



## Chapter 9

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# Defending Federal Black Lung Claims Under the New Regulations

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**§ 9.01. Introduction.**

On December 20, 2000, the United States Department of Labor issued a Final Rule<sup>1</sup> to overhaul the regulatory framework governing claims filed under the Black Lung Benefits Act (the “Act”). After nearly four calendar years of extensive rulemaking,<sup>2</sup> the new black lung regulations emerged at the conclusion the Clinton Administration. The new black lung regulations promulgated under the Final Rule purport to streamline claims handling procedures and ease entitlement standards. A critical review of the thoroughly debated amended regulations compels the conclusion that the changes, if fully implemented, will likely extend the availability of black lung benefits to those not entitled under the Act. Even more extraordinarily, the Final Rule constitutes a “significant regulatory action”<sup>3</sup> that acknowledges and expects to wreak substantial hardships on small underground coal mines.<sup>4</sup>

In an effort to obtain guidance from the Final Rule, this chapter sets forth the statutory bases for claims adjudication under the Act, analyzes the more pertinent provisions of the Final Rule, and concludes that the

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<sup>1</sup> “Regulations Implementing the Federal Coal Mine Health and Safety Act of 1969, as amended.” 65 F.R. 79920-80107 (Dec. 20, 2000)(cited to herein as “the Final Rule”). Unless otherwise noted, all citations to Title 20, C.F.R. contained in this chapter are to the revisions promulgated and republished under the Final Rule.

<sup>2</sup> The Final Rule was issued only after two previous rulemaking efforts suffered severe criticism from both miners (claimants) and the coal industry. *See* Proposed Rule, 62 F.R. 3338-3435 (Jan. 22, 1997), which was substantially revised in “Regulations Implementing the Federal Coal Mine Health and Safety Act of 1969; Proposed Rule,” 64 F.R. 54966-55072 (Oct. 8, 1999). A full discussion of both proposed rules is outside the scope of this Chapter.

<sup>3</sup> 65 F.R. 80029 (Dec. 20, 2000)(Section 3(f)(4) of Executive Order 12866 compelled the Office of Management and Budget to classify the Final Rule as a “significant regulatory action.”).

<sup>4</sup> 65 F.R. 80029-45 (Dec. 20, 2000)(Regulatory Flexibility Act analysis). The Final Rule admits many smaller mines (less than 20 employees and coal production of less than 100,000 short tons) face an acute risk of closure due to increased costs of complying with the amended regulations. 65 F.R. 80032-41. With the overall claim approval rate expected to rise from 7.33 percent to 12.18 percent, an initial two-year claim filing increase of 3,440, and claim defense costs expected to rise \$6,000 per claim, the coal industry faces an estimated annual insurance premium increase of \$57.56 million.

Final Rule’s major revisions are either inconsistent with the Act or unnecessary under current case law. As set forth below, most of the new black lung regulations either conform the regulations to current case law or expand the regulations beyond its statutory support in order to assist claimants.

**§ 9.02. The Black Lung Benefits Act and Related Statutes.**

Claims adjudication for federal black lung benefits is governed by the Black Lung Benefits Act (promulgated under the Mine Safety Act), and the Administrative Procedures Act (the APA).

**[1] — Federal Mine Safety and Health Act, Title IV, as Amended.**

In 1969, Congress enacted Title IV of the Federal Mine Safety and Health Act in order to provide benefits to coal miners<sup>5</sup> totally disabled from pneumoconiosis (commonly known as “black lung disease”) and to widows whose husbands have died from black lung.<sup>6</sup> Title IV has been amended several times and is commonly referred to as the Black Lung Benefits Act.<sup>7</sup> The Act creates a general framework outlining a rudimentary claims process. More essentially, the Act operates as an enabling act and delegates authority to the Secretary of Labor to

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<sup>5</sup> The Act defines a “miner” as “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.” 30 U.S.C. § 901(d).

<sup>6</sup> 30 U.S.C. § 901(a). The Black Lung Benefits Act appears at Title 30, U.S.C. Sections 901 through 962.

<sup>7</sup> Title IV of the FMSH Act, P.L. 91-173 (1969) was amended by the Black Lung Benefits Act of 1972, P.L. 92-303, 86 Stat. 150 (1972). Further amendments were enacted under the Federal Mine Safety and Health Amendments Act of 1977, P.L. 95-164 (1977), the Black Lung Benefits Revenue Act of 1977, P.L. 95-227 (1977), the Black Lung Benefits Reform Act of 1977, P.L. 95-239 (1978), the Black Lung Benefits Amendments of 1981, P.L. 91-119 (1981), and the Black Lung Benefits Revenue Act of 1981, P.L. 97-119 (1981). The relevant purposes of each legislative enactment are set forth at 20 C.F.R. § 725.1(a)-(i).