

Indian Tribes with the financial and technical assistance necessary for the purpose of making amendments to the inventory maintained under section 403(c) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1233(c)).

(Pub. L. 117-58, div. D, title VII, § 40701, Nov. 15, 2021, 135 Stat. 1091; Pub. L. 117-328, div. DD, title VIII, § 801, Dec. 29, 2022, 136 Stat. 5622.)

Editorial Notes

REFERENCES IN TEXT

The Surface Mining Control and Reclamation Act of 1977, referred to in subsec. (b)(1), is Pub. L. 95-87, Aug. 3, 1977, 91 Stat. 445, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1201 of this title and Tables.

CODIFICATION

Section was enacted as part of the Infrastructure Investment and Jobs Act, and not as part of the Surface Mining Control and Reclamation Act of 1977 which comprises this chapter.

AMENDMENTS

2022—Subsec. (c). Pub. L. 117-328 designated existing provisions as par. (1), inserted heading, substituted “Except as provided in paragraph (2), grants under” for “Grants under”, and added par. (2).

Statutory Notes and Related Subsidiaries

WAGE RATE REQUIREMENTS

For provisions relating to rates of wages to be paid to laborers and mechanics on projects for construction, alteration, or repair work funded under div. D or an amendment by div. D of Pub. L. 117-58, including authority of Secretary of Labor, see section 18851 of Title 42, The Public Health and Welfare.

DEFINITIONS

For definition of “Indian Tribe” as used in this section, see section 5304 of Title 25, Indians, as made applicable by section 18701(2) of Title 42, The Public Health and Welfare.

§ 1232. Reclamation fee

(a) Payment; rate

All operators of coal mining operations subject to the provisions of this chapter shall pay to the Secretary of the Interior, for deposit in the fund, a reclamation fee of 22.4 cents per ton of coal produced by surface coal mining and 9.6 cents per ton of coal produced by underground mining or 10 per centum of the value of the coal at the mine, as determined by the Secretary, whichever is less, except that the reclamation fee for lignite coal shall be at a rate of 2 per centum of the value of the coal at the mine, or 6.4 cents per ton, whichever is less.

(b) Due date

Such fee shall be paid no later than thirty days after the end of each calendar quarter beginning with the first calendar quarter occurring after August 3, 1977, and ending September 30, 2034.

(c) Submission of statement

Together with such reclamation fee, all operators of coal mine operations shall submit a statement of the amount of coal produced dur-

ing the calendar quarter, the method of coal removal and the type of coal, the accuracy of which shall be sworn to by the operator and notarized. Such statement shall include an identification of the permittee of the surface coal mining operation, any operator in addition to the permittee, the owner of the coal, the preparation plant, tripple,¹ or loading point for the coal, and the person purchasing the coal from the operator. The report shall also specify the number of the permit required under section 1256 of this title and the mine safety and health identification number. Each quarterly report shall contain a notification of any changes in the information required by this subsection since the date of the preceding quarterly report. The information contained in the quarterly reports under this subsection shall be maintained by the Secretary in a computerized database.

(d) Penalty

(1) Any person, corporate officer, agent or director, on behalf of a coal mine operator, who knowingly makes any false statement, representation or certification, or knowingly fails to make any statement, representation or certification required in this section shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than one year, or both.

(2) The Secretary shall conduct such audits of coal production and the payment of fees under this subchapter as may be necessary to ensure full compliance with the provisions of this subchapter. For purposes of performing such audits the Secretary (or any duly designated officer, employee, or representative of the Secretary) shall, at all reasonable times, upon request, have access to, and may copy, all books, papers, and other documents of any person subject to the provisions of this subchapter. The Secretary may at any time conduct audits of any surface coal mining and reclamation operation, including without limitation, tipples and preparation plants, as may be necessary in the judgment of the Secretary to ensure full and complete payment of the fees under this subchapter.

(e) Civil action to recover fee

Any portion of the reclamation fee not properly or promptly paid pursuant to this section shall be recoverable, with statutory interest, from coal mine operators, in any court of competent jurisdiction in any action at law to compel payment of debts.

(f) Cooperation from other agencies

All Federal and State agencies shall fully cooperate with the Secretary of the Interior in the enforcement of this section. Whenever the Secretary believes that any person has not paid the full amount of the fee payable under subsection (a) the Secretary shall notify the Federal agency responsible for ensuring compliance with the provisions of section 4121 of title 26.

(g) Allocation of funds

(1) Except as provided in subsection (h), monies deposited into the fund shall be allocated by the Secretary to accomplish the purposes of this subchapter as follows:

¹ So in original. Probably should be “tipple.”

(A) 50 percent of the reclamation fees collected annually in any State (other than fees collected with respect to Indian lands) shall be allocated annually by the Secretary to the State, subject to such State having each of the following:

(i) An approved abandoned mine reclamation program pursuant to section 1235 of this title.

(ii) Lands and waters which are eligible pursuant to section 1234 of this title (in the case of a State not certified under section 1240a(a) of this title) or pursuant to section 1240a(b) of this title (in the case of a State certified under section 1240a(a) of this title).

(B) 50 percent of the reclamation fees collected annually with respect to Indian lands shall be allocated annually by the Secretary to the Indian tribe having jurisdiction over such lands, subject to such tribe having each of the following:

(i) an² approved abandoned mine reclamation program pursuant to section 1235 of this title.

(ii) Lands and waters which are eligible pursuant to section 1234 of this title (in the case of an Indian tribe not certified under section 1240a(a) of this title) or pursuant to section 1240a(b) of this title (in the case of a tribe certified under section 1240a(a) of this title).

(C) The funds allocated by the Secretary under this paragraph to States and Indian tribes shall only be used for annual reclamation project construction and program administration grants.

(D) To the extent not expended within 3 years after the date of any grant award under this paragraph (except for grants awarded during fiscal years 2008, 2009, and 2010 to the extent not expended within 5 years), such grant shall be available for expenditure by the Secretary under paragraph (5).

(2) In making the grants referred to in paragraph (1)(C) and the grants referred to in paragraph (5), the Secretary shall ensure strict compliance by the States and Indian tribes with the priorities described in section 1233(a) of this title until a certification is made under section 1240a(a) of this title.

(3) Amounts available in the fund which are not allocated to States and Indian tribes under paragraph (1) or allocated under paragraph (5) are authorized to be expended by the Secretary for any of the following:

(A) For the purpose of section 1257(c) of this title, either directly or through grants to the States, subject to the limitation contained in section 1231(c)(9) of this title.

(B) For the purpose of section 1240 of this title (relating to emergencies).

(C) For the purpose of meeting the objectives of the fund set forth in section 1233(a) of this title for eligible lands and waters pursuant to section 1234 of this title in States and on Indian lands where the State or Indian tribe does not have an approved abandoned mine reclamation program pursuant to section 1235 of this title.

(D) For the administration of this subchapter by the Secretary.

(E) For the purpose of paragraph (8).

(4)(A) Amounts available in the fund which are not allocated under paragraphs (1), (2), and (5) or expended under paragraph (3) in any fiscal year are authorized to be expended by the Secretary under this paragraph for the reclamation or drainage abatement of lands and waters within unclaimed sites which are mined for coal or which were affected by such mining, wastebanks, coal processing or other coal mining processes and left in an inadequate reclamation status.

(B) Funds made available under this paragraph may be used for reclamation or drainage abatement at a site referred to in subparagraph (A) if the Secretary makes either of the following findings:

(i) A finding that the surface coal mining operation occurred during the period beginning on August 4, 1977, and ending on or before the date on which the Secretary approved a State program pursuant to section 1253 of this title for a State in which the site is located, and that any funds for reclamation or abatement which are available pursuant to a bond or other form of financial guarantee or from any other source are not sufficient to provide for adequate reclamation or abatement at the site.

(ii) A finding that the surface coal mining operation occurred during the period beginning on August 4, 1977, and ending on or before November 5, 1990, and that the surety of such mining operator became insolvent during such period, and as of November 5, 1990, funds immediately available from proceedings relating to such insolvency, or from any financial guarantee or other source are not sufficient to provide for adequate reclamation or abatement at the site.

(C) In determining which sites to reclaim pursuant to this paragraph, the Secretary shall follow the priorities stated in paragraphs (1) and (2) of section 1233(a) of this title. The Secretary shall ensure that priority is given to those sites which are in the immediate vicinity of a residential area or which have an adverse economic impact upon a local community.

(D) Amounts collected from the assessment of civil penalties under section 1268 of this title are authorized to be appropriated to carry out this paragraph.

(E) Any State may expend grants made available under paragraphs (1) and (5) for reclamation and abatement of any site referred to in subparagraph (A) if the State, with the concurrence of the Secretary, makes either of the findings referred to in clause (i) or (ii) of subparagraph (B) and if the State determines that the reclamation priority of the site is the same or more urgent than the reclamation priority for eligible lands and waters pursuant to section 1234 of this title under the priorities stated in paragraphs (1) and (2) of section 1233(a) of this title.

(F) For the purposes of the certification referred to in section 1240a(a) of this title, sites referred to in subparagraph (A) of this paragraph shall be considered as having the same priorities

² So in original. Probably should be capitalized.

as those stated in section 1233(a) of this title for eligible lands and waters pursuant to section 1234 of this title. All sites referred to in subparagraph (A) of this paragraph within any State shall be reclaimed prior to such State making the certification referred to in section 1240a(a) of this title.

(5)(A) The Secretary shall allocate 60 percent of the amount in the fund after making the allocation referred to in paragraph (1) for making additional annual grants to States and Indian tribes which are not certified under section 1240a(a) of this title to supplement grants received by such States and Indian tribes pursuant to paragraph (1)(C) until the priorities stated in paragraphs (1) and (2) of section 1233(a) of this title have been achieved by such State or Indian tribe. The allocation of such funds for the purpose of making such expenditures shall be through a formula based on the amount of coal historically produced in the State or from the Indian lands concerned prior to August 3, 1977. Funds made available under paragraph (3) or (4) of this subsection for any State or Indian tribe shall not be deducted against any allocation of funds to the State or Indian tribe under paragraph (1) or under this paragraph.

(B) Any amount that is reallocated and available under section 1240a(h)(3) of this title shall be in addition to amounts that are allocated under subparagraph (A).

(6)(A) Any State with an approved abandoned mine reclamation program pursuant to section 1235 of this title may receive and retain, without regard to the 3-year limitation referred to in paragraph (1)(D), up to 30 percent of the total of the grants made annually to the State under paragraphs (1) and (5) if those amounts are deposited into an acid mine drainage abatement and treatment fund established under State law, from which amounts (together with all interest earned on the amounts) are expended by the State for the abatement of the causes and the treatment of the effects of acid mine drainage in a comprehensive manner within qualified hydrologic units affected by coal mining practices.

(B) In this paragraph, the term “qualified hydrologic unit” means a hydrologic unit—

(i) in which the water quality has been significantly affected by acid mine drainage from coal mining practices in a manner that adversely impacts biological resources; and

(ii) that contains land and water that are—

(I) eligible pursuant to section 1234 of this title and include any of the priorities described in section 1233(a) of this title; and

(II) the subject of expenditures by the State from the forfeiture of bonds required under section 1259 of this title or from other States sources to abate and treat acid mine drainage.

(7) In complying with the priorities described in section 1233(a) of this title, any State or Indian tribe may use amounts available in grants made annually to the State or tribe under paragraphs (1) and (5) for the reclamation of eligible land and water described in section 1233(a)(3) of this title before the completion of reclamation projects under paragraphs (1) and (2) of section 1233(a) of this title only if the expenditure of funds for the reclamation is done in conjunction

with the expenditure before, on, or after December 20, 2006, of funds for reclamation projects under paragraphs (1) and (2) of section 1233(a) of this title.

(8)(A) In making funds available under this subchapter, the Secretary shall ensure that the grant awards total not less than \$3,000,000 annually to each State and each Indian tribe having an approved abandoned mine reclamation program pursuant to section 1235 of this title and eligible land and water pursuant to section 1234 of this title, so long as an allocation of funds to the State or tribe is necessary to achieve the priorities stated in paragraphs (1) and (2) of section 1233(a) of this title.

(B) Notwithstanding any other provision of law, this paragraph applies to the States of Tennessee and Missouri.

(h) Transfers of interest earned by Fund

(1) In general

(A) Transfers to Combined Benefit Fund

As soon as practicable after the beginning of fiscal year 2007 and each fiscal year thereafter, and before making any allocation with respect to the fiscal year under subsection (g), the Secretary shall use an amount not to exceed the amount of interest that the Secretary estimates will be earned and paid to the fund during the fiscal year to transfer to the Combined Benefit Fund such amounts as are estimated by the trustees of such fund to offset the amount of any deficit in net assets in the Combined Benefit Fund as of October 1, 2006, and to make the transfer described in paragraph (2)(A).

(B) Transfers to 1992 and 1993 plans

As soon as practicable after the beginning of fiscal year 2008 and each fiscal year thereafter, and before making any allocation with respect to the fiscal year under subsection (g), the Secretary shall use an amount not to exceed the amount of interest that the Secretary estimates will be earned and paid to the fund during the fiscal year (reduced by the amount used under subparagraph (A)) to make the transfers described in paragraphs (2)(B) and (2)(C).

(2) Transfers described

The transfers referred to in paragraph (1) are the following:

(A) United Mine Workers of America Combined Benefit Fund

A transfer to the United Mine Workers of America Combined Benefit Fund equal to the amount that the trustees of the Combined Benefit Fund estimate will be expended from the fund for the fiscal year in which the transfer is made, reduced by—

(i) the amount the trustees of the Combined Benefit Fund estimate the Combined Benefit Fund will receive during the fiscal year in—

(I) required premiums; and

(II) payments paid by Federal agencies in connection with benefits provided by the Combined Benefit Fund; and

(ii) the amount the trustees of the Combined Benefit Fund estimate will be ex-

pending during the fiscal year to provide health benefits to beneficiaries who are unassigned beneficiaries solely as a result of the application of section 9706(h)(1) of title 26, but only to the extent that such amount does not exceed the amounts described in subsection (i)(1)(A) that the Secretary estimates will be available to pay such estimated expenditures.

(B) United Mine Workers of America 1992 Benefit Plan

A transfer to the United Mine Workers of America 1992 Benefit Plan, in an amount equal to the difference between—

(i) the amount that the trustees of the 1992 UMW Benefit Plan estimate will be expended from the 1992 UMW Benefit Plan during the next calendar year to provide the benefits required by the 1992 UMW Benefit Plan on December 20, 2006; minus

(ii) the amount that the trustees of the 1992 UMW Benefit Plan estimate the 1992 UMW Benefit Plan will receive during the next calendar year in—

(I) required monthly per beneficiary premiums, including the amount of any security provided to the 1992 UMW Benefit Plan that is available for use in the provision of benefits; and

(II) payments paid by Federal agencies in connection with benefits provided by the 1992 UMW Benefit Plan.

(C) Multiemployer Health Benefit Plan

(i) Transfer to the Plan

A transfer to the Multiemployer Health Benefit Plan established after July 20, 1992, by the parties that are the settlors of the 1992 UMW Benefit Plan referred to in subparagraph (B) (referred to in this subparagraph and subparagraph (D) as “the Plan”), in an amount equal to the excess (if any) of—

(I) the amount that the trustees of the Plan estimate will be expended from the Plan during the next calendar year, to provide benefits no greater than those provided by the Plan as of December 31, 2006; over

(II) the amount that the trustees estimated the Plan will receive during the next calendar year in payments paid by Federal agencies in connection with benefits provided by the Plan.

(ii) Calculation of excess

The excess determined under clause (i) shall be calculated by taking into account only—

(I) those beneficiaries actually enrolled in the Plan as of December 27, 2020, who are eligible to receive health benefits under the Plan on the first day of the calendar year for which the transfer is made, other than those beneficiaries enrolled in the Plan under the terms of a participation agreement with the current or former employer of such beneficiaries;

(II) those beneficiaries whose health benefits, defined as those benefits pay-

able, following death or retirement or upon a finding of disability, directly by an employer in the bituminous coal industry under a coal wage agreement (as defined in section 9701(b)(1) of title 26) or a related coal wage agreement, would be denied or reduced as a result of a bankruptcy proceeding commenced in 2012, 2015, 2018, 2019, or any year thereafter,¹ (or, in the case of any such health benefits confirmed in any bankruptcy proceeding, would be subsequently denied or reduced); and

(III) the cost of administering the resolution of disputes process administered (as of December 27, 2020) by the Trustees of the Plan.

For purposes of subclause (I), a beneficiary enrolled in the Plan as of December 27, 2020, shall be deemed to have been eligible to receive health benefits under the Plan on January 1, 2020.

(iii) Eligibility of certain retirees

Individuals referred to in clause (ii)(II) shall be treated as eligible to receive health benefits under the Plan.

(iv) Requirements for transfer

The amount of the transfer otherwise determined under this subparagraph for a fiscal year shall be reduced by any amount transferred for the fiscal year to the Plan, to pay benefits required under the Plan, from a voluntary employees' beneficiary association established as a result of a bankruptcy proceeding described in clause (ii).

(v) VEBA transfer

The administrator of such voluntary employees' beneficiary association shall transfer to the Plan any amounts received as a result of such bankruptcy proceeding, reduced by an amount for administrative costs of such association.

(vi) Related coal wage agreement

For purposes of clause (ii), the term “related coal wage agreement” means an agreement between the United Mine Workers of America and an employer in the bituminous coal industry that—

(I) is a signatory operator; or

(II) is or was a debtor in a bankruptcy proceeding that was consolidated, administratively or otherwise, with the bankruptcy proceeding of a signatory operator or a related person to a signatory operator (as those terms are defined in section 9701(c) of title 26).

(D) Individuals considered enrolled

For purposes of subparagraph (C), any individual who was eligible to receive benefits from the Plan as of December 20, 2006, even though benefits were being provided to the individual pursuant to a settlement agreement approved by order of a bankruptcy court entered on or before September 30,

¹ So in original.

2004, will be considered to be actually enrolled in the Plan and shall receive benefits from the Plan beginning on December 31, 2006.

(3) Adjustment

If, for any fiscal year, the amount of a transfer under subparagraph (A), (B), or (C) of paragraph (2) is more or less than the amount required to be transferred under that subparagraph, the Secretary shall appropriately adjust the amount transferred under that subparagraph for the next fiscal year.

(4) Additional amounts

(A) Previously credited interest

Notwithstanding any other provision of law, any interest credited to the fund that has not previously been transferred to the Combined Benefit Fund referred to in paragraph (2)(A) under this section—

(i) shall be held in reserve by the Secretary until such time as necessary to make the payments under subparagraphs (A) and (B) of subsection (i)(1), as described in clause (ii); and

(ii) in the event that the amounts described in subsection (i)(1) are insufficient to make the maximum payments described in subparagraphs (A) and (B) of subsection (i)(1), shall be used by the Secretary to supplement the payments so that the maximum amount permitted under those paragraphs is paid.

(B) Previously allocated amounts

All amounts allocated under subsection (g)(2) before December 20, 2006, for the program described in section 1236 of this title, but not appropriated before December 20, 2006, shall be available to the Secretary to make the transfers described in paragraph (2).

(C) Adequacy of previously credited interest

The Secretary shall—

(i) consult with the trustees of the plans described in paragraph (2) at reasonable intervals; and

(ii) notify Congress if a determination is made that the amounts held in reserve under subparagraph (A) are insufficient to meet future requirements under subparagraph (A)(ii).

(D) Additional reserve amounts

In addition to amounts held in reserve under subparagraph (A), there is authorized to be appropriated such sums as may be necessary for transfer to the fund to carry out the purposes of subparagraph (A)(ii).

(E) Inapplicability of cap

The limitation described in subsection (i)(3)(A) shall not apply to payments made from the reserve fund under this paragraph.

(5) Limitations

(A) Availability of funds for next fiscal year

The Secretary may make transfers under subparagraphs (B) and (C) of paragraph (2) for a calendar year only if the Secretary determines, using actuarial projections pro-

vided by the trustees of the Combined Benefit Fund referred to in paragraph (2)(A), that amounts will be available under paragraph (1), after the transfer, for the next fiscal year for making the transfer under paragraph (2)(A).

(B) Rate of contributions of obligors

(i) In general

(I) Rate

A transfer under paragraph (2)(C) shall not be made for a calendar year unless the persons that are obligated to contribute to the plan referred to in paragraph (2)(C) on the date of the transfer are obligated to make the contributions at rates that are no less than those in effect on the date which is 30 days before December 20, 2006.

(II) Application

The contributions described in subclause (I) shall be applied first to the provision of benefits to those plan beneficiaries who are not described in paragraph (2)(C)(ii).

(ii) Initial contributions

(I) In general

From December 20, 2006, through December 31, 2010, the persons that, on December 20, 2006, are obligated to contribute to the plan referred to in paragraph (2)(C) shall be obligated, collectively, to make contributions equal to the amount described in paragraph (2)(C), less the amount actually transferred due to the operation of subparagraph (C).

(II) First calendar year

Calendar year 2006 is the first calendar year for which contributions are required under this clause.

(III) Amount of contribution for 2006

Except as provided in subclause (IV), the amount described in paragraph (2)(C) for calendar year 2006 shall be calculated as if paragraph (2)(C) had been in effect during 2005.

(IV) Limitation

The contributions required under this clause for calendar year 2006 shall not exceed the amount necessary for solvency of the plan described in paragraph (2)(C), measured as of December 31, 2006, and taking into account all assets held by the plan as of that date.

(iii) Division

The collective annual contribution obligation required under clause (ii) shall be divided among the persons subject to the obligation, and applied uniformly, based on the hours worked for which contributions referred to in clause (i) would be owed.

(C) Phase-in of transfers

For each of calendar years 2008 through 2010, the transfers required under subpara-

graphs (B) and (C) of paragraph (2) shall equal the following amounts:

(i) For calendar year 2008, the Secretary shall make transfers equal to 25 percent of the amounts that would otherwise be required under subparagraphs (B) and (C) of paragraph (2).

(ii) For calendar year 2009, the Secretary shall make transfers equal to 50 percent of the amounts that would otherwise be required under subparagraphs (B) and (C) of paragraph (2).

(iii) For calendar year 2010, the Secretary shall make transfers equal to 75 percent of the amounts that would otherwise be required under subparagraphs (B) and (C) of paragraph (2).

(i) Funding

(1) In general

Subject to paragraph (3), out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the plans described in subsection (h)(2) such sums as are necessary to pay the following amounts:

(A) To the Combined Fund (as defined in section 9701(a)(5) of title 26 and referred to in this paragraph as the “Combined Fund”), the amount that the trustees of the Combined Fund estimate will be expended from premium accounts maintained by the Combined Fund for the fiscal year to provide benefits for beneficiaries who are unassigned beneficiaries solely as a result of the application of section 9706(h)(1) of title 26, subject to the following limitations:

(i) For fiscal year 2008, the amount paid under this subparagraph shall equal—

(I) the amount described in subparagraph (A); minus

(II) the amounts required under section 9706(h)(3)(A) of title 26.

(ii) For fiscal year 2009, the amount paid under this subparagraph shall equal—

(I) the amount described in subparagraph (A); minus

(II) the amounts required under section 9706(h)(3)(B) of title 26.

(iii) For fiscal year 2010, the amount paid under this subparagraph shall equal—

(I) the amount described in subparagraph (A); minus

(II) the amounts required under section 9706(h)(3)(C) of title 26.

(B) On certification by the trustees of any plan described in subsection (h)(2) that the amount available for transfer by the Secretary pursuant to this section (determined after application of any limitation under subsection (h)(5)) is less than the amount required to be transferred, to the plan the amount necessary to meet the requirement of subsection (h)(2).

(C) To the Combined Fund, \$9,000,000 on October 1, 2007, \$9,000,000 on October 1, 2008, \$9,000,000 on October 1, 2009, and \$9,000,000 on October 1, 2010 (which amounts shall not be exceeded) to provide a refund of any premium (as described in section 9704(a) of title 26) paid on or before September 7, 2000, to

the Combined Fund, plus interest on the premium calculated at the rate of 7.5 percent per year, on a proportional basis and to be paid not later than 60 days after the date on which each payment is received by the Combined Fund, to those signatory operators (to the extent that the Combined Fund has not previously returned the premium amounts to the operators), or any related persons to the operators (as defined in section 9701(c) of title 26), or their heirs, successors, or assigns who have been denied the refunds as the result of final judgments or settlements if—

(i) prior to December 20, 2006, the signatory operator (or any related person to the operator)—

(I) had all of its beneficiary assignments made under section 9706 of title 26 voided by the Commissioner of the Social Security Administration; and

(II) was subject to a final judgment or final settlement of litigation adverse to a claim by the operator that the assignment of beneficiaries under section 9706 of title 26 was unconstitutional as applied to the operator; and

(ii) on or before September 7, 2000, the signatory operator (or any related person to the operator) had paid to the Combined Fund any premium amount that had not been refunded.

(2) Payments to States and Indian tribes

Subject to paragraph (3), out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary of the Interior for distribution to States and Indian tribes such sums as are necessary to pay amounts described in paragraphs (1)(A) and (2)(A) of section 1240a(h) of this title.

(3) Limitations

(A) Cap

The total amount transferred under this subsection for any fiscal year shall not exceed \$750,000,000.

(B) Insufficient amounts

In a case in which the amount required to be transferred without regard to this paragraph exceeds the maximum annual limitation in subparagraph (A), the Secretary shall adjust the transfers of funds under paragraph (1) so that—

(i) each such transfer for the fiscal year is a percentage of the amount described;

(ii) the amount is determined without regard to subsection (h)(5)(A); and

(iii) the percentage transferred is the same for all transfers made under paragraph (1) for the fiscal year.

(C) Increase in limitation to account for calculation of health benefit plan excess

The dollar limitation under subparagraph (A) shall be increased by the amount of the cost to provide benefits which are taken into account under subsection (h)(2)(C)(ii) solely by reason of the amendments made by section 2(a) of the American Miner Benefits Improvement Act of 2020.

(4) Additional amounts**(A) Calculation**

If the dollar limitation specified in paragraph (3)(A) exceeds the aggregate amount required to be transferred under paragraphs (1) and (2) for a fiscal year, the Secretary of the Treasury shall transfer an additional amount equal to the difference between such dollar limitation and such aggregate amount to the trustees of the 1974 UMW Pension Plan to pay benefits required under that plan.

(B) Cessation of transfers

The transfers described in subparagraph (A) shall cease as of the first fiscal year beginning after the first plan year for which the funded percentage (as defined in section 432(j)(2) of title 26) of the 1974 UMW Pension Plan is at least 100 percent.

(C) Prohibition on benefit increases, etc.

During a fiscal year in which the 1974 UMW Pension Plan is receiving transfers under subparagraph (A), no amendment of such plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan may be adopted unless the amendment is required as a condition of qualification under part I of subchapter D of chapter 1 of title 26 [26 U.S.C. 401 et seq.].

(D) Critical status to be maintained

Until such time as the 1974 UMW Pension Plan ceases to be eligible for the transfers described in subparagraph (A)—

- (i) the Plan shall be treated as if it were in critical status for purposes of sections 412(b)(3), 432(e)(3), and 4971(g)(1)(A) of title 26 and sections 1082(b)(3) and 1085(e)(3) of title 29;
- (ii) the Plan shall maintain and comply with its rehabilitation plan under section 432(e) of such Code and section 1085(e) of title 29, including any updates thereto; and
- (iii) the provisions of subsections (c) and (d) of section 432 of such Code and subsections (c) and (d) of section 1085 of title 29 shall not apply.

(E) Treatment of transfers for purposes of withdrawal liability under ERISA

The amount of any transfer made under subparagraph (A) (and any earnings attributable thereto) shall be disregarded in determining the unfunded vested benefits of the 1974 UMW Pension Plan and the allocation of such unfunded vested benefits to an employer for purposes of determining the employer's withdrawal liability under section 1381 of title 29.

(F) Requirement to maintain contribution rate

A transfer under subparagraph (A) shall not be made for a fiscal year unless the persons that are obligated to contribute to the 1974 UMW Pension Plan on the date of the transfer are obligated to make the contribu-

tions at rates that are no less than those in effect on the date which is 30 days before December 20, 2019.

(G) Enhanced annual reporting**(i) In general**

Not later than the 90th day of each plan year beginning after December 20, 2019, the trustees of the 1974 UMW Pension Plan shall file with the Secretary of the Treasury or the Secretary's delegate and the Pension Benefit Guaranty Corporation a report (including appropriate documentation and actuarial certifications from the plan actuary, as required by the Secretary of the Treasury or the Secretary's delegate) that contains—

(I) whether the plan is in endangered or critical status under section 1085 of title 29 and section 432 of title 26 as of the first day of such plan year;

(II) the funded percentage (as defined in section 432(j)(2) of title 26) as of the first day of such plan year, and the underlying actuarial value of assets and liabilities taken into account in determining such percentage;

(III) the market value of the assets of the plan as of the last day of the plan year preceding such plan year;

(IV) the total value of all contributions made during the plan year preceding such plan year;

(V) the total value of all benefits paid during the plan year preceding such plan year;

(VI) cash flow projections for such plan year and either the 6 or 10 succeeding plan years, at the election of the trustees, and the assumptions relied upon in making such projections;

(VII) funding standard account projections for such plan year and the 9 succeeding plan years, and the assumptions relied upon in making such projections;

(VIII) the total value of all investment gains or losses during the plan year preceding such plan year;

(IX) any significant reduction in the number of active participants during the plan year preceding such plan year, and the reason for such reduction;

(X) a list of employers that withdrew from the plan in the plan year preceding such plan year, and the resulting reduction in contributions;

(XI) a list of employers that paid withdrawal liability to the plan during the plan year preceding such plan year and, for each employer, a total assessment of the withdrawal liability paid, the annual payment amount, and the number of years remaining in the payment schedule with respect to such withdrawal liability;

(XII) any material changes to benefits, accrual rates, or contribution rates during the plan year preceding such plan year;

(XIII) any scheduled benefit increase or decrease in the plan year preceding

such plan year having a material effect on liabilities of the plan;

(XIV) details regarding any funding improvement plan or rehabilitation plan and updates to such plan;

(XV) the number of participants and beneficiaries during the plan year preceding such plan year who are active participants, the number of participants and beneficiaries in pay status, and the number of terminated vested participants and beneficiaries;

(XVI) the information contained on the most recent annual funding notice submitted by the plan under section 1021(f) of title 29;

(XVII) the information contained on the most recent Department of Labor Form 5500 of the plan; and

(XVIII) copies of the plan document and amendments, other retirement benefit or ancillary benefit plans relating to the plan and contribution obligations under such plans, a breakdown of administrative expenses of the plan, participant census data and distribution of benefits, the most recent actuarial valuation report as of the plan year, copies of collective bargaining agreements, and financial reports, and such other information as the Secretary of the Treasury or the Secretary's delegate, in consultation with the Secretary of Labor and the Director of the Pension Benefit Guaranty Corporation, may require.

(ii) Electronic submission

The report required under clause (i) shall be submitted electronically.

(iii) Information sharing

The Secretary of the Treasury or the Secretary's delegate shall share the information in the report under clause (i) with the Secretary of Labor.

(iv) Penalty

Any failure to file the report required under clause (i) on or before the date described in such clause shall be treated as a failure to file a report required to be filed under section 6058(a) of title 26, except that section 6652(e) of title 26 shall be applied with respect to any such failure by substituting "\$100" for "\$25". The preceding sentence shall not apply if the Secretary of the Treasury or the Secretary's delegate determines that reasonable diligence has been exercised by the trustees of such plan in attempting to timely file such report.

(H) 1974 UMW Pension Plan defined

For purposes of this paragraph, the term "1974 UMW Pension Plan" has the meaning given the term in section 9701(a)(3) of title 26, but without regard to the limitation on participation to individuals who retired in 1976 and thereafter.

(5) Availability of funds

Funds shall be transferred under paragraphs (1) and (2) beginning in fiscal year 2008 and

each fiscal year thereafter, and shall remain available until expended.

(Pub. L. 95-87, title IV, § 402, Aug. 3, 1977, 91 Stat. 457; Pub. L. 100-34, title I, § 101, May 7, 1987, 101 Stat. 300; Pub. L. 101-508, title VI, §§ 6003, 6004, Nov. 5, 1990, 104 Stat. 1388-290, 1388-291; Pub. L. 102-486, title XIX, § 19143(b)(1), (2), (3)(B), title XXV, § 2515, Oct. 24, 1992, 106 Stat. 3056, 3113; Pub. L. 108-447, div. E, title I, § 135(a), Dec. 8, 2004, 118 Stat. 3068; Pub. L. 109-13, div. A, title VI, § 6035, May 11, 2005, 119 Stat. 289; Pub. L. 109-54, title I, § 129, Aug. 2, 2005, 119 Stat. 525; Pub. L. 109-234, title VII, § 7007, June 15, 2006, 120 Stat. 483; Pub. L. 109-432, div. C, title II, § 202, Dec. 20, 2006, 120 Stat. 3008; Pub. L. 110-343, div. C, title VI, § 602, Oct. 3, 2008, 122 Stat. 3911; Pub. L. 114-223, div. C, § 167(b), (c), as added Pub. L. 114-254, div. A, § 101(3), Dec. 10, 2016, 130 Stat. 1009, 1010; Pub. L. 114-223, div. C, § 202(b), as added Pub. L. 115-30, par. (2), Apr. 28, 2017, 131 Stat. 134; Pub. L. 115-31, div. M, title I, § 104(a), May 5, 2017, 131 Stat. 803; Pub. L. 116-94, div. M, §§ 102(a), 103, Dec. 20, 2019, 133 Stat. 3091, 3094; Pub. L. 116-260, div. Y, § 2(a), (b), Dec. 27, 2020, 134 Stat. 2417, 2418; Pub. L. 117-58, div. D, title VII, § 40702, Nov. 15, 2021, 135 Stat. 1092.)

Editorial Notes

REFERENCES IN TEXT

The amendments made by section 2(a) of the American Miner Benefits Improvement Act of 2020, referred to in subsec. (i)(3)(C), are the amendments made to subsec. (h)(2)(C)(ii) of this section made by section 2(a) of div. Y of Pub. L. 116-260. See 2020 Amendment notes below.

CODIFICATION

November 5, 1990, referred to in subsec. (g)(4)(B)(ii), was in the original "the date of enactment of this paragraph", which was translated as meaning the date of enactment of Pub. L. 101-508, which amended this section generally, to reflect the probable intent of Congress.

AMENDMENTS

2021—Subsec. (a). Pub. L. 117-58, § 40702(a), substituted "22.4 cents" for "28 cents", "9.6 cents" for "12 cents", and "6.4 cents" for "8 cents".

Subsec. (b). Pub. L. 117-58, § 40702(b), substituted "September 30, 2034" for "September 30, 2021".

2020—Subsec. (h)(2)(C)(ii). Pub. L. 116-260, § 2(a)(4), substituted "January 1, 2020" for "January 1, 2019" in concluding provisions.

Pub. L. 116-260, § 2(a)(1), substituted "December 27, 2020" for "December 20, 2019" wherever appearing.

Subsec. (h)(2)(C)(ii)(II). Pub. L. 116-260, § 2(a)(3), inserted "(or, in the case of any such health benefits confirmed in any bankruptcy proceeding, would be subsequently denied or reduced)" before "; and".

Pub. L. 116-260, § 2(a)(2), substituted "2019, or any year thereafter," for "or 2019".

Subsec. (i)(3)(C). Pub. L. 116-260, § 2(b), added subpar. (C).

2019—Subsec. (h)(2)(C)(ii). Pub. L. 116-94, § 103(4), substituted "January 1, 2019" for "January 1, 2017" in concluding provisions.

Pub. L. 116-94, § 103(1), substituted "December 20, 2019" for "May 5, 2017" in subcl. (I) and in concluding provisions.

Subsec. (h)(2)(C)(ii)(II). Pub. L. 116-94, § 103(2), substituted "or a related coal wage agreement, would be denied or reduced as a result of a bankruptcy proceeding commenced in 2012, 2015, 2018, or 2019" for "or", would be denied or reduced as a result of a bankruptcy proceeding commenced in 2012 or 2015".

Subsec. (h)(2)(C)(ii)(III). Pub. L. 116-94, §103(3), added subcl. (III).

Subsec. (h)(2)(C)(vi). Pub. L. 116-94, §103(5), added cl. (vi).

Subsec. (i)(3)(A). Pub. L. 116-94, §102(a)(1), substituted “\$750,000,000” for “\$490,000,000”.

Subsec. (i)(4), (5). Pub. L. 116-94, §102(a)(2), (3), added par. (4) and redesignated former par. (4) as (5).

2017—Subsec. (h)(2)(C)(ii). Pub. L. 115-31 added cl. (ii) and struck out former cl. (ii) which related to calculation of excess.

Pub. L. 114-223, div. C, §202(b)(3), as added by Pub. L. 115-30, par. (2), inserted at end of concluding provisions “For purposes of subclause (II)(aa), a beneficiary enrolled in the Plan as of April 28, 2017, shall be deemed to have been eligible to receive health benefits under the Plan on January 1, 2017.”

Subsec. (h)(2)(C)(ii)(II). Pub. L. 114-223, div. C, §202(b)(1), as added by Pub. L. 115-30, par. (2), substituted “May 5, 2017” for “April 30, 2017” in introductory provisions.

Subsec. (h)(2)(C)(ii)(II)(aa). Pub. L. 114-223, div. C, §202(b)(2), as added by Pub. L. 115-30, par. (2), substituted “April 28, 2017” for “December 10, 2016”.

Subsec. (h)(2)(C)(iii), (iv). Pub. L. 115-31 added cls. (iii) and (iv) and struck out former cls. (iii) and (iv) which read as follows:

“(iii) ELIGIBILITY OF CERTAIN RETIREES.—Individuals referred to in clause (ii)(II)(bb) shall be treated as eligible to receive health benefits under the Plan for the plan year that includes January 1, 2017.

“(iv) REQUIREMENTS FOR TRANSFER.—The amount of the transfer otherwise determined under this subparagraph for fiscal year 2017 shall be reduced by any amount transferred for the fiscal year to the Plan, to pay benefits required under the Plan, from a voluntary employees’ beneficiary association established as a result of a bankruptcy proceeding described in clause (ii)(II).”

2016—Subsec. (h)(2)(C). Pub. L. 114-223, div. C, §167(b), as added by Pub. L. 114-254, div. A, §101(3), designated existing provisions as cl. (i), inserted heading, redesignated former cls. (i) and (ii) as subcls. (I) and (II), respectively, of cl. (i), realigned margins, added cls. (ii) to (v), and struck out concluding provisions which read as follows: “Such excess shall be calculated by taking into account only those beneficiaries actually enrolled in the Plan as of December 31, 2006, who are eligible to receive benefits under the Plan on the first day of the calendar year for which the transfer is made.”

Subsec. (i)(3)(B). Pub. L. 114-223, div. C, §167(c), as added by Pub. L. 114-254, div. A, §101(3), substituted “under paragraph (1) so that” for “so that” in introductory provisions, “each such transfer” for “each transfer” in cl. (i), and “paragraph (1)” for “this subsection” in cl. (iii).

2008—Subsec. (i)(1)(C). Pub. L. 110-343 substituted “\$9,000,000 on October 1, 2009, and \$9,000,000 on October 1, 2010” for “and \$9,000,000 on October 1, 2009” in introductory provisions.

2006—Subsec. (a). Pub. L. 109-432, §202(a)(2), substituted “28” for “31.5”, “12” for “13.5”, and “8 cents” for “9 cents”.

Pub. L. 109-432, §202(a)(1), substituted “31.5” for “35”, “13.5” for “15”, and “9 cents” for “10 cents”.

Subsec. (b). Pub. L. 109-432, §202(b), substituted “September 30, 2021” for “September 30, 2007, after which time the fee shall be established at a rate to continue to provide for the deposit referred to in subsection (h) of this section”.

Pub. L. 109-234 substituted “September 30, 2007” for “June 30, 2006”.

Subsec. (g)(1)(D). Pub. L. 109-432, §202(c)(1), inserted “(except for grants awarded during fiscal years 2008, 2009, and 2010 to the extent not expended within 5 years)” after “this paragraph” and substituted “under paragraph (5)” for “in any area under paragraph (2), (3), (4), or (5)”.

Subsec. (g)(2). Pub. L. 109-432, §202(c)(2), added par. (2) and struck out former par. (2) which read as follows:

“20 percent of the amounts available in the fund in any fiscal year which are not allocated under paragraph (1) in that fiscal year (including that interest accruing as provided in section 1231(e) of this title and including funds available for reallocation pursuant to paragraph (1)(D)), shall be allocated to the Secretary only for the purpose of making the annual transfer to the Secretary of Agriculture under section 1231(c)(2) of this title.”

Subsec. (g)(3). Pub. L. 109-432, §202(c)(3)(A), substituted “paragraph (5)” for “paragraphs (2) and (5)” in introductory provisions.

Subsec. (g)(3)(A). Pub. L. 109-432, §202(c)(3)(B), substituted “1231(c)(9)” for “1231(c)(11)”.

Subsec. (g)(3)(E). Pub. L. 109-432, §202(c)(3)(C), added subpar. (E).

Subsec. (g)(5). Pub. L. 109-432, §202(c)(4), designated existing provisions as subpar. (A), in first sentence, substituted “60” for “40”, in last sentence, substituted “Funds made available under paragraph (3) or (4)” for “Funds allocated or expended by the Secretary under paragraphs (2), (3), or (4)”, and added subpar. (B).

Subsec. (g)(6) to (8). Pub. L. 109-432, §202(c)(5), added pars. (6) to (8) and struck out former pars. (6) to (8) which related to authority of any State to receive and retain up to 10 percent of the total of grants, State authority to establish an acid mine drainage abatement and treatment fund and to implement plans for acid mine drainage abatement and treatment, and allocation of not less than \$2,000,000 annually for expenditure in each State and for each Indian tribe, having an approved reclamation program and eligible lands and waters.

Subsecs. (h), (i). Pub. L. 109-432, §202(d), added subsecs. (h) and (i) and struck out former subsec. (h) which related to transfer of funds to the United Mine Workers of America Combined Benefit Fund.

2005—Subsec. (b). Pub. L. 109-54 substituted “June 30, 2006” for “September 30, 2005”.

Pub. L. 109-13 substituted “September 30, 2005” for “June 30, 2005”.

2004—Subsec. (b). Pub. L. 108-447 substituted “June 30, 2005” for “September 30, 2004”.

1992—Subsec. (b). Pub. L. 102-486, §2515, which directed that subsec. (b) be amended by substituting “2004, after which time the fee shall be established at a rate to continue to provide for the deposit referred to in subsection (h) of this section” for “1995”, was executed by inserting “, after which time the fee shall be established at a rate to continue to provide for the deposit referred to in subsection (h) of this section” after “2004”, to reflect the probable intent of Congress and the intervening amendment by Pub. L. 102-486, §19143(b)(1). See below.

Pub. L. 102-486, §19143(b)(1), substituted “2004” for “1995” before period at end.

Subsec. (g)(1). Pub. L. 102-486, §19143(b)(3)(B), substituted “Except as provided in subsection (h) of this section, moneys” for “Moneys”.

Subsec. (h). Pub. L. 102-486, §19143(b)(2), added subsec. (h).

1990—Subsec. (b). Pub. L. 101-508, §6003(a), substituted “ending September 30, 1995” for “ending fifteen years after August 3, 1977, unless extended by an Act of Congress”.

Subsec. (c). Pub. L. 101-508, §6003(b), inserted at end “Such statement shall include an identification of the permittee of the surface coal mining operation, any operator in addition to the permittee, the owner of the coal, the preparation plant, tripple, or loading point for the coal, and the person purchasing the coal from the operator. The report shall also specify the number of the permit required under section 1256 of this title and the mine safety and health identification number. Each quarterly report shall contain a notification of any changes in the information required by this subsection since the date of the preceding quarterly report. The information contained in the quarterly reports under this subsection shall be maintained by the Secretary in a computerized database.”

Subsec. (d). Pub. L. 101-508, §6003(c), designated existing provisions as par. (1) and added par. (2).

Subsec. (f). Pub. L. 101-508, §6003(d), inserted at end “Whenever the Secretary believes that any person has not paid the full amount of the fee payable under subsection (a) of this section the Secretary shall notify the Federal agency responsible for ensuring compliance with the provisions of section 4121 of title 26.”

Subsec. (g). Pub. L. 101-508, §6004, amended subsec. (g) generally, substituting present provisions for provisions relating to geographic allocation of expenditures from the fund, providing for allocation of 50 percent of funds collected annually in any State or Indian reservation to that State or Indian reservation pursuant to approved reclamation program, providing for special State set-aside for future expenditure, and authorizing expenditure of balance of funds collected at discretion of Secretary in order to meet the purposes of this subchapter.

1987—Subsec. (g)(3), (4). Pub. L. 100-34 added par. (3) and redesignated former par. (3) as (4).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2020 AMENDMENT

Pub. L. 116-260, div. Y, §2(c), Dec. 27, 2020, 134 Stat. 2418, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Dec. 27, 2020].

“(2) SUBSECTION (a)(3).—The amendment made by subsection (a)(3) [amending this section] shall apply to denials and reductions after December 31, 2019.”

EFFECTIVE DATE OF 2019 AMENDMENT

Pub. L. 116-94, div. M, §102(b), Dec. 20, 2019, 133 Stat. 3094, provided that:

“(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to fiscal years beginning after September 30, 2016.

“(2) REPORTING REQUIREMENTS.—Section 402(i)(4)(G) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232(i)(4)(G)), as added by this section, shall apply to plan years beginning after the date of the enactment of this Act [Dec. 20, 2019].”

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115-31, div. M, title I, §104(b), May 5, 2017, 131 Stat. 804, provided that: “The amendments made by this section [amending this section] shall apply to fiscal years beginning after September 30, 2016.”

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-432, div. C, title II, §202(a)(1), Dec. 20, 2006, 120 Stat. 3008, provided that the amendment made by section 202(a)(1) [amending this section] is effective Oct. 1, 2007.

Pub. L. 109-432, div. C, title II, §202(a)(2), Dec. 20, 2006, 120 Stat. 3008, provided that the amendment made by section 202(a)(2) [amending this section] is effective Oct. 1, 2012.

Pub. L. 109-432, div. C, title II, §202(b), Dec. 20, 2006, 120 Stat. 3008, provided that the amendment made by section 202(b) [amending this section] is effective Sept. 30, 2007.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-508 effective Oct. 1, 1991, see section 6014 of Pub. L. 101-508 set out as a note under section 1231 of this title.

WAGE RATE REQUIREMENTS

For provisions relating to rates of wages to be paid to laborers and mechanics on projects for construction, alteration, or repair work funded under div. D or an amendment by div. D of Pub. L. 117-58, including authority of Secretary of Labor, see section 18851 of Title 42, The Public Health and Welfare.

§ 1233. Objectives of fund

(a) Priorities

Expenditure of moneys from the fund on lands and water eligible pursuant to section 1234 of this title for the purposes of this subchapter, except as provided for under section 1240a of this title, shall reflect the following priorities in the order stated:

(1)(A) the protection;¹ of public health, safety, and property from extreme danger of adverse effects of coal mining practices;

(B) the restoration of land and water resources and the environment that—

(i) have been degraded by the adverse effects of coal mining practices; and

(ii) are adjacent to a site that has been or will be remediated under subparagraph (A);

(2)(A) the protection of public health and safety from adverse effects of coal mining practices;

(B) the restoration of land and water resources and the environment that—

(i) have been degraded by the adverse effects of coal mining practices; and

(ii) are adjacent to a site that has been or will be remediated under subparagraph (A); and

(3) the restoration of land and water resources and the environment previously degraded by adverse effects of coal mining practices including measures for the conservation and development of soil, water (excluding channelization), woodland, fish and wildlife, recreation resources, and agricultural productivity.

(b) Water supply restoration

(1) Any State or Indian tribe not certified under section 1240a(a) of this title may expend funds allocated to such State or Indian tribe in any year through the grants made available under paragraphs (1) and (5) of section 1232(g) of this title for the purpose of protecting, repairing, replacing, constructing, or enhancing facilities relating to water supply, including water distribution facilities and treatment plants, to replace water supplies adversely affected by coal mining practices.

(2) If the adverse effect on water supplies referred to in this subsection occurred both prior to and after August 3, 1977, or as the case may be, the dates (and under the criteria) set forth under section 1232(g)(4)(B) of this title, section 1234 of this title shall not be construed to prohibit a State or Indian tribe referred to in paragraph (1) from using funds referred to in such paragraph for the purposes of this subsection if the State or Indian tribe determines that such adverse effects occurred predominantly prior to August 3, 1977, or as the case may be, the dates (and under the criteria) set forth under section 1232(g)(4)(B) of this title.

(c) Inventory

For the purposes of assisting in the planning and evaluation of reclamation projects pursuant to section 1235 of this title, and assisting in making the certification referred to in section

¹ So in original.