(Pub. L. 100–688, title IV, § 4202, Nov. 18, 1988, 102 Stat. 4159.)

REFERENCES IN TEXT

The Marine Protection, Research, and Sanctuaries Act of 1972, referred to in subsec. (a), is Pub. L. 92–532, Oct. 23, 1972, 86 Stat. 1052, as amended, which is classified generally to chapters 27 (§ 1401 et seq.) and 41 (§ 2801 et seq.) of this title and chapters 32 (§ 1431 et seq.) and 32A (§ 1447 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1401 of this title and Tables.

The Solid Waste Disposal Act, referred to in subsec. (a), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§ 6901 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of Title 42 and Tables.

§ 2623. Authorization of appropriations

There are authorized to be appropriated $1,500,000 for each of the fiscal years 1989 and 1990, to carry out this chapter.

(Pub. L. 100–688, title IV, § 4203, Nov. 18, 1988, 102 Stat. 4160.)

CHAPTER 40—OIL POLLUTION

SUBCHAPTER I—OIL POLLUTION LIABILITY AND COMPENSATION

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SUBCHAPTER I—OIL POLLUTION LIABILITY AND COMPENSATION

§ 2701. Definitions

For the purposes of this Act, the term—

(1) ''act of God'' means an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character the effects of which could not have been prevented or avoided by the exercise of due care or foresight;

(2) ''barrel'' means 42 United States gallons at 60 degrees fahrenheit;

(3) ''claim'' means a request, made in writing for a sum certain, for compensation for damages or removal costs resulting from an incident;

(4) ''claimant'' means any person or government who presents a claim for compensation under this subchapter;

(5) ''damages'' means damages specified in section 2702(b) of this title, and includes the cost of assessing these damages;

(6) ''deepwater port'' is a facility licensed under the Deepwater Port Act of 1974 (33 U.S.C. 1501–1524);

(7) ''discharge'' means any emission (other than natural seepage), intentional or unintentional, and includes, but is not limited to, spilling, leaking, pumping, pouring, emitting, emptying, or dumping;

(8) ''exclusive economic zone'' means the zone established by Presidential Proclamation Numbered 5030, dated March 10, 1983, including the ocean waters of the areas referred to as ''eastern special areas'' in Article 3(1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990;

(9) ''facility'' means any structure, group of structures, equipment, or device (other than a vessel) which is used for one or more of the following purposes: exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil. This term includes any motor vehicle, rolling stock, or pipeline used for one or more of these purposes;

(10) ''foreign offshore unit'' means a facility which is located, in whole or in part, in the territorial sea or on the continental shelf of a foreign country and which is or was used for one or more of the following purposes: exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil produced from the seabed beneath the foreign country's territorial sea or from the foreign country's continental shelf;

(11) ''Fund'' means the Oil Spill Liability Trust Fund, established by section 9509 of title 26;

(12) ''gross ton'' has the meaning given that term by the Secretary under part J of title 46;

(13) ''guarantor'' means any person, other than the responsible party, who provides evidence of financial responsibility for a responsible party under this Act;

(14) ''incident'' means any occurrence or series of occurrences having the same origin, involving one or more vessels, facilities, or any

combination thereof, resulting in the discharge or substantial threat of discharge of oil;

(15) ''Indian tribe'' means any Indian tribe, band, nation, or other organized group or community, but not including any Alaska Native regional or village corporation, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians and has governmental authority over lands belonging to or controlled by the tribe;

(16) ''lessee'' means a person holding a leasehold interest in an oil or gas lease on lands beneath navigable waters (as that term is defined in section 1301(a) of title 43) or on submerged lands of the Outer Continental Shelf, granted or maintained under applicable State law or the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.);

(17) ''liable'' or ''liability'' shall be construed to be the standard of liability which obtains under section 1321 of this title;

(18) ''mobile offshore drilling unit'' means a vessel (other than a self-elevating lift vessel) capable of use as an offshore facility;

(19) ''National Contingency Plan'' means the National Contingency Plan prepared and published under section 1321(d) of this title or revised under section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9605);

(20) ''natural resources'' includes land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the exclusive economic zone), any State or local government or Indian tribe, or any foreign government;

(21) ''navigable waters'' means the waters of the United States, including the territorial sea;

(22) ''offshore facility'' means any facility of any kind located in, on, or under any of the navigable waters of the United States, and any facility of any kind which is subject to the jurisdiction of the United States and is located in, on, or under any other waters, other than a vessel or a public vessel;

(23) ''oil'' means oil of any kind or in any form, including petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil, but does not include any substance which is specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601) and which is subject to the provisions of that Act [42 U.S.C. 9601 et seq.];

(24) ''onshore facility'' means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land within the United States other than submerged land;

(25) the term ''Outer Continental Shelf facility'' means an offshore facility which is located, in whole or in part, on the Outer Continental Shelf and is or was used for one or more of the following purposes: exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil produced from the Outer Continental Shelf;

(26) ''owner or operator''—

(A) means—

(i) in the case of a vessel, any person owning, operating, or chartering by demise, the vessel;

(ii) in the case of an onshore or offshore facility, any person owning or operating such facility;

(iii) in the case of any abandoned offshore facility, the person who owned or operated such facility immediately prior to such abandonment;

(iv) in the case of any facility, title or control of which was conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment, or similar means to a unit of State or local government, any person who owned, operated, or otherwise controlled activities at such facility immediately beforehand;

(v) notwithstanding subparagraph (B)(i), and in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity, including for purposes of liability under section 2702 of this title, any State or local government that has caused or contributed to a discharge or substantial threat of a discharge of oil from a vessel or facility ownership or control of which was acquired involuntarily through—

(I) seizure or otherwise in connection with law enforcement activity;

(II) bankruptcy;

(III) tax delinquency;

(IV) abandonment; or

(V) other circumstances in which the government involuntarily acquires title by virtue of its function as sovereign;

(vi) notwithstanding subparagraph (B)(ii), a person that is a lender and that holds indicia of ownership primarily to protect a security interest in a vessel or facility if, while the borrower is still in possession of the vessel or facility encumbered by the security interest, the person—

(I) exercises decision making control over the environmental compliance related to the vessel or facility, such that the person has undertaken responsibility for oil handling or disposal practices related to the vessel or facility; or

(II) exercises control at a level comparable to that of a manager of the vessel or facility, such that the person has assumed or manifested responsibility—

(aa) for the overall management of the vessel or facility encompassing day-to-day decision making with respect to environmental compliance; or

(bb) over all or substantially all of the operational functions (as distinguished from financial or administrative functions) of the vessel or facility other than the function of environmental compliance; and

(B) does not include—

(i) A unit of state or local government that acquired ownership or control of a vessel or facility involuntarily through—

(I) seizure or otherwise in connection with law enforcement activity;

(II) bankruptcy;

(III) tax delinquency;

(IV) abandonment; or

(V) other circumstances in which the government involuntarily acquires title by virtue of its function as sovereign;

(ii) a person that is a lender that does not participate in management of a vessel or facility, but holds indicia of ownership primarily to protect the security interest of the person in the vessel or facility; or

(iii) a person that is a lender that did not participate in management of a vessel or facility prior to foreclosure, notwithstanding that the person—

(I) forecloses on the vessel or facility; and

(II) after foreclosure, sells, re-leases (in the case of a lease finance transaction), or liquidates the vessel or facility, maintains business activities, winds up operations, undertakes a removal action under section 1321(c) of this title or under the direction of an on-scene coordinator appointed under the National Contingency Plan, with respect to the vessel or facility, or takes any other measure to preserve, protect, or prepare the vessel or facility prior to sale or disposition,

if the person seeks to sell, re-lease (in the case of a lease finance transaction), or otherwise divest the person of the vessel or facility at the earliest practicable, commercially reasonable time, on commercially reasonable terms, taking into account market conditions and legal and regulatory requirements;

(27) ''person'' means an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body;

(28) ''permittee'' means a person holding an authorization, license, or permit for geological exploration issued under section 11 of the Outer Continental Shelf Lands Act (43 U.S.C. 1340) or applicable State law;

(29) ''public vessel'' means a vessel owned or bareboat chartered and operated by the United States, or by a State or political subdivision thereof, or by a foreign nation, except when the vessel is engaged in commerce;

(30) ''remove'' or ''removal'' means containment and removal of oil or a hazardous substance from water and shorelines or the taking of other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines, and beaches;

(31) ''removal costs'' means the costs of removal that are incurred after a discharge of oil has occurred or, in any case in which there is a substantial threat of a discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from such an incident;

(32) ''responsible party'' means the following:

(A) VESSELS.—In the case of a vessel, any person owning, operating, or demise chartering the vessel.

(B) ONSHORE FACILITIES.—In the case of an onshore facility (other than a pipeline), any person owning or operating the facility, except a Federal agency, State, municipality, commission, or political subdivision of a State, or any interstate body, that as the owner transfers possession and right to use the property to another person by lease, assignment, or permit.

(C) OFFSHORE FACILITIES.—In the case of an offshore facility (other than a pipeline or a deepwater port licensed under the Deepwater Port Act of 1974 (33 U.S.C. 1501 et seq.)), the lessee or permittee of the area in which the facility is located or the holder of a right of use and easement granted under applicable State law or the Outer Continental Shelf Lands Act (43 U.S.C. 1301–1356) for the area in which the facility is located (if the holder is a different person than the lessee or permittee), except a Federal agency, State, municipality, commission, or political subdivision of a State, or any interstate body, that as owner transfers possession and right to use the property to another person by lease, assignment, or permit.

(D) DEEPWATER PORTS.—In the case of a deepwater port licensed under the Deepwater Port Act of 1974 (33 U.S.C. 1501–1524), the licensee.

(E) PIPELINES.—In the case of a pipeline, any person owning or operating the pipeline.

(F) ABANDONMENT.—In the case of an abandoned vessel, onshore facility, deepwater port, pipeline, or offshore facility, the persons who would have been responsible parties immediately prior to the abandonment of the vessel or facility.

(33) ''Secretary'' means the Secretary of the department in which the Coast Guard is operating;

(34) ''tank vessel'' means a vessel that is constructed or adapted to carry, or that carries, oil or hazardous material in bulk as cargo or cargo residue, and that—

(A) is a vessel of the United States;

(B) operates on the navigable waters; or

(C) transfers oil or hazardous material in a place subject to the jurisdiction of the United States;

(35) ''territorial seas'' means the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of 3 miles;

(36) ''United States'' and ''State'' mean the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Marianas, and any other territory or possession of the United States;

(37) ''vessel'' means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water, other than a public vessel;

(38) ''participate in management''—

(A)(i) means actually participating in the management or operational affairs of a vessel or facility; and

(ii) does not include merely having the capacity to influence, or the unexercised right to control, vessel or facility operations; and

(B) does not include—

(i) performing an act or failing to act prior to the time at which a security interest is created in a vessel or facility;

(ii) holding a security interest or abandoning or releasing a security interest;

(iii) including in the terms of an extension of credit, or in a contract or security agreement relating to the extension, a covenant, warranty, or other term or condition that relates to environmental compliance;

(iv) monitoring or enforcing the terms and conditions of the extension of credit or security interest;

(v) monitoring or undertaking one or more inspections of the vessel or facility;

(vi) requiring a removal action or other lawful means of addressing a discharge or substantial threat of a discharge of oil in connection with the vessel or facility prior to, during, or on the expiration of the term of the extension of credit;

(vii) providing financial or other advice or counseling in an effort to mitigate, prevent, or cure default or diminution in the value of the vessel or facility;

(viii) restructuring, renegotiating, or otherwise agreeing to alter the terms and conditions of the extension of credit or security interest, exercising forbearance;

(ix) exercising other remedies that may be available under applicable law for the breach of a term or condition of the extension of credit or security agreement; or

(x) conducting a removal action under section 1321(c) of this title or under the direction of an on-scene coordinator appointed under the National Contingency Plan,

if such actions do not rise to the level of participating in management under subparagraph (A) of this paragraph and paragraph (26)(A)(vi);

(39) ''extension of credit'' has the meaning provided in section 101(20)(G)(i) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9601(20)(G)(i));

(40) ''financial or administrative function'' has the meaning provided in section 101(20)(G)(ii) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9601(20)(G)(ii));

(41) ''foreclosure'' and ''foreclose'' each has the meaning provided in section 101(20)(G)(iii) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9601(20)(G)(iii));

(42) ''lender'' has the meaning provided in section 101(20)(G)(iv) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9601(20)(G)(iv));

(43) ''operational function'' has the meaning provided in section 101(20)(G)(v) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9601(20)(G)(v)); and

(44) ''security interest'' has the meaning provided in section 101(20)(G)(vi) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9601(20)(G)(vi)).

(Pub. L. 101–380, title I, § 1001, Aug. 18, 1990, 104 Stat. 486; Pub. L. 105–383, title III, § 307(a), Nov. 13, 1998, 112 Stat. 3421; Pub. L. 108–293, title VII, § 703(a), (b), Aug. 9, 2004, 118 Stat. 1069, 1071.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 101–380, Aug. 18, 1990, 104 Stat. 484, as amended, known as the Oil Pollution Act of 1990, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

The Deepwater Port Act of 1974, referred to in pars. (6) and (32)(C), (D), is Pub. L. 93–627, Jan. 3, 1975, 88 Stat. 2126, as amended, which is classified generally to chapter 29 (§ 1501 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1501 of this title and Tables.

Presidential Proclamation Numbered 5030, referred to in par. (8), is Proc. No. 5030, Mar. 10, 1983, 48 F.R. 10605, which is set out as a note under section 1453 of Title 16, Conservation.

The Outer Continental Shelf Lands Act, referred to in pars. (16) and (32)(C), is act Aug. 7, 1953, ch. 345, 67 Stat. 462, as amended, which is classified generally to subchapter III (§ 1331 et seq.) of chapter 29 of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1331 of Title 43 and Tables.

The Comprehensive Environmental Response, Compensation, and Liability Act, referred to in par. (23), probably means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. 96–510, Dec. 11, 1980, 94 Stat. 2767, as amended, which is classified principally to chapter 103 (§ 9601 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of Title 42 and Tables.

AMENDMENTS

2004—Par. (26). Pub. L. 108–293, § 703(a), amended par. (26) generally. Prior to amendment, par. (26) read as follows: '''owner or operator' means (A) in the case of a vessel, any person owning, operating, or chartering by demise, the vessel, and (B) in the case of an onshore facility, and an offshore facility, any person owning or operating such onshore facility or offshore facility, and (C) in the case of any abandoned offshore facility, the person who owned or operated such facility immediately prior to such abandonment;''.

Pars. (38) to (44). Pub. L. 108–293, § 703(b), added pars. (38) to (44).

1998—Par. (23). Pub. L. 105–383 amended par. (23) generally. Prior to amendment, par. (23) read as follows: '''oil' means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil, but does not include petroleum, including crude oil or any fraction thereof, which is specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601) and which is subject to the provisions of that Act;''.

EFFECTIVE DATE

Section 1020 of title I of Pub. L. 101–380 provided that: ''This Act [see Short Title of 1990 Amendments note below for classification] shall apply to an incident occurring after the date of the enactment of this Act [Aug. 18, 1990].''

SHORT TITLE OF 2006 AMENDMENT

Pub. L. 109–241, title VI, § 601, July 11, 2006, 120 Stat. 553, provided that: ''This title [enacting sections 1232b and 2762 of this title, amending sections 1321, 2704, and 2761 of this title, and enacting provisions set out as notes under section 2704 of this title] may be cited as the 'Delaware River Protection Act of 2006'.''

SHORT TITLE OF 1995 AMENDMENT

Pub. L. 104–55, § 1, Nov. 20, 1995, 109 Stat. 546, provided that: ''This Act [enacting section 2720 of this title and amending sections 2704 and 2716 of this title] may be cited as the 'Edible Oil Regulatory Reform Act'.''

SHORT TITLE OF 1990 AMENDMENTS

Pub. L. 101–537, title II, § 2001, Nov. 8, 1990, 104 Stat. 2375, and Pub. L. 101–646, title IV, § 4001, Nov. 29, 1990, 104 Stat. 4788, as amended by Pub. L. 104–332, § 2(h)(1), Oct. 26, 1996, 110 Stat. 4091, provided that: ''This title [amending section 2761 of this title] may be cited as the 'Great Lakes Oil Pollution Research and Development Act'.''

SHORT TITLE

Section 1 of Pub. L. 101–380 provided that: ''This Act [enacting this chapter, sections 1642 and 1656 of Title 43, Public Lands, sections 3703a and 7505 of Title 46, Shipping, and section 1274a of the Appendix to Title 46, amending sections 1223, 1228, 1232, 1236, 1319, 1321, 1481, 1486, 1503, 1514, and 1908 of this title, section 3145 of Title 16, Conservation, sections 4612 and 9509 of Title 26, Internal Revenue Code, sections 1334, 1350, and 1653 of Title 43, sections 2101, 2302, 3318, 3715, 3718, 5116, 6101, 7101, 7106, 7107, 7109, 7302, 7502, 7503, 7701 to 7703, 8101, 8104, 8502, 8503, 8702, 9101, 9102, 9302, 9308, and 12106 of Title 46, and section 1274 of the Appendix to Title 46, repealing section 1517 of this title and sections 1811 and 1812 to 1824 of Title 43, enacting provisions set out as notes under this section, sections 1203, 1223, and 1321, of this title, section 92 of Title 14, Coast Guard, section 9509 of Title 26, sections 1334, 1651, and 1653 of Title 43, sections 3703, 3703a, and 7106 of Title 46, and section 1295 of the Appendix to Title 46, amending provisions set out as a note under section 401 of Title 23, Highways, and repealing provisions set out as a note under section 1811 of Title 43] may be cited as the 'Oil Pollution Act of 1990'.''

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 2702. Elements of liability

(a) In general

Notwithstanding any other provision or rule of law, and subject to the provisions of this Act, each responsible party for a vessel or a facility from which oil is discharged, or which poses the substantial threat of a discharge of oil, into or upon the navigable waters or adjoining shorelines or the exclusive economic zone is liable for the removal costs and damages specified in subsection (b) of this section that result from such incident.

(b) Covered removal costs and damages

(1) Removal costs

The removal costs referred to in subsection (a) of this section are—

(A) all removal costs incurred by the United States, a State, or an Indian tribe under subsection (c), (d), (e), or (*l*) of section 1321 of this title, under the Intervention on the High Seas Act (33 U.S.C. 1471 et seq.), or under State law; and

(B) any removal costs incurred by any person for acts taken by the person which are consistent with the National Contingency Plan.

(2) Damages

The damages referred to in subsection (a) of this section are the following:

(A) Natural resources

Damages for injury to, destruction of, loss of, or loss of use of, natural resources, including the reasonable costs of assessing the damage, which shall be recoverable by a United States trustee, a State trustee, an Indian tribe trustee, or a foreign trustee.

(B) Real or personal property

Damages for injury to, or economic losses resulting from destruction of, real or personal property, which shall be recoverable by a claimant who owns or leases that property.

(C) Subsistence use

Damages for loss of subsistence use of natural resources, which shall be recoverable by any claimant who so uses natural resources which have been injured, destroyed, or lost, without regard to the ownership or management of the resources.

(D) Revenues

Damages equal to the net loss of taxes, royalties, rents, fees, or net profit shares due to the injury, destruction, or loss of real property, personal property, or natural resources, which shall be recoverable by the Government of the United States, a State, or a political subdivision thereof.

(E) Profits and earning capacity

Damages equal to the loss of profits or impairment of earning capacity due to the injury, destruction, or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant.

(F) Public services

Damages for net costs of providing increased or additional public services during or after removal activities, including protection from fire, safety, or health hazards, caused by a discharge of oil, which shall be recoverable by a State, or a political subdivision of a State.

(c) Excluded discharges

This subchapter does not apply to any discharge—

(1) permitted by a permit issued under Federal, State, or local law;

(2) from a public vessel; or

(3) from an onshore facility which is subject to the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1651 et seq.).

(d) Liability of third parties

(1) In general

(A) Third party treated as responsible party

Except as provided in subparagraph (B), in any case in which a responsible party establishes that a discharge or threat of a discharge and the resulting removal costs and damages were caused solely by an act or omission of one or more third parties described in section 2703(a)(3) of this title (or solely by such an act or omission in combination with an act of God or an act of war), the third party or parties shall be treated as the responsible party or parties for purposes of determining liability under this subchapter.

(B) Subrogation of responsible party

If the responsible party alleges that the discharge or threat of a discharge was caused solely by an act or omission of a third party, the responsible party—

(i) in accordance with section 2713 of this title, shall pay removal costs and damages to any claimant; and

(ii) shall be entitled by subrogation to all rights of the United States Government and the claimant to recover removal costs or damages from the third party or the Fund paid under this subsection.

(2) Limitation applied

(A) Owner or operator of vessel or facility

If the act or omission of a third party that causes an incident occurs in connection with a vessel or facility owned or operated by the third party, the liability of the third party shall be subject to the limits provided in section 2704 of this title as applied with respect to the vessel or facility.

(B) Other cases

In any other case, the liability of a third party or parties shall not exceed the limitation which would have been applicable to the responsible party of the vessel or facility from which the discharge actually occurred if the responsible party were liable.

(Pub. L. 101–380, title I, § 1002, Aug. 18, 1990, 104 Stat. 489.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a), is Pub. L. 101–380, Aug. 18, 1990, 104 Stat. 484, as amended, known as the Oil Pollution Act of 1990, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

The Intervention on the High Seas Act, referred to in subsec. (b)(1)(A), is Pub. L. 93–248, Feb. 5, 1974, 88 Stat. 8, as amended, which is classified generally to chapter 28 (§ 1471 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1471 of this title and Tables.

The Trans-Alaska Pipeline Authorization Act, referred to in subsec. (c)(3), is title II of Pub. L. 93–153, Nov. 16, 1973, 87 Stat. 584, which is classified generally to chapter 34 (§ 1651 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1651 of Title 43 and Tables.

§ 2703. Defenses to liability

(a) Complete defenses

A responsible party is not liable for removal costs or damages under section 2702 of this title if the responsible party establishes, by a preponderance of the evidence, that the discharge or substantial threat of a discharge of oil and the resulting damages or removal costs were caused solely by—

(1) an act of God;

(2) an act of war;

(3) an act or omission of a third party, other than an employee or agent of the responsible party or a third party whose act or omission occurs in connection with any contractual relationship with the responsible party (except where the sole contractual arrangement arises in connection with carriage by a common carrier by rail), if the responsible party establishes, by a preponderance of the evidence, that the responsible party—

(A) exercised due care with respect to the oil concerned, taking into consideration the characteristics of the oil and in light of all relevant facts and circumstances; and

(B) took precautions against foreseeable acts or omissions of any such third party and the foreseeable consequences of those acts or omissions; or

(4) any combination of paragraphs (1), (2), and (3).

(b) Defenses as to particular claimants

A responsible party is not liable under section 2702 of this title to a claimant, to the extent that the incident is caused by the gross negligence or willful misconduct of the claimant.

(c) Limitation on complete defense

Subsection (a) of this section does not apply with respect to a responsible party who fails or refuses—

(1) to report the incident as required by law if the responsible party knows or has reason to know of the incident;

(2) to provide all reasonable cooperation and assistance requested by a responsible official in connection with removal activities; or

(3) without sufficient cause, to comply with an order issued under subsection (c) or (e) of section 1321 of this title or the Intervention on the High Seas Act (33 U.S.C. 1471 et seq.).

(d) Definition of contractual relationship

(1) In general

For purposes of subsection (a)(3) of this section the term ''contractual relationship'' includes, but is not limited to, land contracts, deeds, easements, leases, or other instruments transferring title or possession, unless—

(A) the real property on which the facility concerned is located was acquired by the responsible party after the placement of the oil on, in, or at the real property on which the facility concerned is located;

(B) one or more of the circumstances described in subparagraph (A), (B), or (C) of

paragraph (2) is established by the responsible party by a preponderance of the evidence; and

(C) the responsible party complies with paragraph (3).

(2) Required circumstance

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

(A) At the time the responsible party acquired the real property on which the facility is located the responsible party did not know and had no reason to know that oil that is the subject of the discharge or substantial threat of discharge was located on, in, or at the facility.

(B) The responsible party is a government entity that acquired the facility—

(i) by escheat;

(ii) through any other involuntary transfer or acquisition; or

(iii) through the exercise of eminent domain authority by purchase or condemnation.

(C) The responsible party acquired the facility by inheritance or bequest.

(3) Additional requirements

For purposes of paragraph (1)(C), the responsible party must establish by a preponderance of the evidence that the responsible party—

(A) has satisfied the requirements of subsection (a)(3)(A) and (B) of this section;

(B) has provided full cooperation, assistance, and facility access to the persons that are authorized to conduct removal actions, including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial removal action;

(C) is in compliance with any land use restrictions established or relied on in connection with the removal action; and

(D) has not impeded the effectiveness or integrity of any institutional control employed in connection with the removal action.

(4) Reason to know

(A) Appropriate inquiries

To establish that the responsible party had no reason to know of the matter described in paragraph (2)(A), the responsible party must demonstrate to a court that—

(i) on or before the date on which the responsible party acquired the real property on which the facility is located, the responsible party carried out all appropriate inquiries, as provided in subparagraphs (B) and (D), into the previous ownership and uses of the real property on which the facility is located in accordance with generally accepted good commercial and customary standards and practices; and

(ii) the responsible party took reasonable steps to—

(I) stop any continuing discharge;

(II) prevent any substantial threat of discharge; and

(III) prevent or limit any human, environmental, or natural resource exposure to any previously discharged oil.

(B) Regulations establishing standards and practices

Not later than 2 years after August 9, 2004, the Secretary, in consultation with the Administrator of the Environmental Protection Agency, shall by regulation establish standards and practices for the purpose of satisfying the requirement to carry out all appropriate inquiries under subparagraph (A).

(C) Criteria

In promulgating regulations that establish the standards and practices referred to in subparagraph (B), the Secretary shall include in such standards and practices provisions regarding each of the following:

(i) The results of an inquiry by an environmental professional.

(ii) Interviews with past and present owners, operators, and occupants of the facility and the real property on which the facility is located for the purpose of gathering information regarding the potential for oil at the facility and on the real property on which the facility is located.

(iii) Reviews of historical sources, such as chain of title documents, aerial photographs, building department records, and land use records, to determine previous uses and occupancies of the real property on which the facility is located since the property was first developed.

(iv) Searches for recorded environmental cleanup liens against the facility and the real property on which the facility is located that are filed under Federal, State, or local law.

(v) Reviews of Federal, State, and local government records, waste disposal records, underground storage tank records, and waste handling, generation, treatment, disposal, and spill records, concerning oil at or near the facility and on the real property on which the facility is located.

(vi) Visual inspections of the facility, the real property on which the facility is located, and adjoining properties.

(vii) Specialized knowledge or experience on the part of the responsible party.

(viii) The relationship of the purchase price to the value of the facility and the real property on which the facility is located, if oil was not at the facility or on the real property.

(ix) Commonly known or reasonably ascertainable information about the facility and the real property on which the facility is located.

(x) The degree of obviousness of the presence or likely presence of oil at the facility and on the real property on which the facility is located, and the ability to detect the oil by appropriate investigation.

(D) Interim standards and practices

(i) Real property purchased before May 31, 1997

With respect to real property purchased before May 31, 1997, in making a deter-

mination with respect to a responsible party described in subparagraph (A), a court shall take into account—

(I) any specialized knowledge or experience on the part of the responsible party;

(II) the relationship of the purchase price to the value of the facility and the real property on which the facility is located, if the oil was not at the facility or on the real property;

(III) commonly known or reasonably ascertainable information about the facility and the real property on which the facility is located;

(IV) the obviousness of the presence or likely presence of oil at the facility and on the real property on which the facility is located; and

(V) the ability of the responsible party to detect oil by appropriate inspection.

(ii) Real property purchased on or after May 31, 1997

With respect to real property purchased on or after May 31, 1997, until the Secretary promulgates the regulations described in clause (ii), the procedures of the American Society for Testing and Materials, including the document known as ''Standard E1527–97'', entitled ''Standard Practice for Environmental Site Assessment: Phase I Environmental Site Assessment Process'', shall satisfy the requirements in subparagraph (A).

(E) Site inspection and title search

In the case of real property for residential use or other similar use purchased by a nongovernmental or noncommercial entity, inspection and title search of the facility and the real property on which the facility is located that reveal no basis for further investigation shall be considered to satisfy the requirements of this paragraph.

(5) Previous owner or operator

Nothing in this paragraph or in subsection (a)(3) of this section shall diminish the liability of any previous owner or operator of such facility who would otherwise be liable under this Act. Notwithstanding this paragraph, if a responsible party obtained actual knowledge of the discharge or substantial threat of discharge of oil at such facility when the responsible party owned the facility and then subsequently transferred ownership of the facility or the real property on which the facility is located to another person without disclosing such knowledge, the responsible party shall be treated as liable under 2702(a)[1] of this title and no defense under subsection (a) of this section shall be available to such responsible party.

(6) Limitation on defense

Nothing in this paragraph shall affect the liability under this Act of a responsible party who, by any act or omission, caused or contributed to the discharge or substantial threat of discharge of oil which is the subject of the action relating to the facility.

(Pub. L. 101–380, title I, § 1003, Aug. 18, 1990, 104 Stat. 491; Pub. L. 108–293, title VII, § 703(c), Aug. 9, 2004, 118 Stat. 1072.)

REFERENCES IN TEXT

The Intervention on the High Seas Act, referred to in subsec. (c)(3), is Pub. L. 93–248, Feb. 5, 1974, 88 Stat. 8, as amended, which is classified generally to chapter 28 (§ 1471 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1471 of this title and Tables.

This Act, referred to in subsec. (d)(5), (6), is Pub. L. 101–380, Aug. 18, 1990, 104 Stat. 484, as amended, known as the Oil Pollution Act of 1990, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

AMENDMENTS

2004—Subsec. (d). Pub. L. 108–293 added subsec. (d).

§ 2704. Limits on liability

(a) General rule

Except as otherwise provided in this section, the total of the liability of a responsible party under section 2702 of this title and any removal costs incurred by, or on behalf of, the responsible party, with respect to each incident shall not exceed—

(1) for a tank vessel the greater of—

(A) with respect to a single-hull vessel, including a single-hull vessel fitted with double sides only or a double bottom only, $3,000 per gross ton;

(B) with respect to a vessel other than a vessel referred to in subparagraph (A), $1,900 per gross ton; or

(C)(i) with respect to a vessel greater than 3,000 gross tons that is—

(I) a vessel described in subparagraph (A), $22,000,000; or

(II) a vessel described in subparagraph (B), $16,000,000; or

(ii) with respect to a vessel of 3,000 gross tons or less that is—

(I) a vessel described in subparagraph (A), $6,000,000; or

(II) a vessel described in subparagraph (B), $4,000,000;

(2) for any other vessel, $950 per gross ton or $800,000,,[1] whichever is greater;

(3) for an offshore facility except a deepwater port, the total of all removal costs plus $75,000,000; and

(4) for any onshore facility and a deepwater port, $350,000,000.

(b) Division of liability for mobile offshore drilling units

(1) Treated first as tank vessel

For purposes of determining the responsible party and applying this Act and except as provided in paragraph (2), a mobile offshore drilling unit which is being used as an offshore facility is deemed to be a tank vessel with respect to the discharge, or the substantial

[1] So in original. Probably should be preceded by ''section''.

[1] So in original. The second comma probably should not appear.

threat of a discharge, of oil on or above the surface of the water.

(2) Treated as facility for excess liability

To the extent that removal costs and damages from any incident described in paragraph (1) exceed the amount for which a responsible party is liable (as that amount may be limited under subsection (a)(1) of this section), the mobile offshore drilling unit is deemed to be an offshore facility. For purposes of applying subsection (a)(3) of this section, the amount specified in that subsection shall be reduced by the amount for which the responsible party is liable under paragraph (1).

(c) Exceptions

(1) Acts of responsible party

Subsection (a) of this section does not apply if the incident was proximately caused by—

(A) gross negligence or willful misconduct of, or

(B) the violation of an applicable Federal safety, construction, or operating regulation by,

the responsible party, an agent or employee of the responsible party, or a person acting pursuant to a contractual relationship with the responsible party (except where the sole contractual arrangement arises in connection with carriage by a common carrier by rail).

(2) Failure or refusal of responsible party

Subsection (a) of this section does not apply if the responsible party fails or refuses—

(A) to report the incident as required by law and the responsible party knows or has reason to know of the incident;

(B) to provide all reasonable cooperation and assistance requested by a responsible official in connection with removal activities; or

(C) without sufficient cause, to comply with an order issued under subsection (c) or (e) of section 1321 of this title or the Intervention on the High Seas Act (33 U.S.C. 1471 et seq.).

(3) OCS facility or vessel

Notwithstanding the limitations established under subsection (a) of this section and the defenses of section 2703 of this title, all removal costs incurred by the United States Government or any State or local official or agency in connection with a discharge or substantial threat of a discharge of oil from any Outer Continental Shelf facility or a vessel carrying oil as cargo from such a facility shall be borne by the owner or operator of such facility or vessel.

(4) Certain tank vessels

Subsection (a)(1) of this section shall not apply to—

(A) a tank vessel on which the only oil carried as cargo is an animal fat or vegetable oil, as those terms are used in section 2720 of this title; and

(B) a tank vessel that is designated in its certificate of inspection as an oil spill response vessel (as that term is defined in section 2101 of title 46) and that is used solely for removal.

(d) Adjusting limits of liability

(1) Onshore facilities

Subject to paragraph (2), the President may establish by regulation, with respect to any class or category of onshore facility, a limit of liability under this section of less than $350,000,000, but not less than $8,000,000, taking into account size, storage capacity, oil throughput, proximity to sensitive areas, type of oil handled, history of discharges, and other factors relevant to risks posed by the class or category of facility.

(2) Deepwater ports and associated vessels

(A) Study

The Secretary shall conduct a study of the relative operational and environmental risks posed by the transportation of oil by vessel to deepwater ports (as defined in section 1502 of this title) versus the transportation of oil by vessel to other ports. The study shall include a review and analysis of offshore lightering practices used in connection with that transportation, an analysis of the volume of oil transported by vessel using those practices, and an analysis of the frequency and volume of oil discharges which occur in connection with the use of those practices.

(B) Report

Not later than 1 year after August 18, 1990, the Secretary shall submit to the Congress a report on the results of the study conducted under subparagraph (A).

(C) Rulemaking proceeding

If the Secretary determines, based on the results of the study conducted under this[2] subparagraph (A), that the use of deepwater ports in connection with the transportation of oil by vessel results in a lower operational or environmental risk than the use of other ports, the Secretary shall initiate, not later than the 180th day following the date of submission of the report to the Congress under subparagraph (B), a rulemaking proceeding to lower the limits of liability under this section for deepwater ports as the Secretary determines appropriate. The Secretary may establish a limit of liability of less than $350,000,000, but not less than $50,000,000, in accordance with paragraph (1).

(3) Periodic reports

The President shall, within 6 months after August 18, 1990, and from time to time thereafter, report to the Congress on the desirability of adjusting the limits of liability specified in subsection (a) of this section.

(4) Adjustment to reflect Consumer Price Index

The President, by regulations issued not later than 3 years after July 11, 2006, and not less than every 3 years thereafter, shall adjust the limits on liability specified in subsection (a) to reflect significant increases in the Consumer Price Index.

(Pub. L. 101–380, title I, § 1004, Aug. 18, 1990, 104 Stat. 491; Pub. L. 104–55, § 2(d)(1), Nov. 20, 1995,

[2] So in original. The word ''this'' probably should not appear.

109 Stat. 546; Pub. L. 105–383, title IV, § 406, Nov. 13, 1998, 112 Stat. 3429; Pub. L. 109–241, title VI, § 603(a)(1), (2), (b), July 11, 2006, 120 Stat. 553, 554.)

REFERENCES IN TEXT

This Act, referred to in subsec. (b)(1), is Pub. L. 101–380, Aug. 18, 1990, 104 Stat. 484, as amended, known as the Oil Pollution Act of 1990, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

The Intervention on the High Seas Act, referred to in subsec. (c)(2)(C), is Pub. L. 93–248, Feb. 5, 1974, 88 Stat. 8, as amended, which is classified generally to chapter 28 (§ 1471 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1471 of this title and Tables.

AMENDMENTS

2006—Subsec. (a)(1)(A) to (C). Pub. L. 109–241, § 603(a)(1), added subpars. (A) to (C) and struck out former subpars. (A) and (B), which read as follows:

''(A) $1,200 per gross ton; or

''(B)(i) in the case of a vessel greater than 3,000 gross tons, $10,000,000; or

''(ii) in the case of a vessel of 3,000 gross tons or less, $2,000,000;''.

Subsec. (a)(2). Pub. L. 109–241, § 603(a)(2), substituted ''$950 per gross ton'' for ''$600 per gross ton'' and ''$800,000,'' for ''$500,000''.

Subsec. (d)(4). Pub. L. 109–241, § 603(b), amended heading and text of par. (4) generally. Prior to amendment, text read as follows: ''The President shall, by regulations issued not less often than every 3 years, adjust the limits of liability specified in subsection (a) of this section to reflect significant increases in the Consumer Price Index.''

1998—Subsec. (a)(1). Pub. L. 105–383, § 406(1), substituted comma for ''(except a tank vessel on which the only oil carried as cargo is an animal fat or vegetable oil, as those terms are used in section 2720 of this title)'' after ''tank vessel''.

Subsec. (c)(4). Pub. L. 105–383, § 406(2), added par. (4).

1995—Subsec. (a)(1). Pub. L. 104–55 substituted ''for a tank vessel (except a tank vessel on which the only oil carried as cargo is an animal fat or vegetable oil, as those terms are used in section 2720 of this title)'' for ''for a tank vessel,''.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–241, title VI, § 603(a)(3), July 11, 2006, 120 Stat. 554, provided that: ''In the case of an incident occurring before the 90th day following the date of enactment of this Act [July 11, 2006], section 1004(a)(1) of the Oil Pollution Act of 1990 (33 U.S.C. 2704(a)(1)) shall apply as in effect immediately before the effective date of this subsection [July 11, 2006].''

DELEGATION OF FUNCTIONS

Specific functions of President under subsec. (d) of this section delegated to Administrator of Environmental Protection Agency, Secretary of Transportation, and Secretary of the Interior by section 4 of Ex. Ord. No. 12777, Oct. 18, 1991, 56 F.R. 54763, set out as a note under section 1321 of this title.

REPORT

Pub. L. 109–241, title VI, § 603(c), July 11, 2006, 120 Stat. 554, provided that:

''(1) INITIAL REPORT.—Not later than 45 days after the date of enactment of this Act [July 11, 2006], the Secretary of the department in which the Coast Guard is operating shall submit a report on liability limits described in paragraph (2) to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.

''(2) CONTENTS.—The report shall include, at a minimum, the following:

''(A) An analysis of the extent to which oil discharges from vessels and nonvessel sources have or are likely to result in removal costs and damages (as defined in section 1001 of the Oil Pollution Act of 1990 (33 U.S.C. 2701)) for which no defense to liability exists under section 1003 of such Act [33 U.S.C. 2703] and that exceed the liability limits established in section 1004 of such Act [33 U.S.C. 2704], as amended by this section.

''(B) An analysis of the impacts that claims against the Oil Spill Liability Trust Fund for amounts exceeding such liability limits will have on the Fund.

''(C) Based on analyses under this paragraph and taking into account other factors impacting the Fund, recommendations on whether the liability limits need to be adjusted in order to prevent the principal of the Fund from declining to levels that are likely to be insufficient to cover expected claims.

''(3) ANNUAL UPDATES.—The Secretary shall provide an update of the report to the Committees referred to in paragraph (1) on an annual basis.''

§ 2705. Interest; partial payment of claims

(a) General rule

The responsible party or the responsible party's guarantor is liable to a claimant for interest on the amount paid in satisfaction of a claim under this Act for the period described in subsection (b) of this section. The responsible party shall establish a procedure for the payment or settlement of claims for interim, short-term damages. Payment or settlement of a claim for interim, short-term damages representing less than the full amount of damages to which the claimant ultimately may be entitled shall not preclude recovery by the claimant for damages not reflected in the paid or settled partial claim.

(b) Period

(1) In general

Except as provided in paragraph (2), the period for which interest shall be paid is the period beginning on the 30th day following the date on which the claim is presented to the responsible party or guarantor and ending on the date on which the claim is paid.

(2) Exclusion of period due to offer by guarantor

If the guarantor offers to the claimant an amount equal to or greater than that finally paid in satisfaction of the claim, the period described in paragraph (1) does not include the period beginning on the date the offer is made and ending on the date the offer is accepted. If the offer is made within 60 days after the date on which the claim is presented under section 2713(a) of this title, the period described in paragraph (1) does not include any period before the offer is accepted.

(3) Exclusion of periods in interests of justice

If in any period a claimant is not paid due to reasons beyond the control of the responsible party or because it would not serve the interests of justice, no interest shall accrue under this section during that period.

(4) Calculation of interest

The interest paid under this section shall be calculated at the average of the highest rate for commercial and finance company paper of maturities of 180 days or less obtaining on each of the days included within the period for

which interest must be paid to the claimant, as published in the Federal Reserve Bulletin.

(5) Interest not subject to liability limits

(A) In general

Interest (including prejudgment interest) under this paragraph is in addition to damages and removal costs for which claims may be asserted under section 2702 of this title and shall be paid without regard to any limitation of liability under section 2704 of this title.

(B) Payment by guarantor

The payment of interest under this subsection by a guarantor is subject to section 2716(g) of this title.

(Pub. L. 101–380, title I, § 1005, Aug. 18, 1990, 104 Stat. 493; Pub. L. 104–324, title XI, § 1142(a), Oct. 19, 1996, 110 Stat. 3991.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a), is Pub. L. 101–380, Aug. 18, 1990, 104 Stat. 484, as amended, known as the Oil Pollution Act of 1990, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

AMENDMENTS

1996—Pub. L. 104–324, § 1142(a)(1), inserted ''; partial payment of claims'' after ''Interest'' in section catchline.

Subsec. (a). Pub. L. 104–324, § 1142(a)(2), inserted at end ''The responsible party shall establish a procedure for the payment or settlement of claims for interim, short-term damages. Payment or settlement of a claim for interim, short-term damages representing less than the full amount of damages to which the claimant ultimately may be entitled shall not preclude recovery by the claimant for damages not reflected in the paid or settled partial claim.''

§ 2706. Natural resources

(a) Liability

In the case of natural resource damages under section 2702(b)(2)(A) of this title, liability shall be—

(1) to the United States Government for natural resources belonging to, managed by, controlled by, or appertaining to the United States;

(2) to any State for natural resources belonging to, managed by, controlled by, or appertaining to such State or political subdivision thereof;

(3) to any Indian tribe for natural resources belonging to, managed by, controlled by, or appertaining to such Indian tribe; and

(4) in any case in which section 2707 of this title applies, to the government of a foreign country for natural resources belonging to, managed by, controlled by, or appertaining to such country.

(b) Designation of trustees

(1) In general

The President, or the authorized representative of any State, Indian tribe, or foreign government, shall act on behalf of the public, Indian tribe, or foreign country as trustee of natural resources to present a claim for and to recover damages to the natural resources.

(2) Federal trustees

The President shall designate the Federal officials who shall act on behalf of the public as trustees for natural resources under this Act.

(3) State trustees

The Governor of each State shall designate State and local officials who may act on behalf of the public as trustee for natural resources under this Act and shall notify the President of the designation.

(4) Indian tribe trustees

The governing body of any Indian tribe shall designate tribal officials who may act on behalf of the tribe or its members as trustee for natural resources under this Act and shall notify the President of the designation.

(5) Foreign trustees

The head of any foreign government may designate the trustee who shall act on behalf of that government as trustee for natural resources under this Act.

(c) Functions of trustees

(1) Federal trustees

The Federal officials designated under subsection (b)(2) of this section—

(A) shall assess natural resource damages under section 2702(b)(2)(A) of this title for the natural resources under their trusteeship;

(B) may, upon request of and reimbursement from a State or Indian tribe and at the Federal officials' discretion, assess damages for the natural resources under the State's or tribe's trusteeship; and

(C) shall develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent, of the natural resources under their trusteeship.

(2) State trustees

The State and local officials designated under subsection (b)(3) of this section—

(A) shall assess natural resource damages under section 2702(b)(2)(A) of this title for the purposes of this Act for the natural resources under their trusteeship; and

(B) shall develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent, of the natural resources under their trusteeship.

(3) Indian tribe trustees

The tribal officials designated under subsection (b)(4) of this section—

(A) shall assess natural resource damages under section 2702(b)(2)(A) of this title for the purposes of this Act for the natural resources under their trusteeship; and

(B) shall develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent, of the natural resources under their trusteeship.

(4) Foreign trustees

The trustees designated under subsection (b)(5) of this section—

(A) shall assess natural resource damages under section 2702(b)(2)(A) of this title for the purposes of this Act for the natural resources under their trusteeship; and

(B) shall develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent, of the natural resources under their trusteeship.

(5) Notice and opportunity to be heard

Plans shall be developed and implemented under this section only after adequate public notice, opportunity for a hearing, and consideration of all public comment.

(d) Measure of damages

(1) In general

The measure of natural resource damages under section 2702(b)(2)(A) of this title is—

(A) the cost of restoring, rehabilitating, replacing, or acquiring the equivalent of, the damaged natural resources;

(B) the diminution in value of those natural resources pending restoration; plus

(C) the reasonable cost of assessing those damages.

(2) Determine costs with respect to plans

Costs shall be determined under paragraph (1) with respect to plans adopted under subsection (c) of this section.

(3) No double recovery

There shall be no double recovery under this Act for natural resource damages, including with respect to the costs of damage assessment or restoration, rehabilitation, replacement, or acquisition for the same incident and natural resource.

(e) Damage assessment regulations

(1) Regulations

The President, acting through the Under Secretary of Commerce for Oceans and Atmosphere and in consultation with the Administrator of the Environmental Protection Agency, the Director of the United States Fish and Wildlife Service, and the heads of other affected agencies, not later than 2 years after August 18, 1990, shall promulgate regulations for the assessment of natural resource damages under section 2702(b)(2)(A) of this title resulting from a discharge of oil for the purpose of this Act.

(2) Rebuttable presumption

Any determination or assessment of damages to natural resources for the purposes of this Act made under subsection (d) of this section by a Federal, State, or Indian trustee in accordance with the regulations promulgated under paragraph (1) shall have the force and effect of a rebuttable presumption on behalf of the trustee in any administrative or judicial proceeding under this Act.

(f) Use of recovered sums

Sums recovered under this Act by a Federal, State, Indian, or foreign trustee for natural resource damages under section 2702(b)(2)(A) of this title shall be retained by the trustee in a revolving trust account, without further appropriation, for use only to reimburse or pay costs incurred by the trustee under subsection (c) of this section with respect to the damaged natural resources. Any amounts in excess of those required for these reimbursements and costs shall be deposited in the Fund.

(g) Compliance

Review of actions by any Federal official where there is alleged to be a failure of that official to perform a duty under this section that is not discretionary with that official may be had by any person in the district court in which the person resides or in which the alleged damage to natural resources occurred. The court may award costs of litigation (including reasonable attorney and expert witness fees) to any prevailing or substantially prevailing party. Nothing in this subsection shall restrict any right which any person may have to seek relief under any other provision of law.

(Pub. L. 101–380, title I, §1006, Aug. 18, 1990, 104 Stat. 494.)

REFERENCES IN TEXT

This Act, referred to in subsecs. (b)(2)–(5), (c)(2)(A), (3)(A), (4)(A), (d)(3), (e), and (f), is Pub. L. 101–380, Aug. 18, 1990, 104 Stat. 484, as amended, known as the Oil Pollution Act of 1990, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

DELEGATION OF FUNCTIONS

Functions of President under subsec. (b)(3) and (4) of this section delegated to Administrator of Environmental Protection Agency by section 8(c) of Ex. Ord. No. 12777, Oct. 18, 1991, 56 F.R. 54768, set out as a note under section 1321 of this title.

NOAA OIL AND HAZARDOUS SUBSTANCE SPILL COST REIMBURSEMENT

Pub. L. 102–567, title II, §205, Oct. 29, 1992, 106 Stat. 4282, provided that:

''(a) TREATMENT OF AMOUNTS RECEIVED AS REIMBURSEMENT OF EXPENSES.—Notwithstanding any other provision of law, amounts received by the United States as reimbursement of expenses related to oil or hazardous substance spill response activities, or natural resource damage assessment, restoration, rehabilitation, replacement, or acquisition activities, conducted (or to be conducted) by the National Oceanic and Atmospheric Administration—

''(1) shall be deposited into the Fund;

''(2) shall be available, without fiscal year limitation and without apportionment, for use in accordance with the law under which the activities are conducted; and

''(3) shall not be considered to be an augmentation of appropriations.

''(b) APPLICATION.—Subsection (a) shall apply to amounts described in subsection (a) that are received—

''(1) after the date of the enactment of this Act [Oct. 29, 1992]; or

''(2) with respect to the oil spill associated with the grounding of the EXXON VALDEZ.

''(c) DEFINITIONS.—For purposes of this section—

''(1) the term 'Fund' means the Damage Assessment and Restoration Revolving Fund of the National Oceanic and Atmospheric Administration referred to in title I of Public Law 101–515 under the heading 'National Oceanic and Atmospheric Administration' (104 Stat. 2105) [set out as a note below]; and

''(2) the term 'expenses' includes incremental and base salaries, ships, aircraft, and associated indirect costs, except the term does not include base salaries and benefits of National Oceanic and Atmospheric Administration Support Coordinators.''

DAMAGE ASSESSMENT AND RESTORATION REVOLVING FUND; DEPOSITS; AVAILABILITY; TRANSFER

Pub. L. 101–515, title I, Nov. 5, 1990, 104 Stat. 2105, provided that: ''For contingency planning, response and

natural resource damage assessment and restoration activities, pursuant to the Comprehensive Environmental Response, Compensation[,] and Liability Act [of 1980], as amended [42 U.S.C. 9601 et seq.], the Federal Water Pollution Control Act, as amended [33 U.S.C. 1251 et seq.], the Marine Protection, Research[,] and Sanctuaries Act [of 1972], as amended [16 U.S.C. 1431et seq., 1447 et seq.; 33 U.S.C. 1401 et seq., 2801 et seq.], and the Oil Pollution Act of 1990 [33 U.S.C. 2701 et seq.], $5,000,000 to remain available until expended: *Provided*, That notwithstanding any other provision of law, in fiscal year 1991 and thereafter, sums provided by any party or governmental entity for natural resource damage assessment, response or restoration activities conducted or to be conducted by the National Oceanic and Atmospheric Administration as a result of any injury to the marine environment and/or resources for which the National Oceanic and Atmospheric Administration acts as trustee of said marine environment and/or resources, shall be deposited in the Damage Assessment and Restoration Revolving Fund and said funds so deposited shall remain available until expended: *Provided further*, That for purposes of obligation and expenditure in fiscal year 1991 and thereafter, sums available in the Damage Assessment and Restoration Revolving Fund may be transferred, upon the approval of the Secretary of Commerce or his delegate, to the Operations, Research, and Facilities appropriation of the National Oceanic and Atmospheric Administration.''

§ 2707. Recovery by foreign claimants

(a) Required showing by foreign claimants

(1) In general

In addition to satisfying the other requirements of this Act, to recover removal costs or damages resulting from an incident a foreign claimant shall demonstrate that—

(A) the claimant has not been otherwise compensated for the removal costs or damages; and

(B) recovery is authorized by a treaty or executive agreement between the United States and the claimant's country, or the Secretary of State, in consultation with the Attorney General and other appropriate officials, has certified that the claimant's country provides a comparable remedy for United States claimants.

(2) Exceptions

Paragraph (1)(B) shall not apply with respect to recovery by a resident of Canada in the case of an incident described in subsection (b)(4) of this section.

(b) Discharges in foreign countries

A foreign claimant may make a claim for removal costs and damages resulting from a discharge, or substantial threat of a discharge, of oil in or on the territorial sea, internal waters, or adjacent shoreline of a foreign country, only if the discharge is from—

(1) an Outer Continental Shelf facility or a deepwater port;

(2) a vessel in the navigable waters;

(3) a vessel carrying oil as cargo between 2 places in the United States; or

(4) a tanker that received the oil at the terminal of the pipeline constructed under the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1651 et seq.), for transportation to a place in the United States, and the discharge or threat occurs prior to delivery of the oil to that place.

(c) "Foreign claimant" defined

In this section, the term ''foreign claimant'' means—

(1) a person residing in a foreign country;

(2) the government of a foreign country; and

(3) an agency or political subdivision of a foreign country.

(Pub. L. 101–380, title I, § 1007, Aug. 18, 1990, 104 Stat. 496.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a)(1), is Pub. L. 101–380, Aug. 18, 1990, 104 Stat. 484, as amended, known as the Oil Pollution Act of 1990, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

The Trans-Alaska Pipeline Authorization Act, referred to in subsec. (b)(4), is title II of Pub. L. 93–153, Nov. 16, 1973, 87 Stat. 584, which is classified generally to chapter 34 (§ 1651 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1651 of Title 43 and Tables.

§ 2708. Recovery by responsible party

(a) In general

The responsible party for a vessel or facility from which oil is discharged, or which poses the substantial threat of a discharge of oil, may assert a claim for removal costs and damages under section 2713 of this title only if the responsible party demonstrates that—

(1) the responsible party is entitled to a defense to liability under section 2703 of this title; or

(2) the responsible party is entitled to a limitation of liability under section 2704 of this title.

(b) Extent of recovery

A responsible party who is entitled to a limitation of liability may assert a claim under section 2713 of this title only to the extent that the sum of the removal costs and damages incurred by the responsible party plus the amounts paid by the responsible party, or by the guarantor on behalf of the responsible party, for claims asserted under section 2713 of this title exceeds the amount to which the total of the liability under section 2702 of this title and removal costs and damages incurred by, or on behalf of, the responsible party is limited under section 2704 of this title.

(Pub. L. 101–380, title I, § 1008, Aug. 18, 1990, 104 Stat. 497.)

§ 2709. Contribution

A person may bring a civil action for contribution against any other person who is liable or potentially liable under this Act or another law. The action shall be brought in accordance with section 2717 of this title.

(Pub. L. 101–380, title I, § 1009, Aug. 18, 1990, 104 Stat. 497.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 101–380, Aug. 18, 1990, 104 Stat. 484, as amended, known as the Oil Pollution Act of 1990, which is classified principally to this

chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

§ 2710. Indemnification agreements

(a) Agreements not prohibited

Nothing in this Act prohibits any agreement to insure, hold harmless, or indemnify a party to such agreement for any liability under this Act.

(b) Liability not transferred

No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer liability imposed under this Act from a responsible party or from any person who may be liable for an incident under this Act to any other person.

(c) Relationship to other causes of action

Nothing in this Act, including the provisions of subsection (b) of this section, bars a cause of action that a responsible party subject to liability under this Act, or a guarantor, has or would have, by reason of subrogation or otherwise, against any person.

(Pub. L. 101–380, title I, § 1010, Aug. 18, 1990, 104 Stat. 498.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 101–380, Aug. 18, 1990, 104 Stat. 484, as amended, known as the Oil Pollution Act of 1990, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

§ 2711. Consultation on removal actions

The President shall consult with the affected trustees designated under section 2706 of this title on the appropriate removal action to be taken in connection with any discharge of oil. For the purposes of the National Contingency Plan, removal with respect to any discharge shall be considered completed when so determined by the President in consultation with the Governor or Governors of the affected States. However, this determination shall not preclude additional removal actions under applicable State law.

(Pub. L. 101–380, title I, § 1011, Aug. 18, 1990, 104 Stat. 498.)

DELEGATION OF FUNCTIONS

Functions of President under this section delegated to Administrator of Environmental Protection Agency for inland zone and to Secretary of Department in which Coast Guard is operating for coastal zone by section 3 of Ex. Ord. No. 12777, Oct. 18, 1991, 56 F.R. 54757, set out as a note under section 1321 of this title.

§ 2712. Uses of Fund

(a) Uses generally

The Fund shall be available to the President for—

(1) the payment of removal costs, including the costs of monitoring removal actions, determined by the President to be consistent with the National Contingency Plan—

(A) by Federal authorities; or

(B) by a Governor or designated State official under subsection (d) of this section;

(2) the payment of costs incurred by Federal, State, or Indian tribe trustees in carrying out their functions under section 2706 of this title for assessing natural resource damages and for developing and implementing plans for the restoration, rehabilitation, replacement, or acquisition of the equivalent of damaged resources determined by the President to be consistent with the National Contingency Plan;

(3) the payment of removal costs determined by the President to be consistent with the National Contingency Plan as a result of, and damages resulting from, a discharge, or a substantial threat of a discharge, of oil from a foreign offshore unit;

(4) the payment of claims in accordance with section 2713 of this title for uncompensated removal costs determined by the President to be consistent with the National Contingency Plan or uncompensated damages;

(5) the payment of Federal administrative, operational, and personnel costs and expenses reasonably necessary for and incidental to the implementation, administration, and enforcement of this Act (including, but not limited to, sections 1004(d)(2), 1006(e), 4107, 4110, 4111, 4112, 4117, 5006, 8103, and title VII) and subsections (b), (c), (d), (j), and (*l*) of section 1321 of this title with respect to prevention, removal, and enforcement related to oil discharges, provided that—

(A) not more than $25,000,000 in each fiscal year shall be available to the Secretary for operating expenses incurred by the Coast Guard;

(B) not more than $30,000,000 each year through the end of fiscal year 1992 shall be available to establish the National Response System under section 1321(j) of this title, including the purchase and prepositioning of oil spill removal equipment; and

(C) not more than $27,250,000 in each fiscal year shall be available to carry out subchapter IV of this chapter; and

(6) the making of loans pursuant to the program established under section 2713(f) of this title.

(b) Defense to liability for Fund

The Fund shall not be available to pay any claim for removal costs or damages to a particular claimant, to the extent that the incident, removal costs, or damages are caused by the gross negligence or willful misconduct of that claimant.

(c) Obligation of Fund by Federal officials

The President may promulgate regulations designating one or more Federal officials who may obligate money in accordance with subsection (a) of this section.

(d) Access to Fund by State officials

(1) Immediate removal

In accordance with regulations promulgated under this section, the President, upon the request of the Governor of a State or pursuant to an agreement with a State under paragraph (2), may obligate the Fund for payment in an amount not to exceed $250,000 for removal costs consistent with the National Contin-

gency Plan required for the immediate removal of a discharge, or the mitigation or prevention of a substantial threat of a discharge, of oil.

(2) Agreements

(A) In general

The President shall enter into an agreement with the Governor of any interested State to establish procedures under which the Governor or a designated State official may receive payments from the Fund for removal costs pursuant to paragraph (1).

(B) Terms

Agreements under this paragraph—

(i) may include such terms and conditions as may be agreed upon by the President and the Governor of a State;

(ii) shall provide for political subdivisions of the State to receive payments for reasonable removal costs; and

(iii) may authorize advance payments from the Fund to facilitate removal efforts.

(e) Regulations

The President shall—

(1) not later than 6 months after August 18, 1990, publish proposed regulations detailing the manner in which the authority to obligate the Fund and to enter into agreements under this subsection shall be exercised; and

(2) not later than 3 months after the close of the comment period for such proposed regulations, promulgate final regulations for that purpose.

(f) Rights of subrogation

Payment of any claim or obligation by the Fund under this Act shall be subject to the United States Government acquiring by subrogation all rights of the claimant or State to recover from the responsible party.

(g) Audits

The Comptroller General shall audit all payments, obligations, reimbursements, and other uses of the Fund, to assure that the Fund is being properly administered and that claims are being appropriately and expeditiously considered. The Comptroller General shall submit to the Congress an interim report one year after August 18, 1990. The Comptroller General shall thereafter audit the Fund as is appropriate. Each Federal agency shall cooperate with the Comptroller General in carrying out this subsection.

(h) Period of limitations for claims

(1) Removal costs

No claim may be presented under this subchapter for recovery of removal costs for an incident unless the claim is presented within 6 years after the date of completion of all removal actions for that incident.

(2) Damages

No claim may be presented under this section for recovery of damages unless the claim is presented within 3 years after the date on which the injury and its connection with the discharge in question were reasonably discoverable with the exercise of due care, or in the case of natural resource damages under section 2702(b)(2)(A) of this title, if later, the date of completion of the natural resources damage assessment under section 2706(e) of this title.

(3) Minors and incompetents

The time limitations contained in this subsection shall not begin to run—

(A) against a minor until the earlier of the date when such minor reaches 18 years of age or the date on which a legal representative is duly appointed for the minor, or

(B) against an incompetent person until the earlier of the date on which such incompetent's incompetency ends or the date on which a legal representative is duly appointed for the incompetent.

(i) Limitation on payment for same costs

In any case in which the President has paid an amount from the Fund for any removal costs or damages specified under subsection (a) of this section, no other claim may be paid from the Fund for the same removal costs or damages.

(j) Obligation in accordance with plan

(1) In general

Except as provided in paragraph (2), amounts may be obligated from the Fund for the restoration, rehabilitation, replacement, or acquisition of natural resources only in accordance with a plan adopted under section 2706(c) of this title.

(2) Exception

Paragraph (1) shall not apply in a situation requiring action to avoid irreversible loss of natural resources or to prevent or reduce any continuing danger to natural resources or similar need for emergency action.

(k) Preference for private persons in area affected by discharge

(1) In general

In the expenditure of Federal funds for removal of oil, including for distribution of supplies, construction, and other reasonable and appropriate activities, under a contract or agreement with a private person, preference shall be given, to the extent feasible and practicable, to private persons residing or doing business primarily in the area affected by the discharge of oil.

(2) Limitation

This subsection shall not be considered to restrict the use of Department of Defense resources.

(Pub. L. 101–380, title I, § 1012, Aug. 18, 1990, 104 Stat. 498; Pub. L. 108–293, title VII, § 708(b), Aug. 9, 2004, 118 Stat. 1077.)

REFERENCES IN TEXT

This Act, referred to in subsecs. (a)(5) and (f), is Pub. L. 101–380, Aug. 18, 1990, 104 Stat. 484, known as the Oil Pollution Act of 1990, which is classified principally to this chapter. Sections 1004(d)(2) and 1006(e) are classified to sections 2704(d)(2) and 2706(e), respectively, of this title. Section 4107 amended section 1223 of this title and enacted provisions set out as a note under section 1223 of this title. Sections 4110 and 4111 enacted provisions set out as a note and formerly set out as a

note under section 3703 of Title 46, Shipping. Section 4112 is not classified to the Code. Section 4117 enacted provisions set out as a note under section 1295 of the former Appendix to Title 46. Section 5006 is classified to section 2736 of this title. Section 8103 enacted provisions formerly set out as a note under section 1651 of Title 43, Public Lands. Title VII is classified to subchapter IV of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

AMENDMENTS

2004—Subsec. (a)(6). Pub. L. 108–293 added par. (6).

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

DELEGATION OF FUNCTIONS

Functions of President under subsecs. (a)(1), (3), (4), (d), and (e) of this section delegated to Secretary of Department in which Coast Guard is operating by section 7(a)(1)(A), (c)(1), (3) of Ex. Ord. No. 12777, Oct. 18, 1991, 56 F.R. 54766, 54767, set out as a note under section 1321 of this title.

Functions of President under subsec. (a)(2) of this section delegated to Federal trustees designated in National Contingency Plan by section 7(a)(2) of Ex. Ord. No. 12777.

Functions of President under subsecs. (a)(5) and (c) of this section delegated to each head of departments and agencies having responsibility for implementation, administration, and enforcement of the Oil Pollution Act of 1990 (Pub. L. 101–380, see Tables for classification) and section 1321(b), (c), (d), (j), (*l*) of this title by section 7(a)(3), (b) of Ex. Ord. No. 12777.

Memorandum of the President of the United States, Aug. 24, 1990, 55 F.R. 35291, which delegated to the Secretary of the Department in which the Coast Guard is operating authority to make available from the Oil Spill Liability Trust Fund not to exceed $50,000,000 in any fiscal year to remove discharged oil or hazardous substances from navigable waters, was revoked by Ex. Ord. No. 12777, § 8(i), Oct. 18, 1991, 56 F.R. 54769, set out as a note under section 1321 of this title.

§ 2713. Claims procedure

(a) Presentation

Except as provided in subsection (b) of this section, all claims for removal costs or damages shall be presented first to the responsible party or guarantor of the source designated under section 2714(a) of this title.

(b) Presentation to Fund

(1) In general

Claims for removal costs or damages may be presented first to the Fund—

(A) if the President has advertised or otherwise notified claimants in accordance with section 2714(c) of this title;

(B) by a responsible party who may assert a claim under section 2708 of this title;

(C) by the Governor of a State for removal costs incurred by that State; or

(D) by a United States claimant in a case where a foreign offshore unit has discharged oil causing damage for which the Fund is liable under section 2712(a) of this title.

(2) Limitation on presenting claim

No claim of a person against the Fund may be approved or certified during the pendency of an action by the person in court to recover costs which are the subject of the claim.

(c) Election

If a claim is presented in accordance with subsection (a) of this section and—

(1) each person to whom the claim is presented denies all liability for the claim, or

(2) the claim is not settled by any person by payment within 90 days after the date upon which (A) the claim was presented, or (B) advertising was begun pursuant to section 2714(b) of this title, whichever is later,

the claimant may elect to commence an action in court against the responsible party or guarantor or to present the claim to the Fund.

(d) Uncompensated damages

If a claim is presented in accordance with this section, including a claim for interim, short-term damages representing less than the full amount of damages to which the claimant ultimately may be entitled, and full and adequate compensation is unavailable, a claim for the uncompensated damages and removal costs may be presented to the Fund.

(e) Procedure for claims against Fund

The President shall promulgate, and may from time to time amend, regulations for the presentation, filing, processing, settlement, and adjudication of claims under this Act against the Fund.

(f) Loan program

(1) In general

The President shall establish a loan program under the Fund to provide interim assistance to fishermen and aquaculture producer claimants during the claims procedure.

(2) Eligibility for loan

A loan may be made under paragraph (1) only to a fisherman or aquaculture producer that—

(A) has incurred damages for which claims are authorized under section 2702 of this title;

(B) has made a claim pursuant to this section that is pending; and

(C) has not received an interim payment under section 2705(a) of this title for the amount of the claim, or part thereof, that is pending.

(3) Terms and conditions of loans

A loan awarded under paragraph (1)—

(A) shall have flexible terms, as determined by the President;

(B) shall be for a period ending on the later of—

(i) the date that is 5 years after the date on which the loan is made; or

(ii) the date on which the fisherman or aquaculture producer receives payment for the claim to which the loan relates under the procedure established by subsections (a) through (e) of this section; and

(C) shall be at a low interest rate, as determined by the President.

(Pub. L. 101–380, title I, § 1013, Aug. 18, 1990, 104 Stat. 501; Pub. L. 104–324, title XI, § 1142(b), Oct. 19, 1996, 110 Stat. 3991; Pub. L. 108–293, title VII, § 708(a), Aug. 9, 2004, 118 Stat. 1077.)

REFERENCES IN TEXT

This Act, referred to in subsec. (e), is Pub. L. 101–380, Aug. 18, 1990, 104 Stat. 484, as amended, known as the Oil Pollution Act of 1990, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

AMENDMENTS

2004—Subsec. (f). Pub. L. 108–293 added subsec.(f).

1996—Subsec. (d). Pub. L. 104–324 substituted ''section, including a claim for interim, short-term damages representing less than the full amount of damages to which the claimant ultimately may be entitled,'' for ''section''.

DELEGATION OF FUNCTIONS

Functions of President under subsec. (e) of this section delegated to Secretary of Department in which Coast Guard is operating by section 7(c)(2) of Ex. Ord. No. 12777, Oct. 18, 1991, 56 F.R. 54767, set out as a note under section 1321 of this title.

§ 2714. Designation of source and advertisement

(a) Designation of source and notification

When the President receives information of an incident, the President shall, where possible and appropriate, designate the source or sources of the discharge or threat. If a designated source is a vessel or a facility, the President shall immediately notify the responsible party and the guarantor, if known, of that designation.

(b) Advertisement by responsible party or guarantor

(1) If a responsible party or guarantor fails to inform the President, within 5 days after receiving notification of a designation under subsection (a) of this section, of the party's or the guarantor's denial of the designation, such party or guarantor shall advertise the designation and the procedures by which claims may be presented, in accordance with regulations promulgated by the President. Advertisement under the preceding sentence shall begin no later than 15 days after the date of the designation made under subsection (a) of this section. If advertisement is not otherwise made in accordance with this subsection, the President shall promptly and at the expense of the responsible party or the guarantor involved, advertise the designation and the procedures by which claims may be presented to the responsible party or guarantor. Advertisement under this subsection shall continue for a period of no less than 30 days.

(2) An advertisement under paragraph (1) shall state that a claimant may present a claim for interim, short-term damages representing less than the full amount of damages to which the claimant ultimately may be entitled and that payment of such a claim shall not preclude recovery for damages not reflected in the paid or settled partial claim.

(c) Advertisement by President

If—

(1) the responsible party and the guarantor both deny a designation within 5 days after receiving notification of a designation under subsection (a) of this section,

(2) the source of the discharge or threat was a public vessel, or

(3) the President is unable to designate the source or sources of the discharge or threat under subsection (a) of this section,

the President shall advertise or otherwise notify potential claimants of the procedures by which claims may be presented to the Fund.

(Pub. L. 101–380, title I, § 1014, Aug. 18, 1990, 104 Stat. 501; Pub. L. 104–324, title XI, § 1142(c), Oct. 19, 1996, 110 Stat. 3991.)

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–324 designated existing provisions as par. (1) and added par. (2).

DELEGATION OF FUNCTIONS

Functions of President under this section delegated to Secretary of Department in which Coast Guard is operating by section 7(d)(2) of Ex. Ord. No. 12777, Oct. 18, 1991, 56 F.R. 54768, set out as a note under section 1321 of this title.

§ 2715. Subrogation

(a) In general

Any person, including the Fund, who pays compensation pursuant to this Act to any claimant for removal costs or damages shall be subrogated to all rights, claims, and causes of action that the claimant has under any other law.

(b) Interim damages

(1) In general

If a responsible party, a guarantor, or the Fund has made payment to a claimant for interim, short-term damages representing less than the full amount of damages to which the claimant ultimately may be entitled, subrogation under subsection (a) of this section shall apply only with respect to the portion of the claim reflected in the paid interim claim.

(2) Final damages

Payment of such a claim shall not foreclose a claimant's right to recovery of all damages to which the claimant otherwise is entitled under this Act or under any other law.

(c) Actions on behalf of Fund

At the request of the Secretary, the Attorney General shall commence an action on behalf of the Fund to recover any compensation paid by the Fund to any claimant pursuant to this Act, and all costs incurred by the Fund by reason of the claim, including interest (including prejudgment interest), administrative and adjudicative costs, and attorney's fees. Such an action may be commenced against any responsible party or (subject to section 2716 of this title) guarantor, or against any other person who is liable, pursuant to any law, to the compensated claimant or to the Fund, for the cost or damages for which the compensation was paid. Such an action shall be commenced against the responsible foreign government or other responsible party to recover any removal costs or damages paid from the Fund as the result of the discharge, or substantial threat of discharge, of oil from a foreign offshore unit.

(d) Authority to settle

The head of any department or agency responsible for recovering amounts for which a person is liable under this subchapter may consider, compromise, and settle a claim for such amounts, including such costs paid from the Fund, if the claim has not been referred to the Attorney General. In any case in which the total amount to be recovered may exceed $500,000 (excluding interest), a claim may be compromised and settled under the preceding sentence only with the prior written approval of the Attorney General.

(Pub. L. 101–380, title I, § 1015, Aug. 18, 1990, 104 Stat. 502; Pub. L. 104–324, title XI, § 1142(d), Oct. 19, 1996, 110 Stat. 3991; Pub. L. 108–293, title VII, § 706, Aug. 9, 2004, 118 Stat. 1076.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 101–380, Aug. 18, 1990, 104 Stat. 484, as amended, known as the Oil Pollution Act of 1990, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

AMENDMENTS

2004—Subsec. (d). Pub. L. 108–293 added subsec. (d).

1996—Subsecs. (b), (c). Pub. L. 104–324 added subsec. (b) and redesignated former subsec. (b) as (c).

§ 2716. Financial responsibility

(a) Requirement

The responsible party for—

(1) any vessel over 300 gross tons (except a non-self-propelled vessel that does not carry oil as cargo or fuel) using any place subject to the jurisdiction of the United States; or

(2) any vessel using the waters of the exclusive economic zone to transship or lighter oil destined for a place subject to the jurisdiction of the United States;

shall establish and maintain, in accordance with regulations promulgated by the Secretary, evidence of financial responsibility sufficient to meet the maximum amount of liability to which the responsible party could be subjected under section 2704(a) or (d) of this title, in a case where the responsible party would be entitled to limit liability under that section. If the responsible party owns or operates more than one vessel, evidence of financial responsibility need be established only to meet the amount of the maximum liability applicable to the vessel having the greatest maximum liability.

(b) Sanctions

(1) Withholding clearance

The Secretary of the Treasury shall withhold or revoke the clearance required by section 60105 of title 46 of any vessel subject to this section that does not have the evidence of financial responsibility required for the vessel under this section.

(2) Denying entry to or detaining vessels

The Secretary may—

(A) deny entry to any vessel to any place in the United States, or to the navigable waters, or

(B) detain at the place,

any vessel that, upon request, does not produce the evidence of financial responsibility required for the vessel under this section.

(3) Seizure of vessel

Any vessel subject to the requirements of this section which is found in the navigable waters without the necessary evidence of financial responsibility for the vessel shall be subject to seizure by and forfeiture to the United States.

(c) Offshore facilities

(1) In general

(A) Evidence of financial responsibility required

Except as provided in paragraph (2), a responsible party with respect to an offshore facility that—

(i)(I) is located seaward of the line of ordinary low water along that portion of the coast that is in direct contact with the open sea and the line marking the seaward limit of inland waters; or

(II) is located in coastal inland waters, such as bays or estuaries, seaward of the line of ordinary low water along that portion of the coast that is not in direct contact with the open sea;

(ii) is used for exploring for, drilling for, producing, or transporting oil from facilities engaged in oil exploration, drilling, or production; and

(iii) has a worst-case oil spill discharge potential of more than 1,000 barrels of oil (or a lesser amount if the President determines that the risks posed by such facility justify it),

shall establish and maintain evidence of financial responsibility in the amount required under subparagraph (B) or (C), as applicable.

(B) Amount required generally

Except as provided in subparagraph (C), the amount of financial responsibility for offshore facilities that meet the criteria of subparagraph (A) is—

(i) $35,000,000 for an offshore facility located seaward of the seaward boundary of a State; or

(ii) $10,000,000 for an offshore facility located landward of the seaward boundary of a State.

(C) Greater amount

If the President determines that an amount of financial responsibility for a responsible party greater than the amount required by subparagraph (B) is justified based on the relative operational, environmental, human health, and other risks posed by the quantity or quality of oil that is explored for, drilled for, produced, or transported by the responsible party, the evidence of financial responsibility required shall be for an amount determined by the President not exceeding $150,000,000.

(D) Multiple facilities

In a case in which a person is a responsible party for more than one facility subject to

this subsection, evidence of financial responsibility need be established only to meet the amount applicable to the facility having the greatest financial responsibility requirement under this subsection.

(E) Definition

For the purpose of this paragraph, the seaward boundary of a State shall be determined in accordance with section 1301(b) of title 43.

(2) Deepwater ports

Each responsible party with respect to a deepwater port shall establish and maintain evidence of financial responsibility sufficient to meet the maximum amount of liability to which the responsible party could be subjected under section 2704(a) of this title in a case where the responsible party would be entitled to limit liability under that section. If the Secretary exercises the authority under section 2704(d)(2) of this title to lower the limit of liability for deepwater ports, the responsible party shall establish and maintain evidence of financial responsibility sufficient to meet the maximum amount of liability so established. In a case in which a person is the responsible party for more than one deepwater port, evidence of financial responsibility need be established only to meet the maximum liability applicable to the deepwater port having the greatest maximum liability.

(e)[1] Methods of financial responsibility

Financial responsibility under this section may be established by any one, or by any combination, of the following methods which the Secretary (in the case of a vessel) or the President (in the case of a facility) determines to be acceptable: evidence of insurance, surety bond, guarantee, letter of credit, qualification as a self-insurer, or other evidence of financial responsibility. Any bond filed shall be issued by a bonding company authorized to do business in the United States. In promulgating requirements under this section, the Secretary or the President, as appropriate, may specify policy or other contractual terms, conditions, or defenses which are necessary, or which are unacceptable, in establishing evidence of financial responsibility to effectuate the purposes of this Act.

(f) Claims against guarantor

(1) In general

Subject to paragraph (2), a claim for which liability may be established under section 2702 of this title may be asserted directly against any guarantor providing evidence of financial responsibility for a responsible party liable under that section for removal costs and damages to which the claim pertains. In defending against such a claim, the guarantor may invoke—

(A) all rights and defenses which would be available to the responsible party under this Act;

(B) any defense authorized under subsection (e) of this section; and

(C) the defense that the incident was caused by the willful misconduct of the responsible party.

The guarantor may not invoke any other defense that might be available in proceedings brought by the responsible party against the guarantor.

(2) Further requirement

A claim may be asserted pursuant to paragraph (1) directly against a guarantor providing evidence of financial responsibility under subsection (c)(1) of this section with respect to an offshore facility only if—

(A) the responsible party for whom evidence of financial responsibility has been provided has denied or failed to pay a claim under this Act on the basis of being insolvent, as defined under section 101(32) of title 11, and applying generally accepted accounting principles;

(B) the responsible party for whom evidence of financial responsibility has been provided has filed a petition for bankruptcy under title 11; or

(C) the claim is asserted by the United States for removal costs and damages or for compensation paid by the Fund under this Act, including costs incurred by the Fund for processing compensation claims.

(3) Rulemaking authority

Not later than 1 year after October 19, 1996, the President shall promulgate regulations to establish a process for implementing paragraph (2) in a manner that will allow for the orderly and expeditious presentation and resolution of claims and effectuate the purposes of this Act.

(g) Limitation on guarantor's liability

Nothing in this Act shall impose liability with respect to an incident on any guarantor for damages or removal costs which exceed, in the aggregate, the amount of financial responsibility which that guarantor has provided for a responsible party pursuant to this section. The total liability of the guarantor on direct action for claims brought under this Act with respect to an incident shall be limited to that amount.

(h) Continuation of regulations

Any regulation relating to financial responsibility, which has been issued pursuant to any provision of law repealed or superseded by this Act, and which is in effect on the date immediately preceding the effective date of this Act, is deemed and shall be construed to be a regulation issued pursuant to this section. Such a regulation shall remain in full force and effect unless and until superseded by a new regulation issued under this section.

(i) Unified certificate

The Secretary may issue a single unified certificate of financial responsibility for purposes of this Act and any other law.

(Pub. L. 101–380, title I, § 1016, Aug. 18, 1990, 104 Stat. 502; Pub. L. 104–55, § 2(d)(2), Nov. 20, 1995, 109 Stat. 547; Pub. L. 104–324, title XI, § 1125(a), Oct. 19, 1996, 110 Stat. 3981.)

REFERENCES IN TEXT

This Act, referred to in subsecs. (e), (f), (g), (h), and (i), is Pub. L. 101–380, Aug. 18, 1990, 104 Stat. 484, as

[1] So in original. No subsec. (d) has been enacted.

amended, known as the Oil Pollution Act of 1990, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

The effective date of this Act, referred to in subsec. (h), is the effective date of Pub. L. 101–380 which is applicable to incidents occurring after Aug. 18, 1990, see section 1020 of Pub. L. 101–380, set out as an Effective Date note under section 2701 of this title.

CODIFICATION

In subsec. (b)(1), ''section 60105 of title 46'' substituted for ''section 4197 of the Revised Statutes of the United States'' on authority of Pub. L. 109–304, § 18(c), Oct. 6, 2006, 120 Stat. 1709, which Act enacted section 60105 of Title 46, Shipping.

AMENDMENTS

1996—Subsec. (c)(1). Pub. L. 104–324, § 1125(a)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''Except as provided in paragraph (2), each responsible party with respect to an offshore facility shall establish and maintain evidence of financial responsibility of $150,000,000 to meet the amount of liability to which the responsible party could be subjected under section 2704(a) of this title in a case in which the responsible party would be entitled to limit liability under that section. In a case in which a person is the responsible party for more than one facility subject to this subsection, evidence of financial responsibility need be established only to meet the maximum liability applicable to the facility having the greatest maximum liability.''

Subsec. (f). Pub. L. 104–324, § 1125(a)(2), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''Any claim for which liability may be established under section 2702 of this title may be asserted directly against any guarantor providing evidence of financial responsibility for a responsible party liable under that section for removal costs and damages to which the claim pertains. In defending against such a claim, the guarantor may invoke (1) all rights and defenses which would be available to the responsible party under this Act, (2) any defense authorized under subsection (e) of this section, and (3) the defense that the incident was caused by the willful misconduct of the responsible party. The guarantor may not invoke any other defense that might be available in proceedings brought by the responsible party against the guarantor.''

Subsec. (g). Pub. L. 104–324, § 1125(a)(3), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''Nothing in this Act shall impose liability with respect to an incident on any guarantor for damages or removal costs which exceed, in the aggregate, the amount of financial responsibility required under this Act which that guarantor has provided for a responsible party.''

1995—Subsec. (a). Pub. L. 104–55 substituted ''the responsible party could be subjected under section 2704(a) or (d) of this title'' for '', in the case of a tank vessel, the responsible party could be subject under section 2704(a)(1) or (d) of this title, or to which, in the case of any other vessel, the responsible party could be subjected under section 2704(a)(2) or (d) of this title''.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1125(b) of Pub. L. 104–324 provided that: ''The amendment made by subsection (a)(2) [amending this section] shall not apply to any final rule issued before the date of enactment of this section [Oct. 19, 1996].''

DELEGATION OF FUNCTIONS

Specific functions of President under subsec. (e) of this section delegated to Secretary of the Interior and Secretary of the Department in which the Coast Guard is operating by section 5(a) of Ex. Ord. No. 12777, Oct. 18, 1991, 56 F.R. 54764, as amended, set out as a note under section 1321 of this title.

§ 2716a. Financial responsibility civil penalties

(a) Administrative

Any person who, after notice and an opportunity for a hearing, is found to have failed to comply with the requirements of section 2716 of this title or the regulations issued under that section, or with a denial or detention order issued under subsection (c)(2) of that section, shall be liable to the United States for a civil penalty, not to exceed $25,000 per day of violation. The amount of the civil penalty shall be assessed by the President by written notice. In determining the amount of the penalty, the President shall take into account the nature, circumstances, extent, and gravity of the violation, the degree of culpability, any history of prior violation, ability to pay, and such other matters as justice may require. The President may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which had been imposed under this paragraph. If any person fails to pay an assessed civil penalty after it has become final, the President may refer the matter to the Attorney General for collection.

(b) Judicial

In addition to, or in lieu of, assessing a penalty under subsection (a) of this section, the President may request the Attorney General to secure such relief as necessary to compel compliance with this[1] section 2716 of this title, including a judicial order terminating operations. The district courts of the United States shall have jurisdiction to grant any relief as the public interest and the equities of the case may require.

(Pub. L. 101–380, title IV, § 4303, Aug. 18, 1990, 104 Stat. 539.)

CODIFICATION

Section was not enacted as part of title I of Pub. L. 101–380 which comprises this subchapter.

DELEGATION OF FUNCTIONS

Specific functions of President under this section delegated to Secretary of Department in which Coast Guard is operating and Secretary of the Interior by section 5(b) of Ex. Ord. No. 12777, Oct. 18, 1991, 56 F.R. 54765, as amended, set out as a note under section 1321 of this title.

§ 2717. Litigation, jurisdiction, and venue

(a) Review of regulations

Review of any regulation promulgated under this Act may be had upon application by any interested person only in the Circuit Court of Appeals of the United States for the District of Columbia. Any such application shall be made within 90 days from the date of promulgation of such regulations. Any matter with respect to which review could have been obtained under this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement or to obtain damages or recovery of response costs.

(b) Jurisdiction

Except as provided in subsections (a) and (c) of this section, the United States district courts

[1] So in original. The word ''this'' probably should not appear.

shall have exclusive original jurisdiction over all controversies arising under this Act, without regard to the citizenship of the parties or the amount in controversy. Venue shall lie in any district in which the discharge or injury or damages occurred, or in which the defendant resides, may be found, has its principal office, or has appointed an agent for service of process. For the purposes of this section, the Fund shall reside in the District of Columbia.

(c) State court jurisdiction

A State trial court of competent jurisdiction over claims for removal costs or damages, as defined under this Act, may consider claims under this Act or State law and any final judgment of such court (when no longer subject to ordinary forms of review) shall be recognized, valid, and enforceable for all purposes of this Act.

(d) Assessment and collection of tax

The provisions of subsections (a), (b), and (c) of this section shall not apply to any controversy or other matter resulting from the assessment or collection of any tax, or to the review of any regulation promulgated under title 26.

(e) Savings provision

Nothing in this subchapter shall apply to any cause of action or right of recovery arising from any incident which occurred prior to August 18, 1990. Such claims shall be adjudicated pursuant to the law applicable on the date of the incident.

(f) Period of limitations

(1) Damages

Except as provided in paragraphs (3) and (4), an action for damages under this Act shall be barred unless the action is brought within 3 years after—

(A) the date on which the loss and the connection of the loss with the discharge in question are reasonably discoverable with the exercise of due care, or

(B) in the case of natural resource damages under section 2702(b)(2)(A) of this title, the date of completion of the natural resources damage assessment under section 2706(c) of this title.

(2) Removal costs

An action for recovery of removal costs referred to in section 2702(b)(1) of this title must be commenced within 3 years after completion of the removal action. In any such action described in this subsection, the court shall enter a declaratory judgment on liability for removal costs or damages that will be binding on any subsequent action or actions to recover further removal costs or damages. Except as otherwise provided in this paragraph, an action may be commenced under this subchapter for recovery of removal costs at any time after such costs have been incurred.

(3) Contribution

No action for contribution for any removal costs or damages may be commenced more than 3 years after—

(A) the date of judgment in any action under this Act for recovery of such costs or damages, or

(B) the date of entry of a judicially approved settlement with respect to such costs or damages.

(4) Subrogation

No action based on rights subrogated pursuant to this Act by reason of payment of a claim may be commenced under this Act more than 3 years after the date of payment of such claim.

(5) Commencement

The time limitations contained herein shall not begin to run—

(A) against a minor until the earlier of the date when such minor reaches 18 years of age or the date on which a legal representative is duly appointed for such minor, or

(B) against an incompetent person until the earlier of the date on which such incompetent's incompetency ends or the date on which a legal representative is duly appointed for such incompetent.

(Pub. L. 101–380, title I, § 1017, Aug. 18, 1990, 104 Stat. 504.)

REFERENCES IN TEXT

This Act, referred to in subsecs. (a), (b), (c), and (f), is Pub. L. 101–380, Aug. 18, 1990, 104 Stat. 484, as amended, known as the Oil Pollution Act of 1990, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

§ 2718. Relationship to other law

(a) Preservation of State authorities; Solid Waste Disposal Act

Nothing in this Act or the Act of March 3, 1851 shall—

(1) affect, or be construed or interpreted as preempting, the authority of any State or political subdivision thereof from imposing any additional liability or requirements with respect to—

(A) the discharge of oil or other pollution by oil within such State; or

(B) any removal activities in connection with such a discharge; or

(2) affect, or be construed or interpreted to affect or modify in any way the obligations or liabilities of any person under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) or State law, including common law.

(b) Preservation of State funds

Nothing in this Act or in section 9509 of title 26 shall in any way affect, or be construed to affect, the authority of any State—

(1) to establish, or to continue in effect, a fund any purpose of which is to pay for costs or damages arising out of, or directly resulting from, oil pollution or the substantial threat of oil pollution; or

(2) to require any person to contribute to such a fund.

(c) Additional requirements and liabilities; penalties

Nothing in this Act, the Act of March 3, 1851 (46 U.S.C. 183 et seq.),[1] or section 9509 of title 26,

[1] See References in Text note below.

shall in any way affect, or be construed to affect, the authority of the United States or any State or political subdivision thereof—

(1) to impose additional liability or additional requirements; or

(2) to impose, or to determine the amount of, any fine or penalty (whether criminal or civil in nature) for any violation of law;

relating to the discharge, or substantial threat of a discharge, of oil.

(d) Federal employee liability

For purposes of section 2679(b)(2)(B) of title 28, nothing in this Act shall be construed to authorize or create a cause of action against a Federal officer or employee in the officer's or employee's personal or individual capacity for any act or omission while acting within the scope of the officer's or employee's office or employment.

(Pub. L. 101–380, title I, § 1018, Aug. 18, 1990, 104 Stat. 505.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 101–380, Aug. 18, 1990, 104 Stat. 484, as amended, known as the Oil Pollution Act of 1990, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

Act of March 3, 1851, referred to in subsecs. (a) and (c), is act Mar. 3, 1851, ch. 43, 9 Stat. 635, which was incorporated into the Revised Statutes as R.S. §§ 4282, 4283, 4284 to 4287 and 4289, and was classified to sections 182, 183, and 184 to 188 of Title 46, Appendix, Shipping, prior to being repealed and restated in chapter 305 of Title 46, Shipping, by Pub. L. 109–304, §§ 6(c), 19, Oct. 6, 2006, 120 Stat. 1509, 1710. For disposition of sections of the former Appendix to Title 46, see Disposition Table preceding section 101 of Title 46.

The Solid Waste Disposal Act, referred to in subsec. (a)(2), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§ 6901 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of Title 42 and Tables.

REPORT ON VESSEL SAFETY AND ABILITY TO MEET LEGAL OBLIGATIONS

Pub. L. 102–241, § 32, Dec. 19, 1991, 105 Stat. 2222, provided that: "Not later than one year after the date of enactment of this Act [Dec. 19, 1991], the Secretary of Transportation shall report to Congress on the effect of section 1018 of the Oil Pollution Act of 1990 (Public Law 101–380; 104 Stat. 484) [33 U.S.C. 2718] on the safety of vessels being used to transport oil and the capability of owners and operators to meet their legal obligations in the event of an oil spill."

§ 2719. State financial responsibility

A State may enforce, on the navigable waters of the State, the requirements for evidence of financial responsibility under section 2716 of this title.

(Pub. L. 101–380, title I, § 1019, Aug. 18, 1990, 104 Stat. 506.)

§ 2720. Differentiation among fats, oils, and greases

(a) In general

Except as provided in subsection (c) of this section, in issuing or enforcing any regulation or establishing any interpretation or guideline relating to the transportation, storage, discharge, release, emission, or disposal of a fat, oil, or grease under any Federal law, the head of that Federal agency shall—

(1) differentiate between and establish separate classes for—

(A) animal fats and oils and greases, and fish and marine mammal oils, within the meaning of paragraph (2) of section 61(a) of title 13, and oils of vegetable origin, including oils from the seeds, nuts, and kernels referred to in paragraph (1)(A) of that section; and

(B) other oils and greases, including petroleum; and

(2) apply standards to different classes of fats and oils based on considerations in subsection (b) of this section.

(b) Considerations

In differentiating between the class of fats, oils, and greases described in subsection (a)(1)(A) of this section and the class of oils and greases described in subsection (a)(1)(B) of this section, the head of the Federal agency shall consider differences in the physical, chemical, biological, and other properties, and in the environmental effects, of the classes.

(c) Exception

The requirements of this Act shall not apply to the Food and Drug Administration and the Food Safety and Inspection Service.

(Pub. L. 104–55, § 2, Nov. 20, 1995, 109 Stat. 546.)

REFERENCES IN TEXT

This Act, referred to in subsec. (c), is Pub. L. 104–55, Nov. 20, 1995, 109 Stat. 546, which enacted this section and amended sections 2704 and 2716 of this title. For complete classification of this Act to the Code, see Short Title of 1995 Amendment note set out under section 2701 of this title and Tables.

CODIFICATION

Section was enacted as part of the Edible Oil Regulatory Reform Act, and not as part of title I of the Oil Pollution Act of 1990 which comprises this subchapter.

Section is comprised of section 2 of Pub. L. 104–55. Subsec. (d) of section 2 of Pub. L. 104–55 amended sections 2704 and 2716 of this title.

REGULATIONS

Pub. L. 105–277, div. A, § 101(g) [title III, § 343], Oct. 21, 1998, 112 Stat. 2681–439, 2681–473, provided that:

"(a) None of the funds made available by this Act or subsequent Acts may be used by the Coast Guard to issue, implement, or enforce a regulation or to establish an interpretation or guideline under the Edible Oil Regulatory Reform Act (Public Law 104–55) [see Short Title of 1995 Amendment note set out under section 2701 of this title], or the amendments made by that Act, that does not recognize and provide for, with respect to fats, oils, and greases (as described in that Act, or the amendments made by that Act) differences in—

"(1) physical, chemical, biological and other relevant properties; and

"(2) environmental effects.

"(b) Not later than March 31, 1999, the Secretary of Transportation shall issue regulations amending 33 CFR 154 to comply with the requirements of Public Law 104–55."

[For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities

and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.]

Pub. L. 105–276, title III, Oct. 21, 1998, 112 Stat. 2499, provided that: ''Not later than March 31, 1999, the Administrator of the Environmental Protection Agency shall issue regulations amending 40 C.F.R. 112 to comply with the requirements of the Edible Oil Regulatory Reform Act (Public Law 104–55) [see Short Title of 1995 Amendment note set out under section 2701 of this title]. Such regulations shall differentiate between and establish separate classes for animal fats and oils and greases, and fish and marine mammal oils (as described in that Act), and other oils and greases, and shall apply standards to such different classes of fats and oils based on differences in the physical, chemical, biological, and other properties, and in the environmental effects, of the classes. None of the funds made available by this Act or in subsequent Acts may be used by the Environmental Protection Agency to issue or to establish an interpretation or guidance relating to fats, oils, and greases (as described in Public Law 104–55) that does not comply with the requirements of the Edible Oil Regulatory Reform Act.''

SENSE OF CONGRESS ON IMPLEMENTATION OF REGULATIONS REGARDING ANIMAL FATS AND VEGETABLE OILS

Pub. L. 104–324, title XI, § 1130, Oct. 19, 1996, 110 Stat. 3985, provided that:

''(a) SENSE OF CONGRESS.—It is the sense of Congress that, in an effort to reduce unnecessary regulatory burdens, a regulation issued or enforced and an interpretation or guideline established pursuant to Public Law 104–55 [see Short Title of 1995 Amendment note set out under section 2701 of this title] should in any manner possible recognize and provide for the differences in the physical, chemical, biological, and other properties, and in the environmental effects, of the classes of fats, oils, and greases described under that law.

''(b) REPORT.—Within 60 days after the date of enactment of this section [Oct. 19, 1996] and on January 1 of each year thereafter, the Secretary of Transportation shall submit a report to Congress on the extent to which the implementation by the United States Coast Guard of regulations issued or enforced, or interpretations or guidelines established, pursuant to Public Law 104–55, carry out the intent of Congress and recognize and provide for the differences in the physical, chemical, biological, and other properties, and in the environmental effects, of the classes of fats, oils, and greases described under that law.''

[For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.]

SUBCHAPTER II—PRINCE WILLIAM SOUND PROVISIONS

§ 2731. Oil Spill Recovery Institute

(a) Establishment of Institute

The Secretary of Commerce shall provide for the establishment of a Prince William Sound Oil Spill Recovery Institute (hereinafter in this section referred to as the ''Institute'') through the Prince William Sound Science and Technology Institute located in Cordova, Alaska.

(b) Functions

The Institute shall conduct research and carry out educational and demonstration projects designed to—

(1) identify and develop the best available techniques, equipment, and materials for dealing with oil spills in the arctic and subarctic marine environment; and

(2) complement Federal and State damage assessment efforts and determine, document, assess, and understand the long-range effects of Arctic or Subarctic oil spills on the natural resources of Prince William Sound and its adjacent waters (as generally depicted on the map entitled ''EXXON VALDEZ oil spill dated March 1990''), and the environment, the economy, and the lifestyle and well-being of the people who are dependent on them, except that the Institute shall not conduct studies or make recommendations on any matter which is not directly related to Arctic or Subarctic oil spills or the effects thereof.

(c) Advisory board

(1) In general

The policies of the Institute shall be determined by an advisory board, composed of 16 members appointed as follows:

(A) One representative appointed by each of the Commissioners of Fish and Game, Environmental Conservation, and Natural Resources of the State of Alaska, all of whom shall be State employees.

(B) One representative appointed by each of the Secretaries of Commerce and the Interior and the Commandant of the Coast Guard, who shall be Federal employees.

(C) Two representatives from the fishing industry appointed by the Governor of the State of Alaska from among residents of communities in Alaska that were affected by the EXXON VALDEZ oil spill, who shall serve terms of 2 years each. Interested organizations from within the fishing industry may submit the names of qualified individuals for consideration by the Governor.

(D) Two Alaska Natives who represent Native entities affected by the EXXON VALDEZ oil spill, at least one of whom represents an entity located in Prince William Sound, appointed by the Governor of Alaska from a list of 4 qualified individuals submitted by the Alaska Federation of Natives, who shall serve terms of 2 years each.

(E) Two representatives from the oil and gas industry to be appointed by the Governor of the State of Alaska who shall serve terms of 2 years each. Interested organizations from within the oil and gas industry may submit the names of qualified individuals for consideration by the Governor.

(F) Two at-large representatives from among residents of communities in Alaska that were affected by the EXXON VALDEZ oil spill who are knowledgeable about the marine environment and wildlife within Prince William Sound, and who shall serve terms of 2 years each, appointed by the remaining members of the Advisory Board. Interested parties may submit the names of qualified individuals for consideration by the Advisory Board.

(G) One nonvoting representative of the Institute of Marine Science.

(H) One nonvoting representative appointed by the Prince William Sound Science and Technology Institute.

(2) Chairman

The representative of the Secretary of Commerce shall serve as Chairman of the Advisory Board.

(3) Policies

Policies determined by the Advisory Board under this subsection shall include policies for the conduct and support, through contracts and grants awarded on a nationally competitive basis, of research, projects, and studies to be supported by the Institute in accordance with the purposes of this section.

(4) Scientific review

The Advisory Board may request a scientific review of the research program every five years by the National Academy of Sciences which shall perform the review, if requested, as part of its responsibilities under section 2761(b)(2) of this title.

(d) Scientific and technical committee

(1) In general

The Advisory Board shall establish a scientific and technical committee, composed of specialists in matters relating to oil spill containment and cleanup technology, arctic and subarctic marine ecology, and the living resources and socioeconomics of Prince William Sound and its adjacent waters, from the University of Alaska, the Institute of Marine Science, the Prince William Sound Science and Technology Institute, and elsewhere in the academic community.

(2) Functions

The Scientific and Technical Committee shall provide such advice to the Advisory Board as the Advisory Board shall request, including recommendations regarding the conduct and support of research, projects, and studies in accordance with the purposes of this section. The Advisory Board shall not request, and the Committee shall not provide, any advice which is not directly related to Arctic or Subarctic oil spills or the effects thereof.

(e) Director

The Institute shall be administered by a Director appointed by the Advisory Board. The Prince William Sound Science and Technology Institute and the Scientific and Technical Committee may each submit independent recommendations for the Advisory Board's consideration for appointment as Director. The Director may hire such staff and incur such expenses on behalf of the Institute as are authorized by the Advisory Board.

(f) Evaluation

The Secretary of Commerce may conduct an ongoing evaluation of the activities of the Institute to ensure that funds received by the Institute are used in a manner consistent with this section.

(g) Audit

The Comptroller General of the United States, and any of his or her duly authorized representatives, shall have access, for purposes of audit and examination, to any books, documents, papers, and records of the Institute and its administering agency that are pertinent to the funds received and expended by the Institute and its administering agency.

(h) Status of employees

Employees of the Institute shall not, by reason of such employment, be considered to be employees of the Federal Government for any purpose.

(i) Termination

The authorization in section 2736(b) of this title providing funding for the Institute shall terminate 1 year after the date on which the Secretary, in consultation with the Secretary of the Interior, determines that oil and gas exploration, development, and production in the State of Alaska have ceased.

(j) Use of funds

No funds made available to carry out this section may be used to initiate litigation. No funds made available to carry out this section may be used for the acquisition of real property (including buildings) or construction of any building. No more than 20 percent of funds made available to carry out this section may be used to lease necessary facilities and to administer the Institute. The Advisory Board may compensate its Federal representatives for their reasonable travel costs. None of the funds authorized by this section shall be used for any purpose other than the functions specified in subsection (b) of this section.

(k) Research

The Institute shall publish and make available to any person upon request the results of all research, educational, and demonstration projects conducted by the Institute. The Administrator shall provide a copy of all research, educational, and demonstration projects conducted by the Institute to the National Oceanic and Atmospheric Administration.

(*l*) "Prince William Sound and its adjacent waters" defined

In this section, the term ''Prince William Sound and its adjacent waters'' means such sound and waters as generally depicted on the map entitled ''EXXON VALDEZ oil spill dated March 1990''.

(Pub. L. 101–380, title V, § 5001, Aug. 18, 1990, 104 Stat. 542; Pub. L. 104–324, title XI, § 1102(a), Oct. 19, 1996, 110 Stat. 3964; Pub. L. 107–295, title IV, § 427, Nov. 25, 2002, 116 Stat. 2127; Pub. L. 109–58, title III, § 389(1), Aug. 8, 2005, 119 Stat. 747; Pub. L. 109–241, title IX, § 902(*l*)(1), July 11, 2006, 120 Stat. 568.)

AMENDMENTS

2006—Subsec. (c)(1)(B). Pub. L. 109–241 substituted ''Commerce and the Interior and the Commandant of the Coast Guard,'' for ''Commerce, the Interior, and Transportation,''.

2005—Subsec. (i). Pub. L. 109–58 substituted ''1 year after the date on which the Secretary, in consultation with the Secretary of the Interior, determines that oil and gas exploration, development, and production in the State of Alaska have ceased'' for ''September 30, 2012''.

2002—Subsec. (i). Pub. L. 107–295 substituted ''September 30, 2012'' for ''10 years after October 19, 1996''.

1996—Subsec. (a). Pub. L. 104–324, § 1102(a)(1), (2), struck out ''to be administered by the Secretary of Commerce'' after ''as the 'Institute')'' and substituted ''located'' for ''and located''.

Subsec. (b)(2). Pub. L. 104–324, § 1102(a)(3), substituted ''Arctic or Subarctic oil spills'' for ''the EXXON VALDEZ oil spill'' in two places.

Subsec. (c)(1). Pub. L. 104–324, § 1102(a)(4), substituted ''16'' for ''18'' in introductory provisions.

Subsec. (c)(1)(A). Pub. L. 104–324, § 1102(a)(5), substituted '', and Natural Resources'' for '', Natural Resources, and Commerce and Economic Development''.

Subsec. (c)(1)(B). Pub. L. 104–324, § 1102(a)(6), (8), added subpar. (B) and struck out former subpar. (B) which read as follows: ''One representative appointed by each of—

''(i) the Secretaries of Commerce, the Interior, Agriculture, Transportation, and the Navy; and

''(ii) the Administrator of the Environmental Protection Agency;

all of whom shall be Federal employees.''

Subsec. (c)(1)(C). Pub. L. 104–324, § 1102(a)(6), (8), added subpar. (C) and struck out former subpar. (C) which read as follows: ''4 representatives appointed by the Secretary of Commerce from among residents of communities in Alaska that were affected by the EXXON VALDEZ oil spill who are knowledgeable about fisheries, other local industries, the marine environment, wildlife, public health, safety, or education. At least 2 of the representatives shall be appointed from among residents of communities located in Prince William Sound. The Secretary shall appoint residents to serve terms of 2 years each, from a list of 8 qualified individuals to be submitted by the Governor of the State of Alaska based on recommendations made by the governing body of each affected community. Each affected community may submit the names of 2 qualified individuals for the Governor's consideration. No more than 5 of the 8 qualified persons recommended by the Governor shall be members of the same political party.''

Subsec. (c)(1)(D). Pub. L. 104–324, § 1102(a)(6), (8), added subpar. (D) and struck out former subpar. (D) which read as follows: ''3 Alaska Natives who represent Native entities affected by the EXXON VALDEZ oil spill, at least one of whom represents an entity located in Prince William Sound, to serve terms of 2 years each from a list of 6 qualified individuals submitted by the Alaska Federation of Natives.''

Subsec. (c)(1)(E) to (H). Pub. L. 104–324, § 1102(a)(7), (8), added subpars. (E) and (F) and redesignated former subpars. (E) and (F) as (G) and (H), respectively.

Subsec. (c)(4). Pub. L. 104–324, § 1102(a)(9), added par. (4).

Subsec. (d)(2). Pub. L. 104–324, § 1102(a)(10), substituted ''Arctic or Subarctic oil spills'' for ''the EXXON VALDEZ oil spill''.

Subsec. (e). Pub. L. 104–324, § 1102(a)(11)–(13), substituted ''appointed by the Advisory Board'' for ''appointed by the Secretary of Commerce'', struck out '', the Advisory Board,'' after ''Technology Institute'', and substituted ''Advisory Board's'' for ''Secretary's''.

Subsec. (i). Pub. L. 104–324, § 1102(a)(14), (15), inserted ''authorization in section 2736(b) of this title providing funding for the'' after ''The'' and substituted ''October 19, 1996'' for ''August 18, 1990''.

Subsec. (j). Pub. L. 104–324, § 1102(a)(16), (17), struck out first sentence which read as follows: ''All funds authorized for the Institute shall be provided through the National Oceanic and Atmospheric Administration.'', and inserted ''The Advisory Board may compensate its Federal representatives for their reasonable travel costs.'' after ''Institute.''

TERMINATION OF ADVISORY BOARDS

Advisory boards established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a board established by Congress, its duration is otherwise provided for by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 2732. Terminal and tanker oversight and monitoring

(a) Short title and findings

(1) Short title

This section may be cited as the ''Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Act of 1990''.

(2) Findings

The Congress finds that—

(A) the March 24, 1989, grounding and rupture of the fully loaded oil tanker, the EXXON VALDEZ, spilled 11 million gallons of crude oil in Prince William Sound, an environmentally sensitive area;

(B) many people believe that complacency on the part of the industry and government personnel responsible for monitoring the operation of the Valdez terminal and vessel traffic in Prince William Sound was one of the contributing factors to the EXXON VALDEZ oil spill;

(C) one way to combat this complacency is to involve local citizens in the process of preparing, adopting, and revising oil spill contingency plans;

(D) a mechanism should be established which fosters the long-term partnership of industry, government, and local communities in overseeing compliance with environmental concerns in the operation of crude oil terminals;

(E) such a mechanism presently exists at the Sullom Voe terminal in the Shetland Islands and this terminal should serve as a model for others;

(F) because of the effective partnership that has developed at Sullom Voe, Sullom Voe is considered the safest terminal in Europe;

(G) the present system of regulation and oversight of crude oil terminals in the United States has degenerated into a process of continual mistrust and confrontation;

(H) only when local citizens are involved in the process will the trust develop that is necessary to change the present system from confrontation to consensus;

(I) a pilot program patterned after Sullom Voe should be established in Alaska to further refine the concepts and relationships involved; and

(J) similar programs should eventually be established in other major crude oil terminals in the United States because the recent oil spills in Texas, Delaware, and Rhode Island indicate that the safe transportation of crude oil is a national problem.

(b) Demonstration programs

(1) Establishment

There are established 2 Oil Terminal and Oil Tanker Environmental Oversight and Mon-

itoring Demonstration Programs (hereinafter referred to as ''Programs'') to be carried out in the State of Alaska.

(2) Advisory function

The function of these Programs shall be advisory only.

(3) Purpose

The Prince William Sound Program shall be responsible for environmental monitoring of the terminal facilities in Prince William Sound and the crude oil tankers operating in Prince William Sound. The Cook Inlet Program shall be responsible for environmental monitoring of the terminal facilities and crude oil tankers operating in Cook Inlet located South of the latitude at Point Possession and North of the latitude at Amatuli Island, including offshore facilities in Cook Inlet.

(4) Suits barred

No program, association, council, committee or other organization created by this section may sue any person or entity, public or private, concerning any matter arising under this section except for the performance of contracts.

(c) Oil Terminal Facilities and Oil Tanker Operations Association

(1) Establishment

There is established an Oil Terminal Facilities and Oil Tanker Operations Association (hereinafter in this section referred to as the ''Association'') for each of the Programs established under subsection (b) of this section.

(2) Membership

Each Association shall be comprised of 4 individuals as follows:

(A) One individual shall be designated by the owners and operators of the terminal facilities and shall represent those owners and operators.

(B) One individual shall be designated by the owners and operators of the crude oil tankers calling at the terminal facilities and shall represent those owners and operators.

(C) One individual shall be an employee of the State of Alaska, shall be designated by the Governor of the State of Alaska, and shall represent the State government.

(D) One individual shall be an employee of the Federal Government, shall be designated by the President, and shall represent the Federal Government.

(3) Responsibilities

Each Association shall be responsible for reviewing policies relating to the operation and maintenance of the oil terminal facilities and crude oil tankers which affect or may affect the environment in the vicinity of their respective terminals. Each Association shall provide a forum among the owners and operators of the terminal facilities, the owners and operators of crude oil tankers calling at those facilities, the United States, and the State of Alaska to discuss and to make recommendations concerning all permits, plans, and site-specific regulations governing the activities and actions of the terminal facilities which affect or may affect the environment in the vicinity of the terminal facilities and of crude oil tankers calling at those facilities.

(4) Designation of existing organization

The Secretary may designate an existing nonprofit organization as an Association under this subsection if the organization is organized to meet the purposes of this section and consists of at least the individuals listed in paragraph (2).

(d) Regional Citizens' Advisory Councils

(1) Membership

There is established a Regional Citizens' Advisory Council (hereinafter in this section referred to as the ''Council'') for each of the programs established by subsection (b) of this section.

(2) Membership

Each Council shall be composed of voting members and nonvoting members, as follows:

(A) Voting members

Voting members shall be Alaska residents and, except as provided in clause (vii) of this paragraph, shall be appointed by the Governor of the State of Alaska from a list of nominees provided by each of the following interests, with one representative appointed to represent each of the following interests, taking into consideration the need for regional balance on the Council:

(i) Local commercial fishing industry organizations, the members of which depend on the fisheries resources of the waters in the vicinity of the terminal facilities.

(ii) Aquaculture associations in the vicinity of the terminal facilities.

(iii) Alaska Native Corporations and other Alaska Native organizations the members of which reside in the vicinity of the terminal facilities.

(iv) Environmental organizations the members of which reside in the vicinity of the terminal facilities.

(v) Recreational organizations the members of which reside in or use the vicinity of the terminal facilities.

(vi) The Alaska State Chamber of Commerce, to represent the locally based tourist industry.

(vii)(I) For the Prince William Sound Terminal Facilities Council, one representative selected by each of the following municipalities: Cordova, Whittier, Seward, Valdez, Kodiak, the Kodiak Island Borough, and the Kenai Peninsula Borough.

(II) For the Cook Inlet Terminal Facilities Council, one representative selected by each of the following municipalities: Homer, Seldovia, Anchorage, Kenai, Kodiak, the Kodiak Island Borough, and the Kenai Peninsula Borough.

(B) Nonvoting members

One ex-officio, nonvoting representative shall be designated by, and represent, each of the following:

(i) The Environmental Protection Agency.

(ii) The Coast Guard.

(iii) The National Oceanic and Atmospheric Administration.

(iv) The United States Forest Service.

(v) The Bureau of Land Management.

(vi) The Alaska Department of Environmental Conservation.

(vii) The Alaska Department of Fish and Game.

(viii) The Alaska Department of Natural Resources.

(ix) The Division of Emergency Services, Alaska Department of Military and Veterans Affairs.

(3) Terms

(A) Duration of Councils

The term of the Councils shall continue throughout the life of the operation of the Trans-Alaska Pipeline System and so long as oil is transported to or from Cook Inlet.

(B) Three years

The voting members of each Council shall be appointed for a term of 3 years except as provided for in subparagraph (C).

(C) Initial appointments

The terms of the first appointments shall be as follows:

(i) For the appointments by the Governor of the State of Alaska, one-third shall serve for 3 years, one-third shall serve for 2 years, and one-third shall serve for one year.

(ii) For the representatives of municipalities required by subsection (d)(2)(A)(vii) of this section, a drawing of lots among the appointees shall determine that one-third of that group serves for 3 years, one-third serves for 2 years, and the remainder serves for 1 year.

(4) Self-governing

Each Council shall elect its own chairperson, select its own staff, and make policies with regard to its internal operating procedures. After the initial organizational meeting called by the Secretary under subsection (i) of this section, each Council shall be self-governing.

(5) Dual membership and conflicts of interest prohibited

(A) No individual selected as a member of the Council shall serve on the Association.

(B) No individual selected as a voting member of the Council shall be engaged in any activity which might conflict with such individual carrying out his functions as a member thereof.

(6) Duties

Each Council shall—

(A) provide advice and recommendations to the Association on policies, permits, and site-specific regulations relating to the operation and maintenance of terminal facilities and crude oil tankers which affect or may affect the environment in the vicinity of the terminal facilities;

(B) monitor through the committee established under subsection (e) of this section, the environmental impacts of the operation of the terminal facilities and crude oil tankers;

(C) monitor those aspects of terminal facilities' and crude oil tankers' operations and maintenance which affect or may affect the environment in the vicinity of the terminal facilities;

(D) review through the committee established under subsection (f) of this section, the adequacy of oil spill prevention and contingency plans for the terminal facilities and the adequacy of oil spill prevention and contingency plans for crude oil tankers, operating in Prince William Sound or in Cook Inlet;

(E) provide advice and recommendations to the Association on port operations, policies and practices;

(F) recommend to the Association—

(i) standards and stipulations for permits and site-specific regulations intended to minimize the impact of the terminal facilities' and crude oil tankers' operations in the vicinity of the terminal facilities;

(ii) modifications of terminal facility operations and maintenance intended to minimize the risk and mitigate the impact of terminal facilities, operations in the vicinity of the terminal facilities and to minimize the risk of oil spills;

(iii) modifications of crude oil tanker operations and maintenance in Prince William Sound and Cook Inlet intended to minimize the risk and mitigate the impact of oil spills; and

(iv) modifications to the oil spill prevention and contingency plans for terminal facilities and for crude oil tankers in Prince William Sound and Cook Inlet intended to enhance the ability to prevent and respond to an oil spill; and

(G) create additional committees of the Council as necessary to carry out the above functions, including a scientific and technical advisory committee to the Prince William Sound Council.

(7) No estoppel

No Council shall be held liable under State or Federal law for costs or damages as a result of rendering advice under this section. Nor shall any advice given by a voting member of a Council, or program representative or agent, be grounds for estopping the interests represented by the voting Council members from seeking damages or other appropriate relief.

(8) Scientific work

In carrying out its research, development and monitoring functions, each Council is authorized to conduct its own scientific research and shall review the scientific work undertaken by or on behalf of the terminal operators or crude oil tanker operators as a result of a legal requirement to undertake that work. Each Council shall also review the relevant scientific work undertaken by or on behalf of any government entity relating to the terminal facilities or crude oil tankers. To the extent possible, to avoid unnecessary duplication, each Council shall coordinate its inde-

pendent scientific work with the scientific work performed by or on behalf of the terminal operators and with the scientific work performed by or on behalf of the operators of the crude oil tankers.

(e) Committee for Terminal and Oil Tanker Operations and Environmental Monitoring

(1) Monitoring Committee

Each Council shall establish a standing Terminal and Oil Tanker Operations and Environmental Monitoring Committee (hereinafter in this section referred to as the ''Monitoring Committee'') to devise and manage a comprehensive program of monitoring the environmental impacts of the operations of terminal facilities and of crude oil tankers while operating in Prince William Sound and Cook Inlet. The membership of the Monitoring Committee shall be made up of members of the Council, citizens, and recognized scientific experts selected by the Council.

(2) Duties

In fulfilling its responsibilities, the Monitoring Committee shall—

(A) advise the Council on a monitoring strategy that will permit early detection of environmental impacts of terminal facility operations and crude oil tanker operations while in Prince William Sound and Cook Inlet;

(B) develop monitoring programs and make recommendations to the Council on the implementation of those programs;

(C) at its discretion, select and contract with universities and other scientific institutions to carry out specific monitoring projects authorized by the Council pursuant to an approved monitoring strategy;

(D) complete any other tasks assigned by the Council; and

(E) provide written reports to the Council which interpret and assess the results of all monitoring programs.

(f) Committee for Oil Spill Prevention, Safety, and Emergency Response

(1) Technical Oil Spill Committee

Each Council shall establish a standing technical committee (hereinafter referred to as ''Oil Spill Committee'') to review and assess measures designed to prevent oil spills and the planning and preparedness for responding to, containing, cleaning up, and mitigating impacts of oil spills. The membership of the Oil Spill Committee shall be made up of members of the Council, citizens, and recognized technical experts selected by the Council.

(2) Duties

In fulfilling its responsibilities, the Oil Spill Committee shall—

(A) periodically review the respective oil spill prevention and contingency plans for the terminal facilities and for the crude oil tankers while in Prince William Sound or Cook Inlet, in light of new technological developments and changed circumstances;

(B) monitor periodic drills and testing of the oil spill contingency plans for the terminal facilities and for crude oil tankers while in Prince William Sound and Cook Inlet;

(C) study wind and water currents and other environmental factors in the vicinity of the terminal facilities which may affect the ability to prevent, respond to, contain, and clean up an oil spill;

(D) identify highly sensitive areas which may require specific protective measures in the event of a spill in Prince William Sound or Cook Inlet;

(E) monitor developments in oil spill prevention, containment, response, and cleanup technology;

(F) periodically review port organization, operations, incidents, and the adequacy and maintenance of vessel traffic service systems designed to assure safe transit of crude oil tankers pertinent to terminal operations;

(G) periodically review the standards for tankers bound for, loading at, exiting from, or otherwise using the terminal facilities;

(H) complete any other tasks assigned by the Council; and

(I) provide written reports to the Council outlining its findings and recommendations.

(g) Agency cooperation

On and after the expiration of the 180-day period following August 18, 1990, each Federal department, agency, or other instrumentality shall, with respect to all permits, site-specific regulations, and other matters governing the activities and actions of the terminal facilities which affect or may affect the vicinity of the terminal facilities, consult with the appropriate Council prior to taking substantive action with respect to the permit, site-specific regulation, or other matter. This consultation shall be carried out with a view to enabling the appropriate Association and Council to review the permit, site-specific regulation, or other matters and make appropriate recommendations regarding operations, policy or agency actions. Prior consultation shall not be required if an authorized Federal agency representative reasonably believes that an emergency exists requiring action without delay.

(h) Recommendations of Council

In the event that the Association does not adopt, or significantly modifies before adoption, any recommendation of the Council made pursuant to the authority granted to the Council in subsection (d) of this section, the Association shall provide to the Council, in writing, within 5 days of its decision, notice of its decision and a written statement of reasons for its rejection or significant modification of the recommendation.

(i) Administrative actions

Appointments, designations, and selections of individuals to serve as members of the Associations and Councils under this section shall be submitted to the Secretary prior to the expiration of the 120-day period following August 18, 1990. On or before the expiration of the 180-day period following August 18, 1990, the Secretary shall call an initial meeting of each Association and Council for organizational purposes.

(j) Location and compensation

(1) Location

Each Association and Council established by this section shall be located in the State of Alaska.

(2) Compensation

No member of an Association or Council shall be compensated for the member's services as a member of the Association or Council, but shall be allowed travel expenses, including per diem in lieu of subsistence, at a rate established by the Association or Council not to exceed the rates authorized for employees of agencies under sections 5702 and 5703 of title 5. However, each Council may enter into contracts to provide compensation and expenses to members of the committees created under subsections (d), (e), and (f) of this section.

(k) Funding

(1) Requirement

Approval of the contingency plans required of owners and operators of the Cook Inlet and Prince William Sound terminal facilities and crude oil tankers while operating in Alaskan waters in commerce with those terminal facilities shall be effective only so long as the respective Association and Council for a facility are funded pursuant to paragraph (2).

(2) Prince William Sound Program

The owners or operators of terminal facilities or crude oil tankers operating in Prince William Sound shall provide, on an annual basis, an aggregate amount of not more than $2,000,000, as determined by the Secretary. Such amount—

(A) shall provide for the establishment and operation on the environmental oversight and monitoring program in Prince William Sound;

(B) shall be adjusted annually by the Anchorage Consumer Price Index; and

(C) may be adjusted periodically upon the mutual consent of the owners or operators of terminal facilities or crude oil tankers operating in Prince William Sound and the Prince William Sound terminal facilities Council.

(3) Cook Inlet Program

The owners or operators of terminal facilities, offshore facilities, or crude oil tankers operating in Cook Inlet shall provide, on an annual basis, an aggregate amount of not more than $1,000,000, as determined by the Secretary. Such amount—

(A) shall provide for the establishment and operation of the environmental oversight and monitoring program in Cook Inlet;

(B) shall be adjusted annually by the Anchorage Consumer Price Index; and

(C) may be adjusted periodically upon the mutual consent of the owners or operators of terminal facilities, offshore facilities, or crude oil tankers operating in Cook Inlet and the Cook Inlet Council.

***(l)* Reports**

(1) Associations and Councils

Prior to the expiration of the 36-month period following August 18, 1990, each Association and Council established by this section shall report to the President and the Congress concerning its activities under this section, together with its recommendations.

(2) GAO

Prior to the expiration of the 36-month period following August 18, 1990, the General Accounting Office shall report to the President and the Congress as to the handling of funds, including donated funds, by the entities carrying out the programs under this section, and the effectiveness of the demonstration programs carried out under this section, together with its recommendations.

(m) Definitions

As used in this section, the term—

(1) ''terminal facilities'' means—

(A) in the case of the Prince William Sound Program, the entire oil terminal complex located in Valdez, Alaska, consisting of approximately 1,000 acres including all buildings, docks (except docks owned by the City of Valdez if those docks are not used for loading of crude oil), pipes, piping, roads, ponds, tanks, crude oil tankers only while at the terminal dock, tanker escorts owned or operated by the operator of the terminal, vehicles, and other facilities associated with, and necessary for, assisting tanker movement of crude oil into and out of the oil terminal complex; and

(B) in the case of the Cook Inlet Program, the entire oil terminal complex including all buildings, docks, pipes, piping, roads, ponds, tanks, vessels, vehicles, crude oil tankers only while at the terminal dock, tanker escorts owned or operated by the operator of the terminal, emergency spill response vessels owned or operated by the operator of the terminal, and other facilities associated with, and necessary for, assisting tanker movement of crude oil into and out of the oil terminal complex;

(2) ''crude oil tanker'' means a tanker (as that term is defined under section 2101 of title 46)—

(A) in the case of the Prince William Sound Program, calling at the terminal facilities for the purpose of receiving and transporting oil to refineries, operating north of Middleston Island and bound for or exiting from Prince William Sound; and

(B) in the case of the Cook Inlet Program, calling at the terminal facilities for the purpose of receiving and transporting oil to refineries and operating in Cook Inlet and the Gulf of Alaska north of Amatuli Island, including tankers transiting to Cook Inlet from Prince William Sound;

(3) ''vicinity of the terminal facilities'' means that geographical area surrounding the environment of terminal facilities which is directly affected or may be directly affected by the operation of the terminal facilities; and

(4) ''Secretary'' means the Secretary of the department in which the Coast Guard is operating.

(n) Savings clause

(1) Regulatory authority

Nothing in this section shall be construed as modifying, repealing, superseding, or preempting any municipal, State or Federal law or regulation, or in any way affecting litigation arising from oil spills or the rights and responsibilities of the United States or the State of Alaska, or municipalities thereof, to preserve and protect the environment through regulation of land, air, and water uses, of safety, and of related development. The monitoring provided for by this section shall be designed to help assure compliance with applicable laws and regulations and shall only extend to activities—

(A) that would affect or have the potential to affect the vicinity of the terminal facilities and the area of crude oil tanker operations included in the Programs; and

(B) are subject to the United States or State of Alaska, or municipality thereof, law, regulation, or other legal requirement.

(2) Recommendations

This subsection is not intended to prevent the Association or Council from recommending to appropriate authorities that existing legal requirements should be modified or that new legal requirements should be adopted.

(*o*) Alternative voluntary advisory group in lieu of Council

The requirements of subsections (c) through (*l*) of this section, as such subsections apply respectively to the Prince William Sound Program and the Cook Inlet Program, are deemed to have been satisfied so long as the following conditions are met:

(1) Prince William Sound

With respect to the Prince William Sound Program, the Alyeska Pipeline Service Company or any of its owner companies enters into a contract for the duration of the operation of the Trans-Alaska Pipeline System with the Alyeska Citizens Advisory Committee in existence on August 18, 1990, or a successor organization, to fund that Committee or organization on an annual basis in the amount provided for by subsection (k)(2)(A) of this section and the President annually certifies that the Committee or organization fosters the general goals and purposes of this section and is broadly representative of the communities and interests in the vicinity of the terminal facilities and Prince William Sound.

(2) Cook Inlet

With respect to the Cook Inlet Program, the terminal facilities, offshore facilities, or crude oil tanker owners and operators enter into a contract with a voluntary advisory organization to fund that organization on an annual basis and the President annually certifies that the organization fosters the general goals and purposes of this section and is broadly representative of the communities and interests in the vicinity of the terminal facilities and Cook Inlet.

(Pub. L. 101–380, title V, § 5002, Aug. 18, 1990, 104 Stat. 544; Pub. L. 109–241, title IX, § 902(*l*)(2), July 11, 2006, 120 Stat. 568.)

AMENDMENTS

2006—Subsec. (m)(4). Pub. L. 109–241 substituted ''of the department in which the Coast Guard is operating.'' for ''of Transportation.''

CHANGE OF NAME

General Accounting Office redesignated Government Accountability Office by section 8 of Pub. L. 108–271, set out as a note under section 702 of Title 31, Money and Finance.

DELEGATION OF FUNCTIONS

Functions of President under subsecs. (c)(2)(D) and (*o*) of this section delegated to Secretary of the Department in which the Coast Guard is operating by section 8(f), (g) of Ex. Ord. No. 12777, Oct. 18, 1991, 56 F.R. 54769, as amended, set out as a note under section 1321 of this title.

PRINCE WILLIAM SOUND REGIONAL CITIZENS ADVISORY COMMITTEE

Certification of President of the United States, Mar. 21, 1991, 56 F.R. 12439, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 5002(*o*)(1) of the Oil Pollution Act of 1990 (Public Law 101–380, 104 Stat. 552) [33 U.S.C. 2732(*o*)(1)], I hereby certify for the year 1991 the following:

(1) that the Prince William Sound Regional Citizens Advisory Committee fosters the general goals and purposes of section 5002 of the Oil Pollution Act of 1990 for the year 1991; and

(2) that the Prince William Sound Regional Citizens Advisory Committee is broadly representative of the communities and interests in the vicinity of the terminal facilities and Prince William Sound.

This certification shall be published in the Federal Register.

GEORGE BUSH.

COOK INLET REGIONAL CITIZENS ADVISORY COUNCIL

Certification of President of the United States, Aug. 6, 1991, 56 F.R. 37819, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 5002(*o*)(2) of the Oil Pollution Act of 1990 [33 U.S.C. 2732(*o*)(2)], I hereby certify for the year 1991 the following:

(1) that the Cook Inlet Regional Citizens Advisory Council has met the general goals and purposes of section 5002 of the Oil Pollution Act of 1990 for the year 1991; and

(2) that the Cook Inlet Regional Citizens Advisory Council is broadly representative of the communities and interests in the vicinity of the terminal facilities and offshore facilities in Cook Inlet.

This certification shall be published in the Federal Register.

GEORGE BUSH.

§ 2733. Bligh Reef light

The Secretary of Transportation shall within one year after August 18, 1990, install and ensure operation of an automated navigation light on or adjacent to Bligh Reef in Prince William Sound, Alaska, of sufficient power and height to provide long-range warning of the location of Bligh Reef.

(Pub. L. 101–380, title V, § 5003, Aug. 18, 1990, 104 Stat. 553.)

§ 2734. Vessel traffic service system

The Secretary of Transportation shall within one year after August 18, 1990—

(1) acquire, install, and operate such additional equipment (which may consist of radar, closed circuit television, satellite tracking systems, or other shipboard dependent surveillance), train and locate such personnel, and issue such final regulations as are necessary to increase the range of the existing VTS system in the Port of Valdez, Alaska, sufficiently to track the locations and movements of tank vessels carrying oil from the Trans-Alaska Pipeline when such vessels are transiting Prince William Sound, Alaska, and to sound an audible alarm when such tankers depart from designated navigation routes; and

(2) submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report on the feasibility and desirability of instituting positive control of tank vessel movements in Prince William Sound by Coast Guard personnel using the Port of Valdez, Alaska, VTS system, as modified pursuant to paragraph (1).

(Pub. L. 101–380, title V, § 5004, Aug. 18, 1990, 104 Stat. 553; Pub. L. 107–295, title IV, § 408(b)(2), Nov. 25, 2002, 116 Stat. 2117.)

AMENDMENTS

2002—Par. (2). Pub. L. 107–295 substituted ''Transportation and Infrastructure'' for ''Merchant Marine and Fisheries''.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 2735. Equipment and personnel requirements under tank vessel and facility response plans

(a) In general

In addition to the requirements for response plans for vessels established by section 1321(j) of this title, a response plan for a tanker loading cargo at a facility permitted under the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1651 et seq.), and a response plan for such a facility, shall provide for—

(1) prepositioned oil spill containment and removal equipment in communities and other strategic locations within the geographic boundaries of Prince William Sound, including escort vessels with skimming capability; barges to receive recovered oil; heavy duty sea boom, pumping, transferring, and lightering equipment; and other appropriate removal equipment for the protection of the environment, including fish hatcheries;

(2) the establishment of an oil spill removal organization at appropriate locations in Prince William Sound, consisting of trained personnel in sufficient numbers to immediately remove, to the maximum extent practicable, a worst case discharge or a discharge of 200,000 barrels of oil, whichever is greater;

(3) training in oil removal techniques for local residents and individuals engaged in the cultivation or production of fish or fish products in Prince William Sound;

(4) practice exercises not less than 2 times per year which test the capacity of the equipment and personnel required under this paragraph; and

(5) periodic testing and certification of equipment required under this paragraph, as required by the Secretary.

(b) Definitions

In this section—

(1) the term ''Prince William Sound'' means all State and Federal waters within Prince William Sound, Alaska, including the approach to Hinchenbrook Entrance out to and encompassing Seal Rocks; and

(2) the term ''worst case discharge'' means—

(A) in the case of a vessel, a discharge in adverse weather conditions of its entire cargo; and

(B) in the case of a facility, the largest foreseeable discharge in adverse weather conditions.

(Pub. L. 101–380, title V, § 5005, Aug. 18, 1990, 104 Stat. 553; Pub. L. 102–388, title III, § 354, Oct. 6, 1992, 106 Stat. 1555.)

REFERENCES IN TEXT

The Trans-Alaska Pipeline Authorization Act, referred to in subsec. (a), is title II of Pub. L. 93–153, Nov. 16, 1973, 87 Stat. 584, which is classified generally to chapter 34 (§ 1651 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1651 of Title 43 and Tables.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–388 substituted ''tanker loading cargo at'' for ''tank vessel operating on Prince William Sound, or'' and directed the insertion of ''and a response plan for such a facility,'' after ''(43 U.S.C. 1651 et seq.).'', which was executed by making the insertion after ''(43 U.S.C. 1651 et seq.),'' to reflect the probable intent of Congress.

§ 2736. Funding

(a) Sections 2731, 2733, and 2734

Amounts in the Fund shall be available, without further appropriations and without fiscal year limitation, to carry out section 2731 of this title in the amount as determined in subsection (b) of this section, and to carry out sections 2733 and 2734 of this title, in an amount not to exceed $5,000,000.

(b) Use of interest only

The amount of funding to be made available annually to carry out section 2731 of this title shall be the interest produced by the Fund's investment of the $22,500,000 remaining funding authorized for the Prince William Sound Oil Spill Recovery Institute and currently deposited in the Fund and invested by the Secretary of the Treasury in income producing securities along with other funds comprising the Fund. The National Pollution Funds Center shall transfer all such accrued interest, including the interest earned from the date funds in the Trans-Alaska Liability Pipeline Fund were transferred into

the Oil Spill Liability Trust Fund pursuant to section 8102(a)(2)(B)(ii), to the Prince William Sound Oil Spill Recovery Institute annually, beginning 60 days after October 19, 1996.

(c) Use for section 2712

Beginning 1 year after the date on which the Secretary, in consultation with the Secretary of the Interior, determines that oil and gas exploration, development, and production in the State of Alaska have ceased, the funding authorized for the Prince William Sound Oil Spill Recovery Institute and deposited in the Fund shall thereafter be made available for purposes of section 2712 of this title in Alaska.

(d) Section 2738

Amounts in the Fund shall be available, without further appropriation and without fiscal year limitation, to carry out section 2738(b) of this title, in an annual amount not to exceed $5,000,000 of which up to $3,000,000 may be used for the lease payment to the Alaska SeaLife Center under section 2738(b)(2) of this title: *Provided*, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended [2 U.S.C. 901(b)(2)(A)]: *Provided further*, That the entire amount shall be available only to the extent an official budget request that includes designation of the entire amount of the request as an emergency requirement as defined in the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, is transmitted by the President to the Congress.

(Pub. L. 101–380, title V, § 5006, Aug. 18, 1990, 104 Stat. 554; Pub. L. 104–324, title XI, § 1102(b), Oct. 19, 1996, 110 Stat. 3965; Pub. L. 106–246, div. B, title II, § 2204(2), July 13, 2000, 114 Stat. 547; Pub. L. 106–554, § 1(a)(4) [div. B, title I, § 144(c)(1)(C)], Dec. 21, 2000, 114 Stat. 2763, 2763A–239; Pub. L. 108–293, title VII, § 704, Aug. 9, 2004, 118 Stat. 1075; Pub. L. 109–58, title III, § 389(2), Aug. 8, 2005, 119 Stat. 747; Pub. L. 109–59, title IV, § 4413, Aug. 10, 2005, 119 Stat. 1779; Pub. L. 109–241, title IX, § 901(j), July 11, 2006, 120 Stat. 564.)

REFERENCES IN TEXT

Section 8102(a)(2)(B)(ii), referred to in subsec. (b), is section 8102(a)(2)(B)(ii) of Pub. L. 101–380, title VIII, Aug. 18, 1990, 104 Stat. 565, which is set out as a note under section 1653 of Title 43, Public Lands.

The Balanced Budget and Emergency Deficit Control Act of 1985, referred to in subsec. (d), is title II of Pub. L. 99–177, Dec. 12, 1985, 99 Stat. 1038, as amended, which enacted chapter 20 (§ 900 et seq.) and sections 654 to 656 of Title 2, The Congress, amended sections 602, 622, 631 to 642, and 651 to 653 of Title 2, sections 1104 to 1106, and 1109 of Title 31, Money and Finance, and section 911 of Title 42, The Public Health and Welfare, repealed section 661 of Title 2, enacted provisions set out as notes under section 900 of Title 2 and section 911 of Title 42, and amended provisions set out as a note under section 621 of Title 2. For complete classification of this Act to the Code, see Short Title note set out under section 900 of Title 2 and Tables.

AMENDMENTS

2006—Subsec. (c). Pub. L. 109–241, which directed the insertion of a comma after ''October 1, 2012'', could not be executed because ''October 1, 2012'' did not appear subsequent to amendment by Pub. L. 109–58. See 2005 Amendment note below.

2005—Subsec. (c). Pub. L. 109–58 substituted ''1 year after the date on which the Secretary, in consultation with the Secretary of the Interior, determines that oil and gas exploration, development, and production in the State of Alaska have ceased,'' for ''October 1, 2012''.

Subsec. (d). Pub. L. 109–59, which directed insertion of ''annual'' before ''amount'', was executed by making the insertion before ''amount not to exceed'', to reflect the probable intent of Congress.

2004—Subsecs. (c), (d). Pub. L. 108–293 in subsec. (c) relating to section 2712, substituted ''October 1, 2012'' for ''with the eleventh year following October 19, 1996,'' and redesignated subsec. (c) relating to section 2738 as (d).

2000—Subsec. (c). Pub. L. 106–554 inserted ''of which up to $3,000,000 may be used for the lease payment to the Alaska SeaLife Center under section 2738(b)(2) of this title'' after ''$5,000,000'' in subsec. (c) relating to section 2738.

Pub. L. 106–246 added subsec. (c) relating to section 2738.

1996—Subsec. (a). Pub. L. 104–324, § 1102(b)(1)–(3), redesignated subsec. (b) as (a), substituted ''2731, 2733,'' for ''2733'' in heading, inserted ''to carry out section 2731 of this title in the amount as determined in subsection (b) of this section, and'' after ''limitation,'', and struck out heading and text of former subsec. (a). Text read as follows: ''Amounts in the Fund shall be available, subject to appropriations, and shall remain available until expended, to carry out section 2731 of this title as follows:

''(1) $5,000,000 shall be available for the first fiscal year beginning after August 18, 1990.

''(2) $2,000,000 shall be available for each of the 9 fiscal years following the fiscal year described in paragraph (1).''

Subsecs. (b), (c). Pub. L. 104–324, § 1102(b)(4), added subsecs. (b) and (c). Former subsec. (b) redesignated (a).

§ 2737. Limitation

Notwithstanding any other law, tank vessels that have spilled more than 1,000,000 gallons of oil into the marine environment after March 22, 1989, are prohibited from operating on the navigable waters of Prince William Sound, Alaska.

(Pub. L. 101–380, title V, § 5007, Aug. 18, 1990, 104 Stat. 554.)

§ 2738. North Pacific Marine Research Institute

(a) Institute established

The Secretary of Commerce shall establish a North Pacific Marine Research Institute (hereafter in this section referred to as the ''Institute'') to be administered at the Alaska SeaLife Center by the North Pacific Research Board.

(b) Functions

The Institute shall—

(1) conduct research and carry out education and demonstration projects on or relating to the North Pacific marine ecosystem with particular emphasis on marine mammal, sea bird, fish, and shellfish populations in the Bering Sea and Gulf of Alaska including populations located in or near Kenai Fjords National Park and the Alaska Maritime National Wildlife Refuge; and

(2) lease, maintain, operate, and upgrade the necessary research equipment and related facilities necessary to conduct such research at the Alaska SeaLife Center.

(c) Evaluation and audit

The Secretary of Commerce may periodically evaluate the activities of the Institute to ensure

that funds received by the Institute are used in a manner consistent with this section. The Federal Advisory Committee Act [5 U.S.C. App.] shall not apply to the Institute.

(d) Status of employees

Employees of the Institute shall not, by reason of such employment, be considered to be employees of the Federal Government for any purpose.

(e) Use of funds

No funds made available to carry out this section may be used to initiate litigation, or for the acquisition of real property (other than facilities leased at the Alaska SeaLife Center). No more than 10 percent of the funds made available to carry out subsection (b)(1) of this section may be used to administer the Institute. The administrative funds of the Institute and the administrative funds of the North Pacific Research Board created under Public Law 105–83 may be used to jointly administer such programs at the discretion of the North Pacific Research Board.

(f) Availability of research

The Institute shall publish and make available to any person on request the results of all research, educational, and demonstration projects conducted by the Institute. The Institute shall provide a copy of all research, educational, and demonstration projects conducted by the Institute to the National Park Service, the United States Fish and Wildlife Service, and the National Oceanic and Atmospheric Administration.

(Pub. L. 101–380, title V, § 5008, as added Pub. L. 106–246, div. B, title II, § 2204(1), July 13, 2000, 114 Stat. 546; amended Pub. L. 106–554, § 1(a)(4) [div. B, title I, § 144(c)(1)(A), (B)], Dec. 21, 2000, 114 Stat. 2763, 2763A–238, 2763A–239.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (c), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

Public Law 105–83, referred to in subsec. (e), is Pub. L. 105–83, Nov. 14, 1997, 111 Stat. 1543, as amended, known as the Department of the Interior and Related Agencies Appropriations Act, 1998. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2000—Subsec. (c). Pub. L. 106–554, § 1(a)(4) [div. B, title I, § 144(c)(1)(A)], inserted second sentence and struck out former second sentence which read as follows: "The Comptroller General of the United States, and any of his or her duly authorized representatives, shall have access, for purposes of audit and examination, to any books, documents, papers, and records of the Institute that are pertinent to the funds received and expended by the Institute."

Subsec. (e). Pub. L. 106–554, § 1(a)(4) [div. B, title I, § 144(c)(1)(B)], inserted at end "The administrative funds of the Institute and the administrative funds of the North Pacific Research Board created under Public Law 105–83 may be used to jointly administer such programs at the discretion of the North Pacific Research Board."

SUBCHAPTER III—MISCELLANEOUS

§ 2751. Savings provision

(a) Cross-references

A reference to a law replaced by this Act, including a reference in a regulation, order, or other law, is deemed to refer to the corresponding provision of this Act.

(b) Continuation of regulations

An order, rule, or regulation in effect under a law replaced by this Act continues in effect under the corresponding provision of this Act until repealed, amended, or superseded.

(c) Rule of construction

An inference of legislative construction shall not be drawn by reason of the caption or catch line of a provision enacted by this Act.

(d) Actions and rights

Nothing in this Act shall apply to any rights and duties that matured, penalties that were incurred, and proceedings that were begun before August 18, 1990, except as provided by this section, and shall be adjudicated pursuant to the law applicable on the date prior to August 18, 1990.

(e) Admiralty and maritime law

Except as otherwise provided in this Act, this Act does not affect—

(1) admiralty and maritime law; or

(2) the jurisdiction of the district courts of the United States with respect to civil actions under admiralty and maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled.

(Pub. L. 101–380, title VI, § 6001, Aug. 18, 1990, 104 Stat. 554.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 101–380, Aug. 18, 1990, 104 Stat. 484, as amended, known as the Oil Pollution Act of 1990, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

§ 2752. Annual appropriations

(a) Required

Except as provided in subsection (b) of this section, amounts in the Fund shall be available only as provided in annual appropriation Acts.

(b) Exceptions

Subsection (a) of this section shall not apply to sections[1] 2706(f), 2712(a)(4), or 2736 of this title, and shall not apply to an amount not to exceed $50,000,000 in any fiscal year which the President may make available from the Fund to carry out section 1321(c) of this title and to initiate the assessment of natural resources damages required under section 2706 of this title. To the extent that such amount is not adequate, the Coast Guard may obtain an advance from the Fund of such sums as may be necessary, up to a maximum of $100,000,000, and within 30 days shall notify Congress of the amount advanced and the facts and circumstances necessitating the advance. Amounts advanced shall be repaid to the Fund when, and to the extent that, removal costs are recovered by the Coast Guard from responsible parties for the discharge or substantial threat of discharge. Sums to which

[1] So in original. Probably should be "section".

this subsection applies shall remain available until expended.

(Pub. L. 101–380, title VI, § 6002, Aug. 18, 1990, 104 Stat. 555; Pub. L. 104–324, title XI, § 1102(c)(1), Oct. 19, 1996, 110 Stat. 3966; Pub. L. 107–295, title III, § 323, Nov. 25, 2002, 116 Stat. 2104.)

AMENDMENTS

2002—Subsec. (b). Pub. L. 107–295 inserted after first sentence ''To the extent that such amount is not adequate, the Coast Guard may obtain an advance from the Fund of such sums as may be necessary, up to a maximum of $100,000,000, and within 30 days shall notify Congress of the amount advanced and the facts and circumstances necessitating the advance. Amounts advanced shall be repaid to the Fund when, and to the extent that, removal costs are recovered by the Coast Guard from responsible parties for the discharge or substantial threat of discharge.''

1996—Subsec. (b). Pub. L. 104–324 substituted ''2736'' for ''2736(b)''.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

DELEGATION OF FUNCTIONS

Functions of President under subsec. (b) of this section delegated to Secretary of Department in which Coast Guard is operating by section 7(a)(1)(B) of Ex. Ord. No. 12777, Oct. 18, 1991, 56 F.R. 54766, set out as a note under section 1321 of this title.

§ 2753. Repealed. Pub. L. 104–134, title I, § 101(c) [title I, § 109], Apr. 26, 1996, 110 Stat. 1321–156, 1321–177; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327

Section, Pub. L. 101–380, title VI, § 6003, Aug. 18, 1990, 104 Stat. 555, related to protection of the Outer Banks of North Carolina.

SUBCHAPTER IV—OIL POLLUTION RESEARCH AND DEVELOPMENT PROGRAM

§ 2761. Oil pollution research and development program

(a) Interagency Coordinating Committee on Oil Pollution Research

(1) Establishment

There is established an Interagency Coordinating Committee on Oil Pollution Research (hereinafter in this section referred to as the ''Interagency Committee'').

(2) Purposes

The Interagency Committee shall coordinate a comprehensive program of oil pollution research, technology development, and demonstration among the Federal agencies, in cooperation and coordination with industry, universities, research institutions, State governments, and other nations, as appropriate, and shall foster cost-effective research mechanisms, including the joint funding of research.

(3) Membership

The Interagency Committee shall include representatives from the Coast Guard, the Department of Commerce (including the National Oceanic and Atmospheric Administration and the National Institute of Standards and Technology), the Department of Energy, the Department of the Interior (including the Minerals Management Service and the United States Fish and Wildlife Service), the Department of Transportation (including the Maritime Administration and the Pipeline and Hazardous Materials Safety Administration), the Department of Defense (including the Army Corps of Engineers and the Navy), the Department of Homeland Security (including the United States Fire Administration in the Federal Emergency Management Agency), the Environmental Protection Agency, the National Aeronautics and Space Administration, and such other Federal agencies the President may designate.

(4) Chairman

A representative of the Coast Guard shall serve as Chairman.

(b) Oil pollution research and technology plan

(1) Implementation plan

Within 180 days after August 18, 1990, the Interagency Committee shall submit to Congress a plan for the implementation of the oil pollution research, development, and demonstration program established pursuant to subsection (c) of this section. The research plan shall—

(A) identify agency roles and responsibilities;

(B) assess the current status of knowledge on oil pollution prevention, response, and mitigation technologies and effects of oil pollution on the environment;

(C) identify significant oil pollution research gaps including an assessment of major technological deficiencies in responses to past oil discharges;

(D) establish research priorities and goals for oil pollution technology development related to prevention, response, mitigation, and environmental effects;

(E) estimate the resources needed to conduct the oil pollution research and development program established pursuant to subsection (c) of this section, and timetables for completing research tasks; and

(F) identify, in consultation with the States, regional oil pollution research needs and priorities for a coordinated, multidisciplinary program of research at the regional level.

(2) Advice and guidance

The Chairman, through the Department of Transportation, shall contract with the National Academy of Sciences to—

(A) provide advice and guidance in the preparation and development of the research plan; and

(B) assess the adequacy of the plan as submitted, and submit a report to Congress on the conclusions of such assessment.

The National Institute of Standards and Technology shall provide the Interagency Committee with advice and guidance on issues relat-

ing to quality assurance and standards measurements relating to its activities under this section.

(c) Oil pollution research and development program

(1) Establishment

The Interagency Committee shall coordinate the establishment, by the agencies represented on the Interagency Committee, of a program for conducting oil pollution research and development, as provided in this subsection.

(2) Innovative oil pollution technology

The program established under this subsection shall provide for research, development, and demonstration of new or improved technologies which are effective in preventing or mitigating oil discharges and which protect the environment, including—

(A) development of improved designs for vessels and facilities, and improved operational practices;

(B) research, development, and demonstration of improved technologies to measure the ullage of a vessel tank, prevent discharges from tank vents, prevent discharges during lightering and bunkering operations, contain discharges on the deck of a vessel, prevent discharges through the use of vacuums in tanks, and otherwise contain discharges of oil from vessels and facilities;

(C) research, development, and demonstration of new or improved systems of mechanical, chemical, biological, and other methods (including the use of dispersants, solvents, and bioremediation) for the recovery, removal, and disposal of oil, including evaluation of the environmental effects of the use of such systems;

(D) research and training, in consultation with the National Response Team, to improve industry's and Government's ability to quickly and effectively remove an oil discharge, including the long-term use, as appropriate, of the National Spill Control School in Corpus Christi, Texas, and the Center for Marine Training and Safety in Galveston, Texas;

(E) research to improve information systems for decisionmaking, including the use of data from coastal mapping, baseline data, and other data related to the environmental effects of oil discharges, and cleanup technologies;

(F) development of technologies and methods to protect public health and safety from oil discharges, including the population directly exposed to an oil discharge;

(G) development of technologies, methods, and standards for protecting removal personnel, including training, adequate supervision, protective equipment, maximum exposure limits, and decontamination procedures;

(H) research and development of methods to restore and rehabilitate natural resources damaged by oil discharges;

(I) research to evaluate the relative effectiveness and environmental impacts of bioremediation technologies; and

(J) the demonstration of a satellite-based, dependent surveillance vessel traffic system in Narragansett Bay to evaluate the utility of such system in reducing the risk of oil discharges from vessel collisions and groundings in confined waters.

(3) Oil pollution technology evaluation

The program established under this subsection shall provide for oil pollution prevention and mitigation technology evaluation including—

(A) the evaluation and testing of technologies developed independently of the research and development program established under this subsection;

(B) the establishment, where appropriate, of standards and testing protocols traceable to national standards to measure the performance of oil pollution prevention or mitigation technologies; and

(C) the use, where appropriate, of controlled field testing to evaluate real-world application of oil discharge prevention or mitigation technologies.

(4) Oil pollution effects research

(A) The Committee shall establish a research program to monitor and evaluate the environmental effects of oil discharges. Such program shall include the following elements:

(i) The development of improved models and capabilities for predicting the environmental fate, transport, and effects of oil discharges.

(ii) The development of methods, including economic methods, to assess damages to natural resources resulting from oil discharges.

(iii) The identification of types of ecologically sensitive areas at particular risk to oil discharges and the preparation of scientific monitoring and evaluation plans, one for each of several types of ecological conditions, to be implemented in the event of major oil discharges in such areas.

(iv) The collection of environmental baseline data in ecologically sensitive areas at particular risk to oil discharges where such data are insufficient.

(B) The Department of Commerce in consultation with the Environmental Protection Agency shall monitor and scientifically evaluate the long-term environmental effects of oil discharges if—

(i) the amount of oil discharged exceeds 250,000 gallons;

(ii) the oil discharge has occurred on or after January 1, 1989; and

(iii) the Interagency Committee determines that a study of the long-term environmental effects of the discharge would be of significant scientific value, especially for preventing or responding to future oil discharges.

Areas for study may include the following sites where oil discharges have occurred: the New York/New Jersey Harbor area, where oil was discharged by an Exxon underwater pipeline, the T/B CIBRO SAVANNAH, and the M/V BT NAUTILUS; Narragansett Bay where oil

was discharged by the WORLD PRODIGY; the Houston Ship Channel where oil was discharged by the RACHEL B; the Delaware River, where oil was discharged by the PRESIDENTE RIVERA and the T/V ATHOS I, and Huntington Beach, California, where oil was discharged by the AMERICAN TRADER.

(C) Research conducted under this paragraph by, or through, the United States Fish and Wildlife Service shall be directed and coordinated by the National Wetland Research Center.

(5) Marine simulation research

The program established under this subsection shall include research on the greater use and application of geographic and vessel response simulation models, including the development of additional data bases and updating of existing data bases using, among others, the resources of the National Maritime Research Center. It shall include research and vessel simulations for—

(A) contingency plan evaluation and amendment;

(B) removal and strike team training;

(C) tank vessel personnel training; and

(D) those geographic areas where there is a significant likelihood of a major oil discharge.

(6) Demonstration projects

The United States Coast Guard, in conjunction with such agencies as the President may designate, shall conduct 4 port oil pollution minimization demonstration projects, one each with (A) the Port Authority of New York and New Jersey, (B) the Ports of Los Angeles and Long Beach, California, (C) the Port of New Orleans, Louisiana, and (D) ports on the Great Lakes, for the purpose of developing and demonstrating integrated port oil pollution prevention and cleanup systems which utilize the information and implement the improved practices and technologies developed from the research, development, and demonstration program established in this section. Such systems shall utilize improved technologies and management practices for reducing the risk of oil discharges, including, as appropriate, improved data access, computerized tracking of oil shipments, improved vessel tracking and navigation systems, advanced technology to monitor pipeline and tank conditions, improved oil spill response capability, improved capability to predict the flow and effects of oil discharges in both the inner and outer harbor areas for the purposes of making infrastructure decisions, and such other activities necessary to achieve the purposes of this section.

(7) Simulated environmental testing

Agencies represented on the Interagency Committee shall ensure the long-term use and operation of the Oil and Hazardous Materials Simulated Environmental Test Tank (OHMSETT) Research Center in New Jersey for oil pollution technology testing and evaluations.

(8) Regional research program

(A) Consistent with the research plan in subsection (b) of this section, the Interagency Committee shall coordinate a program of competitive grants to universities or other research institutions, or groups of universities or research institutions, for the purposes of conducting a coordinated research program related to the regional aspects of oil pollution, such as prevention, removal, mitigation, and the effects of discharged oil on regional environments. For the purposes of this paragraph, a region means a Coast Guard district as set out in part 3 of title 33, Code of Federal Regulations (1989).

(B) The Interagency Committee shall coordinate the publication by the agencies represented on the Interagency Committee of a solicitation for grants under this subsection. The application shall be in such form and contain such information as may be required in the published solicitation. The applications shall be reviewed by the Interagency Committee, which shall make recommendations to the appropriate granting agency represented on the Interagency Committee for awarding the grant. The granting agency shall award the grants recommended by the Interagency Committee unless the agency decides not to award the grant due to budgetary or other compelling considerations and publishes its reasons for such a determination in the Federal Register. No grants may be made by any agency from any funds authorized for this paragraph unless such grant award has first been recommended by the Interagency Committee.

(C) Any university or other research institution, or group of universities or research institutions, may apply for a grant for the regional research program established by this paragraph. The applicant must be located in the region, or in a State a part of which is in the region, for which the project is proposed as part of the regional research program. With respect to a group application, the entity or entities which will carry out the substantial portion of the proposed research must be located in the region, or in a State a part of which is in the region, for which the project is proposed as part of the regional research program.

(D) The Interagency Committee shall make recommendations on grants in such a manner as to ensure an appropriate balance within a region among the various aspects of oil pollution research, including prevention, removal, mitigation, and the effects of discharged oil on regional environments. In addition, the Interagency Committee shall make recommendations for grants based on the following criteria:

(i) There is available to the applicant for carrying out this paragraph demonstrated research resources.

(ii) The applicant demonstrates the capability of making a significant contribution to regional research needs.

(iii) The projects which the applicant proposes to carry out under the grant are consistent with the research plan under subsection (b)(1)(F) of this section and would further the objectives of the research and development program established in this section.

(E) Grants provided under this paragraph shall be for a period up to 3 years, subject to annual review by the granting agency, and provide not more than 80 percent of the costs of the research activities carried out in connection with the grant.

(F) No funds made available to carry out this subsection may be used for the acquisition of real property (including buildings) or construction of any building.

(G) Nothing in this paragraph is intended to alter or abridge the authority under existing law of any Federal agency to make grants, or enter into contracts or cooperative agreements, using funds other than those authorized in this Act for the purposes of carrying out this paragraph.

(9) Funding

For each of the fiscal years 1991, 1992, 1993, 1994, and 1995, $6,000,000 of amounts in the Fund shall be available to carry out the regional research program in paragraph (8), such amounts to be available in equal amounts for the regional research program in each region; except that if the agencies represented on the Interagency Committee determine that regional research needs exist which cannot be addressed within such funding limits, such agencies may use their authority under paragraph (10) to make additional grants to meet such needs. For the purposes of this paragraph, the research program carried out by the Prince William Sound Oil Spill Recovery Institute established under section 2731 of this title, shall not be eligible to receive grants under this paragraph until the authorization for funding under section 2736(b) of this title expires.

(10) Grants

In carrying out the research and development program established under this subsection, the agencies represented on the Interagency Committee may enter into contracts and cooperative agreements and make grants to universities, research institutions, and other persons. Such contracts, cooperative agreements, and grants shall address research and technology priorities set forth in the oil pollution research plan under subsection (b) of this section.

(11) Utilization of resources

In carrying out research under this section, the Department of Transportation shall continue to utilize the resources of the Pipeline and Hazardous Materials Safety Administration of the Department of Transportation, to the maximum extent practicable.

(d) International cooperation

In accordance with the research plan submitted under subsection (b) of this section, the Interagency Committee shall coordinate and cooperate with other nations and foreign research entities in conducting oil pollution research, development, and demonstration activities, including controlled field tests of oil discharges.

(e) Biennial reports

The Chairman of the Interagency Committee shall submit to Congress every 2 years on October 30 a report on the activities carried out under this section in the preceding 2 fiscal years, and on activities proposed to be carried out under this section in the current 2 fiscal year period.

(f) Funding

Not to exceed $22,000,000 of amounts in the Fund shall be available annually to carry out this section except for subsection (c)(8) of this section. Of such sums—

(1) funds authorized to be appropriated to carry out the activities under subsection (c)(4) of this section shall not exceed $5,000,000 for fiscal year 1991 or $3,500,000 for any subsequent fiscal year; and

(2) not less than $3,000,000 shall be available for carrying out the activities in subsection (c)(6) of this section for fiscal years 1992, 1993, 1994, and 1995.

All activities authorized in this section, including subsection (c)(8) of this section, are subject to appropriations.

(Pub. L. 101–380, title VII, § 7001, Aug. 18, 1990, 104 Stat. 559; Pub. L. 101–537, title II, § 2002, Nov. 8, 1990, 104 Stat. 2375; Pub. L. 101–646, title IV, § 4002, Nov. 29, 1990, 104 Stat. 4788; Pub. L. 104–324, title XI, §§ 1102(c)(2), 1108, Oct. 19, 1996, 110 Stat. 3966, 3968; Pub. L. 104–332, § 2(h)(1), (2), Oct. 26, 1996, 110 Stat. 4091; Pub. L. 108–426, § 2(c)(5), Nov. 30, 2004, 118 Stat. 2424; Pub. L. 109–241, title VI, § 605(a)(1), title IX, § 902(*l*)(3), (4), July 11, 2006, 120 Stat. 555, 568.)

REFERENCES IN TEXT

This Act, referred to in subsec. (c)(8)(G), is Pub. L. 101–380, Aug. 18, 1990, 104 Stat. 484, as amended, known as the Oil Pollution Act of 1990, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–241, § 902(*l*)(3), added pars. (3) and (4) and struck out former par. (3) and concluding provisions which read as follows:

"MEMBERSHIP.—The Interagency Committee shall include representatives from the Department of Commerce (including the National Oceanic and Atmospheric Administration and the National Institute of Standards and Technology), the Department of Energy, the Department of the Interior (including the Minerals Management Service and the United States Fish and Wildlife Service), the Department of Transportation (including the United States Coast Guard, the Maritime Administration, and the Pipeline and Hazardous Materials Safety Administration), the Department of Defense (including the Army Corps of Engineers and the Navy), the Environmental Protection Agency, the National Aeronautics and Space Administration, and the United States Fire Administration in the Federal Emergency Management Agency, as well as such other Federal agencies as the President may designate.

A representative of the Department of Transportation shall serve as Chairman."

Subsec. (c)(4)(B). Pub. L. 109–241, § 605(a)(1), substituted "RIVERA and the T/V ATHOS I," for "RIVERA,".

Subsec. (c)(6). Pub. L. 109–241, § 902(*l*)(4), substituted "such agencies as the President may designate," for "other such agencies in the Department of Transportation as the Secretary of Transportation may designate,".

2004—Subsec. (a)(3). Pub. L. 108–426, § 2(c)(5)(A), substituted "Pipeline and Hazardous Materials Safety Ad-

ministration'' for ''Research and Special Projects Administration''.

Subsec. (c)(11). Pub. L. 108–426, § 2(c)(5)(B), substituted ''Pipeline and Hazardous Materials Safety Administration'' for ''Research and Special Programs Administration''.

1996—Subsec. (c)(2)(D). Pub. L. 104–324, § 1108, inserted '', and the Center for Marine Training and Safety in Galveston, Texas'' before semicolon at end.

Subsec. (c)(6). Pub. L. 104–332, § 2(h)(1), made technical amendment to Pub. L. 101–646, § 4002(1). See 1990 Amendment note below.

Subsec. (c)(9). Pub. L. 104–324, § 1102(c)(2), inserted ''until the authorization for funding under section 2736(b) of this title expires'' before period at end.

Subsec. (f). Pub. L. 104–332 made technical amendment to Pub. L. 101–646, § 4002(2). See 1990 Amendment note below.

1990—Subsec. (c)(6). Pub. L. 101–537, § 2002(1), and Pub. L. 101–646, § 4002(1), as amended by Pub. L. 104–332, § 2(h)(1), made substantially identical amendments, substituting ''4'' for ''3'' and inserting cl. (D).

Subsec. (f). Pub. L. 101–537, § 2002(2), and Pub. L. 101–646, § 4002(2), as amended by Pub. L. 104–332, amended subsec. (f) identically, substituting ''$22,000,000'' for ''$21,250,000'' in introductory provisions and ''$3,000,000'' for ''$2,250,000'' in par. (2).

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

DELEGATION OF FUNCTIONS

Functions of President under subsec. (a)(3) of this section delegated to Secretary of the Department in which the Coast Guard is operating by section 8(h) of Ex. Ord. No. 12777, Oct. 18, 1991, 56 F.R. 54769, as amended, set out as a note under section 1321 of this title.

§ 2762. Submerged oil program

(a) Program

(1) Establishment

The Under Secretary of Commerce for Oceans and Atmosphere, in conjunction with the Commandant of the Coast Guard, shall establish a program to detect, monitor, and evaluate the environmental effects of submerged oil in the Delaware River and Bay region. The program shall include the following elements:

(A) The development of methods to remove, disperse, or otherwise diminish the persistence of submerged oil.

(B) The development of improved models and capacities for predicting the environmental fate, transport, and effects of submerged oil.

(C) The development of techniques to detect and monitor submerged oil.

(2) Report

Not later than 3 years after July 11, 2006, the Secretary of Commerce shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report on the activities carried out under this subsection and activities proposed to be carried out under this subsection.

(b) Demonstration project

(1) Removal of submerged oil

The Commandant of the Coast Guard, in conjunction with the Under Secretary of Commerce for Oceans and Atmosphere, shall conduct a demonstration project for the purpose of developing and demonstrating technologies and management practices to remove submerged oil from the Delaware River and other navigable waters.

(2) Funding

There is authorized to be appropriated to the Commandant of the Coast Guard $2,000,000 for each of fiscal years 2006 through 2010 to carry out this subsection.

(Pub. L. 101–380, title VII, § 7002, as added Pub. L. 109–241, title VI, § 605(a)(2), July 11, 2006, 120 Stat. 555.)

CHAPTER 41—NATIONAL COASTAL MONITORING

Sec.
2801. Purposes.
2802. Definitions.
2803. Comprehensive Coastal Water Quality Monitoring Program.
2804. Report to Congress.
2805. Authorization of appropriations.

§ 2801. Purposes

The purposes of this chapter are to—

(1) establish a comprehensive national program for consistent monitoring of the Nation's coastal ecosystems;

(2) establish long-term water quality assessment and monitoring programs for high priority coastal waters that will enhance the ability of Federal, State, and local authorities to develop and implement effective remedial programs for those waters;

(3) establish a system for reviewing and evaluating the scientific, analytical, and technological means that are available for monitoring the environmental quality of coastal ecosystems;

(4) establish methods for identifying uniform indicators of coastal ecosystem quality;

(5) provide for periodic, comprehensive reports to Congress concerning the quality of the Nation's coastal ecosystems;

(6) establish a coastal environment information program to distribute coastal monitoring information;

(7) provide state[1] programs authorized under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.) with information necessary to design land use plans and coastal zone regulations that will contribute to the protection of coastal ecosystems; and

(8) provide certain water pollution control programs authorized under the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) with information necessary to design and implement effective coastal water pollution controls.

(Pub. L. 92–532, title V, § 501, as added Pub. L. 102–567, title V, § 501, Oct. 29, 1992, 106 Stat. 4293.)

[1] So in original. Probably should be capitalized.