

retary of Health and Human Services”, “Commissioner” for “Secretary”, and “Commissioner’s” for “Secretary’s”, wherever appearing in text.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-432 applicable to plan years of the Combined Fund beginning after Sept. 30, 2006, see section 212(a)(4) of Pub. L. 109-432, set out as a note under section 9704 of this title.

##### EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103-296, set out as a note under section 401 of Title 42, The Public Health and Welfare.

#### PART III—ENFORCEMENT

Sec.

9707. Failure to pay premium.

#### § 9707. Failure to pay premium

##### (a) Failures to pay

###### (1) Premiums for eligible beneficiaries

There is hereby imposed a penalty on the failure of any assigned operator to pay any premium required to be paid under section 9704 with respect to any eligible beneficiary.

###### (2) Contributions required under the mining laws

There is hereby imposed a penalty on the failure of any person to make a contribution required under section 402(h)(5)(B)(ii) of the Surface Mining Control and Reclamation Act of 1977 to a plan referred to in section 402(h)(2)(C) of such Act. For purposes of applying this section, each such required monthly contribution for the hours worked of any individual shall be treated as if it were a premium required to be paid under section 9704 with respect to an eligible beneficiary.

##### (b) Amount of penalty

The amount of the penalty imposed by subsection (a) on any failure with respect to any eligible beneficiary shall be \$100 per day in the noncompliance period with respect to any such failure.

##### (c) Noncompliance period

For purposes of this section, the term “noncompliance period” means, with respect to any failure to pay any premium or installment thereof, the period—

- (1) beginning on the due date for such premium or installment, and
- (2) ending on the date of payment of such premium or installment.

##### (d) Limitations on amount of penalty

###### (1) In general

No penalty shall be imposed by subsection (a) on any failure during any period for which it is established to the satisfaction of the Secretary of the Treasury that none of the persons responsible for such failure knew, or exercising reasonable diligence would have known, that such failure existed.

###### (2) Corrections

No penalty shall be imposed by subsection (a) on any failure if—

(A) such failure was due to reasonable cause and not to willful neglect, and

(B) such failure is corrected during the 30-day period beginning on the 1st date that any of the persons responsible for such failure knew, or exercising reasonable diligence would have known, that such failure existed.

##### (3) Waiver

In the case of a failure that is due to reasonable cause and not to willful neglect, the Secretary of the Treasury may waive all or part of the penalty imposed by subsection (a) for failures to the extent that the Secretary determines, in his sole discretion, that the payment of such penalty would be excessive relative to the failure involved.

##### (e) Liability for penalty

The person failing to meet the requirements of section 9704 shall be liable for the penalty imposed by subsection (a).

##### (f) Treatment

For purposes of this title, the penalty imposed by this section shall be treated in the same manner as the tax imposed by section 4980B.

(Added Pub. L. 102-486, title XIX, § 19143(a), Oct. 24, 1992, 106 Stat. 3050; amended Pub. L. 104-188, title I, § 1704(t)(65), Aug. 20, 1996, 110 Stat. 1890; Pub. L. 109-432, div. C, title II, § 213(b)(1), Dec. 20, 2006, 120 Stat. 3027.)

#### Editorial Notes

##### REFERENCES IN TEXT

Section 402 of the Surface Mining Control and Reclamation Act of 1977, referred to in subsec. (a)(2), is classified to section 1232 of Title 30, Mineral Lands and Mining.

##### AMENDMENTS

2006—Subsec. (a). Pub. L. 109-432 amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: “There is hereby imposed a penalty on the failure of any assigned operator to pay any premium required to be paid under section 9704 with respect to any eligible beneficiary.”

1996—Subsec. (d)(1). Pub. L. 104-188 struck out comma after “diligence”.

#### PART IV—OTHER PROVISIONS

Sec.

9708. Effect on pending claims or obligations.

#### § 9708. Effect on pending claims or obligations

All liability for contributions to the Combined Fund that arises on and after February 1, 1993, shall be determined exclusively under this chapter, including all liability for contributions to the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan for coal production on and after February 1, 1993. However, nothing in this chapter is intended to have any effect on any claims or obligations arising in connection with the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan as of February 1, 1993, including claims or obligations based on the “evergreen” clause found in the language of the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan. This chapter shall not be construed to affect any rights of subrogation of any 1988 agreement op-

erator with respect to contributions due to the 1950 UMWA Benefit Plan or the 1974 UMWA Benefit Plan as of February 1, 1993.

(Added Pub. L. 102-486, title XIX, § 19143(a), Oct. 24, 1992, 106 Stat. 3051.)

### Subchapter C—Health Benefits of Certain Miners

#### Part

- I. Individual employer plans.
- II. 1992 UMWA benefit plan.

#### PART I—INDIVIDUAL EMPLOYER PLANS

#### Sec.

- 9711. Continued obligations of individual employer plans.

### § 9711. Continued obligations of individual employer plans

#### (a) Coverage of current recipients

The last signatory operator of any individual who, as of February 1, 1993, is receiving retiree health benefits from an individual employer plan maintained pursuant to a 1978 or subsequent coal wage agreement shall continue to provide health benefits coverage to such individual and the individual's eligible beneficiaries which is substantially the same as (and subject to all the limitations of) the coverage provided by such plan as of January 1, 1992. Such coverage shall continue to be provided for as long as the last signatory operator (and any related person) remains in business.

#### (b) Coverage of eligible recipients

##### (1) In general

The last signatory operator of any individual who, as of February 1, 1993, is not receiving retiree health benefits under the individual employer plan maintained by the last signatory operator pursuant to a 1978 or subsequent coal wage agreement, but has met the age and service requirements for eligibility to receive benefits under such plan as of such date, shall, at such time as such individual becomes eligible to receive benefits under such plan, provide health benefits coverage to such individual and the individual's eligible beneficiaries which is described in paragraph (2). This paragraph shall not apply to any individual who retired from the coal industry after September 30, 1994, or any eligible beneficiary of such individual.

##### (2) Coverage

Subject to the provisions of subsection (d), health benefits coverage is described in this paragraph if it is substantially the same as (and subject to all the limitations of) the coverage provided by the individual employer plan as of January 1, 1992. Such coverage shall continue for as long as the last signatory operator (and any related person) remains in business.

#### (c) Joint and several liability of related persons

##### (1) In general

Except as provided in paragraph (2), each related person of a last signatory operator to which subsection (a) or (b) applies shall be

jointly and severally liable with the last signatory operator for the provision of health care coverage described in subsection (a) or (b).

#### (2) Liability limited if security provided

If—

(A) security meeting the requirements of paragraph (3) is provided by or on behalf of—

- (i) any last signatory operator which is an assigned operator described in section 9704(j)(2), or
- (ii) any related person to any last signatory operator described in clause (i), and

(B) the common parent of the controlled group of corporations described in section 9704(j)(2)(B) is jointly and severally liable for the provision of health care under this section which, but for this paragraph, would be required to be provided by the last signatory operator or related person,

then, as of the date the security is provided, such common parent (and no other person) shall be liable for the provision of health care under this section which the last signatory operator or related person would otherwise be required to provide. Security may be provided under this paragraph without regard to whether a payment was made under section 9704(j).

#### (3) Security

Security meets the requirements of this paragraph if—

(A) the security—

(i) is in the form of a bond, letter of credit, or cash escrow,

(ii) is provided to the trustees of the 1992 UMWA Benefit Plan solely for the purpose of paying premiums for beneficiaries who would be described in section 9712(b)(2)(B) if the requirements of this section were not met by the last signatory operator, and

(iii) is in an amount equal to 1 year of liability of the last signatory operator under this section, determined by using the average cost of such operator's liability during the prior 3 calendar years;

(B) the security is in addition to any other security required under any other provision of this title; and

(C) the security remains in place for 5 years.

#### (4) Refunds of security

The remaining amount of any security provided under this subsection (and earnings thereon) shall be refunded to the last signatory operator as of the earlier of—

(A) the termination of the obligations of the last signatory operator under this section, or

(B) the end of the 5-year period described in paragraph (3)(C).

#### (d) Managed care and cost containment

The last signatory operator shall not be treated as failing to meet the requirements of subsection (a) or (b) if benefits are provided to eligible beneficiaries under managed care and cost containment rules and procedures described in