

ity 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, 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 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

¹ So in original. Probably should be preceded by "section".

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 this² 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, 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; Pub. L. 111-281, title IX, §903(a)(2), (e)(1), Oct. 15, 2010, 124 Stat. 3010, 3011.)

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

2010—Subsec. (a)(2). Pub. L. 111-281, §903(e)(1), struck out first comma after “\$800,000”.

Pub. L. 111-281, §903(a)(2), made technical amendment to directory language of Pub. L. 109-241, §603(a)(2). See 2006 Amendment note below.

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), as amended by Pub. L. 111-281, §903(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,”.

²So in original. The word “this” probably should not appear.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-281, title IX, §903(a), Oct. 15, 2010, 124 Stat. 3010, provided that the amendment by section 903(a)(2) is effective with enactment of Pub. L. 109-241.

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 pe-

riod 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."