

Unfunded Mandates Reform Act

This action is not subject to sections 202 or 205 of the Unfunded Mandates Reform Act (UMRA, Pub. L. 104-4) because the Department has made a good cause finding the action is not subject to notice and public procedure under the Administrative Procedure Act. In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate as described in sections 203 and 204 of UMRA.

Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Executive Order 12866

This action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735 (Oct. 4, 1993)).

Executive Order 13132

This action will not have substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as described in Executive Order 13132 (64 FR 43255 (Aug. 10, 1999)).

List of Subjects in 20 CFR Parts 718 and 725

Black lung benefits, Claims, Health care, Lung diseases, Miners, Mines, Workers' compensation, X-rays.

For the reasons set forth in the preamble, title 20, Chapter VI, Subchapter B of the Code of Federal Regulations is amended as set forth below:

Signed at Washington, DC, this 26th day of November, 2003.

Victoria Lipnic,

Assistant Secretary for Employment Standards.

PART 718—STANDARDS FOR DETERMINING COAL MINERS' TOTAL DISABILITY OR DEATH DUE TO PNEUMOCONIOSIS

■ 1. The authority citation for Part 718 continues to read as follows:

Authority: 5 U.S.C. 301, Reorganization Plan No. 6 of 1950, 15 FR 3174, 30 U.S.C. 901 *et seq.*, 902(f), 934, 936, 945, 33 U.S.C. 901 *et seq.*, 42 U.S.C. 405, Secretary's Order 7-87, 52 FR 48466, Employment Standards Order No. 90-02.

■ 2. Section 718.2 is revised to read as follows:

§ 718.2 Applicability of this part.

With the exception of the second sentence of § 718.204(a), this part is applicable to the adjudication of all claims filed after March 31, 1980, and considered by the Secretary of Labor under section 422 of the Act and part 725 of this subchapter. The second sentence of § 718.204(a) is applicable to the adjudication of all claims filed after January 19, 2001. If a claim subject to the provisions of section 435 of the Act and subpart C of part 727 of this subchapter (see 20 CFR 725.4(d)) cannot be approved under that subpart, such claim may be approved, if appropriate, under the provisions contained in this part. The provisions of this part shall, to the extent appropriate, be construed together in the adjudication of all claims.

PART 725—CLAIMS FOR BENEFITS UNDER PART C OF TITLE IV OF THE FEDERAL MINE SAFETY AND HEALTH ACT, AS AMENDED

■ 1. The authority citation for Part 725 continues to read as follows:

Authority: 5 U.S.C. 301, Reorganization Plan No. 6 of 1950, 15 FR 3174, 30 U.S.C. 901 *et seq.*, 921, 932, 936; 33 U.S.C. 901 *et seq.*, Secretary's Order 7-87, 52 FR 48466, Employment Standards Order No. 90-02.

■ 2. Section 725.2 is amended by revising paragraph (c) to read as follows:

§ 725.2 Purpose and applicability of this part.

* * * * *

(c) The provisions of this part reflect revisions that became effective on January 19, 2001. This part applies to all claims filed after January 19, 2001 and all benefits payments made on such claims. With the exception of the following sections, this part shall also apply to the adjudication of claims that were pending on January 19, 2001 and all benefits payments made on such claims: §§ 725.101(a)(31), 725.204, 725.212(b), 725.213(c), 725.214(d), 725.219(d), 725.309, 725.310, 725.351, 725.360, 725.367, 725.406, 725.407, 725.408, 725.409, 725.410, 725.411, 725.412, 725.414, 725.415, 725.416, 725.417, 725.418, 725.421(b), 725.423, 725.454, 725.456, 725.457, 725.458, 725.459, 725.465, 725.491, 725.492, 725.493, 725.494, 725.495, 725.547, 725.701(e). The version of those sections set forth in 20 CFR, parts 500 to end, edition revised as of April 1, 1999, apply to the adjudications of claims that were pending on January 19, 2001. For purposes of construing the provisions of this section, a claim shall be considered pending on January 19, 2001 if it was not finally denied more than one year prior to that date.

■ 3. Section 725.459 is amended by revising paragraph (b), and by removing paragraph (d), to read as follows.

§ 725.459 Witness fees

* * * * *

(b) If the witness' proponent does not intend to call the witness to appear at a hearing or deposition, any other party may subpoena the witness for cross-examination. The administrative law judge (ALJ) shall authorize the least intrusive and expensive means of cross-examination as the ALJ deems appropriate and necessary to the full and true disclosure of the facts. If such witness is required to attend the hearing, give a deposition or respond to interrogatories for cross-examination purposes, the proponent of the witness shall pay the witness' fee. The fund shall remain liable for any costs associated with the cross-examination of the physician who performed the complete pulmonary evaluation pursuant to § 725.406.

(c) * * *

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