

tive determination under section 7385o(d) of this title and the Secretary of Energy has accepted that determination under section 7385o(e)(2) of this title, or with respect to which a panel has made a negative determination under section 7385o(d) of this title and the Secretary of Energy has found significant evidence to the contrary under section 7385o(e)(2) of this title, that determination shall be treated for purposes of this part as a determination that the employee contracted the covered illness through exposure at a Department of Energy facility.

(c) Other cases

(1) In any other case, a Department of Energy contractor employee shall be determined for purposes of this part to have contracted a covered illness through exposure at a Department of Energy facility if—

(A) it is at least as likely as not that exposure to a toxic substance at a Department of Energy facility was a significant factor in aggravating, contributing to, or causing the illness; and

(B) it is at least as likely as not that the exposure to such toxic substance was related to employment at a Department of Energy facility.

(2) A determination under paragraph (1) shall be made by the Secretary.

(d) Applications by spouses and children

If a spouse or child of a Department of Energy contractor employee applies for benefits under this part, the Secretary shall make a determination under this section with respect to that employee without regard to whether the spouse is a “covered spouse”, or the child is a “covered child”, under this part.

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3675], as added Pub. L. 108-375, div. C, title XXXI, §3161, Oct. 28, 2004, 118 Stat. 2181.)

REFERENCES IN TEXT

Section 7385o of this title, referred to in subsec. (b), was repealed by Pub. L. 108-375, div. C, title XXXI, §3162(i), Oct. 28, 2004, 118 Stat. 2186.

§ 7385s-5. Applicability to certain uranium employees

(a) In general

This part shall apply to—

(1) a section 5 payment recipient who contracted a section 5 illness through a section 5 exposure at a section 5 facility, or

(2) a section 5 uranium worker determined under section 7385s-4(c) of this title to have contracted a covered illness through exposure to a toxic substance at a section 5 mine or mill,

(or to the survivor of that employee, as applicable) on the same basis as it applies to a Department of Energy contractor employee determined under section 7385s-4 of this title to have contracted a covered illness through exposure to a toxic substance at a Department of Energy facility (or to the survivor of that employee, as applicable).

(b) Definitions

In this section:

(1) The term “section 5 payment recipient” means an individual who receives, or has received, \$100,000 under section 5 of the Radiation Exposure Compensation Act (42 U.S.C. 2210 note) for a claim made under that Act.

(2) The terms “section 5 exposure”, “section 5 facility”, and “section 5 illness” mean the exposure, facility, and illness, respectively, to which an individual’s status as a section 5 payment recipient relates.

(3) The term “section 5 uranium worker” means an individual to whom subsection (a)(1)(A)(i) of section 5 of the Radiation Exposure Compensation Act applies (whether directly or by reason of subsection (a)(2) of this section).

(4) The term “section 5 mine or mill” means the mine or mill to which an individual’s status as a section 5 uranium worker relates.

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3676], as added Pub. L. 108-375, div. C, title XXXI, §3161, Oct. 28, 2004, 118 Stat. 2182.)

REFERENCES IN TEXT

The Radiation Exposure Compensation Act, referred to in subsec. (b), is Pub. L. 101-426, Oct. 15, 1990, 104 Stat. 920, as amended, which is set out as a note under section 2210 of this title.

§ 7385s-6. Administrative and judicial review

(a) Judicial review

A person adversely affected or aggrieved by a final decision of the Secretary under this part may review that order in the United States district court in the district in which the injury was sustained, the employee lives, the survivor lives, or the District of Columbia, by filing in such court within 60 days after the date on which that final decision was issued a written petition praying that such decision be modified or set aside. The person shall also provide a copy of the petition to the Secretary. Upon such filing, the court shall have jurisdiction over the proceeding and shall have the power to affirm, modify, or set aside, in whole or in part, such decision. The court may modify or set aside such decision only if the court determines that such decision was arbitrary and capricious.

(b) Administrative review

The Secretary shall ensure that recommended decisions of the Secretary with respect to a claim under this part are subject to administrative review. The Secretary shall prescribe regulations for carrying out such review or shall apply to this part the regulations applicable to recommended decisions under part B.

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3677], as added Pub. L. 108-375, div. C, title XXXI, §3161, Oct. 28, 2004, 118 Stat. 2182.)

§ 7385s-7. Physicians services

(a) In general

The Secretary may utilize the services of physicians for purposes of making determinations under this part.

(b) Physicians

Any physicians whose services are utilized under subsection (a) of this section shall possess

appropriate expertise and experience in the evaluation and determination of the extent of permanent physical impairments or in the evaluation and diagnosis of illnesses or deaths aggravated, contributed to, or caused by exposure to toxic substances.

(c) Arrangement

The Secretary may secure the services of physicians utilized under subsection (a) of this section through the appointment of physicians or by contract.

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3678], as added Pub. L. 108-375, div. C, title XXXI, §3161, Oct. 28, 2004, 118 Stat. 2182.)

§ 7385s-8. Medical benefits

A covered DOE contractor employee shall be furnished medical benefits specified in section 7384t of this title for the covered illness to the same extent, and under the same conditions and limitations, as an individual eligible for medical benefits under that section is furnished medical benefits under that section.

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3679], as added Pub. L. 108-375, div. C, title XXXI, §3161, Oct. 28, 2004, 118 Stat. 2183.)

§ 7385s-9. Attorney fees

Section 7385g of this title shall apply to a payment under this part to the same extent that it applies to a payment under part B.

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3680], as added Pub. L. 108-375, div. C, title XXXI, §3161, Oct. 28, 2004, 118 Stat. 2183.)

§ 7385s-10. Administrative matters

(a) In general

The Secretary shall administer this part.

(b) Contract authority

The Secretary may enter into contracts with appropriate persons and entities to administer this part.

(c) Records

(1)(A) The Secretary of Energy shall provide to the Secretary all records, files, and other data, whether paper, electronic, imaged, or otherwise, developed by the Secretary of Energy that are applicable to the administration of this part, including records, files, and data on facility industrial hygiene, employment of individuals or groups, exposure and medical records, and claims applications.

(B) In providing records, files, and other data under this paragraph, the Secretary of Energy shall preserve the current organization of such records, files, and other data, and shall provide such description and indexing of such records, files, and other data as the Secretary considers appropriate to facilitate their use by the Secretary.

(2) The Secretary of Energy and the Secretary shall jointly undertake such actions as are appropriate to retrieve records applicable to the claims of Department of Energy contractor employees for contractor employee compensation under this part, including employment records,

records of exposure to beryllium, radiation, silica, or other toxic substances, and records regarding medical treatment.

(d) Information

At the request of the Secretary, the Secretary of Energy and any contractor who employed a Department of Energy contractor employee shall, within time periods specified by the Secretary, provide to the Secretary and to the employee information or documents in response to the request.

(e) Regulations

The Secretary shall prescribe regulations necessary for the administration of this part. The initial regulations shall be prescribed not later than 210 days after October 28, 2004. The Secretary may prescribe interim final regulations necessary to meet the deadlines specified in this part.

(f) Transition provisions

(1) The Secretary shall commence the administration of the provisions of this part not later than 210 days after October 28, 2004.

(2) Until the commencement of the administration of this part, the Department of Energy Physicians Panels appointed pursuant to part D shall continue to consider and issue determinations concerning any cases pending before such Panels immediately before October 28, 2004.

(3) The Secretary shall take such actions as are appropriate to identify other activities under part D that will continue until the commencement of the administration of this part.

(g) Previous applications

Upon the commencement of the administration of this part, any application previously filed with the Secretary of Energy pursuant to part D shall be considered to have been filed with the Secretary as a claim for benefits pursuant to this part.

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3681], as added Pub. L. 108-375, div. C, title XXXI, §3161, Oct. 28, 2004, 118 Stat. 2183.)

REFERENCES IN TEXT

Part D, referred to in subsecs. (f)(2), (3) and (g), was repealed by Pub. L. 108-375, div. C, title XXXI, §3162(i), Oct. 28, 2004, 118 Stat. 2186.

§ 7385s-11. Coordination of benefits with respect to State workers compensation

(a) In general

An individual who has been awarded compensation under this part, and who has also received benefits from a State workers compensation system by reason of the same covered illness, shall receive compensation specified in this part reduced by the amount of any workers compensation benefits, other than medical benefits and benefits for vocational rehabilitation, that the individual has received under the State workers compensation system by reason of the covered illness, after deducting the reasonable costs, as determined by the Secretary, of obtaining those benefits under the State workers compensation system.

(b) Waiver

The Secretary may waive the provisions of subsection (a) of this section if the Secretary de-