

BLACK LUNG BENEFITS REFORM ACT OF 1977

FEBRUARY 2, 1978.—Ordered to be printed

Mr. PERKINS, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany H.R. 4544]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4544) to amend the Federal Coal Mine Health and Safety Act to improve the black lung benefits program established under such Act, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SHORT TITLE

SECTION 1. This Act may be cited as the "Black Lung Benefits Reform Act of 1977".

DEFINITIONS

SEC. 2. (a) Section 402(b) of the Federal Mine Safety and Health Act of 1977 (hereinafter in this Act referred to as the "Act") is amended to read as follows:

"(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."

(b) Section 402(d) of the Act is amended to read as follows:

"(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."

(c) Section 402(f) of the Act is amended to read as follows:

"(f) (1) The term 'total disability' has the meaning given it by regulations of the Secretary of Health, Education, and Welfare for claims

under part B of this title, and by regulations of the Secretary of Labor for claims under part C of this title, subject to the relevant provisions of subsections (b) and (d) of section 413, 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 223 (d) of the Social Security Act; 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, Education, and Welfare, or subject to a determination by the Secretary of Labor, under section 435 (a);

“(B) any claim which is subject to review by the Secretary of Labor under section 435 (b); 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.”.

(d) Section 402 of the Act is amended by adding at the end thereof the following new subsection:

“(h) The term ‘fund’ means the Black Lung Disability Trust Fund established in section 3 (a) (1) of the Black Lung Benefits Revenue Act of 1977.”.

SURVIVOR ENTITLEMENTS

SEC. 3. (a) Section 411 (c) of the Act is amended—

(1) in paragraphs (1) and (2) thereof, by striking out “if” and inserting in lieu thereof “If” and by striking out the semicolon and inserting in lieu thereof a period;

(2) in paragraph (3) thereof, by striking out “if” the first place it appears therein and inserting in lieu thereof “If” and by striking out “; and” and inserting in lieu thereof a period; and

(3) by adding at the end thereof the following new paragraph:

"(5) In the case of a miner who dies on or before the date of the enactment of the Black Lung Benefits Reform Act of 1977 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 412 (a) (2), 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 Secretary, furnish such evidence as is available with respect to the health of the miner at the time of his or her death."

(b) (1) (A) Section 412(a) (3) of the Act is amended by striking out "and" the first place it appears therein, and by inserting after "the time of her death," the following: "and in the case of any child or children entitled to the payment of benefits under paragraph (5) of section 411(c);".

(B) The first sentence of section 412(a) (5) of the Act is amended—

(i) by striking out "or" the fifth place it appears therein; and

(ii) by inserting after "child, or parent," the following: "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 411(c), 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 411(c);".

(2) Section 414(e) of the Act is amended by striking out "or" the second place it appears therein and by striking out the period at the end thereof and inserting in lieu thereof the following: ", or (3) any such individual is entitled to benefits under paragraph (5) of section 411(c).".

(3) Section 421(a) of the Act is amended by inserting after "pneumoconiosis" the second place it appears therein the following: ", and in any case in which benefits based upon eligibility under paragraph (5) of section 411(c) are involved."

(4) The first sentence of section 422(a) of the Act is amended by inserting before the period at the end thereof the following: ", or with respect to entitlements established in paragraph (5) of section 411(c)".

OFFSET LIMITATION

SEC. 4. The first sentence of section 412(b) of the Act is amended by inserting after "disability of such miner" the following: "due to pneumoconiosis".

EVIDENCE REQUIRED TO ESTABLISH CLAIM

SEC. 5. (a) Section 413(b) of the Act is amended by inserting after the second sentence thereof the following new sentences: "Where there is no medical or other relevant evidence in the case of a deceased miner, such affidavits 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 in which there

is other evidence that a miner has a pulmonary or respiratory impairment, the Secretary 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 title if such roentgenogram has been taken by a radiologist or qualified technician, except where the Secretary 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 Secretary has good cause to believe that an autopsy report is not accurate, or that the condition of the miner is being fraudulently misrepresented, the Secretary shall accept such autopsy report concerning the presence of pneumoconiosis and the stage of advancement of pneumoconiosis."

(b) Section 413(b) of the Act, as amended in subsection (a), is further amended by adding at the end thereof the following new sentence: "Each miner who files a claim for benefits under this title shall upon request be provided an opportunity to substantiate his or her claim by means of a complete pulmonary evaluation."

(c) The fifth sentence of section 413(b) of the Act is amended by striking out "(f)," and by striking out "and (l)," and inserting in lieu thereof "(l), and (n),":

(d) Section 413 of the Act is amended by adding at the end thereof the following new subsection:

"(d) No miner who is engaged in coal mine employment shall (except as provided in section 411(c)(3)) 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."

APPROVAL OF STATE WORKERS' COMPENSATION LAWS

SEC. 6. (a) Section 421(b)(2)(A) of the Act is amended by inserting before the semicolon the following: ", 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 423 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) Section 421(b)(2)(C) of the Act is amended by striking out "part B of this title" and inserting in lieu thereof "this part", by striking out "of Health, Education, and Welfare", and by striking out "thereunder" and inserting in lieu thereof "under this part".

(c) Section 421(b)(2)(D) of the Act is amended to read as follows:
 "(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;”.

**DETERMINATION OF CLAIMS FOR BENEFITS UNDER PART C OF TITLE IV
OF THE ACT**

SEC. 7. (a) *The first sentence of section 422(a) of the Act is amended—*

(1) *by inserting after “as amended” the following: “, and as it may be amended from time to time”;*

(2) *by inserting a comma after “and 51 thereof”;* and

(3) *by striking out “and except as the Secretary shall by regulation otherwise provide” and inserting in lieu thereof “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 424”.*

(b) *Section 422(b) of the Act is amended by adding at the end thereof the following new sentence: “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) *Section 422(c) of the Act is amended—*

(1) *by striking out “and the Secretary of Health, Education, and Welfare”;* and

(2) *by striking out “the period” and inserting in lieu thereof “a period after December 31, 1969,”.*

(d) *Section 422(e) of the Act is amended by inserting “or” at the end of paragraph (1) thereof, by striking out “, or” at the end of paragraph (2) thereof and inserting in lieu thereof a period, and by striking out paragraph (3) thereof.*

(e) *Section 422(f) of the Act is amended to read as follows:*

“(f) 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) the date of the enactment of the Black Lung Benefits Reform Act of 1977.”.

(f) *Section 422(h) of the Act is amended by striking out the first sentence thereof.*

(g) *Section 422(i) of the Act is amended to read as follows:*

“(i) (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 423, 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 424 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."

(h) Section 422 of the Act is amended by adding at the end thereof the following new subsections:

"(j) Notwithstanding the provisions of this section, section 424 shall govern the payment of benefits in cases—

"(1) described in section 424 (a) (1); or

"(2) in which the miner's last coal mine employment was before January 1, 1970.

"(k) The Secretary shall be a party in any proceeding relative to a claim for benefits under this part.

"(l) In no case shall the eligible survivors of a miner who was determined to be eligible to receive benefits under this title 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."

(i) Notwithstanding the provisions of section 422 (a) of the Act, individuals appointed to hear and determine claims for benefits under part C of title IV of the Act and under section 415 of the Act pursuant to Public Law 94-504 (90 Stat. 2428) may continue to adjudicate such claims during the one-year period following the date of the enactment of this Act.

PENALTIES FOR FAILURE TO SECURE PAYMENT OF BENEFITS

SEC. 8. Section 423 of the Act is amended by adding at the end thereof the following new subsection:

"(d) (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 title 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, or destroys any property belonging to such employer, after any miner employed by such employer has filed a claim under this title, and with intent to avoid the payment of benefits under this title 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."

CLINICAL FACILITIES

SEC. 9. The first sentence of section 427(c) of the Act is amended by striking out "of the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975" and inserting in lieu thereof "fiscal year".

APPLICABILITY OF AMENDMENTS

SEC. 10. Section 430 of the Act is amended—

(1) by inserting "and by the Black Lung Benefits Reform Act of 1977" after "1972"; and

(2) by striking out the colon and all that follows it and inserting in lieu thereof a period.

MEDICAL CARE

SEC. 11. The Secretary of Health, Education, and Welfare shall notify each miner receiving benefits under part B of title IV of the Act 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 title IV of the Act shall not terminate before six months after such notification is made.

PENALTIES FOR FALSE STATEMENTS AND FAILURES TO FILE REPORTS

SEC. 12. (a) Section 431 of the Act is amended to read as follows: "SEC. 431. Any person who willfully makes any false or misleading

statement or representation for the purpose of obtaining any benefit or payment under this title 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."

(b) Part C of title IV of the Act is amended by adding at the end thereof the following new section:

"SEC. 432. (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."

INSURANCE FUND

SEC. 13. Part C of title IV of the Act, as amended by section 12(b), is further amended by adding at the end thereof the following new section:

"SEC. 433. (a) 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 422.

"(b) 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) (1) The Secretary may enter into agreements with operators of coal mines who may be liable for the payment of benefits under section 422, under which the Black Lung Compensation Insurance Fund established under subsection (g) (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 423 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 422.

"(d) 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) 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) (1) On the basis of estimates made by the Secretary in formulating a premium schedule under subsection (e), 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) (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).

"(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) 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) 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) 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). 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 3 of the Black Lung Benefits Revenue Act of 1977.”

STATEMENT OF REASONS FOR DENIAL OF CLAIMS

SEC. 14. Part C of title IV of the Act, as amended by sections 12(b) and 13, is further amended by adding at the end thereof the following new section:

“SEC. 434. Any individual whose claim for benefits under this title 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.”

REVIEW OF PENDING AND PREVIOUSLY DENIED CLAIMS

SEC. 15. Part C of title IV of the Act, as amended by sections 12(b), 13, and 14, is further amended by adding at the end thereof the following new section:

“SEC. 435. (a) (1) The Secretary of Health, Education, and Welfare shall promptly notify each claimant who has filed a claim for benefits under part B of this title and whose claim is either pending on the effective date of this section or has been denied on or before that effective date, that, upon the request of the claimant, the claim shall be either—

“(A) reviewed by the Secretary of Health, Education, and Welfare 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 Secretary of Health, Education, and Welfare 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 Secretary of Health, Education, and Welfare 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 title, as amended by the Black Lung Benefits Reform Act of 1977, require such approval. The Secretary of Health, Education, and Welfare 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 Secretary of Health, Education, and Welfare 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 Secretary of Health, Education, and Welfare 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 Secretary of Health, Education, and Welfare 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 Secretary of Health, Education, and Welfare under paragraph (1) (B) or (2) (B) as if it were a claim filed under this part. The provisions of subsection (b) shall apply to any determination of the Secretary with respect to any such claim referred to the Secretary.

“(B) The Secretary of Health, Education, and Welfare shall promptly furnish to the Secretary of Labor all pertinent information in the possession of the Department of Health, Education, and Welfare 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) (1) The Secretary of Labor shall review each claim which has been denied under this part (or under section 415) on or before the effective date of this subsection, and each claim which is pending under this part (or under section 415) on such effective 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), 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) 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.”

SHORT TITLE FOR THE ACT

SEC. 16. Section 401 of the Act is amended by inserting “(a)” after “SEC. 401.” and by adding at the end thereof the following new subsection:

“(b) This title may be cited as the ‘Black Lung Benefits Act’.”

OCCUPATIONAL DISEASE STUDY

SEC. 17. (a) The Secretary of Labor, in cooperation with the Director of the National Institute for Occupational Safety and Health, shall conduct a study of all occupationally related pulmonary and respiratory diseases, including the extent and severity of such diseases in the United States. Such study shall further include analyses of (1) any etiologic, symptomatologic, and pathologic factors which are similar to such factors in coal workers’ pneumoconiosis and its sequelae; (2) the adequacy of current workers’ compensation programs in compensating individuals with such diseases; and (3) the status and adequacy of Federal health and safety laws and regulations relating to the industries with which such diseases are associated.

(b) The study required in subsection (a) shall be completed and a report thereon submitted to the President and to the appropriate committees of the Congress no later than 18 months after the date of the enactment of this Act.

FIELD OFFICES

SEC. 18. (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 title IV of the Act. 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) such sums as may be necessary.

INFORMATION TO POTENTIAL BENEFICIARIES

SEC. 19. The Secretary of Health, Education, and Welfare and the Secretary of Labor shall disseminate to interested persons and groups the changes in title IV of the Act 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, Education, and Welfare and the Secretary of Labor and provided to potential beneficiaries.

EFFECTIVE DATES

SEC. 20. (a) The provisions of this Act shall take effect on the date of the enactment of this Act.

(b) 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, 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, shall take effect, as rules and regulations of the Secretary of Labor until such provisions are revoked, amended, or revised by law. 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.

(c) In accordance with the requirements of section 5 of the Black Lung Benefits Revenue Act of 1977, it is hereby provided that such Act shall take effect in accordance with the provisions of such Act. The

provisions of this subsection are hereby deemed to be in explicit satisfaction of the requirements of section 5 of such Act.

And the Senate agree to the same.

CARL D. PERKINS,
 JOHN H. DENT,
 PHILLIP BURTON,
 JOSEPH M. GAYDOS,
 WILLIAM CLAY,
 MARIO BIAGGI,
 LEO C. ZEFERETTI,
 MICHAEL O. MYERS,
 AUSTIN J. MURPHY,
 BALTASAR CORRADA,
 PAUL SIMON,
 GEORGE MILLER,
 FRANK THOMPSON, JR.,
 IKE ANDERSON,
 AL ULLMAN,
 DAN ROSTENKOWSKI,
 CHARLES VANIK,
 JOHN J. DUNCAN,

Managers on the Part of the House.

HARRISON A. WILLIAMS, JR.,
 CLAIBORNE PELL,
 GAYLORD NELSON,
 DON RIEGLE,
 JENNINGS RANDOLPH,
 EDWARD M. KENNEDY,
 RUSSELL LONG,
 FLOYD K. HASKELL,
 JACOB K. JAVITS,
 RICHARD SCHWEIKER,
 ROBERT T. STAFFORD,
 JOHN H. CHAFFEE,
 PAUL LAXALT,

Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4544) to amend the Federal Coal Mine Health and Safety Act to improve the black lung benefits program established under such Act, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck out all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment which is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

DEFINITIONS

Pneumoconiosis

The House bill did not modify the existing law defining "pneumoconiosis". The Senate amendment defined pneumoconiosis as a "chronic dust disease of the lung and its sequelae, including respiratory and pulmonary impairments, arising out of coal mine employment".

The conference substitute conforms to the Senate amendment.

Miner

The House bill did not modify the existing definition of "miner". The Senate amendment modified the definition to include all self-employed miners and specified that the term includes workers who are employed in or around a coal mine or preparation facility in the extraction, preparation, or transportation of coal, and construction workers who are exposed to coal dust in their employment.

The conference substitute conforms generally to the Senate amendment with an amendment to clarify that transportation and construction workers are covered only to the extent they work in or around a coal mine and are exposed to coal dust. The conference substitute elsewhere provides that coal mine construction and transportation employers who are not also mine operators shall not be obligated to purchase insurance for the payment of claims under the Federal Mine Safety and Health Act of 1977. However, the conference substitute elsewhere also provides that coal mine construction and transportation employers who are not also mine operators shall be individually liable

for the payment of approved claims in appropriate cases. (See section 7, which amends the Act to require such employers to secure a bond or otherwise guarantee the payment of such claims once approved.)

Total disability

The House bill did not modify the provisions of current law which authorize the Secretary of Health, Education, and Welfare to promulgate medical standards for the determination of total disability for all claims. The House bill did, however, bind the Secretary of HEW to prescribing part C regulations no more restrictive than those in effect for claims filed on June 30, 1973 ("interim" standards). The Senate amendment authorized the Secretary of Labor to promulgate new medical standards to be applied to all part C claims and retained the standard-setting authority of the Secretary of HEW with respect to part B claims. The Senate amendment further provided that the Secretary of Labor, in consultation with NIOSH, would establish criteria for medical tests consistent with the definition of total disability.

The conference substitute conforms to the Senate amendment with the proviso that the so-called "interim" part B medical standards are to be applied to all reviewed and pending claims filed before the date the Secretary of Labor promulgates new medical standards for part C cases.

The conferees intend that the Secretary of Labor shall promulgate regulations for the determination of total disability or death due to pneumoconiosis. With respect to a claim filed or pending prior to the promulgation of such regulations, such regulations shall not provide more restrictive criteria than those applicable to a claim filed on June 30, 1973, except that in determining claims under such criteria all relevant medical evidence shall be considered in accordance with standards prescribed by the Secretary of Labor and published in the Federal Register.

The conferees also intend that all standards are to incorporate the presumptions contained in section 411 (c) of the Act.

The House bill amended section 413 to provide that a claim cannot be rejected solely on the basis of current employment as a miner if (1) the miner's work location has recently been changed to a less dusty area; (2) the nature of employment has been changed to be less rigorous; or (3) the nature of employment has been changed to result in receipt of substantially less pay.

The Senate amendment modified the definition of "total disability" to provide that: (1) a deceased miner's employment in a mine at the time of death is not conclusive evidence that the miner was not totally disabled; and (2) a living miner's employment with changed employment circumstances indicating a reduced ability to do his usual coal mine work, is not conclusive evidence that the miner is not totally disabled.

The conference substitute conforms to the Senate amendment. By this amendment, the conferees intend to conclusively establish what is already implicit in current law; that is, that mere status as an employee is not always accompanied by the absence of total disability (within the meaning of the Act). It is in response to the administrative practice of denying claims solely on the basis of employment status

without regard to the type of work being performed. The amendment thus identifies certain situations which may suggest the existence of legal disability notwithstanding continued employment status and where additional administrative inquiry is therefore directed.

The House bill also provided that a miner could file a claim for benefits regardless of whether the miner was currently employed and that the Secretary of Labor could advise the miner if he would be eligible for benefits if he changed the circumstances of his work. The Senate amendment did not contain these provisions.

The conference substitute does not include the House provision since the provision would essentially duplicate authority provided elsewhere in the conference substitute, arising out of identical provisions in the House bill and Senate amendment, which prohibits benefit payments to employed miners (except those afflicted with complicated pneumoconiosis, as described by section 411(c)(3)), but permits a miner to receive benefits if his employment terminates within 1 year after he is determined to be otherwise eligible for benefits.

EVIDENCE

Affidavits

The House bill provided that where there is no relevant medical evidence in the case of a deceased miner, affidavits shall be considered sufficient to establish eligibility. The Senate amendment provided that in the case of a deceased miner, where there is no medical evidence or where such evidence is inconclusive, a claim shall be approved if other evidence in the record, including affidavits, taken as a whole, establishes eligibility.

The conference substitute conforms to the House provision with a Senate amendment that affidavits are sufficient to establish eligibility in the case of a deceased miner where there is no medical "or other" relevant evidence.

X-ray rereading prohibition

The House bill required the Secretary to accept the opinion of a claimant's physician regarding whether the miner's X-ray shows pneumoconiosis unless the Secretary has good cause to believe the X-ray is not of sufficient quality, or the miner's condition is being fraudulently represented. The Senate amendment provided that if the miner is employed for 25 or more years in the mines and there is other evidence of pulmonary or respiratory impairment, the Secretary must accept the reading of a board-certified or board-eligible radiologist if the X-ray is of sufficient quality and is taken by a radiologist or a qualified radiologic technologist or technician, except where the Secretary has reason to believe that the claim has been fraudulently misrepresented. The Secretary of Labor may by regulation establish specific requirements for techniques used to take X-rays.

The conference substitute generally conforms to the Senate provision except that the limitation on the prohibition as it pertained to claims of miners with 25 or more years of mining employment contained in the Senate amendment is deleted. In the case of X-rays read by a board-certified or board-eligible radiologist it is the intention of the conferees that the Secretary shall accept, for whatever evidentiary

value X-rays generally may have, the evaluation of such X-rays read by a board-certified or board-eligible radiologist without submitting them to a further rereading.

Autopsy reports

The House bill provided that the Secretary must accept an autopsy report for purposes of determining the presence of pneumoconiosis and the stage of advancement of pneumoconiosis, unless the Secretary has good cause to believe it is not accurate, or that the miner's condition is being fraudulently misrepresented. The Senate amendment did not contain these provisions.

The conference substitute conforms to the House bill.

Pulmonary examination

The Senate amendment required that miners be provided an opportunity to substantiate their claims by means of complete pulmonary examinations. The House bill contained no such provision.

The conference substitute adopts the Senate provision with an amendment to clarify that the miner-claimant has the right to insist on a complete pulmonary examination in substantiating the claim. The conferees recognize that complete pulmonary examinations, including blood gas tests, may be an especially important tool in diagnosing total disability due to pneumoconiosis for miners in certain cases, such as high-altitude miners. In adopting this provision, the conferees intend that in evaluating claims, all relevant evidence be considered, but that no claim may be denied unless the claimant has been offered the opportunity to substantiate his claim by means of such pulmonary examinations (except where it is determined in consultation with the miner's physician that such test is medically contraindicated) and the miner has been given a reasonable period of time to avail himself or herself of such opportunity. The conferees do not intend by this provision, however, that any single medical test be given priority in establishing total disability due to pneumoconiosis.

BENEFIT ELIGIBILITY

Survivor presumption

The Senate amendment entitled the survivor of a miner who died before the date of enactment of the 1977 amendments and who had at least 25 years of coal mine employment prior to June 30, 1971, to benefits, unless it is established that, at the time of death, the miner was not partially or totally disabled due to pneumoconiosis. The survivor was required upon request to supply the Secretary with available evidence concerning the health of the miner at the time of death. The House bill had no equivalent provision.

The conference substitute adopts the Senate provision.

Mine accident provisions

The House bill provided that if a miner was employed 17 years or more in underground coal mines and died as a result of an accident in any such coal mine which occurred before June 30, 1971, an eligible survivor would be entitled to part B black lung benefits. The Senate amendment had no comparable provision.

The conference substitute does not contain this provision.

Determination of year of employment

The Senate amendment provided that a miner would be credited with a year of employment if the miner had four quarters of coverage as defined in the Social Security Act, was continuously on the payroll of a coal company, or if the Secretary of Labor determined on the basis of other evidence that he was employed as a miner. The House bill had no comparable provision.

The conference substitute does not contain this provision.

Use of 15-year presumption

The House bill did not modify current law under which part C claimants, in order to use the section 411(c) (4) presumption of total disability due to pneumoconiosis, must have worked 15 years in the coal mines prior to June 30, 1971, and have filed the claim within 3 years of last exposed employment in a coal mine for a living miner and within 15 years of last exposed employment in a coal mine in the case of a survivor's claim. The Senate amendment eliminated all time limitations on the use of the section 411(c) (4) presumption.

The conference substitute conforms to the Senate amendment.

Statute of limitations

The House bill provided that, in addition to the provisions of current law under which a part C claim may be filed within 3 years of discovery of total disability due to pneumoconiosis or within 3 years of death due to pneumoconiosis, a part C claim may also be filed within 3 years of the date of enactment of these amendments. The Senate amendment permitted the filing of a part C claim by a miner within 3 years after a medical determination of total disability due to pneumoconiosis, and eliminated the statute of limitations on survivor claims.

The conference substitute conforms to the Senate provision with an amendment which would also permit the filing of a part C claim within 3 years of the date of enactment of these amendments.

Survivors of approved claimants

The Senate amendment provided that the eligible survivors of approved claimants would not be required to file a new claim for benefits. The House bill had no comparable provision.

The conference substitute conforms to the Senate amendment.

Medical benefits

The House bill required the Secretary of HEW to notify miners receiving benefits under part B of their eligibility to file for medical benefits under part C. Such miners would then have 6 months to file a part C claim for medical benefits, without regard to the current 3-year statute of limitations. The Senate amendment had no comparable provision.

The conference substitute adopts the provision of the House bill. The conferees intend that the so-called "interim" part B medical standards are to be applied to all of these medical benefits claims.

Applicability of 1977 part B amendments to part C

The Senate amendment made these amendments to part B applicable to part C where relevant. The House bill had no comparable provision.

The conference substitute conforms to the Senate amendment. Neither this provision nor any other provision in the conference substitute eliminates or narrows the current applicability of all part B presumptions to part C claims. Indeed, it is the express intent of the conferees to expand the regulatory authority of the Department of Labor in administering the black lung benefits program.

NOTIFICATION AND REVIEW

Notification

The House bill provided that the Secretaries of Labor and HEW would disseminate to interested persons and groups information on changes in the law. Each Secretary would undertake a program to give individual notices. The Secretary of HEW would locate and notify individuals with long periods of coal mine employment or their survivors of their eligibility to file a part B claim if they had not previously filed a part B or part C claim and such persons could file claims within 6 months of notification.

The Senate amendment required the Secretaries of Labor and HEW to disseminate jointly to interested persons and groups information on changes in the law, and through group organizations and operators to undertake to notify individuals. Individual assistance was to be provided to potential beneficiaries.

The conference substitute conforms to the House bill with an amendment to delete any requirement that a delegate of the Secretary personally visit individuals to inform them of their eligibility for benefits. Also deleted is the provision in the House bill permitting the reopening of part B to "notified" potential claimants. In addition, as discussed below, the Secretary of HEW will notify denied part B claimants and the Secretary of Labor will notify denied part C claimants of their review rights and, with regard to part C claimants, of their right to augment their files. The conference substitute also retains the Senate provision requiring that individual assistance be provided to potential beneficiaries. The conferees intend that the Secretaries undertake a broad campaign to disseminate information about the changes in the program and to notify individuals who may have become eligible for benefits, through appropriate organizations, groups, and coal mine operators.

Review

The House bill provided that the Department of Health, Education, and Welfare would automatically review all previously denied or pending part B claims and that the Department of Labor would likewise review all previously denied or pending part C claims to determine if the respective claimants would be eligible for benefits in light of the 1977 amendments. The Senate amendment provided that claimants with previously denied claims would be permitted to refile under part C under an expedited procedure to be established by the Secretary of Labor.

The conference substitute adopts the requirement of the House bill of entitlement to review of all denied or pending claims (part B and part C) taking into account the changes made by these amendments. It requires the Department of HEW to notify individuals whose part B claims have been denied or are pending that they

may elect to have HEW review the claim on the existing record or have the claim referred to the Department of Labor for refiling under part C with an opportunity to submit new evidence. Where the claimant elects review under part B and the Department of HEW finds the claimant eligible in light of these amendments, or for other reasons, the Secretary of HEW is to certify this determination to the Secretary of Labor. This certification is binding upon the Secretary of Labor as an initial determination of eligibility and the Secretary of Labor is required to immediately make or otherwise provide for the full payment of the claim in accordance with relevant part C provisions.

Where the claimant elects review under part B and the Department of HEW does not find the claimant eligible for benefits on the existing record, the claim will be referred to the Secretary of Labor for refiling under part C, and consideration thereunder (including the opportunity to submit new evidence), and the claimant is notified by HEW of that referral. Once the Secretary of HEW makes the determination of claim approval or denial based on review on the existing record, the responsibility for further review action on any such claim is transferred to the Secretary of Labor. This also includes the situation where a claimant is dissatisfied with the scope or terms of an HEW approval (e.g., dispute regarding augmentation of benefits because of dependents). The Department of HEW is thus expressly relieved of providing an administrative process for appeal from its determinations under these provisions and that responsibility rests with the Department of Labor.

Where the claimant does not elect review under part B, but elects to have the claim referred to the Department of Labor for refiling under part C, HEW shall so notify the Secretary of Labor and shall promptly provide the Secretary with the claimant's case file, and all pertinent information necessary to further process the claim. With respect to all claims referred by HEW to the Secretary of Labor, and thus refiled as part C claims, the Secretary of Labor shall provide an opportunity for the claimant to present additional medical or other evidence in support of the claim and shall notify each claimant of that opportunity.

The conference substitute also requires the Secretary of Labor to automatically review all currently denied or pending part C claims, taking into account the changes made by these amendments. The Secretary is required to immediately make or otherwise provide for the full payment of claims approved under these provisions in accordance with relevant part C provisions. If the evidence on file is not sufficient for approval of a claim, the Secretary shall provide an opportunity for the claimant to present additional medical or other evidence in support of the claim and shall notify each claimant of that opportunity. If a claim is denied on review on the existing record, the claimant shall once again be informed of his right to submit additional evidence in support of the claim under part C.

All reviews or refiled claims shall receive expedited treatment. The conferees also expect the Secretaries of HEW and Labor to establish a satisfactory mechanism to coordinate their responsibilities and to avoid both agencies simultaneously reviewing the claim of any claimant previously denied under part B and later denied, pending, or

entitled under part C. The conferees expect the Secretary of HEW to administer the "interim" standards with a view to the just accomplishment of the purpose of allowing for reviewed part B claims to establish disability within the meaning of the 1977 amendments as they apply to all reviewed part B claims.

For purposes of payment of benefits, all claims under review shall be treated as part C claims and shall be subject to relevant part C provisions which require payment of benefits by a coal mine operator, other employer, or by the trust fund established by the Black Lung Benefits Revenue Act of 1977.

Retroactivity

The House bill provided no payment retroactivity pursuant to review. The Senate amendment provided that a part B denial, refiled as a part C claim and approved, would be paid from January 1, 1974, as would a denied section 415 claim (that is, a claim filed between July 1 and December 31, 1973). A previously denied part C claim approved after refiling would be paid benefits from the date of original filing.

The conference substitute conforms generally to the Senate amendment with an amendment which does not alter the current law regarding retroactivity of benefits payments but which precludes any retroactivity of benefits for a period prior to January 1, 1974.

Pre-1970 employment

The House bill reopened part B (claims paid out of general revenues) for all claims predicated upon employment which terminated prior to December 30, 1969. The Senate amendment provided that any approved part C claim based upon coal mine employment which terminated prior to January 1, 1970, was to be paid by the trust fund established by the Senate amendment. The Senate amendment did not permit newly filed claims under part B.

The conference substitute conforms to the Senate amendment. The responsibility for payment of part B claims approved upon review pursuant to these amendments is dealt with elsewhere in the conference substitute.

Successor operator

The Senate amendment added to current law a requirement that, on or after January 1, 1970, if an operator reorganizes to change its identity, form, or place of organization, is liquidated into a parent corporation, or ceases to exist because of a sale of assets, merger, consolidation, or division, the successor operator or corporation is liable for claims based on coal mine employment for the predecessor operator, except that a predecessor operator shall be primarily liable if the predecessor operator remains a coal mine operator and is financially responsible for the payment of the claim. The House bill had no such provision.

The conference substitute conforms to the Senate amendment.

CLAIMS ADJUDICATION

Procedures

The House bill retained provisions under current law by which the Longshoremen's and Harbor Workers' Act procedures applied with

respect to claims processed by the Secretary of Labor. In addition, the House bill added provisions establishing a new hearing procedure which required an expedited hearing within 45 days if requested by a claimant. The House bill also required the claimant's appeal from a final decision of the Secretary to be taken to a U.S. district court. The standard of review applied by the district court would have been "weight of the evidence".

The Senate amendment retained the Longshoremen's Act procedures for the adjudication of all claims processed by the Secretary of Labor but permitted the use of hearing officers for a period of 1 year. It also made future amendments to Longshoremen's Act procedures automatically applicable to black lung claims.

The conference substitute conforms to the Senate amendment. For purposes of adjudication, all claims certified, referred, or otherwise subject to review by the Secretary of Labor under section 435, shall be treated as part C claims.

Participation

The House bill provided that no operator may participate in the adjudication of any claim. The trustees of the fund (established by the House bill) could participate in the claims process on behalf of all operators only to the extent that they could appeal a prior decision, and medical determinations of the Secretary would not be appealable. If the trustees appealed a decision their appeal would be taken to the appropriate court of appeals.

The Senate amendment provided that only the Secretary and the claimant may participate in proceedings for which the trust fund may be liable. Neither the fund nor any operator could participate in any trust fund claim initially or on appeal. The Senate amendment made the Secretary of Labor a party in any part C proceeding and retained the current authority for operators to participate in claims adjudication with respect to claims for which they might be responsible.

The conference substitute conforms to the Senate amendment in the respect that the Secretary of Labor is a party in any part C proceeding and in retaining the authority of current law for operators to participate in the adjudication of claims for which they may be individually found liable (including part B claims certified or otherwise referred to the Secretary of Labor by the Secretary of HEW pursuant to the conference substitute). The balance of the Senate provision is incorporated in the provisions of the Black Lung Benefits Revenue Act of 1977, a prior and separate enactment dealing generally with the trust fund financing mechanism for the Black Lung Benefits Act.

Enforcement of operator liability to claimants

The House bill did not modify current law under which the failure of an operator to pay a claimant results in payments by the Secretary of Labor made on behalf of such operator. The Secretary may bring a civil action for recovery. Pursuant to incorporated Longshoremen's Act provisions, the operator may be required to pay the claimant 20 percent in addition to compensation if timely payments are not made. There is no penalty for failure to insure.

The Senate amendment provided that the failure of an operator to pay a claimant would result in payments being made by the trust fund. If the operator refused to repay the fund, there would be a lien against

such operator's assets, enforceable in a U.S. district court. The operator would also be liable for the payment of a 20 percent penalty to the claimant pursuant to the Longshoremen's Act. A civil penalty of up to \$1,000 a day would be provided for failure of an employer to secure benefits and corporate officers would be made jointly and severally liable. Criminal penalties would be imposed against an operator who knowingly destroyed or encumbered his property to avoid paying benefits. Other penalties would be imposed by the Senate amendment for the filing of false statements. The Secretary would be authorized to require employers to file reports concerning who may be entitled to benefits. Failure to file such reports would be subject to a civil penalty.

The conference substitute conforms to the Senate amendment with regard to its provisions establishing penalties for failure to secure payment of benefits and for false statements and reports. The balance of the Senate provision (e.g., trust fund liability, lien provisions) is incorporated in the provisions of the Black Lung Benefits Revenue Act of 1977 (discussed above).

The conferees intend that the Secretary of Labor fully utilize the regulatory authority under which he or she may require reports of employers (regarding black lung beneficiaries or potential beneficiaries) to collect broad statistical data and to monitor the status of individual or groups of claims.

Enforcement of operator liability to fund

The House bill provided that if an operator failed or refused to pay an assessment or premium to the fund, the trustees would be authorized to bring a civil action against such operator in an appropriate U.S. district court. Nine percent interest could be assessed on past due balances. In addition, the Secretary of the Treasury could assess penalties not in excess of unpaid premiums and assessments to be paid by a defaulting operator. Penalties could be recovered by the Secretary of the Treasury in an appropriate U.S. district court, and would be paid into the fund.

The Senate amendment provided that if an operator failed to pay his designated 1 percent sales tax or repay the fund for the amounts paid on such operator's behalf, there would be either a default in tax liability declared by the Internal Revenue Service or in the latter case a lien imposed pursuant to provisions of the Internal Revenue Code of 1954. Such lien would be enforced by the Secretary of Labor in a U.S. district court.

The conference substitute does not contain either provision since the provision of the Senate amendment is incorporated in the provisions of the Black Lung Benefits Revenue Act of 1977, a prior and separate enactment (discussed above).

Administration

The House bill established a coal industry administered fund, the trustees of which would be elected by coal mine operators. The operator trustees administered and managed the fund and were authorized to invest the corpus in accordance with ERISA limitations. The Senate amendment established a trust fund and provided that the trustees of the fund would be the Secretaries of Treasury, Labor, and HEW, with the Secretary of the Treasury the managing trustee. Assets of the fund would be invested only in public debt securities.

The conference substitute does not contain either provision since the provision of the Senate amendment is incorporated in the provisions of the Black Lung Benefits Revenue Act of 1977 (discussed above).

Payments

The House bill provided that the trust fund would pay the full cost of all part C claims including reimbursing the Federal Government for any payments made after December 31, 1973, for claims filed after June 30, 1973, and authorized the trust fund to assume payment of the obligations (in return for reasonable payment) of insurance carriers or operators who incurred a prior obligation under this part. The fund would pay only its own administrative expenses.

The Senate amendment provided that the trust fund would pay all part C claims which are predicated upon employment which terminated prior to January 1, 1970, and claims with respect to employment after that date where no responsible operator can be found or the miner's coal mine employer is insolvent or uninsured. The fund would also reimburse the Treasury for all part C claims paid by the Federal Government prior to enactment of these amendments with respect to periods of eligibility from January 1, 1974. The fund would pay the administrative expenses of Labor, HEW, and Treasury.

The conference substitute provides that the trust fund (established by the Black Lung Benefits Revenue Act of 1977) pays benefits in cases in which there is no operator who is required to secure the payment of such benefits or where a liable operator has failed to make payment in a timely manner or cases in which the miner's last coal mine employment was before January 1, 1970 (irrespective that in cases reviewed under section 435 the claims was initially filed as a part B or part C claim). The balance of the Senate amendment is incorporated in the provisions of the Black Lung Benefits Revenue Act of 1977 (discussed above).

Financing

The House bill provided that the trust fund would be supported by premiums and assessments payable by each coal mine operator in the United States, except where a State law has been certified. The amount of the premium would be established in the first year by the Secretary of Labor predicated upon the tons of coal mined by each such operator. In following years, the premium would be established by the trustees subject to modification by the Secretary. Premiums would have to be sufficient to meet the obligations of the fund. Premium rates would be uniform throughout the coal mine industry. Premiums due and payable would be collected by the Secretary of the Treasury in the same manner as quarterly payroll reports of employers, and penalties could be assessed by the Secretary of the Treasury for failure to pay premiums. In addition to the annual premiums, assessments would also be required to be paid into the fund by individual coal mine operators at the end of each year in an amount which would be equal to the claim liability experience of such operator.

The Senate amendment established a trust fund on the books of Treasury, supported by a uniform 1 percent ad valorem manufacturers excise tax on coal (other than lignite) sold by producers after September 30, 1977. Claims for which there is a responsible operator would be financed through insurance or self-insurance, as under current law.

The conference substitute makes reference to the Black Lung Disability Trust Fund established by the Black Lung Benefits Revenue Act of 1977 (discussed above). The financing mechanism for the trust fund, as prescribed in the Revenue Act, conforms generally to the Senate amendment, except that the tax is based upon the tonnage of coal mined by coal operators (as in the House bill) at the rate of \$0.50 per ton for underground coal and \$0.25 per ton for surface-mined coal (but not to exceed 2 percent of the price at which the ton of coal is sold by the producer). The conference substitute does continue the current law regarding the individual liability of responsible operators (except where the miner's last coal mine employment was before January 1, 1970).

MISCELLANEOUS

Insurance

The Senate amendment created a black lung compensation insurance fund in the Department of Labor to enable the Secretary of Labor to offer insurance to operators if such insurance is unavailable privately at reasonable cost. The Senate amendment further authorized repayable advances to the insurance fund. The insurance fund would charge premiums consistent with accepted actuarial principles. The House bill had no such provision.

The conference substitute conforms to the Senate amendment. It is the intent of the conferees that the insurance fund not be operated solely as an insurer of a high-risk pool. The Secretary is also expected to utilize this authority to assist in encouraging private insurers to make contract insurance widely available at reasonable costs.

Field offices

The House bill required the Secretary of Labor to establish field offices. The Senate amendment authorized the Secretary of Labor to establish field offices.

The conference substitute conforms to the House bill with an amendment authorizing the Secretary of Labor to enter into agreements to use the facilities of other Federal or State agencies in establishing such field offices, and to use such facilities and also personnel if necessary in lieu of establishing separate field offices where separate Labor Department staffed field offices are not feasible. The conferees intend that, while the Secretary of Labor establish field offices wherever there are sufficient claimants in need of assistance, the Secretary not be required to maintain separately staffed field offices in locales where there is likely to be an insufficient number of claimants to justify their continued existence.

Occupational disease study

The House bill provided that the House Education and Labor Committee would conduct a study of white lung disease in 1 year. The Senate amendment required the Secretary of Labor, in cooperation with NIOSH, to conduct an 18-month study of all occupationally-related pulmonary and respiratory diseases.

The conference substitute conforms to the Senate amendment.

Information to denied claimants

The Senate amendment required the Secretary of Labor to supply each denied claimant with a written statement of the reasons for such

denial and a summary of the administrative hearing record or, on a showing of good cause, a copy of any transcript thereof. The House bill had no such provision.

The conference substitute conforms to the Senate amendment.

Interim part C payments

The House bill provided that part C benefits would be paid by the Secretary in any case in which the Black Lung Disability Insurance Trust Fund was not in operation. The Senate amendment had no such provision.

The conference substitute conforms to the House bill except that the reference is to the Black Lung Disability Trust Fund established by the Black Lung Benefits Revenue Act of 1977 (discussed above). The intent underlying this provision is to essentially "revive" the payment provisions of the current law in the event payments cannot lawfully be made from the trust fund. An example (and perhaps the only imaginable eventuality which could trigger this provision) would be a Supreme Court finding of legal infirmity going to an aspect of the trust fund sufficient to prevent the trust fund from adequately assuming the purpose and responsibility for which it was established.

Retroactivity—State exemption

The House bill made no change in the current law under which a State could gain an exemption for its operators from the provisions of the Federal statute if the State enacts a black lung compensation law which the Secretary of Labor could certify as meeting the Federal statutory standards. Such standards required *inter alia* State law coverage for miners last employed before enactment. The Senate amendment modified the existing law to permit the Secretary of Labor to approve State laws which provided coverage for miners whose last employment to minutes after the Secretary's approval of such State law.

The conference substitute conforms to the provisions of the Senate amendment with an amendment to clarify the intent of the conferees that operators in certified States under the Federal statute would still be required to secure the payment of benefits pursuant to Federal law with respect to miners whose last employment in coal mining terminated before the Secretary's approval of the State law. It is the intent of the conferees that no miner currently covered by the Federal statute be denied coverage under either the Federal statute or a certified State law because of the operation of this provision. Operators in certified States would nonetheless be liable for the coal excise tax imposed by the Black Lung Benefits Revenue Act of 1977, and miners whose employment ceased before the State law was certified would be paid pursuant to the operation of the Federal law.

Self-insurance

The Senate amendment provided specific income tax treatment for a qualifying trust used by a coal mine operator to self-insure for liabilities under Federal and State black lung benefits laws, and allowed deductions within certain limits for amounts contributed to the trust by the operator. The Senate amendment further imposed certain investment limitations and prohibitions on "self-dealing" and "taxable expenditures" designed to prevent abuses of such trusts. The Senate

amendment provisions would be effective for taxable years beginning after December 31, 1977. The House bill contained no such provision.

The conference substitute does not contain this provision although it is incorporated in the provisions of the Black Lung Benefits Revenue Act of 1977 (discussed above).

Addresses

The Senate amendment amended section 6103 of the Internal Revenue Code of 1954 to allow the IRS to provide NIOSH with addresses of taxpayers for purposes of locating individuals who may have been exposed to occupational hazards. The House bill contained no such provision.

The conference substitute does not contain this provision because this provision was included in the Act of December 13, 1977 (Public Law 95-210; 91 Stat. 1485), an amendment to the Social Security Act to provide payment for rural health clinic services.

Location of Division of Coal Mine Workers' Compensation

The House bill provided that the Division of Coal Mine Workers' Compensation would be located in the Office of the Secretary of Labor. The Senate amendment had no such provision.

The conference substitute does not contain this provision from the House bill.

Effective dates

The House bill provided generally that the bill would take effect on the date of enactment. The House bill also contained additional effective dates relating to the manner in which the funding provisions of the House bill would take effect. The Senate amendment contained similar provisions for a generally applicable effective date on the date of enactment, with additional effective date provisions relating to funding.

The conference substitute provides that the amendments will take effect on the date of enactment. Additional effective dates relating to funding were made unnecessary as a result of the enactment of the Black Lung Benefits Revenue Act of 1977 (discussed above).

CARL D. PERKINS,
 JOHN H. DENT,
 PHILLIP BURTON,
 JOSEPH M. GAYDOS,
 WILLIAM CLAY,
 MARIO BIAGGI,
 LEO C. ZEFERETTI,
 MICHAEL O. MYERS,
 AUSTIN J. MURPHY,
 BALTASAR CORRADA,
 PAUL SIMON,
 GEORGE MILLER,
 FRANK THOMPSON, JR.,
 IKE ANDERSON,
 AL ULLMAN,
 DAN ROSTENKOWSKI,
 CHARLES VANIK,
 JOHN J. DUNCAN,

Managers on the Part of the House.

HARRISON A. WILLIAMS, JR.,
 CLAIBORNE PELL,
 GAYLORD NELSON,
 DON RIEGLE,
 JENNINGS RANDOLPH,
 EDWARD M. KENNEDY,
 RUSSELL LONG,
 FLOYD K. HASKELL,
 JACOB K. JAVITS,
 RICHARD SCHWEIKER,
 ROBERT T. STAFFORD,
 JOHN H. CHAFFEE,
 PAUL LAXALT,

Managers on the Part of the Senate.

