate temporary support is provided or unless such temporary support is not required under the approved roof control plan and the ab-

sence of such support will not pose a hazard to the miners. A copy of the plan shall be furnished the Secretary or his authorized representative and shall be available to the miners and their representatives.

(b) Creation of dangers by roof falls

The method of mining followed in any coal mine shall not expose the miner to unusual dangers from roof falls caused by excessive widths of rooms and entries or faulty pillar recovery methods.

(c) Location and supply of roof support material; safety devices for roof work

The operator, in accordance with the approved plan, shall provide at or near each working face and at such other locations in the coal mine as the Secretary may prescribe an ample supply of suitable materials of proper size with which to secure the roof of all working places in a safe manner. Safety posts, jacks, or other approved devices shall be used to protect the workmen when roof material is being taken down, crossbars are being installed, roof bolt- holes are being drilled, roof bolts are being installed, and in such other circumstances as may be appropriate. Loose roof and overhanging or loose faces and ribs shall be taken down or supported. Except in the case of recovery work, supports knocked out shall be replaced promptly.

(d) Roof bolts

When installation of roof bolts is permitted, such roof bolts shall be tested in accordance with the approved roof control plan.

(e) Recovery of roof bolts

Roof bolts shall not be recovered where complete extractions of pillars are attempted, where adjacent to clay veins, or at the locations of other irregularities, whether natural or otherwise, that induce abnormal hazards. Where roof bolt recovery is permitted, it shall be conducted only in accordance with methods prescribed in the approved roof control plan, and shall be conducted by experienced miners and only where adequate temporary support is provided.

(f) Safety inspections; correction of dangerous conditions

Where miners are exposed to danger from falls of roof, face, and ribs the operator shall examine and test the roof, face, and ribs before any work or machine is started, and as frequently thereafter as may be necessary to insure safety. When dangerous conditions are found, they shall be corrected immediately.

(Pub. L. 91–173, title III, § 302, Dec. 30, 1969, 83 Stat. 766.)

REFERENCES IN TEXT

For the operative date of this subchapter, referred to in subsec. (a), see section 509 of Pub. L. 91–173, set out as an Effective Date note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 861 of this title.

§ 863. Ventilation

(a) Equipment; approval; daily examinations

All coal mines shall be ventilated by mechanical ventilation equipment installed and operated in a manner approved by an authorized representative of the Secretary and such equipment shall be examined daily and a record shall be kept of such examination.

(b) Standards for air in work areas

All active workings shall be ventilated by a current of air containing not less than 19.5 volume per centum of oxygen, not more than 0.5 volume per centum of carbon dioxide, and no harmful quantities of other noxious or poisonous gases; and the volume and velocity of the current of air shall be sufficient to dilute, render harmless, and to carry away, flammable, explosive, noxious, and harmful gases, and dust, and smoke and explosive fumes. The minimum quantity of air reaching the last open crosscut in any pair or set of developing entries and the last open crosscut in any pair or set of rooms shall be nine thousand cubic feet a minute, and the minimum quantity of air reaching the intake end of a pillar line shall be nine thousand cubic feet a minute. The minimum quantity of air in any coal mine reaching each working face shall be three thousand cubic feet a minute. Within three months after the operative date of this subchapter, the Secretary shall prescribe the minimum velocity and quantity of air reaching each working face of each coal mine in order to render harmless and carry away methane and other explosive gases and to reduce the level of respirable dust to the lowest attainable level. The authorized representative of the Secretary may require in any coal mine a greater quantity and velocity of air when he finds it necessary to protect the health or safety of miners. Within one year after the operative date of this subchapter, the Secretary or his authorized representative shall prescribe the maximum respirable dust level in the intake aircourses in each coal mine in order to reduce such level to the lowest attainable level. In robbing areas of anthracite mines, where the air currents cannot be controlled and measurements of the air cannot be obtained, the air shall have perceptible movement.

(c) Line brattice; functions; exceptions; repairs; flame resistant material

(1) Properly installed and adequately maintained line brattice or other approved devices shall be continuously used from the last open crosscut of an entry or room of each working section to provide adequate ventilation to the working faces for the miners and to remove flammable, explosive, and noxious gases, dust, and explosive fumes, unless the Secretary or his authorized representative permits an exception to this requirement, where such exception will not pose a hazard to the miners. When damaged by falls or otherwise, such line brattice or other devices shall be repaired immediately.

(2) The space between the line brattice or other approved device and the rib shall be large enough to permit the flow of a sufficient volume and velocity of air to keep the working face clear of flammable, explosive, and noxious gases, dust, and explosive fumes.

(3) Brattice cloth used underground shall be of flame-resistant material.

(d) Pre-shift examinations and tests; scope; violations of mandatory standards; notification; posting of "DANGER" signs; restriction of entry; records; re-entry

(1) Within three hours immediately preceding the beginning of any shift, and before any miner in such shift enters the active workings of a coal mine, certified persons designated by the operator of the mine shall examine such workings and any other underground area of the mine designated by the Secretary or his authorized representative. Each such examiner shall examine every working section in such workings and shall make tests in each such working section for accumulations of methane with means approved by the Secretary for detecting methane and shall make tests for oxygen deficiency with a permissible flame safety lamp or other means approved by the Secretary; examine seals and doors to determine whether they are functioning properly; examine and test the roof, face, and rib conditions in such working section; examine active roadways, travelways, and belt conveyors on which men are carried, approaches to abandoned areas, and accessible falls in such section for hazards; test by means of an anemometer or other device approved by the Secretary to determine whether the air in each split is traveling in its proper course and in normal volume and velocity; and examine for such other hazards and violations of the mandatory health or safety standards, as an authorized representative of the Secretary may from time to time require. Belt conveyors on which coal is carried shall be examined after each coal-producing shift has begun. Such mine examiner shall place his initials and the date and time at all places he examines. If such mine examiner finds a condition which constitutes a violation of a mandatory health or safety standard or any condition which is hazardous to persons who may enter or be in such area, he shall indicate such hazardous place by posting a "DANGER" sign conspiciously[1] at all points which persons entering such hazardous place would be required to pass, and shall notify the operator of the mine. No person, other than an authorized representative of the Secretary or a State mine inspector or persons authorized by the operator to enter such place for the purpose of eliminating the hazardous condition therein, shall enter such place while such sign is so posted. Upon completing his examination, such mine examiner shall report the results of his examination to a person, designated by the operator to receive such reports at a designated station on the surface of the mine, before other persons enter the underground areas of such mine to work in such shift. Each such mine examiner shall also record the results of his examination with ink or indelible pencil in a book approved by the Secretary kept for such purpose in an area on the surface of the mine chosen by the operator to minimize the danger of destruction by fire or other hazard, and the record shall be open for inspection by interested persons.

(2) No person (other than certified persons designated under this subsection) shall enter any underground area, except during any shift, unless an examination of such area as prescribed in this subsection has been made within eight hours immediately preceding his entrance into such area.

(e) Daily examinations and tests; scope; imminent danger; withdrawal of persons; abatement of danger

At least once during each coal-producing shift, or more often if necessary for safety, each working section shall be examined for hazardous conditions by certified persons designated by the operator to do so. Any such condition shall be corrected immediately. If such condition creates an imminent danger, the operator shall withdraw all persons from the area affected by such condition to a safe area, except those persons referred to in section 814(d) of this title, until the danger is abated. Such examination shall include tests for methane with a means approved by the Secretary for detecting methane and for oxygen deficiency with a permissible flame safety lamp or other means approved by the Secretary.

(f) Weekly examination for hazardous conditions; scope; notification; repairs; imminent danger; withdrawal of persons; abatement; records

In addition to the pre-shift and daily examinations required by this section, examination for hazardous conditions, including tests for methane, and for compliance with the mandatory health or safety standards, shall be made at least once each week by a certified person designated by the operator in the return of each split of air where it enters the main return, on pillar falls, at seals, in the main return, at least one entry of each intake and return aircourse in its entirety, idle workings, and, insofar as safety considerations permit, abandoned areas. Such weekly examination need not be made during any week in which the mine is idle for the entire week, except that such examination shall be made before any other miner returns to the mine. The person making such examinations and tests shall place his initials and the date and time at the places examined, and if any hazardous condition is found, such condition shall be reported to the operator promptly. Any hazardous condition shall be corrected immediately. If such condition creates an imminent danger, the operator shall withdraw all persons from the area affected by such condition to a safe area, except those persons referred to in section 814(d) of this title, until such danger is abated. A record of these examinations, tests, and actions taken shall be recorded in ink or indelible pencil in a book approved by the Secretary kept for such purpose in an area on the surface of the mine chosen by the mine operator to minimize the danger of destruction by fire or other hazard, and the record shall be open for inspection by interested persons.

(g) Weekly ventilation examinations; scope; records

At least once each week, a qualified person shall measure the volume of air entering the main intakes and leaving the main returns, the volume passing through the last open crosscut in any pair or set of developing entries and the

[1] So in original. Probably should be "conspicuously".

last open crosscut in any pair or set of rooms, the volume and, when the Secretary so prescribes, the velocity reaching each working face, the volume being delivered to the intake end of each pillar line, and the volume at the intake and return of each split of air. A record of such measurements shall be recorded in ink or indelible pencil in a book approved by the Secretary kept for such purpose in an area on the surface of the coal mine chosen by the operator to minimize the danger of destruction by fire or other hazard, and the record shall be open for inspection by interested persons.

(h) Methane examinations at working place; periodic intervals; standards; procedures for different air contents of methane

(1) At the start of each shift, tests for methane shall be made at each working place immediately before electrically operated equipment is energized. Such tests shall be made by qualified persons. If 1.0 volume per centum or more of methane is detected, electrical equipment shall not be energized, taken into, or operated in, such working place until the air therein contains less than 1.0 volume per centum of methane. Examinations for methane shall be made during the operation of such equipment at intervals of not more than twenty minutes during each shift, unless more frequent examinations are required by an authorized representative of the Secretary. In conducting such tests, such person shall use means approved by the Secretary for detecting methane.

(2) If at any time the air at any working place, when tested at a point not less than twelve inches from the roof, face, or rib, contains 1.0 volume per centum or more of methane, changes or adjustments shall be made at once in the ventilation in such mine so that such air shall contain less than 1.0 volume per centum of methane. While such changes or adjustments are underway and until they have been achieved, power to electric face equipment located in such place shall be cut off, no other work shall be permitted in such place, and due precautions shall be carried out under the direction of the operator or his agent so as not to endanger other areas of the mine. If at any time such air contains 1.5 volume per centum or more of methane, all persons, except those referred to in section 814(d) of this title, shall be withdrawn from the area of the mine endangered thereby to a safe area, and all electric power shall be cut off from the endangered area of the mine, until the air in such working place shall contain less than 1.0 volume per centum of methane.

(i) Methane examination of air returning from working section; periodic intervals; standards; procedures for different air contents; virgin territory

(1) If, when tested, a split of air returning from any working section contains 1.0 volume per centum or more of methane, changes or adjustments shall be made at once in the ventilation in the mine so that such returning air shall contain less than 1.0 volume per centum of methane. Tests under this paragraph and paragraph (2) of this subsection shall be made at four-hour intervals during each shift by a qualified person designated by the operator of the mine. In making such tests, such person shall use means approved by the Secretary for detecting methane.

(2) If, when tested, a split of air returning from any working section contains 1.5 volume per centum or more of methane, all persons, except those persons referred to in section 814(d) of this title, shall be withdrawn from the area of the mine endangered thereby to a safe area and all electric power shall be cut off from the endangered area of the mine, until the air in such split shall contain less than 1.0 volume per centum of methane.

(3) In virgin territory, if the quantity of air in a split ventilating the active workings in such territory equals or exceeds twice the minimum volume of air prescribed in subsection (b) of this section for the last open crosscut, if the air in the split returning from such workings does not pass over trolley wires or trolley feeder wires, and if a certified person designated by the operator is continually testing the methane content of the air in such split during mining operations in such workings, it shall be necessary to withdraw all persons, except those referred to in section 814(d) of this title, from the area of the mine endangered thereby to a safe area and all electric power shall be cut off from the endangered area only when the air returning from such workings contains 2.0 volume per centum or more of methane.

(j) Abandoned area air; pre-shift examination

Air which has passed by an opening of any abandoned area shall not be used to ventilate any working place in the coal mine if such air contains 0.25 volume per centum or more of methane. Examinations of such air shall be made during the pre-shift examination required by subsection (d) of this section. In making such tests, a certified person designated by the operator shall use means approved by the Secretary for detecting methane. For the purposes of this subsection, an area within a panel shall not be deemed to be abandoned until such panel is abandoned.

(k) Abandoned area air; inaccessible or unsafe for inspection; air from where pillars have been removed

Air that has passed through an abandoned area or an area which is inaccessible or unsafe for inspection shall not be used to ventilate any working place in any mine. No air which has been used to ventilate an area from which the pillars have been removed shall be used to ventilate any working place in a mine, except that such air, if it does not contain 0.25 volume per centum or more of methane, may be used to ventilate enough advancing working places immediately adjacent to the line of retreat to maintain an orderly sequence of pillar recovery on a set of entries.

(*l*) Methane monitors; required equipment; maintenance; warnings; deenergizing of equipment

The Secretary or his authorized representative shall require, as an additional device for detecting concentrations of methane, that a methane monitor, approved as reliable by the Secretary after the operative date of this subchapter, be installed, when available, on any electric face

cutting equipment, continuous miner, longwall face equipment, and loading machine, except that no monitor shall be required to be installed on any such equipment prior to the date on which such equipment is required to be permissible under section 865(a) of this title. When installed on any such equipment, such monitor shall be kept operative and properly maintained and frequently tested as prescribed by the Secretary. The sensing device of such monitor shall be installed as close to the working face as practicable. Such monitor shall be set to deenergize automatically such equipment when such monitor is not operating properly and to give a warning automatically when the concentration of methane reaches a maximum percentage determined by an authorized representative of the Secretary which shall not be more than 1.0 volume per centum of methane. An authorized representative of the Secretary shall require such monitor to deenergize automatically equipment on which it is installed when the concentration of methane reaches a maximum percentage determined by such representative which shall not be more than 2.0 volume per centum of methane.

(m) Idle area inspections; authorized inspectors

Idle and abandoned areas shall be inspected for methane and for oxygen deficiency and other dangerous conditions by a certified person with means approved by the Secretary as soon as possible but not more than three hours before other persons are permitted to enter or work in such areas. Persons, such as pumpmen, who are required regularly to enter such areas in the performance of their duties, and who are trained and qualified in the use of means approved by the Secretary for detecting methane and in the use of a permissible flame safety lamp or other means approved by the Secretary for detecting oxygen deficiency are authorized to make such examinations for themselves, and each such person shall be properly equipped and shall make such examinations upon entering any such area.

(n) Intentional roof falls; prior inspections; safeguards

Immediately before an intentional roof fall is made, pillar workings shall be examined by a qualified person designated by the operator to ascertain whether methane is present. Such person shall use means approved by the Secretary for detecting methane. If in such examination methane is found in amounts of 1.0 volume per centum or more, such roof fall shall not be made until changes or adjustments are made in the ventilation so that the air shall contain less than 1.0 volume per centum of methane.

(*o*) Methane and dust control plans; contents

A ventilation system and methane and dust control plan and revisions thereof suitable to the conditions and the mining system of the coal mine and approved by the Secretary shall be adopted by the operator and set out in printed form within ninety days after the operative date of this subchapter. The plan shall show the type and location of mechanical ventilation equipment installed and operated in the mine, such additional or improved equipment as the Secretary may require, the quantity and velocity of air reaching each working face, and such other information as the Secretary may require. Such plan shall be reviewed by the operator and the Secretary at least every six months.

(p) Devices for detection of methane and oxygen deficiency; maintenance

Each operator shall provide for the proper maintenance and care of the permissible flame safety lamp or any other approved device for detecting methane and oxygen deficiency by a person trained in such maintenance, and, before each shift, care shall be taken to insure that such lamp or other device is in a permissible condition.

(q) Pillar recovery; areas without bleeder systems

Where areas are being pillared on the operative date of this subchapter without bleeder entries, or without bleeder systems or an equivalent means, pillar recovery may be completed in the area, to the extent approved by an authorized representative of the Secretary, if the edges of pillar lines adjacent to active workings are ventilated with sufficient air to keep the air in open areas along the pillar lines below 1.0 volume per centum of methane.

(r) Overcast and undercast intake air split requirements; time extension

Each mechanized mining section shall be ventilated with a separate split of intake air directed by overcasts, undercasts, or the equivalent, except an extension of time, not in excess of nine months, may be permitted by the Secretary, under such conditions as he may prescribe, whenever he determines that this subsection cannot be complied with on the operative date of this subchapter.

(s) Blasting; prior and subsequent examinations for methane

In all underground areas of a coal mine, immediately before firing each shot or group of multiple shots and after blasting is completed, examinations for methane shall be made by a qualified person with means approved by the Secretary for detecting methane. If methane is found in amounts of 1.0 volume per centum or more, changes or adjustments shall be made at once in the ventilation so that the air shall contain less than 1.0 volume per centum of methane. No shots shall be fired until the air contains less than 1.0 volume per centum of methane.

(t) Mine fan stop plans; requisites

Each operator shall adopt a plan within sixty days after the operative date of this subchapter which shall provide that when any mine fan stops, immediate action shall be taken by the operator or his agent (1) to withdraw all persons from the working sections, (2) to cut off the power in the mine in a timely manner, (3) to provide for restoration of power and resumption of work if ventilation is restored within a reasonable period as set forth in the plan after the working places and other active workings where methane is likely to accumulate are reexamined by a certified person to determine if methane in amounts of 1.0 volume per centum or more exists therein, and (4) to provide for withdrawal of all persons from the mine if ventilation cannot

be restored within such reasonable time. The plan and revisions thereof approved by the Secretary shall be set out in printed form and a copy shall be furnished to the Secretary or his authorized representative.

(u) Modifications affecting main air current or any split; withdrawal of personnel; removal of power

Changes in ventilation which materially affect the main air current or any split thereof and which may affect the safety of persons in the coal mine shall be made only when the mine is idle. Only those persons engaged in making such changes shall be permitted in the mine during the change. Power shall be removed from the areas affected by the change before work starts to make the change and shall not be restored until the effect of the change has been ascertained and the affected areas determined to be safe by a certified person.

(v) Reading and countersigning of daily and weekly reports; foreman; superintendent

The mine foreman shall read and countersign promptly the daily reports of the pre-shift examiner and assistant mine foremen, and he shall read and countersign promptly the weekly report covering the examinations for hazardous conditions. Where such reports disclose hazardous conditions, they shall be corrected promptly. If such conditions create an imminent danger, the operator shall withdraw all persons from, or prevent any person from entering, as the case may be, the area affected by such conditions, except those persons referred to in section 814(d) of this title, until such danger is abated. The mine superintendent or assistant superintendent of the mine shall also read and countersign the daily and weekly reports of such persons.

(w) Daily mine condition reports; requisites; signatures

Each day, the mine foreman and each of his assistants shall enter plainly and sign with ink or indelible pencil in a book approved by the Secretary provided for that purpose a report of the condition of the mine or portion thereof under his supervision, which report shall state clearly the location and nature of any hazardous condition observed by him or reported to him during the day and what action was taken to remedy such condition. Such book shall be kept in an area on the surface of the mine chosen by the operator to minimize the danger of destruction by fire or other hazard, and shall be open for inspection by interested persons.

(x) Reopening of abandoned or declared inactive mine; notification; inspection

Before a coal mine is reopened after having been abandoned or declared inactive by the operator, the Secretary shall be notified, and an inspection shall be made of the entire mine by an authorized representative of the Secretary before mining operations commence.

(y) Separation of intake and return aircourses from belt haulage entries; standards

(1) In any coal mine opened after the operative date of this subchapter, the entries used as intake and return aircourses shall be separated from belt haulage entries, and each operator of such mine shall limit the velocity of the air coursed through belt haulage entries to the amount necessary to provide an adequate supply of oxygen in such entries, and to insure that the air therein shall contain less than 1.0 volume per centum of methane, and such air shall not be used to ventilate active working places. Whenever an authorized representative of the Secretary finds, in the case of any coal mine opened on or prior to the operative date of this subchapter which has been developed with more than two entries, that the conditions in the entries, other than belt haulage entries, are such as to permit adequately the coursing of intake or return air through such entries, (1) the belt haulage entries shall not be used to ventilate, unless such entries are necessary to ventilate, active working places, and (2) when the belt haulage entries are not necessary to ventilate the active working places, the operator of such mine shall limit the velocity of the air coursed through the belt haulage entries to the amount necessary to provide an adequate supply of oxygen in such entries, and to insure that the air therein shall contain less than 1.0 volume per centum of methane.

(2) In any coal mine opened on or after the operative date of this subchapter, or, in the case of a coal mine opened prior to such date, in any new working section of such mine, where trolley haulage systems are maintained and where trolley wires or trolley feeder wires are installed, an authorized representative of the Secretary shall require a sufficient number of entries or rooms as intake aircourses in order to limit, as prescribed by the Secretary, the velocity of air currents on such haulageways for the purpose of minimizing the hazards associated with fires and dust explosions in such haulageways.

(z) Pillar extractions; bleeder systems and sealing requirements; standards

(1) While pillars are being extracted in any area of a coal mine, such area shall be ventilated in the manner prescribed by this section.

(2) Within nine months after the operative date of this subchapter, all areas from which pillars have been wholly or partially extracted and abandoned areas, as determined by the Secretary or his authorized representative, shall be ventilated by bleeder entries or by bleeder systems or equivalent means, or be sealed, as determined by the Secretary or his authorized representative. When ventilation of such areas is required, such ventilation shall be maintained so as continuously to dilute, render harmless, and carry away methane and other explosive gases within such areas and to protect the active workings of the mine from the hazards of such methane and other explosive gases. Air coursed through underground areas from which pillars have been wholly or partially extracted which enters another split of air shall not contain more than 2.0 volume per centum of methane, when tested at the point it enters such other split. When sealing is required, such seals shall be made in an approved manner so as to isolate with explosion-proof bulkheads such areas from the active workings of the mine.

(3) In the case of mines opened on or after the operative date of this subchapter, or in the case

of working sections opened on or after such date in mines opened prior to such date, the mining system shall be designed in accordance with a plan and revisions thereof approved by the Secretary and adopted by such operator so that, as each working section of the mine is abandoned, it can be isolated from the active workings of the mine with explosion-proof seals or bulkheads.

(Pub. L. 91–173, title III, § 303, Dec. 30, 1969, 83 Stat. 767.)

REFERENCES IN TEXT

For the operative date of this subchapter, referred to in subsecs. (b), (*l*), (*o*), (q), (r), (t), (y), and (z)(2), (3), see section 509 of Pub. L. 91–173, set out as an Effective Date note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 861, 878 of this title.

§ 864. Combustible materials and rock dusting

(a) Accumulations; maintenance

Coal dust, including float coal dust deposited on rock-dusted surfaces, loose coal, and other combustible materials, shall be cleaned up and not be permitted to accumulate in active workings, or on electric equipment therein.

(b) Abatement of hazards in active working areas

Where underground mining operations in active workings create or raise excessive amounts of dust, water or water with a wetting agent added to it, or other no less effective methods approved by the Secretary or his authorized representative, shall be used to abate such dust. In working places, particularly in distances less than forty feet from the face, water, with or without a wetting agent, or other no less effective methods approved by the Secretary or his authorized representative, shall be applied to coal dust on the ribs, roof, and floor to reduce dispersibility and to minimize the explosion hazard.

(c) Rock dusting of all areas of underground mines; exceptions

All underground areas of a coal mine, except those areas in which the dust is too wet or too high in incombustible content to propagate an explosion, shall be rock dusted to within forty feet of all working faces, unless such areas are inaccessible or unsafe to enter or unless the Secretary or his authorized representative permits an exception upon his finding that such exception will not pose a hazard to the miners. All crosscuts that are less than forty feet from a working face shall also be rock dusted.

(d) Distribution of rock dust; places, quantities

Where rock dust is required to be applied, it shall be distributed upon the top, floor, and sides of all underground areas of a coal mine and maintained in such quantities that the incombustible content of the combined coal dust, rock dust, and other dust shall be not less than 65 per centum, but the incombustible content in the return aircourses shall be no less than 80 per centum. Where methane is present in any ventilating current, the per centum of incombustible content of such combined dusts shall be increased 1.0 and 0.4 per centum for each 0.1 per centum of methane where 65 and 80 per centum, respectively, of incombustibles are required.

(e) Limitation of applicability

Subsections (b) through (d) of this section shall not apply to underground anthracite mines.

(Pub. L. 91–173, title III, § 304, Dec. 30, 1969, 83 Stat. 774.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 861 of this title.

§ 865. Electrical equipment

(a) Allowable equipment; replacements; maintenance; permits for noncompliance; renewals; limitations; list of electric face equipment; survey of new and rebuilt equipment; publication of results

(1) Effective one year after the operative date of this subchapter—

(A) all junction or distribution boxes used for making multiple power connections inby the last open crosscut shall be permissible;

(B) all handheld electric drills, blower and exhaust fans, electric pumps, and such other low horsepower electric face equipment as the Secretary may designate within two months after the operative date of this subchapter which are taken into or used inby the last open crosscut of any coal mine shall be permissible;

(C) all electric face equipment which is taken into or used inby the last open crosscut of any coal mine classified under any provision of law as gassy prior to the operative date of this subchapter shall be permissible; and

(D) all other electric face equipment which is taken into or used inby the last crosscut of any coal mine, except a coal mine referred to in paragraph (2) of this subsection, which has not been classified under any provision of law as a gassy mine prior to the operative date of this subchapter shall be permissible.

(2) Effective four years after the operative date of this subchapter, all electric face equipment, other than equipment referred to in paragraph (1)(B) of this subsection, which is taken into or used inby the last open crosscut of any coal mine which is operated entirely in coal seams located above the watertable and which has not been classified under any provision of law as a gassy mine prior to the operative date of this subchapter and in which one or more openings were made prior to December 30, 1969, shall be permissible, except that any operator of such mine who is unable to comply with the provisions of this paragraph on such effective date may file with the Panel an application for a permit for noncompliance ninety days prior to such date. If the Panel determines, after notice to all interested persons and an opportunity for a public hearing under section 804 of this title, that such application satisfies the provisions of paragraph (10) of this subsection and that such operator, despite his diligent efforts, will be unable to comply with such provisions, the Panel may issue to such operator such a permit. Such per-

mit shall entitle the permittee to an additional extension of time to comply with the provisions of this paragraph of not to exceed twenty-four months, as determined by the Panel, from such effective date.

(3) The operator of each coal mine shall maintain in permissible condition all electric face equipment required by this subsection to be permissible which is taken into or used inby the last open crosscut of any such mine.

(4) Each operator of a coal mine shall, within two months after the operative date of this subchapter, file with the Secretary a statement listing all electric face equipment by type and manufacturer being used by such operator in connection with mining operations in such mine as of the date of such filing, and stating whether such equipment is permissible and maintained in permissible condition or is nonpermissible on such date of filing, and, if nonpermissible, whether such nonpermissible equipment has ever been rated as permissible, and such other information as the Secretary may require.

(5) The Secretary shall promptly conduct a survey as to the total availability of new or rebuilt permissible electric face equipment and replacement parts for such equipment and, within six months after the operative date of this subchapter, publish the results of such survey.

(6) Any operator of a coal mine who is unable to comply with the provisions of paragraph (1)(D) of this subsection within one year after the operative date of this subchapter may file with the Panel an application for a permit for noncompliance. If the Panel determines that such application satisfies the provisions of paragraph (10) of this subsection, the Panel shall issue to such operator a permit for noncompliance. Such permit shall entitle the permittee to an extension of time to comply with such provisions of paragraph (1)(D) of not to exceed twelve months, as determined by the Panel, from the date that compliance with the provisions of paragraph (1)(D) of this subsection is required.

(7) Any operator of a coal mine issued a permit under paragraph (6) of this subsection who, ninety days prior to the termination of such permit, or renewal thereof, determines that he will be unable to comply with the provisions of paragraph (1)(D) of this subsection upon the expiration of such permit may file with the Panel an application for renewal thereof. Upon receipt of such application, the Panel, if it determines, after notice to all interested persons and an opportunity for a public hearing under section 804 of this title, that such application satisfies the provisions of paragraph (10) of this subsection and that such operator, despite his diligent efforts, will be unable to comply with the provisions of paragraph (1)(D), may renew the permit for a period not exceeding twelve months.

(8) Any permit or renewal thereof issued pursuant to this subsection shall entitle the permittee to use such nonpermissible electric face equipment specified in the permit during the term of such permit.

(9) Permits for noncompliance issued under paragraphs (6) or (7) of this subsection shall, in the aggregate, not extend the period of noncompliance more than forty-eight months after December 30, 1969.

(10) Any application for a permit of noncompliance filed under this subsection shall contain a statement by the operator—

(A) that he is unable to comply with paragraph (1)(D) or paragraph (2) of this subsection, as appropriate, within the time prescribed;

(B) listing the nonpermissible electric face equipment being used by such operator in connection with mining operations in such mine on the operative date of this subchapter and the date of the application by type and manufacturer for which a noncompliance permit is requested and whether such equipment had ever been rated as permissible;

(C) setting forth the actions taken from and after the operative date of this subchapter to comply with paragraph (1)(D) or paragraph (2) of this subsection, as appropriate, together with a plan setting forth a schedule of compliance with said paragraphs for each such equipment referred to in such paragraphs and being used by the operator in connection with mining operations in such mine with respect to which such permit is requested and the means and measures to be employed to achieve compliance; and

(D) including such other information as the Panel may require.

(11) No permit for noncompliance shall be issued under this subsection for any nonpermissible electric face equipment, unless such equipment was being used by an operator in connection with the mining operations in a coal mine on the operative date of this subchapter.

(12) Effective one year after the operative date of this subchapter, all replacement equipment acquired for use in any mine referred to in this subsection shall be permissible and shall be maintained in a permissible condition, and in the event of any major overhaul of any item of equipment in use one year from the operative date of this subchapter such equipment shall be put in, and thereafter maintained in, a permissible condition, unless, in the opinion of the Secretary, such equipment or necessary replacement parts are not available.

(b) Notification of permits

A copy of any permit granted under this section shall be mailed immediately to a representative of the miners of the mine to which it pertains, and to the public official or agency of the State charged with administering State laws relating to coal mine health and safety in such mine.

(c) Gassy mines; maintenance of equipment

Any coal mine which, prior to the operative date of this subchapter, was classed gassy under any provision of law and was required to use permissible electric face equipment and to maintain such equipment in a permissible condition shall continue to use such equipment and to maintain such equipment in such condition.

(d) Location of nonpermissible power connection units

All power-connection points, except where permissible power connection units are used, outby the last open crosscut shall be in intake air.

(e) Mine map; contents; modifications

The location and the electrical rating of all stationary electric apparatus in connection with the mine electric system, including permanent cables, switchgear, rectifying substations, transformers, permanent pumps and trolley wires and trolley feeder wires, and settings of all direct-current circuit breakers protecting underground trolley circuits, shall be shown on a mine map. Any changes made in a location, electric rating, or setting shall be promptly shown on the map when the change is made. Such map shall be available to an authorized representative of the Secretary and to the miners in such mine.

(f) Repairs; deenergizing of equipment; authorized personnel; locking out of disconnection devices

All power circuits and electric equipment shall be deenergized before work is done on such circuits and equipment, except when necessary for trouble shooting or testing. In addition, energized trolley wires may be repaired only by a person trained to perform electrical work and to maintain electrical equipment and the operator of such mine shall require that such person wear approved and tested insulated shoes and wireman's gloves. No electrical work shall be performed on low-, medium-, or high-voltage distribution circuits or equipment, except by a qualified person or by a person trained to perform electrical work and to maintain electrical equipment under the direct supervision of a qualified person. Disconnecting devices shall be locked out and suitably tagged by the persons who performed such work, except that, in cases where locking out is not possible, such devices shall be opened and suitably tagged by such persons. Locks or tags shall be removed only by the persons who installed them or, if such persons are unavailable, by persons authorized by the operator or his agent.

(g) Periodic examinations; maintenance; records; accessibility

All electric equipment shall be frequently examined, tested, and properly maintained by a qualified person to assure safe operating conditions. When a potentially dangerous condition is found on electric equipment, such equipment shall be removed from service until such condition is corrected. A record of such examinations shall be kept and made available to an authorized representative of the Secretary and to the miners in such mine.

(h) Electrical conductors

All electric conductors shall be sufficient in size and have adequate current-carrying capacity and be of such construction that a rise in temperature resulting from normal operation will not damage the insulating materials.

(i) Electrical connections

All electrical connections or splices in conductors shall be mechanically and electrically efficient, and suitable connectors shall be used. All electrical connections or splices in insulated wire shall be reinsulated at least to the same degree of protection as the remainder of the wire.

(j) Cables and wires; entry through metal frames

Cables shall enter metal frames of motors, splice boxes, and electric compartments only through proper fittings. When insulated wires other than cables pass through metal frames the holes shall be substantially bushed with insulated bushings.

(k) Support of power wires

All power wires (except trailing cables on mobile equipment, specially designed cables conducting high-voltage power to underground rectifying equipment or transformers, or bare or insulated ground and return wires) shall be supported on well-insulated insulators and shall not contact combustible material, roof, or ribs.

(*l*) Insulation of power wires; exceptions

Power wires and cables, except trolley wires, trolley feeder wires, and bare signal wires, shall be insulated adequately and fully protected.

(m) Circuit breakers; overload protection for three-phase motors

Automatic circuit-breaking devices or fuses of the correct type and capacity shall be installed so as to protect all electric equipment and circuits against short circuit and overloads. Three-phase motors on all electric equipment shall be provided with overload protection that will deenergize all three phases in the event that any phase is overloaded.

(n) Disconnecting switches for main power circuits; location and installation

In all main power circuits, disconnecting switches shall be installed underground within five hundred feet of the bottoms of shafts and boreholes through which main power circuits enter the underground area of the mine and within five hundred feet of all other places where main power circuits enter the underground area of the mine.

(*o*) Switches

All electric equipment shall be provided with switches or other controls that are safely designed, constructed, and installed.

(p) Lightning arresters

Each ungrounded, exposed power conductor that leads underground shall be equipped with suitable lightning arresters of approved type within one hundred feet of the point where the circuit enters the mine. Lightning arresters shall be connected to a low resistance grounding medium on the surface which shall be separated from neutral grounds by a distance of not less than twenty-five feet.

(q) Nonapproved devices

No device for the purpose of lighting any coal mine which has not been approved by the Secretary or his authorized representative shall be permitted in such mine.

(r) Deenergizing of electric face equipment

An authorized representative of the Secretary may require in any mine that electric face equipment be provided with devices that will permit the equipment to be deenergized quickly in the event of an emergency.

(Pub. L. 91–173, title III, §305, Dec. 30, 1969, 83 Stat. 775.)

REFERENCES IN TEXT

For the operative date of this subchapter, referred to in subsecs. (a)(1), (2), (4) to (6), (10)(B), (C), (11), (12), and

(c), see section 509 of Pub. L. 91–173, set out as an Effective Date note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 861, 863, 878 of this title.

§ 866. Trailing cables

(a) Requirements established for flame resistant cables

Trailing cables used in coal mines shall meet the requirements established by the Secretary for flame-resistant cables.

(b) Circuit breakers; markings and visual observation of position of disconnection devices

Short-circuit protection for trailing cables shall be provided by an automatic circuit breaker or other no less effective device approved by the Secretary of adequate current-interrupting capacity in each ungrounded conductor. Disconnecting devices used to disconnect power from trailing cables shall be plainly marked and identified and such devices shall be equipped or designed in such a manner that it can be determined by visual observation that the power is disconnected.

(c) Distribution center junctions; safety connections

When two or more trailing cables junction to the same distribution center, means shall be provided to assure against connecting a trailing cable to the wrong size circuit breaker.

(d) Temporary splices; usable period; exceptions; quality

One temporary splice may be made in any trailing cable. Such trailing cable may only be used for the next twenty-four hour period. No temporary splice shall be made in a trailing cable within twenty-five feet of the machine, except cable reel equipment. Temporary splices in trailing cables shall be made in a workmanlike manner and shall be mechanically strong and well insulated. Trailing cables or hand cables which have exposed wires or which have splices that heat or spark under load shall not be used. As used in this subsection, the term ''splice'' means the mechanical joining of one or more conductors that have been severed.

(e) Permanent splices; quality

When permanent splices in trailing cables are made, they shall be—

(1) mechanically strong with adequate electrical conductivity and flexibility;

(2) effectively insulated and sealed so as to exclude moisture; and

(3) vulcanized or otherwise treated with suitable materials to provide flame-resistant qualities and good bonding to the outer jacket.

(f) Clamping of cables

Trailing cables shall be clamped to machines in a manner to protect the cables from damage and to prevent strain on the electrical connections. Trailing cables shall be adequately protected to prevent damage by mobile equipment.

(g) Making and breaking of connections to junction boxes

Trailing cable and power cable connections to junction boxes shall not be made or broken under load.

(Pub. L. 91–173, title III, § 306, Dec. 30, 1969, 83 Stat. 779.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 861 of this title.

§ 867. Grounding of equipment

(a) Metallic enclosed power conductors; metallic frames and other equipment; methods

All metallic sheaths, armors, and conduits enclosing power conductors shall be electrically continuous throughout and shall be grounded by methods approved by an authorized representative of the Secretary. Metallic frames, casings, and other enclosures of electric equipment that can become ''alive'' through failure of insulation or by contact with energized parts shall be grounded by methods approved by an authorized representative of the Secretary. Methods other than grounding which provide no less effective protection may be permitted by the Secretary or his authorized representative.

(b) Frames of offtrack direct current machines; enclosures of related detached components

The frames of all offtrack direct current machines and the enclosures of related detached components shall be effectively grounded, or otherwise maintained at no less safe voltages, by methods approved by an authorized representative of the Secretary.

(c) Stationary high-voltage equipment powered by underground delta systems

The frames of all stationary high-voltage equipment receiving power from ungrounded delta systems shall be grounded by methods approved by an authorized representative of the Secretary.

(d) Repairs of high-voltage lines; exceptions

High-voltage lines, both on the surface and underground, shall be deenergized and grounded before work is performed on them, except that repairs may be permitted, in the case of energized surface high-voltage lines, if such repairs are made by a qualified person in accordance with procedures and safeguards, including, but not limited to a requirement that the operator of such mine provide, test, and maintain protective devices in making such repairs, to be prescribed by the Secretary prior to the operative date of this subchapter.

(e) Deenergizing of underground power circuits on idle days; exceptions

When not in use, power circuits underground shall be deenergized on idle days and idle shifts, except that rectifiers and transformers may remain energized.

(Pub. L. 91–173, title III, § 307, Dec. 30, 1969, 83 Stat. 780.)

REFERENCES IN TEXT

For the operative date of this subchapter, referred to in subsec. (d), see section 509 of Pub. L. 91–173, set out as an Effective Date note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 861 of this title.

§ 868. Underground high-voltage distribution

(a) Circuits entering underground areas of mines; circuit breakers

High-voltage circuits entering the underground area of any coal mine shall be protected by suitable circuit breakers of adequate interrupting capacity which are properly tested and maintained as prescribed by the Secretary. Such breakers shall be equipped with devices to provide protection against under-voltage, grounded phase, short circuit, and overcurrent.

(b) Circuits extending underground and supplying equipment; direct neutral grounds; ground conductors for frames, exceptions; location of disconnection devices, exceptions

High-voltage circuits extending underground and supplying portable, mobile, or stationary high-voltage equipment shall contain either a direct or derived neutral which shall be grounded through a suitable resistor at the source transformers, and a grounding circuit, originating at the grounded side of the grounding resistor, shall extend along with the power conductors and serve as a grounding conductor for the frames of all high-voltage equipment supplied power from that circuit, except that the Secretary or his authorized representative may permit ungrounded high-voltage circuits to be extended underground to feed stationary electrical equipment if such circuits are either steel armored or installed in grounded, rigid steel conduit throughout their entire length, and upon his finding that such exception does not pose a hazard to the miners. Within one hundred feet of the point on the surface where high-voltage circuits enter the underground portion of the mine, disconnecting devices shall be installed and so equipped or designed in such a manner that it can be determined by visual observation that the power is disconnected, except that the Secretary or his authorized representative may permit such devices to be installed at a greater distance from such area of the mine if he determines, based on existing physical conditions, that such installation will be more accessible at a greater distance and will not pose any hazard to the miners.

(c) Grounding resistors

The grounding resistor, where required, shall be of the proper ohmic value to limit the voltage drop in the grounding circuit external to the resistor to not more than 100 volts under fault conditions. The grounding resistor shall be rated for maximum fault current continuously and insulated from ground for a voltage equal to the phase-to-phase voltage of the system.

(d) Inclusion of fail safe ground check circuits in resistance grounded systems; operative functions; time extension

Six months after the operative date of this subchapter, high-voltage, resistance grounded systems shall include a fail safe ground check circuit to monitor continuously the grounding circuit to assure continuity and the fail safe ground check circuit shall cause the circuit breaker to open when either the ground or pilot check wire is broken, or other no less effective device approved by the Secretary or his authorized representative to assure such continuity, except that an extension of time, not in excess of twelve months, may be permitted by the Secretary on a mine-by-mine basis if he determines that such equipment is not available.

(e) Underground cables used in resistance grounded systems; metallic shields for power conductors; standards; splices

(1) Underground high-voltage cables used in resistance grounded systems shall be equipped with metallic shields around each power conductor, with one or more ground conductors having a total cross-sectional area of not less than one-half the power conductor, and with an insulated internal or external conductor not smaller than No. 8 (AWG) for the ground continuity check circuit.

(2) All such cables shall be adequate for the intended current and voltage. Splices made in such cables shall provide continuity of all components.

(f) Couplers for power circuits; guidelines for construction

Couplers that are used with medium-voltage or high-voltage power circuits shall be of the three-phase type with a full metallic shell, except that the Secretary may permit, under such guidelines as he may prescribe, no less effective couplers constructed of materials other than metal. Couplers shall be adequate for the voltage and current expected. All exposed metal on the metallic couplers shall be grounded to the ground conductor in the cable. The coupler shall be constructed so that the ground check continuity conductor shall be broken first and the ground conductors shall be broken last when the coupler is being uncoupled.

(g) Connections of single-phase loads

Single-phase loads, such as transformer primaries, shall be connected phase to phase.

(h) Installation of underground transmission cables

All underground high-voltage transmission cables shall be installed only in regularly inspected air courses and haulageways, and shall be covered, buried, or placed so as to afford protection against damage, guarded where men regularly work or pass under them unless they are six and one-half feet or more above the floor or rail, securely anchored, properly insulated, and guarded at ends, and covered, insulated, or placed to prevent contact with trolley wires and other low-voltage circuits.

(i) Disconnection devices; location; visual observation of position of switch

Disconnecting devices shall be installed at the beginning of branch lines in high-voltage circuits and equipped or designed in such a manner that it can be determined by visual observation that the circuit is deenergized when the switches are open.

(j) Circuit breakers and disconnection devices; markings

Circuit breakers and disconnecting switches underground shall be marked for identification.

(k) Splices in cables used as trailing cables; terminations and splices in other cables

In the case of high-voltage cables used as trailing cables, temporary splices shall not be used and all permanent splices shall be made in accordance with section 866(e) of this title. Terminations and splices in all other high-voltage cables shall be made in accordance with the manufacturer's specifications.

(*l*) Grounding of frames of underground equipment

Frames, supporting structures, and enclosures of stationary, portable, or mobile underground high-voltage equipment and all high-voltage equipment supplying power to such equipment receiving power from resistance grounded systems shall be effectively grounded to the high-voltage ground.

(m) Moving of power centers, transformers, and cables; deenergizing; exceptions; safety guidelines; record of examinations

Power centers and portable transformers shall be deenergized before they are moved from one location to another, except that, when equipment powered by sources other than such centers or transformers is not available, the Secretary may permit such centers and transformers to be moved while energized, if he determines that another equivalent or greater hazard may otherwise be created, and if they are moved under the supervision of a qualified person, and if such centers and transformers are examined prior to such movement by such person and found to be grounded by methods approved by an authorized representative of the Secretary and otherwise protected from hazards to the miner. A record shall be kept of such examinations. High-voltage cables, other than trailing cables, shall not be moved or handled at any time while energized, except that, when such centers and transformers are moved while energized as permitted under this subsection, energized high-voltage cables attached to such centers and transformers may be moved only by a qualified person and the operator of such mine shall require that such person wear approved and tested insulated wire-man's gloves.

(Pub. L. 91–173, title III, § 308, Dec. 30, 1969, 83 Stat. 780.)

REFERENCES IN TEXT

For the operative date of this subchapter, referred to in subsec. (d), see section 509 of Pub. L. 91–173, set out as an Effective Date note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 861 of this title.

§ 869. Underground low- and medium-voltage alternating current circuits

(a) Circuits providing power for three-phase equipment; circuit breakers

Low- and medium-voltage power circuits serving three-phase alternating current equipment shall be protected by suitable circuit breakers of adequate interrupting capacity which are properly tested and maintained as prescribed by the Secretary. Such breakers shall be equipped with devices to provide protection against under-voltage, grounded phase, short circuit, and over-current.

(b) Circuits used underground; direct neutral grounds; ground conductors for frames; exceptions; grounding resistors

Low- and medium-voltage three-phase alternating-current circuits used underground shall contain either a direct or derived neutral which shall be grounded through a suitable resistor at the power center, and a grounding circuit, originating at the grounded side of the grounding resistor, shall extend along with the power conductors and serve as a grounding conductor for the frames of all the electrical equipment supplied power from that circuit, except that the Secretary or his authorized representative may permit ungrounded low- and medium-voltage circuits to be used underground to feed such stationary electrical equipment if such circuits are either steel armored or installed in grounded rigid steel conduit throughout their entire length. The grounding resistor, where required, shall be of the proper ohmic value to limit the ground fault current to 25 amperes. The grounding resistor shall be rated from maximum fault current continuously and insulated from ground for a voltage equal to the phase-to-phase voltage of the system.

(c) Inclusion of fail safe ground check circuits in resistance ground systems; operative functions; time extension; couplers for power circuits; guidelines for construction

Six months after the operative date of this subchapter, low- and medium-voltage resistance grounded systems shall include a fail safe ground check circuit to monitor continuously the grounding circuit to assure continuity which ground check circuit shall cause the circuit breaker to open when either the ground or pilot check wire is broken, or other no less effective device approved by the Secretary or his authorized representative to assure such continuity, except that an extension of time, not in excess of twelve months, may be permitted by the Secretary on a mine-by-mine basis if he determines that such equipment is not available. Cable couplers shall be constructed so that the ground check continuity conductor shall be broken first and the ground conductors shall be broken last when the coupler is being uncoupled.

(d) Disconnecting devices installed in conjunction with circuit breakers; purpose; trailing cables for mobile equipment; guidelines for construction; time extension; splices

Disconnecting devices shall be installed in conjunction with the circuit breaker to provide visual evidence that the power is disconnected. Trailing cables for mobile equipment shall contain one or more ground conductors having a cross sectional area of not less than one-half the power conductor, and, six months after the operative date of this subchapter, an insulated conductor for the ground continuity check circuit or other no less effective device approved by the Secretary or his authorized representative to assure such continuity, except that an extension of time, not in excess of twelve months may be permitted by the Secretary on a mine-by-mine basis if he determines that such equipment is

not available. Splices made in the cables shall provide continuity of all components.

(e) Connections of single phase loads

Single phase loads shall be connected phase to phase.

(f) Circuit breakers; markings

Circuit breakers shall be marked for identification.

(g) Trailing cables for medium voltage circuits; guidelines for construction

Trailing cables for medium voltage circuits shall include grounding conductors, a ground check conductor, and ground metallic shields around each power conductor or a grounded metallic shield over the assembly, except that on equipment employing cable reels, cables without shields may be used if the insulation is rated 2,000 volts or more.

(Pub. L. 91–173, title III, § 309, Dec. 30, 1969, 83 Stat. 782.)

REFERENCES IN TEXT

For the operative date of this subchapter, referred to in subsecs. (c) and (d), see section 509 of Pub. L. 91–173, set out as an Effective Date note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 861 of this title.

§ 870. Trolley wires and trolley feeder wires

(a) Intervals for cutoff switches

Trolley wires and trolley feeder wires shall be provided with cutout switches at intervals of not more than 2,000 feet and near the beginning of all branch lines.

(b) Overcurrent protection devices

Trolley wires and trolley feeder wires shall be provided with overcurrent protection.

(c) Location of wires

Trolley wires and trolley feeder wires, high-voltage cables and transformers shall not be located inby the last open crosscut and shall be kept at least 150 feet from pillar workings.

(d) Adequate insulation and guard devices; promulgation of safety guidelines

Trolley wires, trolley feeder wires, and bare signal wires shall be insulated adequately where they pass through doors and stoppings, and where they cross other power wires and cables. Trolley wires and trolley feeder wires shall be guarded adequately (1) at all points where men are required to work or pass regularly under the wires; (2) on both sides of all doors and stoppings; and (3) at man-trip stations. The Secretary or his authorized representatives shall specify other conditions where trolley wires and trolley feeder wires shall be adequately protected to prevent contact by any person, or shall require the use of improved methods to prevent such contact. Temporary guards shall be provided where trackmen and other persons work in proximity to trolley wires and trolley feeder wires.

(Pub. L. 91–173, title III, § 310, Dec. 30, 1969, 83 Stat. 783.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 861 of this title.

§ 871. Fire protection

(a) Firefighting equipment; promulgation of minimum requirements for equipment; existing requirements; examinations after blasting

Each coal mine shall be provided with suitable firefighting equipment adapted for the size and conditions of the mine. The Secretary shall establish minimum requirements for the type, quality, and quantity of such equipment, and the interpretations of the Secretary or the Director of the United States Bureau of Mines relating to such equipment in effect on the operative date of this subchapter shall continue in effect until modified or superseded by the Secretary. After every blasting operation, an examination shall be made to determine whether fires have been started.

(b) Underground storage areas for lubricating oils and greases; construction; exceptions

Underground storage places for lubricating oil and grease shall be of fireproof construction. Except for specially prepared materials approved by the Secretary, lubricating oil and grease kept in all underground areas in a coal mine shall be in fireproof, closed metal containers or other no less effective containers approved by the Secretary.

(c) Housing of underground structures, stations, shops, and pumps; construction; ventilation

Underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps shall be housed in fireproof structures or areas. Air currents used to ventilate structures or areas enclosing electrical installations shall be coursed directly into the return. Other underground structures installed in a coal mine as the Secretary may prescribe shall be of fireproof construction.

(d) Use of arc or flame in underground mines; fireproof enclosures; operations outside fireproof enclosures; procedures; standards

All welding, cutting, or soldering with arc or flame in all underground areas of a coal mine shall, whenever practicable, be conducted in fireproof enclosures. Welding, cutting or soldering with arc or flame in other than a fireproof enclosure shall be done under the supervision of a qualified person who shall make a diligent search for fire during and after such operations and shall, immediately before and during such operations, continuously test for methane with means approved by the Secretary for detecting methane. Welding, cutting, or soldering shall not be conducted in air that contains 1.0 volume per centum or more of methane. Rock dust or suitable fire extinguishers shall be immediately available during such welding, cutting, or soldering.

(e) Installation of fire suppression devices on unattended underground equipment; flame-resistant hydraulic fluids

Within one year after the operative date of this subchapter, fire suppression devices meet-

ing specifications prescribed by the Secretary shall be installed on unattended underground equipment and suitable fire-resistant hydraulic fluids approved by the Secretary shall be used in the hydraulic systems of such equipment. Such fluids shall be used in the hydraulic systems of other underground equipment unless fire suppression devices meeting specifications prescribed by the Secretary are installed on such equipment.

(f) Deluge-type water sprays at main and secondary drives

Deluge-type water sprays or foam generators automatically actuated by rise in temperature, or other no less effective means approved by the Secretary of controlling fire, shall be installed at main and secondary belt-conveyor drives. Where sprays or foam generators are used they shall supply a sufficient quantity of water or foam to control fires.

(g) Installation of slippage and sequence switches on belt conveyors; fire suppression devices on belt haulageways

Underground belt conveyors shall be equipped with slippage and sequence switches. The Secretary shall, within sixty days after the operative date of this subchapter, require that devices be installed on all such belts which will give a warning automatically when a fire occurs on or near such belt. The Secretary shall prescribe a schedule for installing fire suppression devices on belt haulageways.

(h) Flame-resistant conveyor belt

On and after the operative date of this subchapter, all conveyor belts acquired for use underground shall meet the requirements to be established by the Secretary for flame-resistant conveyor belts.

(Pub. L. 91–173, title III, § 311, Dec. 30, 1969, 83 Stat. 783; Pub. L. 102–285, § 10(b), May 18, 1992, 106 Stat. 172.)

REFERENCES IN TEXT

For the operative date of this subchapter, referred to subsecs. (a), (e), (g), and (h), see section 509 of Pub. L. 91–173, set out as an Effective Date note under section 801 of this title.

CHANGE OF NAME

''United States Bureau of Mines'' substituted for ''Bureau of Mines'' in subsec. (a) pursuant to section 10(b) of Pub. L. 102–285, set out as a note under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 861, 877 of this title.

§ 872. Maps

(a) Fireproof repository; contents; certification

The operator of a coal mine shall have in a fireproof repository located in an area on the surface of the mine chosen by the mine operator to minimize the danger of destruction by fire or other hazard, an accurate and up-to-date map of such mine drawn on scale. Such map shall show the active workings, all pillared, worked out, and abandoned areas, except as provided in this section, entries and aircourses with the direction of airflow indicated by arrows, contour lines of all elevations, elevations of all main and cross or side entries, dip of the coalbed, escapeways, adjacent mine workings within one thousand feet, mines above or below, water pools above, and either producing or abandoned oil and gas wells located within five hundred feet of such mine and any underground area of such mine, and such other information as the Secretary may require. Such map shall identify those areas of the mine which have been pillared, worked out, or abandoned which are inaccessible or cannot be entered safely and on which no information is available. Such map shall be made or certified by a registered engineer or a registered surveyor of the State in which the mine is located. Such map shall be kept up to date by temporary notations and such map shall be revised and supplemented at intervals prescribed by the Secretary on the basis of a survey made or certified by such engineer or surveyor.

(b) Availability for inspection; confidential copies

The coal mine map and any revision and supplement thereof shall be available for inspection by the Secretary or his authorized representative, by coal mine inspectors of the State in which the mine is located, by miners in the mine and their representatives and by operators of adjacent coal mines and by persons owning, leasing, or residing on surface areas of such mines or areas adjacent to such mines. The operator shall furnish to the Secretary or his authorized representative and to the Secretary of Housing and Urban Development, upon request, one or more copies of such map and any revision and supplement thereof. Such map or revision and supplement thereof shall be kept confidential and its contents shall not be divulged to any other person, except to the extent necessary to carry out the provisions of this chapter and in connection with the functions and responsibilities of the Secretary of Housing and Urban Development.

(c) Notification of mine closures; filing of revised and supplemental map; certification

Whenever an operator permanently closes or abandons a coal mine, or temporarily closes a coal mine for a period of more than ninety days, he shall promptly notify the Secretary of such closure. Within sixty days of the permanent closure or abandonment of the mine, or, when the mine is temporarily closed, upon the expiration of a period of ninety days from the date of closure, the operator shall file with the Secretary a copy of the mine map revised and supplemented to the date of the closure. Such copy of the mine map shall be certified by a registered surveyor or registered engineer of the State in which the mine is located and shall be available for public inspection.

(Pub. L. 91–173, title III, § 312, Dec. 30, 1969, 83 Stat. 785.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 861 of this title.

§ 873. Blasting and explosives

(a) Limitations on storage and use of black powder and mudcaps

Black blasting powder shall not be stored or used underground. Mudcaps (adobes) or other unconfined shots shall not be fired underground.

(b) Storage of explosives and detonators; mudcaps in anthracite mines; restrictions; tests

Explosives and detonators shall be kept in separate containers until immediately before blasting. In underground anthracite mines, (1) mudcaps or other open, unconfined shake shots may be fired, if restricted to battery starting when methane or a fire hazard is not present, and if it is otherwise impracticable to start the battery; (2) open, unconfined shake shots in pitching veins may be fired, when no methane or fire hazard is present, if the taking down of loose hanging coal by other means is too hazardous; and (3) tests for methane shall be made immediately before such shots are fired and if 1.0 volume per centum or more of methane is present, when tested, such shot shall not be made until the methane content is reduced below 1.0 volume per centum.

(c) Permissible explosives, detonators, and devices; firing; stem boreholes; nonpermissible explosives; compressed air blasting

Except as provided in this subsection, in all underground areas of a coal mine only permissible explosives, electric detonators of proper strength, and permissible blasting devices shall be used and all explosives and blasting devices shall be used in a permissible manner. Permissible explosives shall be fired only with permissible shot firing units. Only incombustible materials shall be used for stemming boreholes. The Secretary may, under such safeguards as he may prescribe, permit the firing of more than twenty shots and allow the use of nonpermissible explosives in sinking shafts and slopes from the surface in rock. Nothing in this section shall prohibit the use of compressed air blasting.

(d) Container construction for carrying explosives or detonators in underground mines

Explosives or detonators carried anywhere underground in a coal mine by any person shall be in containers constructed of nonconductive material, maintained in good condition, and kept closed.

(e) Transportation of explosives or detonators in underground mines

Explosives or detonators shall be transported in special closed containers (1) in cars moved by means of a locomotive or rope, (2) on belts, (3) in shuttle cars, or (4) in equipment designed especially to transport such explosives or detonators.

(f) Storage of explosives and detonators in working sections of underground mines; containers; locations

When supplies of explosives and detonators for use in one or more working sections are stored underground, they shall be kept in section boxes or magazines of substantial construction with no metal exposed on the inside, located at least twenty-five feet from roadways and power wires, and in a dry, well rock-dusted location protected from falls of roof, except in pitching beds, where it is not possible to comply with the location requirement, such boxes shall be placed in niches cut into the solid coal or rock.

(g) Location of explosive and detonator containers in working places of underground mines

Explosives and detonators stored in the working places shall be kept in separate closed containers which shall be located out of the line of blast and not less than fifty feet from the working face and fifteen feet from any pipeline, powerline, rail, or conveyor, except that, if kept in niches in the rib, the distance from any pipeline, powerline, rail, or conveyor shall be at least five feet. Such explosives and detonators, when stored, shall be separated by a distance of at least five feet.

(Pub. L. 91–173, title III, § 313, Dec. 30, 1969, 83 Stat. 785.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 861 of this title.

§ 874. Hoisting and mantrips

(a) Transporting of persons; required equipment and capabilities; safety catches; daily examinations; operators

Every hoist used to transport persons at a coal mine shall be equipped with overspeed, overwind, and automatic stop controls. Every hoist handling platforms, cages, or other devices used to transport persons shall be equipped with brakes capable of stopping the fully loaded platform, cage, or other device; with hoisting cable adequately strong to sustain the fully loaded platform, cage, or other device; and have a proper margin of safety. Cages, platforms, or other devices which are used to transport persons in shafts and slopes shall be equipped with safety catches or other no less effective devices approved by the Secretary that act quickly and effectively in an emergency, and such catches shall be tested at least once every two months. Hoisting equipment, including automatic elevators, that is used to transport persons shall be examined daily. Where persons are transported into, or out of, a coal mine by hoists, a qualified hoisting engineer shall be on duty while any person is underground, except that no such engineer shall be required for automatically operated cages, platforms, or elevators.

(b) Promulgation of other safeguards

Other safeguards adequate, in the judgment of an authorized representative of the Secretary, to minimize hazards with respect to transportation of men and materials shall be provided.

(c) Rated capacities; indicator for position of cage

Hoists shall have rated capacities consistent with the loads handled and the recommended safety factors of the ropes used. An accurate and reliable indicator of the position of the cage, platform, skip, bucket, or cars shall be provided.

(d) Methods for signaling between shaft stations and hoist rooms

There shall be at least two effective methods approved by the Secretary of signaling between

each of the shaft stations and the hoist room, one of which shall be a telephone or speaking tube.

(e) Braking equipment for haulage cars used in underground mines

Each locomotive and haulage car used in an underground coal mine shall be equipped with automatic brakes, where space permits. Where space does not permit automatic brakes, locomotives and haulage cars shall be subject to speed reduction gear, or other similar devices approved by the Secretary which are designed to stop the locomotives and haulage cars with the proper margin of safety.

(f) Automatic couplers for haulage equipment

All haulage equipment acquired by an operator of a coal mine on or after one year after the operative date of this subchapter shall be equipped with automatic couplers which couple by impact and uncouple without the necessity of persons going between the ends of such equipment. All haulage equipment without automatic couplers in use in a mine on the operative date of this subchapter shall also be so equipped within four years after the operative date of this subchapter.

(Pub. L. 91–173, title III, § 314, Dec. 30, 1969, 83 Stat. 786.)

REFERENCES IN TEXT

For the operative date of this subchapter, referred to in subsec. (f), see section 509 of Pub. L. 91–173, set out as an Effective Date note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 861 of this title.

§ 875. Emergency shelters; construction; contents; implementation plans

The Secretary or an authorized representative of the Secretary may prescribe in any coal mine that rescue chambers, properly sealed and ventilated, be erected at suitable locations in the mine to which persons may go in case of an emergency for protection against hazards. Such chambers shall be properly equipped with first aid materials, an adequate supply of air and self-contained breathing equipment, an independent communication system to the surface, and proper accommodations for the persons while awaiting rescue, and such other equipment as the Secretary may require. A plan for the erection, maintenance, and revisions of such chambers and the training of the miners in their proper use shall be submitted by the operator to the Secretary for his approval.

(Pub. L. 91–173, title III, § 315, Dec. 30, 1969, 83 Stat. 787.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 861 of this title.

§ 876. Communication facilities; locations

Telephone service or equivalent two-way communication facilities, approved by the Secretary or his authorized representative, shall be provided between the surface and each landing of main shafts and slopes and between the surface and each working section of any coal mine that is more than one hundred feet from a portal.

(Pub. L. 91–173, title III, § 316, Dec. 30, 1969, 83 Stat. 787.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 861 of this title.

§ 877. General safety provisions

(a) Location of oil and gas wells; establishment and maintenance of barriers; minimum requisites; exceptions

Each operator of a coal mine shall take reasonable measures to locate oil and gas wells penetrating coalbeds or any underground area of a coal mine. When located, such operator shall establish and maintain barriers around such oil and gas wells in accordance with State laws and regulations, except that such barriers shall not be less than three hundred feet in diameter, unless the Secretary or his authorized representative permits a lesser barrier consistent with the applicable State laws and regulations where such lesser barrier will be adequate to protect against hazards from such wells to the miners in such mine, or unless the Secretary or his authorized representative requires a greater barrier where the depth of the mine, other geologic conditions, or other factors warrant such a greater barrier.

(b) Boreholes in advance of work face; distance in advance of work face; distance between boreholes

Whenever any working place approaches within fifty feet of abandoned areas in the mine as shown by surveys made and certified by a registered engineer or surveyor, or within two hundred feet of any other abandoned areas of the mine which cannot be inspected and which may contain dangerous accumulations of water or gas, or within two hundred feet of any workings of an adjacent mine, a borehole or boreholes shall be drilled to a distance of at least twenty feet in advance of the working face of such working place and shall be continually maintained to a distance of at least ten feet in advance of the advancing working face. When there is more than one borehole, they shall be drilled sufficiently close to each other to insure that the advancing working face will not accidentally hole through into abandoned areas or adjacent mines. Boreholes shall also be drilled not more than eight feet apart in the rib of such working place to a distance of at least twenty feet and at an angle of forty-five degrees. Such rib holes shall be drilled in one or both ribs of such working place as may be necessary for adequate protection of miners in such place.

(c) Prohibition against smoking; implementation programs

No person shall smoke, carry smoking materials, matches, or lighters underground, or smoke in or around oil houses, explosives magazines, or other surface areas where such practice may cause a fire or explosion. The operator shall institute a program, approved by the Secretary, to insure that any person entering the underground area of the mine does not carry smoking materials, matches, or lighters.

(d) Portable electric lamps; exceptions

Persons underground shall use only permissible electric lamps approved by the Secretary

for portable illumination. No open flame shall be permitted in the underground area of any coal mine, except as permitted under section 871(d) of this title.

(e) Promulgation of lighting standards

Within nine months after the operative date of this subchapter, the Secretary shall propose the standards under which all working places in a mine shall be illuminated by permissible lighting, within eighteen months after the promulgation of such standards, while persons are working in such places.

(f) Escapeways; ventilation; maintenance; tests of passageways; protection of entrance; connection between mine openings

(1) Except as provided in paragraphs (2) and (3) of this subsection, at least two separate and distinct travelable passageways which are maintained to insure passage at all times of any person, including disabled persons, and which are to be designated as escapeways, at least one of which is ventilated with intake air, shall be provided from each working section continuous to the surface escape drift opening, or continuous to the escape shaft or slope facilities to the surface, as appropriate, and shall be maintained in safe condition and properly marked. Mine openings shall be adequately protected to prevent the entrance into the underground area of the mine of surface fires, fumes, smoke, and flood water. Escape facilities approved by the Secretary or his authorized representative, properly maintained and frequently tested, shall be present at or in each escape shaft or slope to allow all persons, including disabled persons, to escape quickly to the surface in the event of an emergency.

(2) When new coal mines are opened, not more than twenty miners shall be allowed at any one time in any mine until a connection has been made between the two mine openings, and such connections shall be made as soon as possible.

(3) When only one mine opening is available, owing to final mining of pillars, not more than twenty miners shall be allowed in such mine at any one time, and the distance between the mine opening and working face shall not exceed five hundred feet.

(4) In the case of all coal mines opened on or after the operative date of this subchapter, and in the case of all new working sections opened on or after such date in mines opened prior to such date, the escapeway required by this section to be ventilated with intake air shall be separated from the belt and trolley haulage entries of the mine for the entire length of such entries to the beginning of each working section, except that the Secretary or his authorized representative may permit such separation to be extended for a greater or lesser distance so long as such extension does not pose a hazard to the miners.

(g) Erection of fireproof structures; prior existing structures; fire doors; monthly tests; records; availability

After the operative date of this subchapter, all structures erected on the surface within one hundred feet of any mine opening shall be of fireproof construction. Unless structures existing on or prior to such date which are located within one hundred feet of any mine opening are of such construction, fire doors shall be erected at effective points in mine openings to prevent smoke or fire from outside sources endangering miners underground. These doors shall be tested at least monthly to insure effective operation. A record of such tests shall be kept in an area on the surface of the mine chosen by the operator to minimize the danger of destruction by fire or other hazard and shall be available for inspection by interested persons.

(h) Prevention of accumulations of coal dust and methane gas; surface coal-handling facilities; air-intake openings

Adequate measures shall be taken to prevent methane and coal dust from accumulating in excessive concentrations in or on surface coal-handling facilities, but in no event shall methane be permitted to accumulate in concentrations in or on surface coal-handling facilities in excess of limits established for methane by the Secretary within one year after the operative date of this subchapter. Where coal is dumped at or near air-intake openings, provisions shall be made to avoid dust from entering the mine.

(i) Training programs

Every operator of a coal mine shall provide a program, approved by the Secretary, of training and retraining of both qualified and certified persons needed to carry out functions prescribed in this chapter.

(j) Electric face equipment; installation of canopies

An authorized representative of the Secretary may require in any coal mine where the height of the coalbed permits that electric face equipment, including shuttle cars, be provided with substantially constructed canopies or cabs to protect the miners operating such equipment from roof falls and from rib and face rolls.

(k) Mine entrances; sealing; prevention of entry by unauthorized personnel

On and after the operative date of this subchapter, the opening of any coal mine that is declared inactive by its operator or is permanently closed or abandoned for more than ninety days, shall be sealed by the operator in a manner prescribed by the Secretary. Openings of all other mines shall be adequately protected in a manner prescribed by the Secretary to prevent entrance by unauthorized persons.

(*l*) Facilities for changing and storing clothes; toilet and bathing facilities

The Secretary may require any operator to provide adequate facilities for the miners to change from the clothes worn underground, to provide for the storing of such clothes from shift to shift, and to provide sanitary and bathing facilities. Sanitary toilet facilities shall be provided in the active workings of the mine when such surface facilities are not readily accessible to the active workings.

(m) Emergency medical assistance preparations; locations for medical equipment; filing of implementation plans

Each operator shall make arrangements in advance for obtaining emergency medical assist-

ance and transportation for injured persons. Emergency communications shall be provided to the nearest point of assistance. Selected agents of the operator shall be trained in first aid and first aid training shall be made available to all miners. Each coal mine shall have an adequate supply of first aid equipment located on the surface, at the bottom of shafts and slopes, and at other strategic locations near the working faces. In fulfilling each of the requirements of this subsection, the operator shall meet at least minimum requirements prescribed by the Secretary of Health and Human Services. Within two months after the operative date of this subchapter, each operator shall file with the Secretary a plan setting forth in such detail as the Secretary may require the manner in which such operator has fulfilled the requirements in this subsection.

(n) Self-rescue device; training of personnel

A self-rescue device approved by the Secretary shall be made available to each miner by the operator which shall be adequate to protect such miner for one hour or longer. Each operator shall train each miner in the use of such device.

(*o*) Methods of eliminating oxygen deficiencies

The Secretary shall prescribe improved methods of assuring that miners are not exposed to atmospheres that are deficient in oxygen.

(p) Identification check system; records

Each operator of a coal mine shall establish a check-in and check-out system which will provide positive identification of every person underground, and will provide an accurate record of the persons in the mine kept on the surface in a place chosen to minimize the danger of destruction by fire or other hazard. Such record shall bear a number identical to an identification check that is securely fastened to the lamp belt worn by the person underground. The identification check shall be made of a rust resistant metal of not less than sixteen gauge.

(q) Installation of devices to prevent and suppress ignition on electric cutting face equipment

The Secretary shall require, when technologically feasible, that devices to prevent and suppress ignitions be installed on electric face cutting equipment.

(r) Tunnelling under water; permits; contents; necessity; safety zones; restrictions

Whenever an operator mines coal from a coal mine opened after the operative date of this subchapter, or from any new working section of a mine opened prior to such date, in a manner that requires the construction, operation, and maintenance of tunnels under any river, stream, lake, or other body of water, that is, in the judgment of the Secretary, sufficiently large to constitute a hazard to miners, such operator shall obtain a permit from the Secretary which shall include such terms and conditions as he deems appropriate to protect the safety of miners working or passing through such tunnels from cave-ins and other hazards. Such permits shall require, in accordance with a plan to be approved by the Secretary, that a safety zone be established beneath and adjacent to such body of water. No plan shall be approved unless there is a minimum of cover to be determined by the Secretary, based on test holes drilled by the operator in a manner to be prescribed by the Secretary. No such permit shall be required in the case of any new working section of a mine which is located under any water resource reservoir being constructed by a Federal agency on December 30, 1969, the operator of which is required by such agency to operate in a manner that adequately protects the safety of miners working in such section from cave-ins and other hazards.

(s) Drinking water

An adequate supply of potable water shall be provided for drinking purposes in the active workings of the mine, and such water shall be carried, stored, and otherwise protected in sanitary containers.

(t) Standards for prevention of explosions from nonmethane gases and for testing for accumulations

Within one year after the operative date of this subchapter, the Secretary shall propose standards for preventing explosions from explosive gases other than methane and for testing for accumulations of such gases.

(Pub. L. 91–173, title III, § 317, Dec. 30, 1969, 83 Stat. 787; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

REFERENCES IN TEXT

For the operative date of this subchapter, referred to in subsecs. (e), (f)(4), (g), (h), (k), (m), (r), and (t), see section 509 of Pub. L. 91–173, set out as an Effective Date note under section 801 of this title.

CHANGE OF NAME

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 861 of this title.

§ 878. Definitions

For the purpose of this subchapter and subchapter II of this chapter, the term—

(a) ''certified'' or ''registered'' as applied to any person means a person certified or registered by the State in which the coal mine is located to perform duties prescribed by such subchapters, except that, in a State where no program of certification or registration is provided or where the program does not meet at least minimum Federal standards established by the Secretary, such certification or registration shall be by the Secretary;

(b) ''qualified person'' means, as the context requires,

(1) an individual deemed qualified by the Secretary and designated by the operator to make tests and examinations required by this chapter; and

(2) an individual deemed, in accordance with minimum requirements to be established by the Secretary, qualified by training, education, and experience, to perform electrical work, to maintain electrical

equipment, and to conduct examinations and tests of all electrical equipment;

(c) ''permissible'' as applied to—

(1) equipment used in the operation of a coal mine, means equipment, other than permissible electric face equipment, to which an approval plate, label, or other device is attached as authorized by the Secretary and which meets specifications which are prescribed by the Secretary for the construction and maintenance of such equipment and are designed to assure that such equipment will not cause a mine explosion or a mine fire,

(2) explosives, shot firing units, or blasting devices used in such mine, means explosives, shot firing units, or blasting devices which meet specifications which are prescribed by the Secretary, and

(3) the manner of use of equipment or explosives, shot firing units, and blasting devices, means the manner of use prescribed by the Secretary;

(d) ''rock dust'' means pulverized limestone, dolomite, gypsum, anhydrite, shale, adobe, or other inert material, preferably light colored, 100 per centum of which will pass through a sieve having twenty meshes per linear inch and 70 per centum or more of which will pass through a sieve having two hundred meshes per linear inch; the particles of which when wetted and dried will not cohere to form a cake which will not be dispersed into separate particles by a light blast of air; and which does not contain more than 5 per centum of combustible matter or more than a total of 4 per centum of free and combined silica (SiO_2), or, where the Secretary finds that such silica concentrations are not available, which does not contain more than 5 per centum of free and combined silica;

(e) ''anthracite'' means coals with a volatile ratio equal to 0.12 or less;

(f) ''volatile ratio'' means volatile matter content divided by the volatile matter plus the fixed carbon;

(g)(1) ''working face'' means any place in a coal mine in which work of extracting coal from its natural deposit in the earth is performed during the mining cycle,

(2) ''working place'' means the area of a coal mine inby the last open crosscut,

(3) ''working section'' means all areas of the coal mine from the loading point of the section to and including the working faces,

(4) ''active workings'' means any place in a coal mine where miners are normally required to work or travel;

(h) ''abandoned areas'' means sections, panels, and other areas that are not ventilated and examined in the manner required for working places under section 863 of this title;

(i) ''permissible'' as applied to electric face equipment means all electrically operated equipment taken into or used inby the last open crosscut of an entry or a room of any coal mine the electrical parts of which, including, but not limited to, associated electrical equipment, components, and accessories, are designed, constructed, and installed, in accordance with the specifications of the Secretary, to assure that such equipment will not cause a mine explosion or mine fire, and the other features of which are designed and constructed, in accordance with the specifications of the Secretary, to prevent, to the greatest extent possible, other accidents in the use of such equipment; and the regulations of the Secretary or the Director of the United States Bureau of Mines in effect on the operative date of this subchapter relating to the requirements for investigation, testing, approval, certification, and acceptance of such equipment as permissible shall continue in effect until modified or superseded by the Secretary, except that the Secretary shall provide procedures, including, where feasible, testing, approval, certification, and acceptance in the field by an authorized representative of the Secretary, to facilitate compliance by an operator with the requirements of section 865(a) of this title within the periods prescribed therein;

(j) ''low voltage'' means up to and including 660 volts; ''medium voltage'' means voltages from 661 to 1,000 volts; and ''high voltage'' means more than 1,000 volts;

(k) Repealed. Pub. L. 95–164, title II, §202(b), Nov. 9, 1977, 91 Stat. 1317.

(*l*) ''coal mine'' includes areas of adjoining mines connected underground.

(Pub. L. 91–173, title III, §318, Dec. 30, 1969, 83 Stat. 791; Pub. L. 95–164, title II, §202(b), Nov. 9, 1977, 91 Stat. 1317; Pub. L. 102–285, §10(b), May 18, 1992, 106 Stat. 172.)

REFERENCES IN TEXT

For the operative date of this subchapter, referred to in par. (i), see section 509 of Pub. L. 91–173, set out as an Effective Date note under section 801 of this title.

AMENDMENTS

1977—Par. (k). Pub. L. 95–164 struck out par. (k) which defined ''respirable dust'' as dust particles 5 microns or less in size.

CHANGE OF NAME

''United States Bureau of Mines'' substituted for ''Bureau of Mines'' in par. (i) pursuant to section 10(b) of Pub. L. 102–285, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–164 effective Nov. 9, 1977, see section 307 of Pub. L. 95–164, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 841, 861 of this title.

SUBCHAPTER IV—BLACK LUNG BENEFITS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 802, 820 of this title; title 31 section 3803.

PART A—GENERAL PROVISIONS

§901. Congressional findings and declaration of purpose; short title

(a) Congress finds and declares that there are a significant number of coal miners living today

who are totally disabled due to pneumoconiosis arising out of employment in one or more of the Nation's coal mines; that there are a number of survivors of coal miners whose deaths were due to this disease; and that few States provide benefits for death or disability due to this disease to coal miners or their surviving dependents. It is, therefore, the purpose of this subchapter to provide benefits, in cooperation with the States, to coal miners who are totally disabled due to pneumoconiosis and to the surviving dependents of miners whose death was due to such disease; and to ensure that in the future adequate benefits are provided to coal miners and their dependents in the event of their death or total disability due to pneumoconiosis.

(b) This subchapter may be cited as the ''Black Lung Benefits Act''.

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

AMENDMENTS

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

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

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

EFFECTIVE DATE OF 1981 AMENDMENT

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

EFFECTIVE DATE OF 1978 AMENDMENT

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

EFFECTIVE DATE OF 1972 AMENDMENT

Section 3(c) of Pub. L. 92–303 provided that: ''The amendments made by this section [amending this section and sections 902, 921, 932, and 933 of this title] shall be effective as of December 30, 1969.''

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

EFFECTIVE DATE

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

SEPARABILITY

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

SPECIAL BENEFITS FOR DISABLED COAL MINERS

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

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

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

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

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

§ 902. Definitions

For purposes of this subchapter—

(a) The term ''dependent'' means—

(1) a child as defined in subsection (g) of this section without regard to subparagraph (2)(B)(ii) thereof; or

(2) a wife who is a member of the same household as the miner, or is receiving regular contributions from the miner for her support, or whose husband is a miner who has been ordered by a court to contribute to her support, or who meets the requirements of section 416(b)(1) or (2) of title 42. The determination of an individual's status as the ''wife'' of a miner shall be made in accordance with section 416(h)(1) of title 42 as if such miner were the ''insured individual'' referred to therein. The term ''wife'' also includes a ''divorced wife'' as defined in section 416(d)(1) of title 42 who is receiving at least one-half of her support, as determined in accordance with regulations prescribed by the Secretary, from the miner, or is receiving substantial contributions from the miner (pursuant to a written agreement), or there is in effect a court order for substantial contributions to her support from such miner.

(b) The term ''pneumoconiosis'' means a chronic dust disease of the lung and its sequelae, including respiratory and pulmonary impairments, arising out of coal mine employment.

(c) The term ''Secretary'' where used in part C means the Secretary of Labor.

(d) The term ''miner'' means any individual who works or has worked in or around a coal mine or coal preparation facility in the extraction or preparation of coal. Such term also includes an individual who works or has worked in coal mine construction or transportation in or around a coal mine, to the extent such individual was exposed to coal dust as a result of such employment.

(e) The term ''widow'' includes the wife living with or dependent for support on the miner at the time of his death, or living apart for reasonable cause or because of his desertion, or who meets the requirements of section 416(c)(1), (2), (3), (4), or (5), and section 416(k) of title 42, who is not married. The determination of an individual's status as the ''widow'' of a miner shall be made in accordance with section 416(h)(1) of title 42 as if such miner were the ''insured individual'' referred to therein. Such term also includes a ''surviving divorced wife'' as defined in section 416(d)(2) of title 42 who for the month preceding the month in which the miner died, was receiving at least one-half of her support, as determined in accordance with regulations prescribed by the Secretary,[1] from the miner, or was receiving substantial contributions from the miner (pursuant to a written agreement) or there was in effect a court order for substantial contributions to her support from the miner at the time of his death.

(f)(1) The term ''total disability'' has the meaning given it by regulations of the Secretary of Health and Human Services[1] for claims under part B of this subchapter, and by regulations of the Secretary of Labor for claims under part C of this subchapter, subject to the relevant provisions of subsections (b) and (d) of section 923 of this title, except that—

(A) in the case of a living miner, such regulations shall provide that a miner shall be considered totally disabled when pneumoconiosis prevents him or her from engaging in gainful employment requiring the skills and abilities comparable to those of any employment in a mine or mines in which he or she previously engaged with some regularity and over a substantial period of time;

(B) such regulations shall provide that (i) a deceased miner's employment in a mine at the time of death shall not be used as conclusive evidence that the miner was not totally disabled; and (ii) in the case of a living miner, if there are changed circumstances of employment indicative of reduced ability to perform his or her usual coal mine work, such miner's employment in a mine shall not be used as conclusive evidence that the miner is not totally disabled;

(C) such regulations shall not provide more restrictive criteria than those applicable under section 423(d) of title 42; and

(D) the Secretary of Labor, in consultation with the Director of the National Institute for Occupational Safety and Health, shall establish criteria for all appropriate medical tests under this subsection which accurately reflect total disability in coal miners as defined in subparagraph (A).

(2) Criteria applied by the Secretary of Labor in the case of—

(A) any claim which is subject to review by the Secretary of Health and Human Services,[1] or subject to a determination by the Secretary of Labor, under section 945(a) of this title;

(B) any claim which is subject to review by the Secretary of Labor under section 945(b) of this title; and

(C) any claim filed on or before the effective date of regulations promulgated under this subsection by the Secretary of Labor;

shall not be more restrictive than the criteria applicable to a claim filed on June 30, 1973, whether or not the final disposition of any such claim occurs after the date of such promulgation of regulations by the Secretary of Labor.

(g) The term ''child'' means a child or a stepchild who is—

(1) unmarried; and

(2)(A) under eighteen years of age, or

(B)(i) under a disability as defined in section 423(d) of title 42,

(ii) which began before the age specified in section 402(d)(1)(B)(ii) of title 42, or, in the case of a student, before he ceased to be a student; or

(C) a student.

The term ''student'' means a ''full-time student'' as defined in section 402(d)(7) of title 42, or a ''student'' as defined in section 8101(17) of title 5. The determination of an individual's status as the ''child'' of the miner or widow, as the case may be, shall be made in accordance with section 416(h)(2) or (3) of title 42 as if such miner or widow were the ''insured individual'' referred to therein.

(h) The term ''fund'' means the Black Lung Disability Trust Fund established by section 9501 of title 26.

(i) For the purposes of subsections (c) and (j) of section 932 of this title, and for the purposes of paragraph (7) of subsection (d) of section 9501 of title 26, the term ''claim denied'' means a claim—

(1) denied by the Social Security Administration; or

(2) in which (A) the claimant was notified by the Department of Labor of an administrative or informal denial more than 1 year prior to March 1, 1978, and did not, within 1 year from the date of notification of such denial, request a hearing, present additional evidence or indicate an intention to present additional evidence, or (B) the claim was denied under the law in effect prior to March 1, 1978, following a formal hearing or administrative or judicial review proceeding.

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

AMENDMENTS

1994—Subsec. (c). Pub. L. 103–296 substituted ''where used in part C means the Secretary of Labor'' for

[1] So in original. Probably should be ''Commissioner of Social Security''.

''where used in part B means the Secretary of Health, Education, and Welfare, and where used in part C means the Secretary of Labor''.

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

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

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

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

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

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

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

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

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

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

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

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

CHANGE OF NAME

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

EFFECTIVE DATE OF 1994 AMENDMENT

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

EFFECTIVE DATE OF 1981 AMENDMENT

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

EFFECTIVE DATE OF 1978 AMENDMENT

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

EFFECTIVE DATE OF 1972 AMENDMENT

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

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 922, 931, 934 of this title; title 26 sections 192, 501, 9501.

§ 903. Field offices

(a) The Secretary of Labor shall establish and operate such field offices as may be necessary to assist miners and survivors of miners in the filing and processing of claims under this subchapter. Such field offices shall, to the extent feasible, be reasonably accessible to such miners and survivors. The Secretary, in connection with the establishment and operation of field offices, may enter into arrangements with other Federal departments and agencies, and with State agencies, for the use of existing facilities operated by such departments and agencies. Where the establishment of separate facilities is not feasible the Secretary may enter into such arrangements as he deems necessary with the heads of Federal departments, agencies, and instrumentalities and with State agencies for the use of existing facilities and personnel under their control.

(b) There are authorized to be appropriated for the purposes of subsection (a) of this section such sums as may be necessary.

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

CODIFICATION

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

EFFECTIVE DATE

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

§ 904. Information to potential beneficiaries of changes made by Black Lung Benefits Reform Act of 1977

The Secretary of Health and Human Services and the Secretary of Labor shall disseminate to interested persons and groups the changes in this subchapter made by this Act, together with an explanation of such changes, and shall undertake, through appropriate organizations, groups, and coal mine operators, to notify individuals who are likely to have become eligible for benefits by reason of such changes. Individual assistance in preparing and processing claims shall be offered by the Secretary of Health and Human Services and the Secretary of Labor and provided to potential beneficiaries.

(Pub. L. 95–239, § 19, Mar. 1, 1978, 92 Stat. 106; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

REFERENCES IN TEXT

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

CODIFICATION

Section was enacted as part of the Black Lung Benefits Reform Act of 1977, and not as part of the Federal

Mine Safety and Health Act of 1977 which comprises this chapter or the Black Lung Benefits Act which comprises this subchapter.

CHANGE OF NAME

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

EFFECTIVE DATE

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

PART B—CLAIMS FOR BENEFITS FILED ON OR BEFORE DECEMBER 31, 1973

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 902, 936, 940, 945 of this title; title 31 section 3716.

§921. Regulations and presumptions

(a) Promulgation; payment of benefits

The Commissioner of Social Security shall, in accordance with the provisions of this part, and the regulations promulgated by him under this part, make payments of benefits in respect of total disability of any miner due to pneumoconiosis, and in respect of the death of any miner whose death was due to pneumoconiosis or, except with respect to a claim filed under part C of this subchapter on or after the effective date of the Black Lung Benefits Amendments of 1981, who at the time of his death was totally disabled by pneumoconiosis.

(b) Promulgation of standards determining total disability

The Commissioner of Social Security shall by regulation prescribe standards for determining for purposes of subsection (a) of this section whether a miner is totally disabled due to pneumoconiosis and for determining whether the death of a miner was due to pneumoconiosis. Regulations required by this subsection shall be promulgated and published in the Federal Register at the earliest practicable date after December 30, 1969, and in no event later than the end of the third month following December 1969. Final regulations required for implementation of any amendments to this subchapter shall be promulgated and published in the Federal Register at the earliest practicable date after the date of enactment of such amendments, and in no event later than the end of the fourth month following the month in which such amendments are enacted. Such regulations may be modified or additional regulations promulgated from time to time thereafter.

(c) Presumptions

For purposes of this section—

(1) If a miner who is suffering or suffered from pneumoconiosis was employed for ten years or more in one or more coal mines there shall be a rebuttable presumption that his pneumoconiosis arose out of such employment.

(2) If a deceased miner was employed for ten years or more in one or more coal mines and died from a respirable disease there shall be a rebuttable presumption that his death was due to pneumoconiosis. The provisions of this paragraph shall not apply with respect to claims filed on or after the effective date of the Black Lung Benefits Amendments of 1981.

(3) If a miner is suffering or suffered from a chronic dust disease of the lung which (A) when diagnosed by chest roentgenogram, yields one or more large opacities (greater than one centimeter in diameter) and would be classified in category A, B, or C in the International Classification of Radiographs of the Pneumoconioses by the International Labor Organization, (B) when diagnosed by biopsy or autopsy, yields massive lesions in the lung, or (C) when diagnosis is made by other means, would be a condition which could reasonably be expected to yield results described in clause (A) or (B) if diagnosis had been made in the manner prescribed in clause (A) or (B), then there shall be an irrebuttable presumption that he is totally disabled due to pneumoconiosis or that his death was due to pneumoconiosis, or that at the time of his death he was totally disabled by pneumoconiosis.[1] as the case may be.

(4) if[2] a miner was employed for fifteen years or more in one or more underground coal mines, and if there is a chest roentgenogram submitted in connection with such miner's, his widow's, his child's, his parent's, his brother's, his sister's, or his dependent's claim under this subchapter and it is interpreted as negative with respect to the requirements of paragraph (3) of this subsection, and if other evidence demonstrates the existence of a totally disabling respiratory or pulmonary impairment, then there shall be a rebuttable presumption that such miner is totally disabled due to pneumoconiosis, that his death was due to pneumoconiosis, or that at the time of his death he was totally disabled by pneumoconiosis. In the case of a living miner, a wife's affidavit may not be used by itself to establish the presumption. The Commissioner of Social Security shall not apply all or a portion of the requirement of this paragraph that the miner work in an underground mine where he determines that conditions of a miner's employment in a coal mine other than an underground mine were substantially similar to conditions in an underground mine. The Commissioner of Social Security may rebut such presumption only by establishing that (A) such miner does not, or did not, have pneumoconiosis, or that (B) his respiratory or pulmonary impairment did not arise out of, or in connection with, employment in a coal mine. The provisions of this paragraph shall not apply with respect to claims filed on or after the effective date of the Black Lung Benefits Amendments of 1981.

(5) In the case of a miner who dies on or before March 1, 1978, who was employed for 25 years or more in one or more coal mines before June 30, 1971, the eligible survivors of such miner shall be entitled to the payment of benefits, at the rate applicable under section

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

[2] So in original. Probably should be capitalized.

922(a)(2) of this title, unless it is established that at the time of his or her death such miner was not partially or totally disabled due to pneumoconiosis. Eligible survivors shall, upon request by the Commissioner of Social Security, furnish such evidence as is available with respect to the health of the miner at the time of his or her death. The provisions of this paragraph shall not apply with respect to claims filed on or after the day that is 180 days after the effective date of the Black Lung Benefits Amendments of 1981.

(d) Applicability of presumptions

Nothing in subsection (c) of this section shall be deemed to affect the applicability of subsection (a) of this section in the case of a claim where the presumptions provided for therein are inapplicable.

(Pub. L. 91–173, title IV, § 411, Dec. 30, 1969, 83 Stat. 793; Pub. L. 92–303, §§ 3(a), 4(b)(1), (3), (c), (d), May 19, 1972, 86 Stat. 153, 154; Pub. L. 95–239, § 3(a), Mar. 1, 1978, 92 Stat. 96; Pub. L. 97–119, title II, §§ 202(b), 203(a)(5), Dec. 29, 1981, 95 Stat. 1643, 1644; Pub. L. 103–296, title I, § 108(i)(2), Aug. 15, 1994, 108 Stat. 1488.)

REFERENCES IN TEXT

The effective date of the Black Lung Benefits Amendments of 1981, referred to in subsecs. (a) and (c)(2), (4), (5), is Jan. 1, 1982, except as otherwise provided. See section 206(a) of Pub. L. 97–119, set out as an Effective Date of 1981 Amendment note under section 901 of this title.

AMENDMENTS

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

1981—Subsec. (a). Pub. L. 97–119, § 203(a)(5), inserted '', except with respect to a claim filed under part C of this subchapter on or after the effective date of the Black Lung Benefits Amendments of 1981,'' after ''pneumoconiosis or''.

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

Subsec. (c)(5). Pub. L. 97–119, § 202(b)(2), inserted provision that this paragraph not apply with respect to claims filed on or after the day that is 180 days after the effective date of the Black Lung Benefits Amendments of 1981.

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

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

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

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

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

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

EFFECTIVE DATE OF 1994 AMENDMENT

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

EFFECTIVE DATE OF 1981 AMENDMENT

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

EFFECTIVE DATE OF 1978 AMENDMENT

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

EFFECTIVE DATE OF 1972 AMENDMENT

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

Section 4(g) of Pub. L. 92–303 provided that: ''The amendments made by this section [amending this section and sections 901, 902, 923, and 931 of this title] shall be effective as of December 30, 1969.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 922, 923, 924 of this title.

§ 922. Payment of benefits

(a) Schedules

Subject to the provisions of subsection (b) of this section, benefit payments shall be made by the Commissioner of Social Security under this part as follows:

(1) In the case of total disability of a miner due to pneumoconiosis, the disabled miner shall be paid benefits during the disability at a rate equal to 37½ per centum of the monthly pay rate for Federal employees in grade GS–2, step 1.

(2) In the case of death of a miner due to pneumoconiosis or, except with respect to a claim filed under part C of this subchapter on or after the effective date of the Black Lung Benefits Amendments of 1981, of a miner receiving benefits under this part, benefits shall be paid to his widow (if any) at the rate the deceased miner would receive such benefits if he were totally disabled.

(3) In the case of the child or children of a miner whose death is due to pneumoconiosis or, except with respect to a claim filed under part C of this subchapter on or after the effective date of the Black Lung Benefits Amendments of 1981, of a miner who is receiving benefits under this part at the time of his death or who was totally disabled by pneumoconiosis at the time of his death, in the case of the child or children of a widow who is receiving benefits under this part at the time of her death, and in the case of any child or children entitled to the payment of benefits under paragraph (5) of section 921(c) of this title, benefits shall be paid to such child or children as follows: If there is one such child, he shall be paid benefits at the rate specified in paragraph (1). If there is more than one such child, the benefits paid shall be divided equally among them and shall be paid at a rate equal to the rate specified in paragraph (1), increased by 50 per centum of such rate if there are two such children, by 75 per centum of such rate if there are three such children, and by 100 per centum of such rate if there are more than three such children: *Provided*, That benefits shall only be paid to a child for so long as he meets the criteria for the term ''child'' contained in section 902(g) of this title: *And provided further*, That no entitle-

ment to benefits as a child shall be established under this paragraph (3) for any month for which entitlement to benefits as a widow is established under paragraph (2).

(4) In the case of an individual entitled to benefit payments under clause (1) or (2) of this subsection who has one or more dependents, the benefit payments shall be increased at the rate of 50 per centum of such benefit payments, if such individual has one dependent, 75 per centum if such individual has two dependents, and 100 per centum if such individual has three or more dependents.

(5) In the case of the dependent parent or parents of a miner whose death is due to pneumoconiosis, or, except with respect to a claim filed under part C of this subchapter on or after the effective date of the Black Lung Benefits Amendments of 1981, of a miner who is receiving benefits under this part at the time of his death or who was totally disabled by pneumoconiosis at the time of death, and who is not survived at the time of his death by a widow or a child, in the case of the dependent surviving brother(s) or sister(s) of such a miner who is not survived at the time of his death by a widow, child, or parent, in the case of the dependent parent or parents of a miner (who is not survived at the time of his or her death by a widow or a child) who are entitled to the payment of benefits under paragraph (5) of section 921(c) of this title, or in the case of the dependent surviving brother(s) or sister(s) of a miner (who is not survived at the time of his or her death by a widow, child, or parent) who are entitled to the payment of benefits under paragraph (5) of section 921(c) of this title, benefits shall be paid under this part to such parent(s), or to such brother(s), or sister(s), at the rate specified in paragraph (3) (as if such parent(s) or such brother(s) or sister(s), were the children of such miner). In determining for purposes of this paragraph whether a claimant bears the relationship as the miner's parent, brother, or sister, the Commissioner of Social Security shall apply legal standards consistent with those applicable to relationship determination under title II of the Social Security Act [42 U.S.C. 401 et seq.]. No benefits to a sister or brother shall be payable under this paragraph for any month beginning with the month in which he or she receives support from his or her spouse, or marries. Benefits shall be payable under this paragraph to a brother only if he is—

(1)(A) under eighteen years of age, or

(B) under a disability as defined in section 223(d) of the Social Security Act [42 U.S.C. 423(d)] which began before the age specified in section 202(d)(1)(B)(ii) of such Act [42 U.S.C. 402(d)(1)(B)(ii)], or in the case of a student, before he ceased to be a student, or

(C) a student as defined in section 902(g) of this title; or

(2) who is, at the time of the miner's death, disabled as determined in accordance with section 223(d) of the Social Security Act [42 U.S.C. 423(d)], during such disability. Any benefit under this paragraph for a month prior to the month in which a claim for such benefit is filed shall be reduced to any extent that may be necessary, so that it will not render erroneous any benefit which, before the filing of such claim, the Commissioner of Social Security has certified for payment for such prior months. As used in this paragraph, ''dependent'' means that during the one year period prior to and ending with such miner's death, such parent, brother, or sister was living in the miner's household, and was, during such period, totally dependent on the miner for support. Proof of such support shall be filed by such claimant within two years after May 1972, or within two years after the miner's death, whichever is the later. Any such proof which is filed after the expiration of such period shall be deemed to have been filed within such period if it is shown to the satisfaction of the Commissioner of Social Security that there was good cause for failure to file such proof within such period. The determination of what constitutes ''living in the miner's household'', ''totally dependent upon the miner for support,'' and ''good cause,'' shall for purposes of this paragraph be made in accordance with regulations of the Commissioner of Social Security. Benefit payments under this paragraph to a parent, brother, or sister, shall be reduced by the amount by which such payments would be reduced on account of excess earnings of such parent, brother, or sister, respectively, under section 203(b)–(*l*) of the Social Security Act [42 U.S.C. 403(b)–(*l*)], as if the benefit under this paragraph were a benefit under section 202 of such Act [42 U.S.C. 402].

(6) If an individual's benefits would be increased under paragraph (4) of this subsection because he or she has one or more dependents, and it appears to the Commissioner of Social Security that it would be in the interest of any such dependent to have the amount of such increase in benefits (to the extent attributable to such dependent) certified to a person other than such individual, then the Commissioner of Social Security may, under regulations prescribed by him, certify the amount of such increase in benefits (to the extent so attributable) not to such individual but directly to such dependent or to another person for the use and benefit of such dependent; and any payment made under this clause, if otherwise valid under this subchapter, shall be a complete settlement and satisfaction of all claims, rights, and interests in and to such payment.

(b) Reduction of benefits

Notwithstanding subsection (a) of this section, benefit payments under this section to a miner or his widow, child, parent, brother, or sister shall be reduced, on a monthly or other appropriate basis, by an amount equal to any payment received by such miner or his widow, child, parent, brother, or sister under the workmen's compensation, unemployment compensation, or disability insurance laws of his State on account of the disability of such miner due to pneumoconiosis, and the amount by which such payment would be reduced on account of excess earnings of such miner under section 203(b) through (*l*) of the Social Security Act [42 U.S.C. 403(b) to (*l*)] if the amount paid were a benefit payable under section 202 of such Act [42 U.S.C. 402]. This part shall not be considered a workmen's compensation law or plan for purposes of section 224 of such Act [42 U.S.C. 424a].

(c) Reporting of income

Benefits payable under this part shall be deemed not to be income for purposes of the Internal Revenue Code of 1986.

(Pub. L. 91–173, title IV, § 412, Dec. 30, 1969, 83 Stat. 794; Pub. L. 92–303, §§ 1(b)(1), (2), (c)(1), 2(a), May 19, 1972, 86 Stat. 150, 151, 153; Pub. L. 95–239, §§ 3(b)(1), 4, Mar. 1, 1978, 92 Stat. 96, 97; Pub. L. 97–119, title II, § 203(a)(1)–(3), (d), Dec. 29, 1981, 95 Stat. 1643, 1644; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 103–296, title I, § 108(i)(2), Aug. 15, 1994, 108 Stat. 1488.)

REFERENCES IN TEXT

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

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

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

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

AMENDMENTS

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

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

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

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

Subsec. (a)(3). Pub. L. 97–119, § 203(a)(2), inserted '', except with respect to a claim filed under part C of this subchapter on or after the effective date of the Black Lung Benefits Amendments of 1981,'' after ''pneumoconiosis or'' and substituted ''time of his death or'' for ''time of his death, or''.

Subsec. (a)(5). Pub. L. 97–119, § 203(a)(3), inserted '', except with respect to a claim filed under part C of this subchapter on or after the effective date of the Black Lung Benefits Amendments of 1981,'' after ''pneumoconiosis, or'' and substituted ''time of his death or who was totally'' for ''time of his death, or of a miner who was totally''.

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

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

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

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

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

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

EFFECTIVE DATE OF 1994 AMENDMENT

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

EFFECTIVE DATE OF 1981 AMENDMENT

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

EFFECTIVE DATE OF 1978 AMENDMENT

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

EFFECTIVE DATE OF 1972 AMENDMENT

Section 2(b) of Pub. L. 92–303 provided that: ''The amendment made by this section [amending this section] shall be effective as of December 30, 1969.''

CALCULATION OF MONTHLY BENEFIT PAYMENTS

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

Pub. L. 103–112, title V, § 508(a), Oct. 21, 1993, 107 Stat. 1113, provided that: ''Notwithstanding any other provision of law, monthly benefit payments under part B or part C of the Black Lung Benefits Act [30 U.S.C. 921 et seq., 931 et seq.] for months after December 1993 and before October 1994 shall be calculated as though the provisions of Federal law prescribing pay rates for Federal employees continued in effect, without amendment to or limitation of such provisions, after January 1993.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 921, 924, 931, 932 of this title.

§ 923. Filing of notice of claim

(a) Promulgation of regulations; time requirement

Except as otherwise provided in section 924 of this title, no payment of benefits shall be made under this part except pursuant to a claim filed therefor on or before December 31, 1973, in such manner, in such form, and containing such information, as the Commissioner of Social Security shall by regulation prescribe.

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

In carrying out the provisions of this part, the Commissioner of Social Security shall to the maximum extent feasible (and consistent with the provisions of this part) utilize the personnel and procedures he uses in determining entitlement to disability insurance benefit payments

under section 223 of the Social Security Act [42 U.S.C. 423], but no claim for benefits under this part shall be denied solely on the basis of the results of a chest roentgenogram. In determining the validity of claims under this part, all relevant evidence shall be considered, including, where relevant, medical tests such as blood gas studies, X-ray examination, electrocardiogram, pulmonary function studies, or physical performance tests, and any medical history, evidence submitted by the claimant's physician, or his wife's affidavits, and in the case of a deceased miner, other appropriate affidavits of persons with knowledge of the miner's physical condition, and other supportive materials. Where there is no medical or other relevant evidence in the case of a deceased miner, such affidavits, from persons not eligible for benefits in such case with respect to claims filed on or after the effective date of the Black Lung Benefits Amendments of 1981, shall be considered to be sufficient to establish that the miner was totally disabled due to pneumoconiosis or that his or her death was due to pneumoconiosis. In any case, other than that involving a claim filed on or after the effective date of the Black Lung Benefits Amendments of 1981, in which there is other evidence that a miner has a pulmonary or respiratory impairment, the Commissioner of Social Security shall accept a board certified or board eligible radiologist's interpretation of a chest roentgenogram which is of a quality sufficient to demonstrate the presence of pneumoconiosis submitted in support of a claim for benefits under this subchapter if such roentgenogram has been taken by a radiologist or qualified technician, except where the Commissioner of Social Security has reason to believe that the claim has been fraudulently represented. In order to insure that any such roentgenogram is of adequate quality to demonstrate the presence of pneumoconiosis, and in order to provide for uniform quality in the roentgenograms, the Secretary of Labor may, by regulation, establish specific requirements for the techniques used to take roentgenograms of the chest. Unless the Commissioner of Social Security has good cause to believe that an autopsy report is not accurate, or that the condition of the miner is being fraudulently misrepresented, the Commissioner of Social Security shall accept such autopsy report concerning the presence of pneumoconiosis and the stage of advancement of pneumoconiosis. Claimants under this part shall be reimbursed for reasonable medical expenses incurred by them in establishing their claims. For purposes of determining total disability under this part, the provisions of subsections (a), (b), (c), (d), and (g) of section 221 of such Act [42 U.S.C. 421(a) to (d), (g)] shall be applicable. The provisions of sections 204, 205(a), (b), (d), (e), (g), (h), (j), (k), (*l*), and (n), 206, 207, and 208 of the Social Security Act [42 U.S.C. 404, 405(a), (b), (d), (e), (g), (h), (j), (k), (*l*), and (n), 406, 407, 408] shall be applicable under this part with respect to a miner, widow, child, parent, brother, sister, or dependent, as if benefits under this part were benefits under title II of such Act [42 U.S.C. 401 et seq.]. Each miner who files a claim for benefits under this subchapter shall upon request be provided an opportunity to substantiate his or her claim by means of a complete pulmonary evaluation.

(c) Filing of claim for workmen's compensation; necessity; exceptions

No claim for benefits under this section shall be considered unless the claimant has also filed a claim under the applicable State workmen's compensation law prior to or at the same time his claim was filed for benefits under this section; except that the foregoing provisions of this paragraph shall not apply in any case in which the filing of a claim under such law would clearly be futile because the period within which such a claim may be filed thereunder has expired or because pneumoconiosis is not compensable under such law, or in any other situation in which, in the opinion of the Commissioner of Social Security, the filing of a claim would clearly be futile.

(d) Employment termination and benefits entitlement

No miner who is engaged in coal mine employment shall (except as provided in section 921(c)(3) of this title) be entitled to any benefits under this part while so employed. Any miner who has been determined to be eligible for benefits pursuant to a claim filed while such miner was engaged in coal mine employment shall be entitled to such benefits if his or her employment terminates within one year after the date such determination becomes final.

(Pub. L. 91–173, title IV, §413, Dec. 30, 1969, 83 Stat. 794; Pub. L. 92–303, §§1(c)(5)(A), 4(f), 5(2), May 19, 1972, 86 Stat. 152, 154, 155; Pub. L. 95–239, §5, Mar. 1, 1978, 92 Stat. 97; Pub. L. 97–119, title II, §202(a), (c), Dec. 29, 1981, 95 Stat. 1643; Pub. L. 103–296, title I, §108(i)(2), Aug. 15, 1994, 108 Stat. 1488.)

REFERENCES IN TEXT

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

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

AMENDMENTS

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

1981—Subsec. (b). Pub. L. 97–119, §202(a), (c), inserted '', from persons not eligible for benefits in such case with respect to claims filed on or after the effective date of the Black Lung Benefits Amendments of 1981,'' after ''such affidavits'' and '', other than that involving a claim filed on or after the effective date of the Black Lung Benefits Amendments of 1981,'' after ''In any case''.

1978—Subsec. (b). Pub. L. 95–239, §5(a), (b), (c), provided that, in the case of a deceased miner where there is no medical or other relevant evidence, the affidavits be considered sufficient to establish that the miner was totally disabled due to pneumoconiosis or that death was due to pneumoconiosis, directed the Secretary to accept a board certified or board eligible radiologist's interpretation of a chest roentgenogram in cases in

which there is other evidence that a miner has a pulmonary or respiratory impairment, provided for regulations covering roentgenogram techniques, provided for acceptance by the Secretary of an autopsy report concerning the presence of pneumoconiosis and the stage of advancement of that pneumoconiosis, directed that each miner who files a claim for benefits under this subchapter be provided upon request an opportunity to substantiate the claim by means of a complete pulmonary evaluation, and, in the reference to the various subsections of section 405 of Title 42, struck out reference to subsec. (f) and inserted reference to subsec. (n).

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

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

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

EFFECTIVE DATE OF 1994 AMENDMENT

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

EFFECTIVE DATE OF 1981 AMENDMENT

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

EFFECTIVE DATE OF 1978 AMENDMENT

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

EFFECTIVE DATE OF 1972 AMENDMENT

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

EFFECTIVE DATE FOR THE APPLICATION OF SECTION 405 OF TITLE 42

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

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 902 of this title; title 31 section 3716.

§ 924. Time for filing claims

(a) Claims filed before December 31, 1973

(1) No claim for benefits under this part on account of total disability of a miner shall be considered unless it is filed on or before December 31, 1973, or, in the case of a claimant who is a widow, within six months after the death of her husband or by December 31, 1973, whichever is the later.

(2) In the case of a claim by a child this paragraph shall apply, notwithstanding any other provision of this part.

(A) If such claim is filed within six months following May 1972, and if entitlement to benefits is established pursuant to such claim, such entitlement shall be effective retroactively from December 30, 1969, or from the date such child would have been first eligible for such benefit payments had section 922(a)(3) of this title been applicable since December 30, 1969, whichever is the lesser period. If on the date such claim is filed the claimant is not eligible for benefit payments, but was eligible at any period of time during the period from December 30, 1969, to the date such claim is filed, entitlement shall be effective for the duration of eligibility during such period.

(B) If such claim is filed after six months following May 1972, and if entitlement to benefits is established pursuant to such claim, such entitlement shall be effective retroactively from a date twelve months preceding the date such claim is filed, or from the date such child would have been first eligible for such benefit payments had section 922(a)(3) of this title been applicable since December 30, 1969, whichever is the lesser period. If on the date such claim is filed the claimant is not eligible for benefit payments, but was eligible at any period of time during the period from a date twelve months preceding the date such claim is filed, to the date such claim is filed, entitlement shall be effective for the duration of eligibility during such period.

(C) No claim for benefits under this part, in the case of a claimant who is a child, shall be considered unless it is filed within six months after the death of his father or mother (whichever last occurred) or by December 31, 1973, whichever is the later.

(D) Any benefit under subparagraph (A) or (B) for a month prior to the month in which a claim is filed shall be reduced, to any extent that may be necessary, so that it will not render erroneous any benefit which, before the filing of such claim, the Commissioner of Social Security has certified for payment for such prior month.

(3) No claim for benefits under this part, in the case of a claimant who is a parent, brother, or sister shall be considered unless it is filed within six months after the death of the miner or by December 31, 1973, whichever is the later.

(b) Filing of claims after June 30, 1973

No benefits shall be paid under this part after December 31, 1973, if the claim therefor was filed after June 30, 1973.

(c) Effective date of claims

No benefits under this part shall be payable for any period prior to the date a claim therefor is filed.

(d) Reduction of State benefits

No benefits shall be paid under this part to the residents of any State which, after December 30, 1969, reduces the benefits payable to persons eligible to receive benefits under this part, under its State laws which are applicable to its general work force with regard to workmen's compensation, unemployment compensation, or disability insurance.

(e) Conditions upon payment

No benefits shall be payable to a widow, child, parent, brother, or sister under this part on ac-

count of the death of a miner unless (1) benefits under this part were being paid to such miner with respect to disability due to pneumoconiosis prior to his death, (2) the death of such miner occurred prior to January 1, 1974, or (3) any such individual is entitled to benefits under paragraph (5) of section 921(c) of this title.

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

AMENDMENTS

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

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

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

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

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

EFFECTIVE DATE OF 1994 AMENDMENT

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

EFFECTIVE DATE OF 1978 AMENDMENT

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 923 of this title.

§924a. Notification to miners of eligibility for medical services and supplies; period for filing claim

The Secretary of Health and Human Services shall notify each miner receiving benefits under this part on account of his or her total disability who such Secretary has reason to believe became eligible for medical services and supplies on January 1, 1974, of his or her possible eligibility for such benefits. Where such Secretary so notifies a miner, the period during which he or she may file a claim for medical services and supplies under part C of this subchapter shall not terminate before six months after such notification is made.

(Pub. L. 95–239, §11, Mar. 1, 1978, 92 Stat. 101; Pub. L. 96–88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695.)

CODIFICATION

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

CHANGE OF NAME

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

EFFECTIVE DATE

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

§925. Procedure for the determination of claims during transition period

(a) Notwithstanding any other provision in this subchapter, for the purpose of assuring the uninterrupted receipt of benefits by claimants at such time as responsibility for administration of the benefits program is assumed by either a State workmen's compensation agency or the Secretary of Labor, any claim for benefits under this part filed during the period from July 1, 1973 to December 31, 1973, shall be considered and determined in accordance with the procedures of this section. With respect to any such claim—

(1) Such claim shall be determined and, where appropriate under this part or section 9501(d) of title 26, benefits shall be paid with respect to such claim by the Secretary of Labor.

(2) The manner and place of filing such claim shall be in accordance with regulations issued jointly by the Commissioner of Social Security and the Secretary of Labor, which regulations shall provide, among other things, that such claims may be filed in district offices of the Social Security Administration and thereafter transferred to the jurisdiction of the Department of Labor for further consideration.

(3) The Secretary of Labor shall promptly notify any operator who he believes, on the basis of information contained in the claim, or any other information available to him, may be liable to pay benefits to the claimant under part C of this subchapter for any month after December 31, 1973.

(4) In determining such claims, the Secretary of Labor shall, to the extent appropriate, follow the procedures described in subsections (b), (c), and (d) of section 919 of title 33.

(5) Any operator who has been notified of the pendency of a claim under paragraph 4 of this subsection shall be bound by the determination of the Secretary of Labor on such claim as if the claim had been filed pursuant to part C of this subchapter and section 932 of this title had been applicable to such operator. Nothing in this paragraph shall require any operator to pay any benefits for any month prior to January 1, 1974.

(b) The Secretary of Labor, after consultation with the Commissioner of Social Security, may issue such regulations as are necessary or appropriate to carry out the purpose of this section.

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

AMENDMENTS

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

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

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

EFFECTIVE DATE OF 1994 AMENDMENT

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 945 of this title.

PART C—CLAIMS FOR BENEFITS AFTER DECEMBER 31, 1973

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 902, 921, 922, 924a, 925, 932a of this title; title 26 sections 192, 501, 9501.

§ 931. Benefits under State workmen's compensation laws

(a) Filing

On and after January 1, 1974, any claim for benefits for death or total disability due to pneumoconiosis shall be filed pursuant to the applicable State workmen's compensation law, except that during any period when miners or their surviving widows, children, parents, brothers, or sisters, as the case may be, are not covered by a State workmen's compensation law which provides adequate coverage for pneumoconiosis, and in any case in which benefits based upon eligibility under paragraph (5) of section 921(c) of this title are involved.[1] they shall be entitled to claim benefits under this part.

(b) Adequacy of compensation; listing of States providing adequate compensation; requisites for listing

(1) For purposes of this section, a State workmen's compensation law shall not be deemed to provide adequate coverage for pneumoconiosis during any period unless it is included in the list of State laws found by the Secretary to provide such adequate coverage during such period. The Secretary shall, no later than October 1, 1972, publish in the Federal Register a list of State workmen's compensation laws which provide adequate coverage for pneumoconiosis and shall revise and republish in the Federal Register such list from time to time, as may be appropriate to reflect changes in such State laws due to legislation or judicial or administrative interpretation.

(2) The Secretary shall include a State workmen's compensation law on such list during any period only if he finds that during such period under such law—

(A) benefits must be paid for total disability or death of a miner due to pneumoconiosis, except that (i) such law shall not be required to provide such benefits where the miner's last employment in a coal mine terminated before the Secretary's approval of the State law pursuant to this section; and (ii) each operator of a coal mine shall secure the payment of benefits pursuant to section 933 of this title with respect to any miner whose last employment in a coal mine terminated before the Secretary's approval of the State law pursuant to this section;

(B) the amount of such cash benefits is substantially equivalent to or greater than the amount of benefits prescribed by section 922(a) of this title;

(C) the standards for determining death or total disability due to pneumoconiosis are substantially equivalent to section 902(f) of this title and to those standards established under this part, and by the regulations of the Secretary promulgated under this part;

(D) any claim for benefits on account of total disability of a miner due to pneumoconiosis is deemed to be timely filed if such claim is filed within three years after a medical determination of total disability due to pneumoconiosis;

(E) there are in effect provisions with respect to prior and successor operators which are substantially equivalent to the provisions contained in section 932(i) of this title; and

(F) there are applicable such other provisions, regulations or interpretations, which are consistent with the provisions contained in Public Law 803, 69th Congress (44 Stat. 1424, approved March 4, 1927), as amended [33 U.S.C. 901 et seq.], which are applicable under section 932(a) of this title, but are not inconsistent with any of the criteria set forth in subparagraphs (A) through (E) of this paragraph, as the Secretary, in accordance with regulations promulgated by him, determines to be necessary or appropriate to assure adequate compensation for total disability or death due to pneumoconiosis.

The action of the Secretary in including or failing to include any State workmen's compensation law on such list shall be subject to judicial review exclusively in the United States court of appeals for the circuit in which the State is located or the United States Court of Appeals for the District of Columbia.

(c) Publication in Federal Register; review of listings

Final regulations required for implementation of any amendments to this part shall be promulgated and published in the Federal Register at the earliest practicable date after the date of enactment of such amendments, and in no event later than the end of the sixth month following the month in which such amendments are enacted.

(Pub. L. 91–173, title IV, § 421, Dec. 30, 1969, 83 Stat. 795; Pub. L. 92–303, §§ 1(c)(1), 4(e), 5(3), (5), May 19, 1972, 86 Stat. 151, 154, 155; Pub. L. 95–239, §§ 3(b)(3), 6, Mar. 1, 1978, 92 Stat. 97, 98.)

REFERENCES IN TEXT

Public Law 803, 69th Congress, referred to in subsec. (b)(2)(F), is act Mar. 4, 1927, ch. 509, 44 Stat. 1424, as amended, popularly known as the Longshore and Harbor Workers' Compensation Act, which is classified

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

generally to chapter 18 (§901 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see section 901 of Title 33 and Tables.

AMENDMENTS

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

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

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

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

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

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

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

EFFECTIVE DATE OF 1978 AMENDMENT

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

EFFECTIVE DATE OF 1972 AMENDMENT

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 932, 933 of this title.

§932. Failure to meet workmen's compensation requirements

(a) Benefits; applicability of Longshore and Harbor Workers' Compensation Act; promulgation of regulations

Subject to section 28(h)(1) of the Longshore and Harbor Workers' Compensation Act Amendments of 1984, during any period after December 31, 1973, in which a State workmen's compensation law is not included on the list published by the Secretary under section 931(b) of this title, the provisions of Public Law 803, 69th Congress (44 Stat. 1424, approved March 4, 1927), as amended [33 U.S.C. 901 et seq.], and as it may be amended from time to time (other than the provisions contained in sections 1, 2, 3, 4,,[1] 8, 9, 10, 12, 13, 29, 30, 31, 32, 33, 37, 38, 41, 43, 44, 45, 46, 47, 48, 49, 50, and 51 thereof) [33 U.S.C. 901, 902, 903, 904, 908, 909, 910, 912, 913, 929, 930, 931, 932, 933, 937, 938, 941, 943, 944, 945, 946, 947, 948, 948a, 949, 950], shall (except as otherwise provided in this subsection or by regulations of the Secretary and except that references in such Act to the employer shall be considered to refer to the trustees of the fund, as the Secretary considers appropriate and as is consistent with the provisions of section 9501(d) of title 26), be applicable to each operator of a coal mine in such State with respect to death or total disability due to pneumoconiosis arising out of employment in such mine, or with respect to entitlements established in paragraph (5) of section 921(c) of this title. In administering this part, the Secretary is authorized to prescribe in the Federal Register such additional provisions, not inconsistent with those specifically excluded by this subsection, as he deems necessary to provide for the payment of benefits by such operator to persons entitled thereto as provided in this part and thereafter those provisions shall be applicable to such operator.

(b) Liability of operators

During any such period each such operator shall be liable for and shall secure the payment of benefits, as provided in this section and section 933 of this title. An employer, other than an operator of a coal mine, shall not be required to secure the payment of such benefits with respect to any employee of such employer to the extent such employee is engaged in the transportation of coal or in coal mine construction. Upon determination by the Secretary of the eligibility of the employee, the Secretary may require such employer to secure a bond or otherwise guarantee the payment of such benefits to the employee.

(c) Persons entitled to benefits

Benefits shall be paid during such period by each such operator under this section to the categories of persons entitled to benefits under section 922(a) of this title in accordance with the regulations of the Secretary applicable under this section: *Provided*, That, except as provided in subsection (i) of this section, no benefit shall be payable by any operator on account of death or total disability due to pneumoconiosis (1) which did not arise, at least in part, out of employment in a mine during a period after December 31, 1969, when it was operated by such operator; or (2) which was the subject of a claim denied before March 1, 1978, and which is or has been approved in accordance with the provisions of section 945 of this title.

(d) Monthly payments; amounts; accrual of interest

Benefits payable under this section shall be paid on a monthly basis and, except as otherwise provided in this section, such payments shall be equal to the amounts specified in section 922(a) of this title. If payment is not made within the time required, interest shall accrue to such amounts at the rates set forth in section 934(b)(5) of this title for interest owed to the fund. With respect to payments withheld pending final adjudication of liability, in the case of claims filed on or after the effective date of the Black Lung Benefits Amendments of 1981, such interest shall commence to accumulate 30 days after the date of the determination that such an award should be made.

(e) Conditions upon payment

No payment of benefits shall be required under this section:

[1] So in original.

(1) except pursuant to a claim filed therefor in such manner, in such form, and containing such information, as the Secretary shall by regulation prescribe; or

(2) for any period prior to January 1, 1974.

(f) Limitation on filing of claims

Any claim for benefits by a miner under this section shall be filed within three years after whichever of the following occurs later—

(1) a medical determination of total disability due to pneumoconiosis; or

(2) March 1, 1978.

(g) Reduction of monthly benefits

The amount of benefits payable under this section shall be reduced, on a monthly or other appropriate basis, by the amount of any compensation received under or pursuant to any Federal or State workmen's compensation law because of death or disability due to pneumoconiosis. In addition, the amount of benefits payable under this section with respect to any claim filed on or after the effective date of the Black Lung Benefits Amendments of 1981 shall be reduced, on a monthly or other appropriate basis, by the amount by which such benefits would be reduced on account of excess earnings of such miner under section 403(b) through (*l*) of title 42 if the amount paid were a benefit payable under section 402 of title 42.

(h) Promulgation of regulations

The Secretary of Labor shall by regulation establish standards, which may include appropriate presumptions, for determining whether pneumoconiosis arose out of employment in a particular coal mine or mines. The Secretary may also, by regulation, establish standards for apportioning liability for benefits under this subsection among more than one operator, where such apportionment is appropriate.

(i) Subsequent operators' liability for benefit payments

(1) During any period in which this section is applicable to the operator of a coal mine who on or after January 1, 1970, acquired such mine or substantially all the assets thereof, from a person (hereinafter in this subsection referred to as a ''prior operator'') who was an operator of such mine, or owner of such assets on or after January 1, 1970, such operator shall be liable for and shall, in accordance with section 933 of this title, secure the payment of all benefits which would have been payable by the prior operator under this section with respect to miners previously employed by such prior operator as if the acquisition had not occurred and the prior operator had continued to be an operator of a coal mine.

(2) Nothing in this subsection shall relieve any prior operator of any liability under this section.

(3)(A) For purposes of paragraph (1) of this subsection, the provisions of this paragraph shall apply to corporate reorganizations, liquidations, and such other transactions as are specified in this paragraph.

(B) If an operator ceases to exist by reason of a reorganization or other transaction or series of transactions which involves a change in identity, form, or place of business or organization, however effected, the successor operator or other corporate or business entity resulting from such reorganization or other change shall be treated as the operator to whom this section applies.

(C) If an operator ceases to exist by reason of a liquidation into a parent or successor corporation, the parent or successor corporation shall be treated as the operator to whom this section applies.

(D) If an operator ceases to exist by reason of a sale of substantially all his or her assets, or as the result of a merger, consolidation, or division, the successor operator, corporation, or other business entity shall be treated as the operator to whom this section applies.

(4) In any case in which there is a determination under section 9501(d) of title 26 that no operator is liable for the payment of benefits to a claimant, nothing in this subsection may be construed to require the payment of benefits to a claimant by or on behalf of any operator.

(j) Failure of operators to secure benefits

Notwithstanding the provisions of this section, section 9501 of title 26 shall govern the payment of benefits in cases—

(1) described in section 9501(d)(1) of title 26;

(2) in which the miner's last coal mine employment was before January 1, 1970; or

(3) in which there was a claim denied before March 1, 1978, and such claim is or has been approved in accordance with the provisions of section 945 of this title.

(k) Secretary as party in claim proceedings

The Secretary shall be a party in any proceeding relative to a claim for benefits under this part.

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

In no case shall the eligible survivors of a miner who was determined to be eligible to receive benefits under this subchapter at the time of his or her death be required to file a new claim for benefits, or refile or otherwise revalidate the claim of such miner, except with respect to a claim filed under this part on or after the effective date of the Black Lung Benefits Amendments of 1981,.[2]

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

REFERENCES IN TEXT

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

Public Law 803, 69th Congress, referred to in subsec. (a), is act Mar. 4, 1927, ch. 509, 44 Stat. 1424, as amended,

[2] So in original.

popularly known as the Longshore and Harbor Workers' Compensation Act, which is classified generally to chapter 18 (§ 901 et seq.) of Title 33. For complete classification of this Act to the Code, see section 901 of Title 33 and Tables.

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

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

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

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

AMENDMENTS

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

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

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

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

Subsec. (d). Pub. L. 97–119, § 204, inserted provision relating to accrual of interest if payment is not made within the time required and accumulation of interest with respect to payments withheld pending final adjudication of liability in the case of claims filed on or after the effective date of the Black Lung Benefits Amendments of 1981.

Subsec. (g). Pub. L. 97–119, § 203(b), inserted provision reducing the amount of benefits payable under this section with respect to any claim filed on or after the effective date of the Black Lung Benefits Amendments of 1981.

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

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

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

1978—Subsec. (a). Pub. L. 95–239, §§ 3(b)(4), 7(a), inserted '', and as it may be amended from time to time'' after ''as amended'', inserted a comma after ''and 51 thereof)'', substituted ''or by regulations of the Secretary and except that references in such Act to the employer shall be considered to refer to the trustees of the fund, as the Secretary considers appropriate and as is consistent with the provisions of section 934 of this title)'' for ''and except as the Secretary shall by regulation otherwise provide)'', and inserted '', or with respect to entitlements established in paragraph (5) of section 921(c) of this title'' after ''with respect to death or total disability due to pneumoconiosis arising out of employment in such mine''.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EFFECTIVE DATE OF 1984 AMENDMENT

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

EFFECTIVE DATE OF 1981 AMENDMENT

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

EFFECTIVE DATE OF 1978 AMENDMENT

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

EFFECTIVE DATE OF 1972 AMENDMENT

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 902, 925, 931, 933, 934, 935, 943 of this title; title 26 section 9501.

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

Qualified individuals appointed by the Secretary of Labor may hear and determine claims

for benefits under part C of title IV of the Federal Coal Mine Health and Safety Act of 1969 [30 U.S.C. 931 et seq.] and under section 415 of such Act [30 U.S.C. 925]. For purposes of this section, the term ''qualified individual'' means such an individual, regardless of whether that individual is a hearing examiner appointed under section 3105 of title 5. Nothing in this section shall be deemed to imply that there is or is not in effect any authority for such individuals to hear and determine such claims under any provision of law other than this section.

(Pub. L. 94–504, Oct. 15, 1976, 90 Stat. 2428.)

REFERENCES IN TEXT

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

CODIFICATION

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

EXTENSION OF ADJUDICATION PERIOD THROUGH MARCH 1, 1979

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

§ 933. Duties of operators in States not qualifying under workmen's compensation laws

(a) Securing of benefits for miners; self-insurers; mutual companies

During any period in which a State workmen's compensation law is not included on the list published by the Secretary under section 931(b) of this title each operator of a coal mine in such State shall secure the payment of benefits for which he is liable under section 932 of this title by (1) qualifying as a self-insurer in accordance with regulations prescribed by the Secretary, or (2) insuring and keeping insured the payment of such benefits with any stock company or mutual company or association, or with any other person or fund, including any State fund, while such company, association, person or fund is authorized under the laws of any State to insure workmen's compensation.

(b) Required provisions of insurance contracts

In order to meet the requirements of clause (2) of subsection (a) of this section, every policy or contract of insurance must contain—

(1) a provision to pay benefits required under section 932 of this title, notwithstanding the provisions of the State workmen's compensation law which may provide for lesser payments;

(2) a provision that insolvency or bankruptcy of the operator or discharge therein (or both) shall not relieve the carrier from liability for such payments; and

(3) such other provisions as the Secretary, by regulation, may require.

(c) Cancellation of insurance contracts

No policy or contract of insurance issued by a carrier to comply with the requirements of clause (2) of subsection (a) of this subsection[1] shall be canceled prior to the date specified in such policy or contract for its expiration until at least thirty days have elapsed after notice of cancellation has been sent by registered or certified mail to the Secretary and to the operator at his last known place of business.

(d) Penalties for failure to secure payment of benefits

(1) Any employer required to secure the payment of benefits under this section who fails to secure such benefits shall be subject to a civil penalty assessed by the Secretary of not more than $1,000 for each day during which such failure occurs. In any case where such employer is a corporation, the president, secretary, and treasurer thereof also shall be severally liable to such civil penalty as provided in this subsection for the failure of such corporation to secure the payment of benefits. Such president, secretary, and treasurer shall be severally personally liable, jointly with such corporation, for any benefit which may accrue under this subchapter in respect to any disability which may occur to any employee of such corporation while it shall so fail to secure the payment of benefits as required by this section.

(2) Any employer of a miner who knowingly transfers, sells, encumbers, assigns, or in any manner disposes of, conceals, secrets,[2] or destroys any property belonging to such employer, after any miner employed by such employer has filed a claim under this subchapter, and with intent to avoid the payment of benefits under this subchapter to such miner or his or her dependents, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than $1,000, or by imprisonment for not more than one year, or both. In any case where such employer is a corporation, the president, secretary, and treasurer thereof also shall be severally liable for such penalty of imprisonment as well as jointly liable with such corporation for such fine.

(3) This subsection shall not affect any other liability of the employer under this part.

(Pub. L. 91–173, title IV, § 423, Dec. 30, 1969, 83 Stat. 797; Pub. L. 92–303, § 3(b), May 19, 1972, 86 Stat. 153; Pub. L. 95–239, § 8, Mar. 1, 1978, 92 Stat. 100.)

AMENDMENTS

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

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

EFFECTIVE DATE OF 1978 AMENDMENT

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

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[1] So in original. Probably should be ''section''.

[2] So in original. Probably should be ''secretes,''.

EFFECTIVE DATE OF 1972 AMENDMENT

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 931, 932, 934, 943 of this title; title 26 section 9501.

§934. "Fund" defined; liability of operators to United States for repayments to fund; procedures applicable; rate of interest

(a) For purposes of this section, the term ''fund'' has the meaning set forth in section 902(h) of this title.

(b)(1) If—

(A) an amount is paid out of the fund to an individual entitled to benefits under section 932 of this title, and

(B) the Secretary determines, under the provisions of sections 932 and 933 of this title, that an operator was required to secure the payment of all or a portion of such benefits,

then the operator is liable to the United States for repayment to the fund of the amount of such benefits the payment of which is properly attributed to him plus interest thereon. No operator or representative of operators may bring any proceeding, or intervene in any proceeding, held for the purpose of determining claims for benefits to be paid by the fund, except that nothing in this section shall affect the rights, duties, or liabilities of any operator in proceedings under section 932 or section 933 of this title. In a case where no operator responsibility is assigned pursuant to sections 932 and 933 of this title, a determination by the Secretary that the fund is liable for the payment of benefits shall be final.

(2) If any operator liable to the fund under paragraph (1) refuses to pay, after demand, the amount of such liability (including interest), then there shall be a lien in favor of the United States for such amount upon all property and rights to property, whether real or personal, belonging to such operator. The lien arises on the date on which such liability is finally determined, and continues until it is satisfied or becomes unenforceable by reason of lapse of time.

(3)(A) Except as otherwise provided under this subsection, the priority of the lien shall be determined in the same manner as under section 6323 of title 26. That section shall be applied for such purposes—

(i) by substituting ''lien imposed by section 424(b)(2) of the Federal Mine Safety and Health Act of 1977'' for ''lien imposed by section 6321''; ''operator liability lien'' for ''tax lien''; ''operator'' for ''taxpayer''; ''lien arising under section 424(b)(2) of the Federal Mine Safety and Health Act of 1977'' for ''assessment of the tax''; ''payment of the liability is made to the Black Lung Disability Trust Fund'' for ''satisfaction of a levy pursuant to section 6332(b)''; and ''satisfaction of operator liability'' for ''collection of any tax under this title'' each place such terms appear; and

(ii) by treating all references to the ''Secretary'' as references to the Secretary of Labor.

(B) In the case of a bankruptcy or insolvency proceeding, the lien imposed under paragraph (2) shall be treated in the same manner as a lien for taxes due and owing to the United States for purposes of the Bankruptcy Act or section 3713(a) of title 31.

(C) For purposes of applying section 6323(a) of title 26 to determine the priority between the lien imposed under paragraph (2) and the Federal tax lien, each lien shall be treated as a judgment lien arising as of the time notice of such lien is filed.

(D) For purposes of this subsection, notice of the lien imposed under paragraph (2) shall be filed in the same manner as under subsections (f) and (g) of section 6323 of title 26.

(4)(A) In any case where there has been a refusal or neglect to pay the liability imposed under paragraph (2), the Secretary may bring a civil action in a district court of the United States to enforce the lien of the United States under this section with respect to such liability or to subject any property, of whatever nature, of the operator, or in which he has any right, title, or interest, to the payment of such liability.

(B) The liability imposed by paragraph (1) may be collected at a proceeding in court if the proceeding is commenced within 6 years after the date on which the liability was finally determined, or before the expiration of any period for collection agreed upon in writing by the operator and the United States before the expiration of such 6-year period. The running of the period of limitation provided under this subparagraph shall be suspended for any period during which the assets of the operator are in the custody or control of any court of the United States, or of any State, or the District of Columbia, and for 6 months thereafter, and for any period during which the operator is outside the United States if such period of absence is for a continuous period of at least 6 months.

(5) The rate of interest under this subsection—

(A) for any period during calendar year 1982, shall be 15 percent, and

(B) for any period after calendar year 1982, shall be the rate established by section 6621 of title 26 which is in effect for such period.

(Pub. L. 91–173, title IV, §424, Dec. 30, 1969, 83 Stat. 798; Pub. L. 92–303, §1(c)(1), May 19, 1972, 86 Stat. 151; Pub. L. 95–227, §3(d), Feb. 10, 1978, 92 Stat. 13; Pub. L. 96–222, title I, §108(b)(2)(A), Apr. 1, 1980, 94 Stat. 226; Pub. L. 97–119, title I, §104(a)(1), (2), (b)(6), Dec. 29, 1981, 95 Stat. 1639; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095.)

REFERENCES IN TEXT

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

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

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

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

CODIFICATION

In subsec. (b)(3)(B), ''section 3713(a) of title 31'' substituted for ''section 3466 of the Revised Statutes (31

U.S.C. 191)'' on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

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

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

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

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

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

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

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

EFFECTIVE DATE OF 1981 AMENDMENT

Section 104(a)(3) of Pub. L. 97–119 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on January 1, 1982, and shall apply to amounts outstanding on such date or arising thereafter.''

EFFECTIVE DATE OF 1980 AMENDMENT

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

EFFECTIVE DATE OF 1978 AMENDMENT

Section 3(e) of Pub. L. 95–227 provided that: ''This section [enacting section 934a of this title and amending this section] shall take effect on April 1, 1978.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 932 of this title; title 26 section 9501.

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

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

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 1982, see section 103(d)(1) of Pub. L. 97–119, set out as an Effective Date note under section 9501 of Title 26, Internal Revenue Code.

PROVISIONS RELATING TO PAYMENT OF BENEFITS TO MINERS AND ELIGIBLE SURVIVORS OF MINERS TO TAKE EFFECT AS RULES AND REGULATIONS OF SECRETARY OF LABOR

Pub. L. 95–239, § 20(b), Mar. 1, 1978, 92 Stat. 106, provided that in the event that the payment of benefits to miners and to eligible survivors of miners cannot be made from the Black Lung Disability Trust Fund established by section 3(a) of the Black Lung Benefits Revenue Act of 1977 [former subsec. (a) of this section], the provisions of the Act relating to the payment of benefits to miners and to eligible survivors of miners, as in effect immediately before the date of the enactment of this Act [Mar. 1, 1978], shall take effect, as rules and regulations of the Secretary of Labor until such provisions are revoked, amended, or revised by law, and that the Secretary of Labor may promulgate additional rules and regulations to carry out such provisions and shall make benefit payments to miners and to eligible survivors of miners in accordance with such provisions.

§ 935. Utilization of services of State and local agencies

With the consent and cooperation of State agencies charged with administration of State workmen's compensation laws, the Secretary may, for the purpose of carrying out his functions and duties under section 932 of this title, utilize the services of State and local agencies and their employees and, notwithstanding any other provision of law, may advance funds to or reimburse such State and local agencies and their employees for services rendered for such purposes.

(Pub. L. 91–173, title IV, § 425, Dec. 30, 1969, 83 Stat. 798.)

§ 936. Regulations and reports

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

The Secretary of Labor, the Commissioner of Social Security, and the Secretary of Health and Human Services are authorized to issue such regulations as each deems appropriate to carry out the provisions of this subchapter. Such regulations shall be issued in conformity with section 553 of title 5, notwithstanding subsection (a) thereof.

(b) Annual reports to Congress

At the end of each fiscal year, the Commissioner of Social Security shall submit to the Congress an annual report upon the subject matter of part B of this subchapter, and, after January 1, 1974, the Secretary of Labor shall also submit such a report upon the subject matter of this part. Each such report shall be prepared and submitted to Congress in accordance with the requirement with respect to submission under section 942 of title 33.

(c) Compliance with State workmen's compensation laws; conflicts between State and Federal provisions

Nothing in this subchapter shall relieve any operator of the duty to comply with any State workmen's compensation law, except insofar as such State law is in conflict with the provisions of this subchapter and the Secretary by regulation, so prescribes. The provisions of any State workmen's compensation law which provide greater benefits than the benefits payable under this subchapter shall not thereby be construed or held to be in conflict with the provisions of this subchapter.

(Pub. L. 91–173, title IV, § 426, Dec. 30, 1969, 83 Stat. 798; Pub. L. 92–303, § 5(3), May 19, 1972, 86 Stat. 155; Pub. L. 103–296, title I, § 108(i)(3), Aug. 15, 1994, 108 Stat. 1488; Pub. L. 104–66, title I, § 1102(b)(2), Dec. 21, 1995, 109 Stat. 723.)

REFERENCES IN TEXT

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

AMENDMENTS

1995—Subsec. (b). Pub. L. 104–66 substituted ''At the end of each fiscal year, the'' for ''Within 120 days following the convening of each session of Congress the'' and inserted at end ''Each such report shall be prepared and submitted to Congress in accordance with the requirement with respect to submission under section 942 of title 33.''

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

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

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

EFFECTIVE DATE OF 1994 AMENDMENT

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 33 section 942.

§937. Contracts and grants

(a) Construction, purchase, and operation of fixed-site and mobile clinical facilities

The Secretary of Health and Human Services is authorized to enter into contracts with, and make grants to, public and private agencies and organizations and individuals for the construction, purchase, and operation of fixed-site and mobile clinical facilities for the analysis, examination, and treatment of respiratory and pulmonary impairments in active and inactive coal miners. The Secretary shall coordinate the making of such contracts and grants with the Appalachian Regional Commission.

(b) Research activities

The Secretary of Health and Human Services shall initiate research within the National Institute for Occupational Safety and Health, and is authorized to make research grants to public and private agencies and organizations and individuals for the purpose of devising simple and effective tests to measure, detect, and treat respiratory and pulmonary impairments in active and inactive coal miners. Any grant made pursuant to this subsection shall be conditioned upon all information, uses, products, processes, patents, and other developments resulting from such research being available to the general public, except to the extent of such exceptions and limitations as the Secretary of Health and Human Services may deem necessary in the public interest.

(c) Authorization of appropriations

There is hereby authorized to be appropriated for the purpose of subsection (a) of this section $10,000,000 for each fiscal year. There are hereby authorized to be appropriated for the purposes of subsection (b) of this section such sums as are necessary.

(Pub. L. 91–173, title IV, §427, as added Pub. L. 92–303, §5(6), May 19, 1972, 86 Stat. 155; amended Pub. L. 95–239, §9, Mar. 1, 1978, 92 Stat. 100; Pub. L. 96–88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695.)

AMENDMENTS

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

CHANGE OF NAME

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

EFFECTIVE DATE OF 1978 AMENDMENT

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 26 section 9501; title 35 section 210; title 42 section 256b.

§938. Miners suffering from pneumoconiosis; discrimination prohibited

(a) Mine operators

No operator shall discharge or in any other way discriminate against any miner employed by him by reason of the fact that such miner is suffering from pneumoconiosis. No person shall cause or attempt to cause an operator to violate this section. For the purposes of this subsection the term ''miner'' shall not include any person who has been found to be totally disabled.

(b) Determination by Secretary; procedure

Any miner who believes that he has been discharged or otherwise discriminated against by any person in violation of subsection (a) of this section, or any representative of such miner may, within ninety days after such violation occurs, apply to the Secretary for a review of such alleged discharge or discrimination. A copy of the application shall be sent to such person who shall be the respondent. Upon receipt of such application, the Secretary shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of any party to enable the parties to present information relating to such violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to section 554 of title 5. Each administrative law judge presiding under this section and under the provisions of subchapters I, II and III of this chapter shall receive compensation at a rate determined under section 5372 of title 5. Upon receiving the report of such investigation, the Secretary shall make findings of fact. If he finds that such violation did occur, he shall issue a decision, incorporating an order therein, requiring the person committing such violation to take such affirmative action as the Secretary

deems appropriate, including, but not limited to, the rehiring or reinstatement of the miner to his former position with back pay. If he finds that there was no such violation, he shall issue an order denying the application. Such order shall incorporate the Secretary's findings therein.

(c) Costs and penalties

Whenever an order is issued under this subsection granting relief to a miner at the request of such miner, a sum equal to the aggregate amount of all costs and expenses (including the attorney's fees) as determined by the Secretary to have been reasonably incurred by such miner for, or in connection with, the institution and prosecution of such proceedings, shall be assessed against the person committing the violation.

(Pub. L. 91–173, title IV, § 428, as added Pub. L. 92–303, § 5(7), May 19, 1972, 86 Stat. 155; amended Pub. L. 95–251, § 2(a)(9), Mar. 27, 1978, 92 Stat. 183; Pub. L. 101–509, title V, § 529 [title I, § 104(d)(3)], Nov. 5, 1990, 104 Stat. 1427, 1447.)

AMENDMENTS

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

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

EFFECTIVE DATE OF 1990 AMENDMENT

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

§ 939. Authorization of appropriations

There is authorized to be appropriated to the Secretary of Labor such sums as may be necessary to carry out his responsibilities under this subchapter. Such sums shall remain available until expended.

(Pub. L. 91–173, title IV, § 429, as added Pub. L. 92–303, § 5(8), May 19, 1972, 86 Stat. 156.)

§ 940. Applicability of amendments to part B of this subchapter to this part

The amendments made by the Black Lung Benefits Act of 1972, the Black Lung Benefits Reform Act of 1977 and the Black Lung Benefits Amendments of 1981 to part B of this subchapter shall, to the extent appropriate, also apply to this part.

(Pub. L. 91–173, title IV, § 430, as added Pub. L. 92–303, § 5(10), May 19, 1972, 86 Stat. 156; amended Pub. L. 95–239, § 10, Mar. 1, 1978, 92 Stat. 100; Pub. L. 97–119, title II, § 202(d), Dec. 29, 1981, 95 Stat. 1643.)

REFERENCES IN TEXT

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

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

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

AMENDMENTS

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

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

EFFECTIVE DATE OF 1981 AMENDMENT

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

EFFECTIVE DATE OF 1978 AMENDMENT

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

§ 941. Penalty for false statements or representations

Any person who willfully makes any false or misleading statement or representation for the purpose of obtaining any benefit or payment under this subchapter shall be guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not more than $1,000, or by imprisonment for not more than one year, or both.

(Pub. L. 91–173, title IV, § 431, as added Pub. L. 92–303, § 6, May 19, 1972, 86 Stat. 156; amended Pub. L. 95–239, § 12(a), Mar. 1, 1978, 92 Stat. 101.)

AMENDMENTS

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

EFFECTIVE DATE OF 1978 AMENDMENT

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 26 section 9501.

§ 942. Miner benefit entitlement reports; penalty for failure or refusal to file

(a) The Secretary may by regulation require employers to file reports concerning miners who may be or are entitled to benefits under this

part, including the date of commencement and cessation of benefits and the amount of such benefits. Any such report shall not be evidence of any fact stated therein in any proceeding relating to death or total disability due to pneumoconiosis of any miner to which such report relates.

(b) Any employer who fails or refuses to file any report required of such employer under this section shall be subject to a civil penalty of not more than $500 for each such failure or refusal.

(Pub. L. 91–173, title IV, § 432, as added Pub. L. 95–239, § 12(b), Mar. 1, 1978, 92 Stat. 101.)

EFFECTIVE DATE

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 26 section 9501.

§ 943. Black lung insurance program

(a) Authorization to establish and carry out

The Secretary is authorized to establish and carry out a black lung insurance program which will enable operators of coal mines to purchase insurance covering their obligations under section 932 of this title.

(b) Non-availability of other insurance coverage

The Secretary may exercise his or her authority under this section only if, and to the extent that, insurance coverage is not otherwise available, at reasonable cost, to operators of coal mines.

(c) Agreements with coal mine operators; reinsurance agreements

(1) The Secretary may enter into agreements with operators of coal mines who may be liable for the payment of benefits under section 932 of this title, under which the Black Lung Compensation Insurance Fund established under subsection (a) of this section (hereinafter in this section referred to as the ''insurance fund'') shall assume all or part of the liability of such operator in return for the payment of premiums to the insurance fund, and on such terms and conditions as will fully protect the financial solvency of the insurance fund. During any period in which such agreement is in effect the operator shall be deemed in compliance with the requirements of section 933 of this title with respect to the risks covered by such agreement.

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

(d) Terms and conditions of insurability

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

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

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

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

(4) appropriate loss deductibles;

(5) experience rating; and

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

(e) Premium schedule studies and investigations

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

(f) Regulations relating to premium rates

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

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

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

(g) Black Lung Compensation Insurance Fund

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

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

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

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

(2) The insurance fund shall be credited with—

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

(B) such amounts as may be advanced to the insurance fund from appropriations in order to

maintain the insurance fund in an operative condition adequate to meet its liabilities; and

(C) income which may be earned on investments of the insurance fund pursuant to paragraph (3).

(3) If, after all outstanding current obligations of the insurance fund have been liquidated and any outstanding amounts which may have been advanced to the insurance fund from appropriations authorized under subsection (i) of this section have been credited to the appropriation from which advanced, the Secretary determines that the moneys of the insurance fund are in excess of current needs, he or she may request the investment of such amounts as he or she deems advisable by the Secretary of the Treasury in public debt securities with maturities suitable for the needs of the insurance fund and bearing interest at prevailing market rates.

(h) Annual report to Congress

The Secretary shall report to the Congress not later than the first day of April of each year on the financial condition of the insurance fund and the results of the operations of the insurance fund during the preceding fiscal year and on its expected condition and operations during the fiscal year in which the report is made.

(i) Authorization of appropriations

There are authorized to be appropriated to the insurance fund, as repayable advances, such sums as may be necessary to meet obligations incurred under subsection (g) of this section. All such sums shall remain available without fiscal year limitation. Advances made pursuant to this subsection shall be repaid, with interest, to the general fund of the Treasury when the Secretary determines that moneys are available in the insurance fund for such repayments. Interest on such advances shall be computed in the same manner as provided in subsection (b)(2) of section 934a[1] of this title.

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

REFERENCES IN TEXT

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

EFFECTIVE DATE

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 26 section 9501.

§ 944. Statement of reasons for denial of claim

Any individual whose claim for benefits under this subchapter is denied shall receive from the Secretary a written statement of the reasons for denial of such claim, and a summary of the administrative hearing record or, upon good cause shown, a copy of any transcript thereof.

(Pub. L. 91–173, title IV, § 434, as added Pub. L. 95–239, § 14, Mar. 1, 1978, 92 Stat. 103.)

[1] See References in Text note below.

EFFECTIVE DATE

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

§ 945. Review of claims pending on, or denied on or before, March 1, 1978

(a) Notification to claimants; review by Commissioner of Social Security taking into account amendments made by Black Lung Benefits Reform Act of 1977; referral

(1) The Commissioner of Social Security shall promptly notify each claimant who has filed a claim for benefits under part B of this subchapter and whose claim is either pending on March 1, 1978, or has been denied on or before that date, that, upon the request of the claimant, the claim shall be either—

(A) reviewed by the Commissioner of Social Security under paragraph (2) for a determination based on the evidence on file, taking into account the amendments made by the Black Lung Benefits Reform Act of 1977; or

(B) referred directly by the Commissioner of Social Security to the Secretary of Labor for a determination under paragraph (3), with an opportunity for the claimant to present additional medical or other evidence in accordance with that paragraph, taking into account the amendments made by the Black Lung Benefits Reform Act of 1977.

(2)(A) The Commissioner of Social Security shall approve forthwith each claim for which review is requested under paragraph (1)(A) if, based upon the evidence on file, the provisions of part B of this subchapter, as amended by the Black Lung Benefits Reform Act of 1977, require such approval. The Commissioner of Social Security shall certify such approval to the Secretary of Labor and such approval shall be binding upon the Secretary of Labor as an initial determination of eligibility. Upon receipt of that certification, the Secretary of Labor shall immediately make or otherwise provide for the payment of the claim in accordance with this part.

(B)(i) The Commissioner of Social Security shall refer to the Secretary of Labor any claim not approved under subparagraph (A) for a determination under paragraph (3), and shall notify the claimant of that referral to the Secretary of Labor for such a determination.

(ii) The Commissioner of Social Security shall notify each claimant whose claim has been approved under subparagraph (A) that, if the claimant disputes the scope or terms of the award, such dispute shall be referred to the Secretary of Labor for a determination under paragraph (3).

(C) Upon the completion of the review of any claim by the Commissioner of Social Security under this paragraph, the responsibility for further action with respect to such claim shall be transferred to the Secretary of Labor. The Secretary of Labor shall consider each such claim in accordance with paragraph (3).

(3)(A) Except as provided in this section, the Secretary of Labor shall treat each claim referred by the Commissioner of Social Security under paragraph (1)(B) or (2)(B) as if it were a

claim filed under this part. The provisions of subsection (b) of this section shall apply to any determination of the Secretary with respect to any such claim referred to the Secretary.

(B) The Commissioner of Social Security shall promptly furnish to the Secretary of Labor all pertinent information in the possession of the Department of Health and Human Services[1] relating to claims referred to the Secretary of Labor under this subsection.

(4) For the purposes of any determination by the Secretary of Labor under paragraph (3), the date of the request under paragraph (1) shall be considered the date of filing of the claim.

(b) Review by Secretary of Labor

(1) The Secretary of Labor shall review each claim which has been denied under this part (or under section 925 of this title) on or before March 1, 1978, and each claim which is pending under this part (or under section 925 of this title) on such date, taking into account the amendments made to this part by the Black Lung Benefits Reform Act of 1977. The Secretary shall approve any such claim forthwith if the provisions of this part, as so amended, require that approval, and the Secretary shall immediately make or otherwise provide for the payment of the claim in accordance with this part.

(2)(A) The Secretary, in carrying out the review of any claim under paragraph (1) and in making any determination under subsection (a)(3) of this section, shall not require any additional medical or other evidence to be submitted if the evidence on file is sufficient for approval of the claim, taking into account the amendments made to this part by the Black Lung Benefits Reform Act of 1977.

(B) If the evidence on file is not sufficient for approval of the claim, the Secretary shall provide an opportunity for the claimant to present additional medical or other evidence to substantiate his or her claim and shall notify each claimant of that opportunity.

(c) Award of benefits on retroactive basis

Any individual whose claim is approved pursuant to this section shall be awarded benefits on a retroactive basis for a period which begins no earlier than January 1, 1974.

(Pub. L. 91–173, title IV, §435, as added Pub. L. 95–239, §15, Mar. 1, 1978, 92 Stat. 103; amended Pub. L. 96–88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 103–296, title I, §108(i)(4), Aug. 15, 1994, 108 Stat. 1488.)

REFERENCES IN TEXT

The Black Lung Benefits Reform Act of 1977, referred to in subsecs. (a)(1)(A), (B), (2)(A), (b)(1), (2)(A), is Pub. L. 95–239, Mar. 1, 1978, 92 Stat. 95. For complete classification of this Act to the Code, see Short Title of 1978 Amendment note set out under section 801 of this title and Tables.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–296 substituted ''Commissioner of Social Security'' for ''Secretary of Health, Education, and Welfare'' wherever appearing.

CHANGE OF NAME

''Department of Health and Human Services'' substituted for ''Department of Health, Education, and Welfare'' in subsec. (a)(3)(B) pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

EFFECTIVE DATE OF 1994 AMENDMENT

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

EFFECTIVE DATE

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 902, 932 of this title; title 26 section 9501.

SUBCHAPTER V—ADMINISTRATIVE PROVISIONS

§951. Studies and research

(a) Appropriate projects

The Secretary of the Interior and the Secretary of Health and Human Services, as appropriate, shall conduct such studies, research, experiments, and demonstrations as may be appropriate—

(1) to improve working conditions and practices in coal or other mines, and to prevent accidents and occupational diseases originating in the coal or other mining industry;

(2) to develop new or improved methods of recovering persons in coal or other mines after an accident;

(3) to develop new or improved means and methods of communication from the surface to the underground area of a coal or other mine;

(4) to develop new or improved means and methods of reducing concentrations of respirable dust in the mine atmosphere of active workings of the coal or other mine;

(5) to develop epidemiological information to (A) identify and define positive factors involved in occupational diseases of miners, (B) provide information on the incidence and prevalence of pneumoconiosis and other respiratory ailments of miners, and (C) improve mandatory health standards;

(6) to develop techniques for the prevention and control of occupational diseases of miners, including tests for hypersusceptibility and early detection;

(7) to evaluate the effect on bodily impairment and occupational disability of miners afflicted with an occupational disease;

(8) to prepare and publish from time to time, reports on all significant aspects of occupational diseases of miners as well as on the medical aspects of injuries, other than diseases, which are revealed by the research carried on pursuant to this subsection;

(9) to study the relationship between coal or other mine environments and occupational diseases of miners;

(10) to develop new and improved underground equipment and other sources of power for such equipment which will provide greater safety;

(11) to determine, upon the written request by any operator or authorized representative

[1] So in original. Probably should be ''Social Security Administration''.

of miners, specifying with reasonable particularity the grounds upon which such request is made, whether any substance normally found in a coal or other mine has potentially toxic effects in the concentrations normally found in the coal or other mine or whether any physical agents or equipment found or used in a coal or other mine has potentially hazardous effects, and shall submit such determinations to both the operators and miners as soon as possible; and

(12) for such other purposes as they deem necessary to carry out the purposes of this chapter.

(b) Responsibility for carrying out prescribed activities

Activities under this section in the field of coal or other mine health shall be carried out by the Secretary of Health and Human Services through the National Institute for Occupational Safety and Health established under the Occupational Safety and Health Act of 1970 [29 U.S.C. 651 et seq.], and activities under this section in the field of coal or other mine safety shall be carried out by the Secretary of the Interior in coordination with the Secretary.

(c) Contracting with and grants to public and private agencies; availability of information; exceptions

In carrying out the provisions for research, demonstrations, experiments, studies, training, and education under this section and sections 861(b) and 952(a) of this title, the Secretary of the Interior and the Secretary of Health and Human Services in coordination with the Secretary may enter into contracts with, and make grants to, public and private agencies and organizations and individuals. No research, demonstrations, or experiments shall be carried out, contracted for, sponsored, cosponsored, or authorized under authority of this chapter, unless all information, uses, products, processes, patents, and other developments resulting from such research, demonstrations, or experiments will (with such exception and limitation, if any, as the Secretary of the Interior or the Secretary of Health and Human Services in coordination with the Secretary may find to be necessary in the public interest) be available to the general public.

(d) Prevention of diseases affecting persons working with mine products

The Secretary of Health and Human Services shall also conduct studies and research into matters involving the protection of life and the prevention of diseases in connection with persons, who although not miners, work with, or around the products of, coal or other mines in areas outside of such mines and under conditions which may adversely affect the health and well-being of such persons.

(e) Authorization of appropriations

There is authorized to be appropriated to the Secretary of the Interior such sums as may be necessary to carry out his responsibilities under this section and section 861(b) of this title at an annual rate of not to exceed $20,000,000 for the fiscal year ending June 30, 1970, $25,000,000 for the fiscal year ending June 30, 1971, and $60,000,000 for the fiscal year ending June 30, 1972, and for each succeeding fiscal year thereafter. There is authorized to be appropriated annually to the Secretary of Health and Human Services such sums as may be necessary to carry out his responsibilities under this chapter. Such sums shall remain available until expended.

(f) Exceptions to mandatory health and safety standards for improving techniques and equipment

The Secretary is authorized to grant on a mine-by-mine basis an exception to any mandatory health or safety standard under this chapter for the purpose of permitting, under such terms and conditions as he may prescribe, accredited educational institutions the opportunity for experimenting with new and improved techniques and equipment to improve the health and safety of miners. No such exception shall be granted unless the Secretary finds that the granting of the exception will not adversely affect the health and safety of miners and publishes his findings.

(g) Grants for research and development of respiratory equipment

The Secretary of Health and Human Services is authorized to make grants to any public or private agency, institution, or organization, and operators or individuals for research and experiments to develop effective respiratory equipment.

(Pub. L. 91–173, title V, § 501, Dec. 30, 1969, 83 Stat. 798; Pub. L. 95–164, title III, § 303(a), Nov. 9, 1977, 91 Stat. 1320; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

REFERENCES IN TEXT

The Occupational Safety and Health Act of 1970, referred to in subsec. (b), is Pub. L. 91–596, Dec. 29, 1970, 84 Stat. 1590, as amended, which is classified principally to chapter 15 (§ 651 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 651 of Title 29 and Tables.

AMENDMENTS

1977—Subsec. (a). Pub. L. 95–164, § 303(a)(1), (2), (6), substituted ''The Secretary of the Interior and'' for ''The Secretary and'' in provisions preceding par. (1), inserted references to mines and mining other than coal mines and coal mining in pars. (1), (2), (3), (4), and (9), added par. (11), and redesignated former par. (11) as (12).

Subsec. (b). Pub. L. 95–164, § 303(a)(1), (3), inserted references to mines other than coal mines, inserted ''through the National Institute for Occupational Safety and Health established under the Occupational Safety and Health Act of 1970'' after ''Secretary of Health, Education, and Welfare'', and substituted ''carried out by the Secretary of the Interior in coordination with the Secretary'' for ''carried out by the Secretary''.

Subsec. (c). Pub. L. 95–164, § 303(a)(4), substituted ''the Secretary of the Interior and the Secretary of Health, Education, and Welfare in coordination with the Secretary'' for ''the Secretary and the Secretary of Health, Education, and Welfare'' and ''the Secretary of the Interior or the Secretary of Health, Education, and Welfare in coordination with the Secretary'' for ''the Secretary or the Secretary of Health, Education, and Welfare''.

Subsec. (d). Pub. L. 95–164, § 303(a)(1), inserted reference to mines other than coal mines.

Subsec. (e). Pub. L. 95–164, §303(a)(5), substituted ''Secretary of the Interior'' for ''Secretary'' and ''$60,000,000'' for ''$30,000,000''.

CHANGE OF NAME

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

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–164 effective 120 days after Nov. 9, 1977, except as otherwise provided, see section 307 of Pub. L. 95–164, set out as a note under section 801 of this title.

EFFECTIVE DATE

Subchapter effective Dec. 30, 1969, see section 509 of Pub. L. 91–173, Dec. 30, 1969, 83 Stat. 742, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 951a, 952, 958, 961 of this title; title 35 section 210.

§951a. Health, Safety, and Mining Technology Research program

(a) Health, Safety, and Mining Technology Research Plan

(1) Every 5 years, the Secretary of the Interior, acting through the Director of the Bureau of Mines (hereinafter in this section referred to as the ''Director''), shall develop a Plan for Health, Safety, and Mining Technology Research (hereinafter in this subsection referred to as the ''Plan'').

(2) The Plan shall identify the goals and objectives of the Health, Safety, and Mining Technology program of the Bureau of Mines, and shall guide research and technology development under such program, over each 5-year period.

(3) In preparing the proposed Plan referred to in paragraph (1), the Director shall solicit suggestions, comments and proposals for research and technology development projects from the mining industry, labor, academia and other concerned groups and individuals.

(b) Technical amendment

For the purposes of section 951(b) of this title, as amended, activities in the field of coal or other mine health under such section shall also be carried out by the Secretary of the Interior acting through the Director of the Bureau of Mines. Nothing in this subsection is intended to preclude or duplicate the ongoing research activities of the Bureau of Mines on health hazards safety technology or research conducted by the National Institute of Occupational Safety and Health on coal mine safety and health effects.

(Pub. L. 102–486, title XXV, §2512, Oct. 24, 1992, 106 Stat. 3111.)

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of the Federal Mine Safety and Health Act of 1977 which comprises this chapter.

CHANGE OF NAME

Bureau of Mines redesignated United States Bureau of Mines by section 10(b) of Pub. L. 102–285, set out as a note under section 1 of this title.

§952. Training and education

(a) Programs for operators, agents, and miners

The Secretary shall expand programs for the education and training of operators and agents thereof, and miners in—

(1) the recognition, avoidance, and prevention of accidents or unsafe or unhealthful working conditions in coal or other mines; and

(2) in the use of flame safety lamps, permissible methane detectors, and other means approved by the Secretary for detecting methane and other explosive gases accurately.

(b) Technical assistance to operators

The Secretary shall, to the greatest extent possible, provide technical assistance to operators in meeting the requirements of this chapter and in further improving the health and safety conditions and practices in coal or other mines.

(c) National Mine Health and Safety Academy

(1) The National Mine Health and Safety Academy shall be maintained as an agency of the Department of Labor. The Academy shall be responsible for the training of mine safety and health inspectors under section 954 of this title, and in training of technical support personnel of the Mine Safety and Health Administration established under section 557a of title 29; and for any other training programs for mine inspectors, mining personnel, or other persons as the Secretary of Labor shall designate. In performing this function, the Academy shall have the authority to enter into cooperative educational and training agreements with educational institutions, State governments, labor organizations, and mine operators and related industries. Such training shall be conducted by the Academy in accordance with curriculum needs and assignment of instructional personnel established by the user.

(2) Repealed. Pub. L. 96–38, title I, §100, July 25, 1979, 93 Stat. 111.

(3) The Secretary of the Interior shall conduct his safety research responsibilities under section 951 of this title in coordination with the Secretary of Labor, and the Secretaries of Labor and the Interior are authorized to enter into contractual or other agreements for the performance of such safety related research.

(Pub. L. 91–173, title V, §502, Dec. 30, 1969, 83 Stat. 800; Pub. L. 95–164, title III, §303(b), (h), Nov. 9, 1977, 91 Stat. 1320, 1321; Pub. L. 96–38, title I, §100, July 25, 1979, 93 Stat. 111.)

AMENDMENTS

1979—Subsec. (c)(1). Pub. L. 96–38 substituted ''Department of Labor'' for ''Department of the Interior'' and ''Secretary of Labor'' for ''Secretaries of Labor and the Interior''.

Subsec. (c)(2). Pub. L. 96–38 struck out par. (2) which directed that the National Mine Health and Safety Academy use the facilities and personnel of the Department of the Interior and that the Secretary of the Interior appoint or assign to the Academy necessary officers and employees.

1977—Subsecs. (a), (b). Pub. L. 95–164, §303(b), inserted references to mines other than coal mines.

Subsec. (c). Pub. L. 95–164, §303(h), added subsec. (c).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–164 effective 120 days after Nov. 9, 1977, except as otherwise provided, see section

307 of Pub. L. 95–164, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 951 of this title.

§ 953. Assistance to States

(a) Development and enforcement of health and safety regulations; improvement of workmen's compensation and occupational disease laws; promotion of Federal-State coordination in mine safety

The Secretary, in coordination with the Secretary of Health and Human Services and the Secretary of the Interior, is authorized to make grants in accordance with an application approved under this section to any State in which coal or other mining takes place—

(1) to assist such State in developing and enforcing effective coal or other mine health and safety laws and regulations consistent with the provisions of section 955 of this title;

(2) to improve State workmen's compensation and occupational disease laws and programs related to coal or other mine employment; and

(3) to promote Federal-State coordination and cooperation in improving the health and safety conditions in the coal or other mines.

(b) Application for grants; contents

The Secretary shall approve any application or any modification thereof, submitted under this section by a State, through its official coal or other mine inspection or safety agency, which—

(1) sets forth the programs, policies, and methods to be followed in carrying out the application in accordance with the purposes of subsection (a) of this section;

(2) provides research and planning studies to carry out plans designed to improve State workmen's compensation and occupational disease laws and programs, as they relate to compensation to miners for occupationally caused diseases and injuries arising out of employment in any coal or other mine;

(3) designates such State coal or other mine inspection or safety agency as the sole agency responsible for administering grants under this section throughout the State, and contains satisfactory evidence that such agency will have the authority to carry out the purposes of this section;

(4) gives assurances that such agency has or will employ an adequate and competent staff of trained inspectors qualified under the laws of such State to make coal or other mine inspections within such State;

(5) provides for the extension and improvement of the State program for the improvement of coal or other mine health and safety in the State, and provides that no advance notice of an inspection will be provided anyone;

(6) provides such fiscal control and fund accounting procedures as may be appropriate to assure proper disbursement and accounting of grants made to the States under this section;

(7) provides that the designated agency will make such reports to the Secretary in such form and containing such information as the Secretary may from time to time require;

(8) contains assurances that grants provided under this section will supplement, not supplant, existing State coal or other mine health and safety programs; and

(9) meets additional conditions which the Secretary may prescribe in furtherance of, and consistent with, the purposes of this section.

(c) Approval by Secretary; notice and hearing

The Secretary shall not finally disapprove any State application or modification thereof without first affording the State agency reasonable notice and opportunity for a public hearing.

(d) Review by Court of Appeals; conclusiveness of findings of Secretary; filing of petition

Any State aggrieved by a decision of the Secretary under subsection (b) or (c) of this section may file within thirty days from the date of such decision with the United States Court of Appeals for the District of Columbia a petition praying that such action be modified or set aside in whole or in part. The court shall hear such appeal on the record made before the Secretary. The decision of the Secretary incorporating his findings of fact therein, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The court may affirm, vacate, or remand the proceedings to the Secretary for such further action as it directs. The filing of a petition under this subsection shall not stay the application of the decision of the Secretary, unless the court so orders. The provisions of section 816(a), (b), and (c) of this title shall not be applicable to this section.

(e) Programs to train State inspectors

Any State application or modification thereof submitted to the Secretary under this section may include a program to train State inspectors.

(f) Cooperation in implementation of programs; exchange of reports between States

The Secretary shall cooperate with such State in carrying out the application or modification thereof and shall, as appropriate, develop and, where appropriate, construct facilities for, and finance a program of, training of Federal and State inspectors jointly. The Secretary shall also cooperate with such State in establishing a system by which State and Federal inspection reports of coal or other mines located in the State are exchanged for the purpose of improving health and safety conditions in such mines.

(g) Limitation on grants

The amount granted to any coal or other mining State for a fiscal year under this section shall not exceed 80 per centum of the amount expended by such State in such year for carrying out such application.

(h) Authorization of appropriations

There is authorized to be appropriated $3,000,000 for fiscal year 1970, and $10,000,000 annually in each succeeding fiscal year to carry out the provisions of this section, which shall remain available until expended. The Secretary shall provide for an equitable distribution of sums appropriated for grants under this section to the States where there is an approved appli-

cation, except that no less than one-half of such sum shall be allocated to coal-producing States.

(Pub. L. 91–173, title V, §503, Dec. 30, 1969, 83 Stat. 800; Pub. L. 95–164, title III, §303(c), Nov. 9, 1977, 91 Stat. 1320; Pub. L. 96–88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695.)

AMENDMENTS

1977—Subsec. (a). Pub. L. 95–164, §303(c)(1), inserted reference to mines and mining other than coal mines and coal mining and substituted ''Secretary of the Interior'' for ''Secretary of Labor''.

Subsecs. (b), (f), (g). Pub. L. 95–164, §303(c)(1), inserted references to mines and mining other than coal mines and coal mining.

Subsec. (h). Pub. L. 95–164, §303(c)(2), substituted ''$10,000,000'' for ''$5,000,000'' and inserted requirement that no less than one-half of sums appropriated for grants be allocated to coal-producing States.

CHANGE OF NAME

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

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–164 effective 120 days after Nov. 9, 1977, except as otherwise provided, see section 307 of Pub. L. 95–164, set out as a note under section 801 of this title.

§954. Appointment of administrative personnel and inspectors; qualifications; training programs

The Secretary may, subject to the civil service laws, appoint such employees as he deems requisite for the administration of this chapter and prescribe their duties. Persons appointed as authorized representatives of the Secretary shall be qualified by practical experience in mining or by experience as a practical mining engineer or by education: *Provided, however*, That, to the maximum extent feasible, in the selection of persons for appointment as mine inspectors, no person shall be so selected unless he has the basic qualification of at least five years practical mining experience and in assigning mine inspectors to the inspection and investigation of individual mines, due consideration shall be given to the extent possible to their previous experience in the particular type of mining operation where such inspections are to be made. Persons appointed to assist such representatives in the taking of samples of respirable dust for the purpose of enforcing subchapter II of this chapter shall be qualified by training, experience, or education. The provisions of section 201 of the Revenue and Expenditure Control Act of 1968 (82 Stat. 251, 270) shall not apply with respect to the appointment of such authorized representatives of the Secretary or to persons appointed to assist such representatives and to carry out the provisions of this chapter, and, in applying the provisions of such section to other agencies under the Secretary and to other agencies of the Government, such appointed persons shall not be taken into account. Such persons shall be adequately trained by the Secretary. The Secretary shall develop programs with educational institutions and operators designed to enable persons to qualify for positions in the administration of this chapter. In selecting persons and training and retraining persons to carry out the provisions of this chapter, the Secretary shall work with appropriate educational institutions, operators, and representatives of miners in developing and maintaining adequate programs for the training and continuing education of persons, particularly inspectors, and where appropriate, the Secretary shall cooperate with such institutions in carrying out the provisions of this section by providing financial and technical assistance to such institutions.

(Pub. L. 91–173, title V, §505, Dec. 30, 1969, 83 Stat. 802; Pub. L. 95–164, title III, §303(d), Nov. 9, 1977, 91 Stat. 1320.)

REFERENCES IN TEXT

The civil service laws, referred to in text, are set forth in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5, Government Organization and Employees.

Section 201 of the Revenue and Expenditure Control Act of 1968 (82 Stat. 251, 270), referred to in text, is section 201 of Pub. L. 90–364, title II, June 28, 1968, 82 Stat. 270, which was set out as a note under section 3101 of Title 5 and was repealed by Pub. L. 91–47, title V, §503, July 22, 1969, 83 Stat. 83.

AMENDMENTS

1977—Pub. L. 95–164 substituted ''practical experience in mining'' for ''practical experience in the mining of coal'' and inserted provision requiring that mine inspectors, to the maximum feasible extent, be persons with at least five years practical mining experience and that in assigning inspectors due consideration be given to previous experience in the particular type mining operations where inspections are to be made.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–164 effective 120 days after Nov. 9, 1977, except as otherwise provided, see section 307 of Pub. L. 95–164, set out as a note under section 801 of this title.

NUMBER OF INSPECTORS

Section 304 of Pub. L. 95–164 provided that: ''Nothing contained in this Act [see Short Title of 1977 Amendment note under section 801 of this title] or any amendment made by this Act shall be construed to reduce the number of inspectors engaged in enforcement of the Federal Coal Mine Health and Safety Act of 1969 [this chapter] and the Federal Metal and Nonmetallic Mine Safety Act [section 721 et seq. of this title] as in effect prior to the effective date of this Act [120 days after Nov. 9, 1977] or to reduce the number of inspectors engaged in the enforcement of the Occupational Safety and Health Act of 1970 [section 651 et seq. of Title 29, Labor].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 952 of this title.

§955. State laws

(a) No State law in effect on December 30, 1969 or which may become effective thereafter shall be superseded by any provision of this chapter or order issued or any mandatory health or safety standard, except insofar as such State law is in conflict with this chapter or with any order issued or any mandatory health or safety standard.

(b) The provisions of any State law or regulation in effect upon the operative date of this

chapter, or which may become effective thereafter, which provide for more stringent health and safety standards applicable to coal or other mines than do the provisions of this chapter or any order issued or any mandatory health or safety standard shall not thereby be construed or held to be in conflict with this chapter. The provisions of any State law or regulation in effect December 30, 1969, or which may become effective thereafter, which provide for health and safety standards applicable to coal or other mines for which no provision is contained in this chapter or in any order issued or any mandatory health or safety standard, shall not be held to be in conflict with this chapter.

(Pub. L. 91–173, title V, § 506, Dec. 30, 1969, 83 Stat. 803; Pub. L. 95–164, title III, § 303(e), Nov. 9, 1977, 91 Stat. 1321.)

REFERENCES IN TEXT

For the operative date of this chapter, referred to in subsec. (b), see section 509 of Pub. L. 91–173, set out as an Effective Date note under section 801 of this title.

AMENDMENTS

1977—Subsec. (b). Pub. L. 95–164 inserted reference to mines other than coal mines.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–164 effective 120 days after Nov. 9, 1977, except as otherwise provided, see section 307 of Pub. L. 95–164, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 953 of this title.

§ 956. Applicability of administrative procedure provisions

Except as otherwise provided in this chapter, the provisions of sections 551 to 559 and sections 701 to 706 of title 5 shall not apply to the making of any order, notice, or decision made pursuant to this chapter, or to any proceeding for the review thereof.

(Pub. L. 91–173, title V, § 507, Dec. 30, 1969, 83 Stat. 803.)

§ 957. Promulgation of regulations

The Secretary, the Secretary of Health and Human Services, the Commissioner of Social Security, and the Panel are authorized to issue such regulations as each deems appropriate to carry out any provision of this chapter.

(Pub. L. 91–173, title V, § 508, Dec. 30, 1969, 83 Stat. 803; Pub. L. 103–296, title I, § 108(i)(5), Aug. 15, 1994, 108 Stat. 1488.)

AMENDMENTS

1994—Pub. L. 103–296 substituted ''Secretary of Health and Human Services, the Commissioner of Social Security'' for ''Secretary of Health, Education, and Welfare''.

EFFECTIVE DATE OF 1994 AMENDMENT

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

§ 958. Annual reports to Congress; contents

(a) Within one hundred and twenty days following the convening of each session of Congress the Secretary shall submit through the President to the Congress and to the Office of Science and Technology an annual report upon the subject matter of this chapter, the progress concerning the achievement of its purposes, the needs and requirements in the field of coal or other mine health and safety, the amount and status of each loan made pursuant to this chapter, a description and the anticipated cost of each project and program he has undertaken under sections 861(b) and 951 of this title, and any other relevant information, including any recommendations he deems appropriate.

(b) Repealed. Pub. L. 96–470, title I, § 106(f), Oct. 19, 1980, 94 Stat. 2238.

(Pub. L. 91–173, title V, § 511, Dec. 30, 1969, 83 Stat. 803; Pub. L. 95–164, title III, § 303(f), Nov. 9, 1977, 91 Stat. 1321; Pub. L. 96–470, title I, § 106(f), Oct. 19, 1980, 94 Stat. 2238.)

AMENDMENTS

1980—Subsec. (b). Pub. L. 96–470 struck out subsec. (b) which provided that within 120 days following the convening of each session of Congress, the Secretary of Health, Education, and Welfare submit through the President to the Congress and to the Office of Science and Technology an annual report on health matters covered by this chapter.

1977—Subsecs. (a), (b). Pub. L. 95–164 inserted references to mines other than coal mines.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–164 effective 120 days after Nov. 9, 1977, except as otherwise provided, see section 307 of Pub. L. 95–164, set out as a note under section 801 of this title.

TRANSFER OF FUNCTIONS

Functions vested by law in Office of Science and Technology and in Director or Deputy Director of Office of Science and Technology transferred to Director of National Science Foundation, and Office of Science and Technology, including offices of Director and Deputy Director, provided for by sections 1 and 2 of Reorg. Plan No. 2 of 1962, eff. June 8, 1962, 27 F.R. 5419, 76 Stat. 1253, was abolished by sections 2 and 3(a)(5) of Reorg. Plan No. 1 of 1973, eff. July 1, 1973, 38 F.R. 9579, 87 Stat. 1089, set out in the Appendix to Title 5, Government Organization and Employees.

§ 959. Study of coordination of Federal and State activities; report

(a) The Secretary shall make a study to determine the best manner to coordinate Federal and State activities in the field of coal or other mine health and safety so as to achieve (1) maximum health and safety protection for miners, (2) an avoidance of duplication of effort, (3) maximum effectiveness, (4) a reduction of delay to a minimum, and (5) most effective use of Federal inspectors.

(b) The Secretary shall make a report of the results of his study to the Congress as soon as practicable after December 30, 1969.

(Pub. L. 91–173, title V, § 512, Dec. 30, 1969, 83 Stat. 804; Pub. L. 95–164, title III, § 303(g), Nov. 9, 1977, 91 Stat. 1321.)

AMENDMENTS

1977—Subsec. (a). Pub. L. 95–164 inserted reference to mines other than coal mines.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–164 effective 120 days after Nov. 9, 1977, except as otherwise provided, see section

307 of Pub. L. 95–164, set out as a note under section 801 of this title.

§960. Limitation on issuance of temporary restraining order or preliminary injunction

In any proceeding in which the validity of any interim mandatory health or safety standard set forth in subchapter II and III of this chapter is in issue, no justice, judge, or court of the United States shall issue any temporary restraining order or preliminary injunction restraining the enforcement of such standard pending a determination of such issue on its merits.

(Pub. L. 91–173, title V, §513, Dec. 30, 1969, 83 Stat. 804.)

§961. Functions transferred under 1977 amendments

(a) Transfer of functions to Secretary of Labor

Except with respect to the functions assigned to the Secretary of the Interior pursuant to section 501 of the Federal Coal Mine Health and Safety Act of 1969 [30 U.S.C. 951], the functions of the Secretary of the Interior under the Federal Coal Mine Health and Safety Act of 1969, as amended [30 U.S.C. 801 et seq.], and the Federal Metal and Nonmetallic Mine Safety Act [30 U.S.C. 721 et seq.] are transferred to the Secretary of Labor, except those which are expressly transferred to the Commission by this Act. Effective on the date of enactment of this Act, Health[1] and Safety Academy is transferred to the Secretary of Labor.

(b) Existing mandatory standards; review by advisory committee; recommendations

(1) The mandatory standards relating to mines, issued by the Secretary of the Interior under the Federal Metal and Nonmetallic Mine Safety Act [30 U.S.C. 721 et seq.] and standards and regulations under the Federal Coal Mine Health and Safety Act of 1969 [30 U.S.C. 801 et seq.] which are in effect on November 9, 1977, shall remain in effect as mandatory health or safety standards applicable to metal and nonmetallic mines and to coal mines respectively under the Federal Mine Safety and Health Act of 1977 [30 U.S.C. 801 et seq.] until such time as the Secretary of Labor shall issue new or revised mandatory health or safety standards applicable to metal and nonmetallic mines and new or revised mandatory health or safety standards applicable to coal mines.

(2) Within 60 days after November 9, 1977, the Secretary of Labor in consultation with the Secretary of the Interior shall establish an advisory committee under section 102 of the Federal Mine Safety and Health Act of 1977 [30 U.S.C. 812] which shall, within 180 days after the date of the establishment of such advisory committee, review the advisory health and safety standards issued by the Secretary of the Interior under the Federal Metal and Nonmetallic Mine Safety Act and recommend to the Secretary of Labor which of those standards (or any modifications of such standards which do not substantially diminish the health and safety of miners) should be promulgated as mandatory health or safety standards. The Secretary of Labor shall publish, within 60 days after any recommendations of the advisory committee under this paragraph, each of the standards so recommended for adoption with or without modifications as a proposed mandatory health or safety standard under this section by publication of such standard in the Federal Register, and afford interested persons a period of 25 days after publication to submit written data or comment. Within 30 days after the close of the comment period specified in the preceding sentence, the Secretary of Labor shall promulgate by publication in the Federal Register mandatory health or safety standards based upon the advisory committee recommendation with or without modification, and the data and comments received thereon, unless the Secretary of Labor determines that such standards will not promote the health and safety of miners and publishes an explanation of that determination in the Federal Register.

(c) Unexpended appropriations; personnel; property; records; obligations; commitments; savings provisions; pending proceedings and suits

(1) All unexpended balances of appropriations, personnel, property, records, obligations, and commitments which are used primarily with respect to any functions transferred under the provisions of subsection (a) of this section to the Secretary of Labor shall be transferred to the Department of Labor or the Commission, as appropriate. The transfer of personnel pursuant to this paragraph shall be without reduction in classification or compensation for one year after such transfer, except that the Secretary of Labor shall have full authority to assign personnel during such one-year period in order to efficiently carry out functions transferred to him under this Act.

(2) All orders, decisions, determinations, rules, regulations, permits, contracts, certificates, licenses, and privileges (A) which have been issued, made, granted, or allowed to become effective in the exercise of functions which are transferred under this section by any department or agency, any functions of which are transferred by this section, and (B) which are in effect at the time this section takes effect, shall continue in effect according to their terms until modified, terminated, superseded, set aside, revoked, or repealed by the Secretary of Labor, the Federal Mine Safety and Health Review Commission or other authorized officials, by any court of competent jurisdiction, or by operation of law.

(3) The provisions of this section shall not affect any proceedings pending at the time this section takes effect before any department, agency, or component thereof, functions of which are transferred by this section, except that such proceedings, to the extent that they relate to functions so transferred, shall be continued before the Secretary of Labor or the Federal Mine Safety and Health Review Commission. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this section had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, revoked,

[1] So in original. Probably should be "the Health".

or repealed by the Secretary of Labor, the Federal Mine Safety and Health Review Commission, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be deemed to prohibit the discontinuance or modification of any proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued if this section had not been enacted.

(4) The provisions of this section shall not affect suits commenced prior to the date this section takes effect and in all such suits proceedings shall be had, appeals taken, and judgments rendered, in the same manner and effect as if this section had not been enacted; except that if before the date on which this section takes effect, any department or agency (or officer thereof in his official capacity) is a party to a suit involving functions transferred to the Secretary, then such suit shall be continued by the Secretary of Labor. No cause of action, and no suit, action, or other proceeding, by or against any department or agency (or officer thereof in his official capacity) functions of which are transferred by this section, shall abate by reason of the enactment of this section. Causes of actions, suits, actions, or other proceedings may be asserted by or against the United States or the Secretary as may be appropriate and, in any litigation pending when this section takes effect, the court may at any time, on its own motion or that of any party, enter an order which will give effect to the provisions of this paragraph.

(d) "Function" defined

For purposes of this section, (1) the term ''function'' includes power and duty, and (2) the transfer of a function, under any provision of law, of an agency or the head of a department shall also be a transfer of all functions under such law which are exercised by any officer[2] or officer of such agency or department.

(e) Determinations by Director of Office of Management and Budget

The Director of the Office of Management and Budget in consultation with the Secretary of Labor and the Secretary of the Interior is authorized and directed to make such determinations as may be necessary with regard to the dispositions of personnel, personnel positions, property, records, assets, liabilities, contracts, obligations, commitments, unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available or to be made available, in connection with the functions transferred by this Act as he may deem necessary to accomplish the purposes of this Act.

(Pub. L. 95–164, title III, § 301, Nov. 9, 1977, 91 Stat. 1317; Pub. L. 96–38, title I, § 100, July 25, 1979, 93 Stat. 111.)

REFERENCES IN TEXT

The Federal Coal Mine Health and Safety Act of 1969, referred to in subsecs. (a) and (b)(1), is Pub. L. 91–173, Dec. 30, 1969, 83 Stat. 742, as amended, which was redesignated the Federal Mine Safety and Health Act of 1977 by Pub. L. 95–164, title I, § 101, Nov. 9, 1977, 91 Stat. 1290, and is classified principally to this chapter (§ 801 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 801 of this title and Tables.

The Federal Metal and Nonmetallic Mine Safety Act, referred to in subsecs. (a) and (b), is Pub. L. 89–577, Sept. 16, 1966, 80 Stat. 772, which was classified generally to chapter 21 (§ 721 et seq.) of this title and was repealed by Pub. L. 95–164, title III, § 306(a), Nov. 9, 1977, 91 Stat. 1322.

This Act, referred to in subsecs. (a), (c)(1), and (e), means Pub. L. 95–164, Nov. 9, 1977, 91 Stat. 1290, known as the Federal Mine Safety and Health Amendments Act of 1977, which enacted sections 822 to 825 and 961 of this title and section 557a of Title 29, Labor, amended sections 801 to 804, 811 to 821, 842, 861, 878, 951 to 955, 958, and 959 of this title and sections 5314 and 5315 of Title 5, Government Organization and Employees, repealed sections 721 to 740 of this title and section 1456a of Title 43, Public Lands, and enacted provisions set out as notes under sections 801 and 954 of this title and section 11 of former Title 31, Money and Finance. For complete classification of this Act to the Code, see Short Title of 1977 Amendment note set out under section 801 of this title and Tables.

The date of enactment of this Act, referred to in subsec. (a), is the date of enactment of Pub. L. 95–164, which was approved Nov. 9, 1977.

The Health and Safety Academy, referred to in subsec. (a), probably means the National Mine Health and Safety Academy. See section 952(c) of this title.

The Federal Mine Safety and Health Act of 1977, referred to in subsec. (b)(1), is Pub. L. 91–173, Dec. 30, 1969, 83 Stat. 742, as amended by Pub. L. 95–164, title I, § 101, Nov. 9, 1977, 91 Stat. 1290, which is classified principally to this chapter (§ 801 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 801 of this title and Tables.

For the time this section takes effect, referred to in subsec. (c)(2) and (4), see Effective Date of 1977 Amendment note set out under section 801 of this title.

CODIFICATION

Section was enacted as part of Pub. L. 95–164, known as the Federal Mine Safety and Health Amendments Act of 1977, and not as part of Pub. L. 91–173, Dec. 30, 1969, 83 Stat. 742, known as the Federal Mine Safety and Health Act of 1977 which comprises this chapter.

AMENDMENTS

1979—Subsec. (a). Pub. L. 96–38 inserted provision transferring the Health and Safety Academy to the Secretary of Labor.

EFFECTIVE DATE

For the effective date of this section, see section 307 of Pub. L. 95–164, set out as an Effective Date of 1977 Amendment note under section 801 of this title.

§ 962. Acceptance of contributions and prosecution of projects; cooperative programs to promote health and safety education and training; use of funds for costs of mine rescue and survival operations

The Secretary is authorized to accept lands, buildings, equipment, and other contributions from public and private sources and to prosecute projects in cooperation with other agencies, Federal, State, or private; the Mine Safety and Health Administration is authorized to promote health and safety education and training in the mining community through cooperative programs with States, industry, and safety associations; and any funds available to the Department may be used, with the approval of the Secretary, to provide for the costs of mine rescue

[2] So in original. Probably should be ''office''.

and survival operations in the event of a major disaster.

(Pub. L. 105–78, title I, Nov. 13, 1997, 111 Stat. 1475.)

CODIFICATION

Section was enacted as part of the appropriation act cited as the credit to this section, and not as part of the Federal Mine Safety and Health Act of 1977 which comprises this chapter.

SIMILAR PROVISIONS

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 104–208, div. A, title I, §101(e) [title I], Sept. 30, 1996, 110 Stat. 3009–233, 3009–240.

Pub. L. 104–134, title I, §101(d) [title I], Apr. 26, 1996, 110 Stat. 1321–211, 1321–218; renumbered title I, Pub. L. 104–140, §1(a), May 2, 1996, 110 Stat. 1327.

Pub. L. 103–333, title I, Sept. 30, 1994, 108 Stat. 2545.

Pub. L. 103–112, title I, Oct. 21, 1993, 107 Stat. 1088.

Pub. L. 102–394, title I, Oct. 6, 1992, 106 Stat. 1797.

Pub. L. 102–170, title I, Nov. 26, 1991, 105 Stat. 1112.

Pub. L. 101–517, title I, Nov. 5, 1990, 104 Stat. 2195.

Pub. L. 101–166, title I, Nov. 21, 1989, 103 Stat. 1164.

Pub. L. 100–436, title I, Sept. 20, 1988, 102 Stat. 1686.

Pub. L. 100–202, §101(h) [title I], Dec. 22, 1987, 101 Stat. 1329–256, 1329–262.

Pub. L. 99–500, §101(i) [H.R. 5233, title I], Oct. 18, 1986, 100 Stat. 1783–287, and Pub. L. 99–591, §101(i) [H.R. 5233, title I], Oct. 30, 1986, 100 Stat. 3341–287.

Pub. L. 99–178, title I, Dec. 12, 1985, 99 Stat. 1107.

Pub. L. 98–619, title I, Nov. 8, 1984, 98 Stat. 3310.

Pub. L. 98–139, title I, Oct. 31, 1983, 97 Stat. 876.

Pub. L. 97–377, title I, §101(e)(1) [title I], Dec. 21, 1982, 96 Stat. 1878, 1883.

Pub. L. 97–92, §101(a) [H.R. 4560, title I], Dec. 15, 1981, 95 Stat. 1183.

Pub. L. 96–536, §101(a) [incorporating H.R. 4389, title I, for FY 1980], Dec. 16, 1980, 94 Stat. 3166.

Pub. L. 96–123, §101(g) [H.R. 4389, title I], Nov. 20, 1979, 93 Stat. 925.

Pub. L. 95–480, title I, Oct. 18, 1978, 92 Stat. 1570.

Pub. L. 95–355, title I, Sept. 8, 1978, 92 Stat. 529.

CHAPTER 23—GEOTHERMAL STEAM AND ASSOCIATED GEOTHERMAL RESOURCES

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