

## § 726.5

this subchapter for the purpose of guiding the Secretary in making such determination. It must be noted that pursuant to these standards any parent or subsidiary corporation, any individual or corporate partner, or partnership, any lessee or lessor of a coal mine, any joint venture or participant in a joint venture, any transferee or transferor of a corporation or other business entity, any former, current, or future operator or any other form of business entity which has had or will have a substantial and reasonably direct interest in the operation of a coal mine may be determined liable for the payment of pneumoconiosis benefits after December 31, 1973. The failure of any such business entity to self-insure or obtain a policy or contract of insurance shall in no way relieve such business entity of its obligation to pay pneumoconiosis benefits in respect of any case in which such business entity's responsibility for such payments has been properly adjudicated. Any business entity described in this section shall take appropriate steps to insure that any liability imposed by part C of the Act on such business entity shall be dischargeable.

### § 726.5 Effective date of insurance coverage.

Pursuant to section 422(c) of part C of title IV of the Act, no coal mine operator shall be responsible for the payment of any benefits whatsoever for any period prior to January 1, 1974. However, coal mine operators shall be liable as of January 1, 1974, for the payment of benefits in respect of claims which were filed under section 415 of part B of title IV of the Act after July 1, 1973. Section 415(a)(3) requires the Secretary to notify any operator who may be liable for the payment of benefits under part C of title IV beginning on January 1, 1974, of the pendency of a section 415 claim. Section 415(a)(5) declares that any operator who has been notified of the pendency of a section 415 claim shall be bound by the determination of the Secretary as to such operator's liability and as to the claimant's entitlement to benefits as if the claim were filed under part C of title IV of the Act and section 422 thereof had been applicable to such operator. Therefore, even though no benefit pay-

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ments shall be required of an operator prior to January 1, 1974, the liability for these payments may be finally adjudicated at any time after July 1, 1973. Neither the failure of an operator to exercise his right to participate in the adjudication of such a claim nor the failure of an operator to obtain insurance coverage in respect of claims filed after June 30, 1973, but before January 1, 1974, shall excuse such operator from his liability for the payment of benefits to such claimants under part C of title IV of the Act.

### § 726.6 The Office of Workers' Compensation Programs.

The Office of Workers' Compensation Programs (hereinafter the Office or OWCP) is that subdivision of the Employment Standards Administration of the U.S. Department of Labor which has been empowered by the Secretary of Labor to carry out his functions under section 415 and part C of title IV of the Act. As noted throughout this part 726 the Office shall perform a number of functions with respect to the regulation of both the self-insurance and commercial insurance programs. All correspondence with or submissions to the Office should be addressed as follows:

Division of Coal Mine Workers' Compensation, Office of Workers' Compensation Programs, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210

### § 726.7 Forms, submission of information.

Any information required by this part 726 to be submitted to the Office of Workmen's Compensation Programs or any other office or official of the Department of Labor, shall be submitted on such forms or in such manner as the Secretary deems appropriate and has authorized from time to time for such purposes.

### § 726.8 Definitions.

In addition to the definitions provided in part 725 of this subchapter, the following definitions apply to this part:

(a) *Director* means the Director, Office of Workers' Compensation Programs, and includes any official of the

Office of Workers' Compensation Programs authorized by the Director to perform any of the functions of the Director under this part and part 725 of this subchapter.

(b) *Person* includes any individual, partnership, corporation, association, business trust, legal representative, or organized group of persons.

(c) *Secretary* means the Secretary of Labor or such other official as the Secretary shall designate to carry out any responsibility under this part.

(d) The terms *employ* and *employment* shall be construed as broadly as possible, and shall include any relationship under which an operator retains the right to direct, control, or supervise the work performed by a miner, or any other relationship under which an operator derives a benefit from the work performed by a miner. Any individuals who participate with one or more persons in the mining of coal, such as owners, proprietors, partners, and joint venturers, whether they are compensated by wages, salaries, piece rates, shares, profits, or by any other means, shall be deemed employees. It is the specific intention of this paragraph to disregard any financial arrangement or business entity devised by the actual owners or operators of a coal mine or coal mine-related enterprise to avoid the payment of benefits to miners who, based upon the economic reality of their relationship to this enterprise, are, in fact, employees of the enterprise.

### Subpart B—Authorization of Self-Insurers

#### § 726.101 Who may be authorized to self-insure.

(a) Pursuant to section 423 of part C of title IV of the Act, authorization to self-insure against liability incurred by coal mine operators on account of the total disability or death of miners due to pneumoconiosis may be granted or denied in the discretion of the Secretary. The provisions of this subpart describe the minimum requirements established by the Secretary for determining whether any particular coal mine operator shall be authorized as a self-insurer.

(b) The minimum requirements which must be met by any operator seeking authorization to self-insure are as follows:

(1) The operator must, at the time of application, have been in the business of mining coal for at least the 3 consecutive years prior to such application; and,

(2) The operator must demonstrate the administrative capacity to fully service such claims as may be filed against him; and,

(3) The operator's average current assets over the preceding 3 years (in computing average current assets such operator shall not include the amount of any negotiable securities which he may be required to deposit to secure his obligations under the Act) must exceed current liabilities by the sum of—

(i) The estimated aggregate amount of black lung benefits (including medical benefits) which such operator may expect to be required to pay during the ensuing year; and,

(ii) The annual premium cost for any indemnity bond purchased; and

(4) Such operator must obtain security, in a form approved by the Office (see § 726.104) and in an amount to be determined by the Office (see § 726.105); and

(5) No operator with fewer than 5 full-time employee-miners shall be permitted to self-insure.

(c) No operator who is unable to meet the requirements of this section should apply for authorization to self-insure and no application for self-insurance shall be approved by the Office until such time as the amount prescribed by the Office has been secured in accordance with this subpart.

#### § 726.102 Application for authority to become a self-insurer; how filed; information to be submitted.

(a) *How filed.* Application for authority to become a self-insurer shall be addressed to the Office and be made on a form provided by the Office. Such application shall be signed by the applicant over his typewritten name and if the applicant is not an individual, by the principal officer of the applicant duly authorized to make such application over his typewritten name and official designation and shall be sworn to