

**(g) Allocation of funds****(1) Fiscal year 2002**

Subject to subsection (h) of this section, the Administrator shall use the amounts appropriated to carry out this section for fiscal year 2002 for making grants to municipalities and municipal entities under subsection (a)(2) of this section, in accordance with the criteria set forth in subsection (b) of this section.

**(2) Fiscal year 2003**

Subject to subsection (h) of this section, the Administrator shall use the amounts appropriated to carry out this section for fiscal year 2003 as follows:

(A) Not to exceed \$250,000,000 for making grants to municipalities and municipal entities under subsection (a)(2) of this section, in accordance with the criteria set forth in subsection (b) of this section.

(B) All remaining amounts for making grants to States under subsection (a)(1) of this section, in accordance with a formula to be established by the Administrator, after providing notice and an opportunity for public comment, that allocates to each State a proportional share of such amounts based on the total needs of the State for municipal combined sewer overflow controls and sanitary sewer overflow controls identified in the most recent survey conducted pursuant to section 1375(b)(1) of this title.

**(h) Administrative expenses**

Of the amounts appropriated to carry out this section for each fiscal year—

(1) the Administrator may retain an amount not to exceed 1 percent for the reasonable and necessary costs of administering this section; and

(2) the Administrator, or a State, may retain an amount not to exceed 4 percent of any grant made to a municipality or municipal entity under subsection (a) of this section, for the reasonable and necessary costs of administering the grant.

**(i) Reports**

Not later than December 31, 2003, and periodically thereafter, the Administrator shall transmit to Congress a report containing recommended funding levels for grants under this section. The recommended funding levels shall be sufficient to ensure the continued expeditious implementation of municipal combined sewer overflow and sanitary sewer overflow controls nationwide.

(June 30, 1948, ch. 758, title II, §221, as added Pub. L. 106-554, §1(a)(4) [div. B, title I, §112(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A-225.)

## INFORMATION ON CSOS AND SSOS

Pub. L. 106-554, §1(a)(4) [div. B, title I, §112(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A-227, provided that:

“(1) REPORT TO CONGRESS.—Not later than 3 years after the date of enactment of this Act [Dec. 21, 2000], the Administrator of the Environmental Protection Agency shall transmit to Congress a report summarizing—

“(A) the extent of the human health and environmental impacts caused by municipal combined sewer overflows and sanitary sewer overflows, including the

location of discharges causing such impacts, the volume of pollutants discharged, and the constituents discharged;

“(B) the resources spent by municipalities to address these impacts; and

“(C) an evaluation of the technologies used by municipalities to address these impacts.

“(2) TECHNOLOGY CLEARINGHOUSE.—After transmitting a report under paragraph (1), the Administrator shall maintain a clearinghouse of cost-effective and efficient technologies for addressing human health and environmental impacts due to municipal combined sewer overflows and sanitary sewer overflows.”

## SUBCHAPTER III—STANDARDS AND ENFORCEMENT

**§ 1311. Effluent limitations****(a) Illegality of pollutant discharges except in compliance with law**

Except as in compliance with this section and sections 1312, 1316, 1317, 1328, 1342, and 1344 of this title, the discharge of any pollutant by any person shall be unlawful.

**(b) Timetable for achievement of objectives**

In order to carry out the objective of this chapter there shall be achieved—

(1)(A) not later than July 1, 1977, effluent limitations for point sources, other than publicly owned treatment works, (i) which shall require the application of the best practicable control technology currently available as defined by the Administrator pursuant to section 1314(b) of this title, or (ii) in the case of a discharge into a publicly owned treatment works which meets the requirements of subparagraph (B) of this paragraph, which shall require compliance with any applicable pretreatment requirements and any requirements under section 1317 of this title; and

(B) for publicly owned treatment works in existence on July 1, 1977, or approved pursuant to section 1283 of this title prior to June 30, 1974 (for which construction must be completed within four years of approval), effluent limitations based upon secondary treatment as defined by the Administrator pursuant to section 1314(d)(1) of this title; or,

(C) not later than July 1, 1977, any more stringent limitation, including those necessary to meet water quality standards, treatment standards, or schedules of compliance, established pursuant to any State law or regulations (under authority preserved by section 1370 of this title) or any other Federal law or regulation, or required to implement any applicable water quality standard established pursuant to this chapter.

(2)(A) for pollutants identified in subparagraphs (C), (D), and (F) of this paragraph, effluent limitations for categories and classes of point sources, other than publicly owned treatment works, which (i) shall require application of the best available technology economically achievable for such category or class, which will result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants, as determined in accordance with regulations issued by the Administrator pursuant to section 1314(b)(2) of this title, which such effluent lim-

itations shall require the elimination of discharges of all pollutants if the Administrator finds, on the basis of information available to him (including information developed pursuant to section 1325 of this title), that such elimination is technologically and economically achievable for a category or class of point sources as determined in accordance with regulations issued by the Administrator pursuant to section 1314(b)(2) of this title, or (ii) in the case of the introduction of a pollutant into a publicly owned treatment works which meets the requirements of subparagraph (B) of this paragraph, shall require compliance with any applicable pretreatment requirements and any other requirement under section 1317 of this title;

(B) Repealed. Pub. L. 97-117, §21(b), Dec. 29, 1981, 95 Stat. 1632.

(C) with respect to all toxic pollutants referred to in table 1 of Committee Print Numbered 95-30 of the Committee on Public Works and Transportation of the House of Representatives compliance with effluent limitations in accordance with subparagraph (A) of this paragraph as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 1314(b) of this title, and in no case later than March 31, 1989;

(D) for all toxic pollutants listed under paragraph (1) of subsection (a) of section 1317 of this title which are not referred to in subparagraph (C) of this paragraph compliance with effluent limitations in accordance with subparagraph (A) of this paragraph as expeditiously as practicable, but in no case later than three years after the date such limitations are promulgated under section 1314(b) of this title, and in no case later than March 31, 1989;

(E) as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 1314(b) of this title, and in no case later than March 31, 1989, compliance with effluent limitations for categories and classes of point sources, other than publicly owned treatment works, which in the case of pollutants identified pursuant to section 1314(a)(4) of this title shall require application of the best conventional pollutant control technology as determined in accordance with regulations issued by the Administrator pursuant to section 1314(b)(4) of this title; and

(F) for all pollutants (other than those subject to subparagraphs (C), (D), or (E) of this paragraph) compliance with effluent limitations in accordance with subparagraph (A) of this paragraph as expeditiously as practicable but in no case later than 3 years after the date such limitations are established, and in no case later than March 31, 1989.

(3)(A) for effluent limitations under paragraph (1)(A)(i) of this subsection promulgated after January 1, 1982, and requiring a level of control substantially greater or based on fundamentally different control technology than under permits for an industrial category issued before such date, compliance as expeditiously as practicable but in no case later than

three years after the date such limitations are promulgated under section 1314(b) of this title, and in no case later than March 31, 1989; and

(B) for any effluent limitation in accordance with paragraph (1)(A)(i), (2)(A)(i), or (2)(E) of this subsection established only on the basis of section 1342(a)(1) of this title in a permit issued after February 4, 1987, compliance as expeditiously as practicable but in no case later than three years after the date such limitations are established, and in no case later than March 31, 1989.

**(c) Modification of timetable**

The Administrator may modify the requirements of subsection (b)(2)(A) of this section with respect to any point source for which a permit application is filed after July 1, 1977, upon a showing by the owner or operator of such point source satisfactory to the Administrator that such modified requirements (1) will represent the maximum use of technology within the economic capability of the owner or operator; and (2) will result in reasonable further progress toward the elimination of the discharge of pollutants.

**(d) Review and revision of effluent limitations**

Any effluent limitation required by paragraph (2) of subsection (b) of this section shall be reviewed at least every five years and, if appropriate, revised pursuant to the procedure established under such paragraph.

**(e) All point discharge source application of effluent limitations**

Effluent limitations established pursuant to this section or section 1312 of this title shall be applied to all point sources of discharge of pollutants in accordance with the provisions of this chapter.

**(f) Illegality of discharge of radiological, chemical, or biological warfare agents, high-level radioactive waste, or medical waste**

Notwithstanding any other provisions of this chapter it shall be unlawful to discharge any radiological, chemical, or biological warfare agent, any high-level radioactive waste, or any medical waste, into the navigable waters.

**(g) Modifications for certain nonconventional pollutants**

**(1) General authority**

The Administrator, with the concurrence of the State, may modify the requirements of subsection (b)(2)(A) of this section with respect to the discharge from any point source of ammonia, chlorine, color, iron, and total phenols (4AAP) (when determined by the Administrator to be a pollutant covered by subsection (b)(2)(F) of this section) and any other pollutant which the Administrator lists under paragraph (4) of this subsection.

**(2) Requirements for granting modifications**

A modification under this subsection shall be granted only upon a showing by the owner or operator of a point source satisfactory to the Administrator that—

(A) such modified requirements will result at a minimum in compliance with the requirements of subsection (b)(1)(A) or (C) of this section, whichever is applicable;

(B) such modified requirements will not result in any additional requirements on any other point or nonpoint source; and

(C) such modification will not interfere with the attainment or maintenance of that water quality which shall assure protection of public water supplies, and the protection and propagation of a balanced population of shellfish, fish, and wildlife, and allow recreational activities, in and on the water and such modification will not result in the discharge of pollutants in quantities which may reasonably be anticipated to pose an unacceptable risk to human health or the environment because of bioaccumulation, persistency in the environment, acute toxicity, chronic toxicity (including carcinogenicity, mutagenicity or teratogenicity), or synergistic propensities.

**(3) Limitation on authority to apply for subsection (c) modification**

If an owner or operator of a point source applies for a modification under this subsection with respect to the discharge of any pollutant, such owner or operator shall be eligible to apply for modification under subsection (c) of this section with respect to such pollutant only during the same time period as he is eligible to apply for a modification under this subsection.

**(4) Procedures for listing additional pollutants**

**(A) General authority**

Upon petition of any person, the Administrator may add any pollutant to the list of pollutants for which modification under this section is authorized (except for pollutants identified pursuant to section 1314(a)(4) of this title, toxic pollutants subject to section 1317(a) of this title, and the thermal component of discharges) in accordance with the provisions of this paragraph.

**(B) Requirements for listing**

**(i) Sufficient information**

The person petitioning for listing of an additional pollutant under this subsection shall submit to the Administrator sufficient information to make the determinations required by this subparagraph.

**(ii) Toxic criteria determination**

The Administrator shall determine whether or not the pollutant meets the criteria for listing as a toxic pollutant under section 1317(a) of this title.

**(iii) Listing as toxic pollutant**

If the Administrator determines that the pollutant meets the criteria for listing as a toxic pollutant under section 1317(a) of this title, the Administrator shall list the pollutant as a toxic pollutant under section 1317(a) of this title.

**(iv) Nonconventional criteria determination**

If the Administrator determines that the pollutant does not meet the criteria for listing as a toxic pollutant under such section and determines that adequate test

methods and sufficient data are available to make the determinations required by paragraph (2) of this subsection with respect to the pollutant, the Administrator shall add the pollutant to the list of pollutants specified in paragraph (1) of this subsection for which modifications are authorized under this subsection.

**(C) Requirements for filing of petitions**

A petition for listing of a pollutant under this paragraph—

(i) must be filed not later than 270 days after the date of promulgation of an applicable effluent guideline under section 1314 of this title;

(ii) may be filed before promulgation of such guideline; and

(iii) may be filed with an application for a modification under paragraph (1) with respect to the discharge of such pollutant.

**(D) Deadline for approval of petition**

A decision to add a pollutant to the list of pollutants for which modifications under this subsection are authorized must be made within 270 days after the date of promulgation of an applicable effluent guideline under section 1314 of this title.

**(E) Burden of proof**

The burden of proof for making the determinations under subparagraph (B) shall be on the petitioner.

**(5) Removal of pollutants**

The Administrator may remove any pollutant from the list of pollutants for which modifications are authorized under this subsection if the Administrator determines that adequate test methods and sufficient data are no longer available for determining whether or not modifications may be granted with respect to such pollutant under paragraph (2) of this subsection.

**(h) Modification of secondary treatment requirements**

The Administrator, with the concurrence of the State, may issue a permit under section 1342 of this title which modifies the requirements of subsection (b)(1)(B) of this section with respect to the discharge of any pollutant from a publicly owned treatment works into marine waters, if the applicant demonstrates to the satisfaction of the Administrator that—

(1) there is an applicable water quality standard specific to the pollutant for which the modification is requested, which has been identified under section 1314(a)(6) of this title;

(2) the discharge of pollutants in accordance with such modified requirements will not interfere, alone or in combination with pollutants from other sources, with the attainment or maintenance of that water quality which assures protection of public water supplies and the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife, and allows recreational activities, in and on the water;

(3) the applicant has established a system for monitoring the impact of such discharge on a representative sample of aquatic biota, to

the extent practicable, and the scope of such monitoring is limited to include only those scientific investigations which are necessary to study the effects of the proposed discharge;

(4) such modified requirements will not result in any additional requirements on any other point or nonpoint source;

(5) all applicable pretreatment requirements for sources introducing waste into such treatment works will be enforced;

(6) in the case of any treatment works serving a population of 50,000 or more, with respect to any toxic pollutant introduced into such works by an industrial discharger for which pollutant there is no applicable pretreatment requirement in effect, sources introducing waste into such works are in compliance with all applicable pretreatment requirements, the applicant will enforce such requirements, and the applicant has in effect a pretreatment program which, in combination with the treatment of discharges from such works, removes the same amount of such pollutant as would be removed if such works were to apply secondary treatment to discharges and if such works had no pretreatment program with respect to such pollutant;

(7) to the extent practicable, the applicant has established a schedule of activities designed to eliminate the entrance of toxic pollutants from nonindustrial sources into such treatment works;

(8) there will be no new or substantially increased discharges from the point source of the pollutant to which the modification applies above that volume of discharge specified in the permit;

(9) the applicant at the time such modification becomes effective will be discharging effluent which has received at least primary or equivalent treatment and which meets the criteria established under section 1314(a)(1) of this title after initial mixing in the waters surrounding or adjacent to the point at which such effluent is discharged.

For the purposes of this subsection the phrase "the discharge of any pollutant into marine waters" refers to a discharge into deep waters of the territorial sea or the waters of the contiguous zone, or into saline estuarine waters where there is strong tidal movement and other hydrological and geological characteristics which the Administrator determines necessary to allow compliance with paragraph (2) of this subsection, and section 1251(a)(2) of this title. For the purposes of paragraph (9), "primary or equivalent treatment" means treatment by screening, sedimentation, and skimming adequate to remove at least 30 percent of the biological oxygen demanding material and of the suspended solids in the treatment works influent, and disinfection, where appropriate. A municipality which applies secondary treatment shall be eligible to receive a permit pursuant to this subsection which modifies the requirements of subsection (b)(1)(B) of this section with respect to the discharge of any pollutant from any treatment works owned by such municipality into marine waters. No permit issued under this subsection shall authorize the discharge of sewage sludge into marine waters. In order for a

permit to be issued under this subsection for the discharge of a pollutant into marine waters, such marine waters must exhibit characteristics assuring that water providing dilution does not contain significant amounts of previously discharged effluent from such treatment works. No permit issued under this subsection shall authorize the discharge of any pollutant into saline estuarine waters which at the time of application do not support a balanced indigenous population of shellfish, fish and wildlife, or allow recreation in and on the waters or which exhibit ambient water quality below applicable water quality standards adopted for the protection of public water supplies, shellfish, fish and wildlife or recreational activities or such other standards necessary to assure support and protection of such uses. The prohibition contained in the preceding sentence shall apply without regard to the presence or absence of a causal relationship between such characteristics and the applicant's current or proposed discharge. Notwithstanding any other provisions of this subsection, no permit may be issued under this subsection for discharge of a pollutant into the New York Bight Apex consisting of the ocean waters of the Atlantic Ocean westward of 73 degrees 30 minutes west longitude and northward of 40 degrees 10 minutes north latitude.

**(i) Municipal time extensions**

(1) Where construction is required in order for a planned or existing publicly owned treatment works to achieve limitations under subsection (b)(1)(B) or (b)(1)(C) of this section, but (A) construction cannot be completed within the time required in such subsection, or (B) the United States has failed to make financial assistance under this chapter available in time to achieve such limitations by the time specified in such subsection, the owner or operator of such treatment works may request the Administrator (or if appropriate the State) to issue a permit pursuant to section 1342 of this title or to modify a permit issued pursuant to that section to extend such time for compliance. Any such request shall be filed with the Administrator (or if appropriate the State) within 180 days after February 4, 1987. The Administrator (or if appropriate the State) may grant such request and issue or modify such a permit, which shall contain a schedule of compliance for the publicly owned treatment works based on the earliest date by which such financial assistance will be available from the United States and construction can be completed, but in no event later than July 1, 1988, and shall contain such other terms and conditions, including those necessary to carry out subsections (b) through (g) of section 1281 of this title, section 1317 of this title, and such interim effluent limitations applicable to that treatment works as the Administrator determines are necessary to carry out the provisions of this chapter.

(2)(A) Where a point source (other than a publicly owned treatment works) will not achieve the requirements of subsections (b)(1)(A) and (b)(1)(C) of this section and—

(i) if a permit issued prior to July 1, 1977, to such point source is based upon a discharge into a publicly owned treatment works; or

(ii) if such point source (other than a publicly owned treatment works) had before July 1, 1977, a contract (enforceable against such point source) to discharge into a publicly owned treatment works; or

(iii) if either an application made before July 1, 1977, for a construction grant under this chapter for a publicly owned treatment works, or engineering or architectural plans or working drawings made before July 1, 1977, for a publicly owned treatment works, show that such point source was to discharge into such publicly owned treatment works,

and such publicly owned treatment works is presently unable to accept such discharge without construction, and in the case of a discharge to an existing publicly owned treatment works, such treatment works has an extension pursuant to paragraph (1) of this subsection, the owner or operator of such point source may request the Administrator (or if appropriate the State) to issue or modify such a permit pursuant to such section 1342 of this title to extend such time for compliance. Any such request shall be filed with the Administrator (or if appropriate the State) within 180 days after December 27, 1977, or the filing of a request by the appropriate publicly owned treatment works under paragraph (1) of this subsection, whichever is later. If the Administrator (or if appropriate the State) finds that the owner or operator of such point source has acted in good faith, he may grant such request and issue or modify such a permit, which shall contain a schedule of compliance for the point source to achieve the requirements of subsections (b)(1)(A) and (C) of this section and shall contain such other terms and conditions, including pretreatment and interim effluent limitations and water conservation requirements applicable to that point source, as the Administrator determines are necessary to carry out the provisions of this chapter.

(B) No time modification granted by the Administrator (or if appropriate the State) pursuant to paragraph (2)(A) of this subsection shall extend beyond the earliest date practicable for compliance or beyond the date of any extension granted to the appropriate publicly owned treatment works pursuant to paragraph (1) of this subsection, but in no event shall it extend beyond July 1, 1988; and no such time modification shall be granted unless (i) the publicly owned treatment works will be in operation and available to the point source before July 1, 1988, and will meet the requirements of subsections (b)(1)(B) and (C) of this section after receiving the discharge from that point source; and (ii) the point source and the publicly owned treatment works have entered into an enforceable contract requiring the point source to discharge into the publicly owned treatment works, the owner or operator of such point source to pay the costs required under section 1284 of this title, and the publicly owned treatment works to accept the discharge from the point source; and (iii) the permit for such point source requires that point source to meet all requirements under section 1317(a) and (b) of this title during the period of such time modification.

#### (j) Modification procedures

(1) Any application filed under this section for a modification of the provisions of—

(A) subsection (b)(1)(B) of this section under subsection (h) of this section shall be filed not later than<sup>1</sup> the 365th day which begins after December 29, 1981, except that a publicly owned treatment works which prior to December 31, 1982, had a contractual arrangement to use a portion of the capacity of an ocean outfall operated by another publicly owned treatment works which has applied for or received modification under subsection (h) of this section, may apply for a modification of subsection (h) of this section in its own right not later than 30 days after February 4, 1987, and except as provided in paragraph (5);

(B) subsection (b)(2)(A) of this section as it applies to pollutants identified in subsection (b)(2)(F) of this section shall be filed not later than 270 days after the date of promulgation of an applicable effluent guideline under section 1314 of this title or not later than 270 days after December 27, 1977, whichever is later.

(2) Subject to paragraph (3) of this section, any application for a modification filed under subsection (g) of this section shall not operate to stay any requirement under this chapter, unless in the judgment of the Administrator such a stay or the modification sought will not result in the discharge of pollutants in quantities which may reasonably be anticipated to pose an unacceptable risk to human health or the environment because of bioaccumulation, persistence in the environment, acute toxicity, chronic toxicity (including carcinogenicity, mutagenicity, or teratogenicity), or synergistic propensities, and that there is a substantial likelihood that the applicant will succeed on the merits of such application. In the case of an application filed under subsection (g) of this section, the Administrator may condition any stay granted under this paragraph on requiring the filing of a bond or other appropriate security to assure timely compliance with the requirements from which a modification is sought.

(3) COMPLIANCE REQUIREMENTS UNDER SUBSECTION (g).—

(A) EFFECT OF FILING.—An application for a modification under subsection (g) of this section and a petition for listing of a pollutant as a pollutant for which modifications are authorized under such subsection shall not stay the requirement that the person seeking such modification or listing comply with effluent limitations under this chapter for all pollutants not the subject of such application or petition.

(B) EFFECT OF DISAPPROVAL.—Disapproval of an application for a modification under subsection (g) of this section shall not stay the requirement that the person seeking such modification comply with all applicable effluent limitations under this chapter.

(4) DEADLINE FOR SUBSECTION (g) DECISION.—An application for a modification with respect to a pollutant filed under subsection (g) of this section must be approved or disapproved not later

<sup>1</sup> So in original. Probably should be "than".

than 365 days after the date of such filing; except that in any case in which a petition for listing such pollutant as a pollutant for which modifications are authorized under such subsection is approved, such application must be approved or disapproved not later than 365 days after the date of approval of such petition.

(5) EXTENSION OF APPLICATION DEADLINE.—

(A) IN GENERAL.—In the 180-day period beginning on October 31, 1994, the city of San Diego, California, may apply for a modification pursuant to subsection (h) of this section of the requirements of subsection (b)(1)(B) of this section with respect to biological oxygen demand and total suspended solids in the effluent discharged into marine waters.

(B) APPLICATION.—An application under this paragraph shall include a commitment by the applicant to implement a waste water reclamation program that, at a minimum, will—

(i) achieve a system capacity of 45,000,000 gallons of reclaimed waste water per day by January 1, 2010; and

(ii) result in a reduction in the quantity of suspended solids discharged by the applicant into the marine environment during the period of the modification.

(C) ADDITIONAL CONDITIONS.—The Administrator may not grant a modification pursuant to an application submitted under this paragraph unless the Administrator determines that such modification will result in removal of not less than 58 percent of the biological oxygen demand (on an annual average) and not less than 80 percent of total suspended solids (on a monthly average) in the discharge to which the application applies.

(D) PRELIMINARY DECISION DEADLINE.—The Administrator shall announce a preliminary decision on an application submitted under this paragraph not later than 1 year after the date the application is submitted.

**(k) Innovative technology**

In the case of any facility subject to a permit under section 1342 of this title which proposes to comply with the requirements of subsection (b)(2)(A) or (b)(2)(E) of this section by replacing existing production capacity with an innovative production process which will result in an effluent reduction significantly greater than that required by the limitation otherwise applicable to such facility and moves toward the national goal of eliminating the discharge of all pollutants, or with the installation of an innovative control technique that has a substantial likelihood for enabling the facility to comply with the applicable effluent limitation by achieving a significantly greater effluent reduction than that required by the applicable effluent limitation and moves toward the national goal of eliminating the discharge of all pollutants, or by achieving the required reduction with an innovative system that has the potential for significantly lower costs than the systems which have been determined by the Administrator to be economically achievable, the Administrator (or the State with an approved program under section 1342 of this title, in consultation with the Administrator) may establish a date for compliance under subsection (b)(2)(A) or

(b)(2)(E) of this section no later than two years after the date for compliance with such effluent limitation which would otherwise be applicable under such subsection, if it is also determined that such innovative system has the potential for industrywide application.

**(l) Toxic pollutants**

Other than as provided in subsection (n) of this section, the Administrator may not modify any requirement of this section as it applies to any specific pollutant which is on the toxic pollutant list under section 1317(a)(1) of this title.

**(m) Modification of effluent limitation requirements for point sources**

(1) The Administrator, with the concurrence of the State, may issue a permit under section 1342 of this title which modifies the requirements of subsections (b)(1)(A) and (b)(2)(E) of this section, and of section 1343 of this title, with respect to effluent limitations to the extent such limitations relate to biochemical oxygen demand and pH from discharges by an industrial discharger in such State into deep waters of the territorial seas, if the applicant demonstrates and the Administrator finds that—

(A) the facility for which modification is sought is covered at the time of the enactment of this subsection by National Pollutant Discharge Elimination System permit number CA0005894 or CA0005282;

(B) the energy and environmental costs of meeting such requirements of subsections (b)(1)(A) and (b)(2)(E) of this section and section 1343 of this title exceed by an unreasonable amount the benefits to be obtained, including the objectives of this chapter;

(C) the applicant has established a system for monitoring the impact of such discharges on a representative sample of aquatic biota;

(D) such modified requirements will not result in any additional requirements on any other point or nonpoint source;

(E) there will be no new or substantially increased discharges from the point source of the pollutant to which the modification applies above that volume of discharge specified in the permit;

(F) the discharge is into waters where there is strong tidal movement and other hydrological and geological characteristics which are necessary to allow compliance with this subsection and section 1251(a)(2) of this title;

(G) the applicant accepts as a condition to the permit a contractual<sup>2</sup> obligation to use funds in the amount required (but not less than \$250,000 per year for ten years) for research and development of water pollution control technology, including but not limited to closed cycle technology;

(H) the facts and circumstances present a unique situation which, if relief is granted, will not establish a precedent or the relaxation of the requirements of this chapter applicable to similarly situated discharges; and

(I) no owner or operator of a facility comparable to that of the applicant situated in the United States has demonstrated that it would be put at a competitive disadvantage to the

<sup>2</sup>So in original. Probably should be "contractual".

applicant (or the parent company or any subsidiary thereof) as a result of the issuance of a permit under this subsection.

(2) The effluent limitations established under a permit issued under paragraph (1) shall be sufficient to implement the applicable State water quality standards, to assure the protection of public water supplies and protection and propagation of a balanced, indigenous population of shellfish, fish, fauna, wildlife, and other aquatic organisms, and to allow recreational activities in and on the water. In setting such limitations, the Administrator shall take into account any seasonal variations and the need for an adequate margin of safety, considering the lack of essential knowledge concerning the relationship between effluent limitations and water quality and the lack of essential knowledge of the effects of discharges on beneficial uses of the receiving waters.

(3) A permit under this subsection may be issued for a period not to exceed five years, and such a permit may be renewed for one additional period not to exceed five years upon a demonstration by the applicant and a finding by the Administrator at the time of application for any such renewal that the provisions of this subsection are met.

(4) The Administrator may terminate a permit issued under this subsection if the Administrator determines that there has been a decline in ambient water quality of the receiving waters during the period of the permit even if a direct cause and effect relationship cannot be shown: *Provided*, That if the effluent from a source with a permit issued under this subsection is contributing to a decline in ambient water quality of the receiving waters, the Administrator shall terminate such permit.

**(n) Fundamentally different factors**

**(1) General rule**

The Administrator, with the concurrence of the State, may establish an alternative requirement under subsection (b)(2) of this section or section 1317(b) of this title for a facility that modifies the requirements of national effluent limitation guidelines or categorical pretreatment standards that would otherwise be applicable to such facility, if the owner or operator of such facility demonstrates to the satisfaction of the Administrator that—

(A) the facility is fundamentally different with respect to the factors (other than cost) specified in section 1314(b) or 1314(g) of this title and considered by the Administrator in establishing such national effluent limitation guidelines or categorical pretreatment standards;

(B) the application—

(i) is based solely on information and supporting data submitted to the Administrator during the rulemaking for establishment of the applicable national effluent limitation guidelines or categorical pretreatment standard specifically raising the factors that are fundamentally different for such facility; or

(ii) is based on information and supporting data referred to in clause (i) and information and supporting data the applicant

did not have a reasonable opportunity to submit during such rulemaking;

(C) the alternative requirement is no less stringent than justified by the fundamental difference; and

(D) the alternative requirement will not result in a non-water quality environmental impact which is markedly more adverse than the impact considered by the Administrator in establishing such national effluent limitation guideline or categorical pretreatment standard.

**(2) Time limit for applications**

An application for an alternative requirement which modifies the requirements of an effluent limitation or pretreatment standard under this subsection must be submitted to the Administrator within 180 days after the date on which such limitation or standard is established or revised, as the case may be.

**(3) Time limit for decision**

The Administrator shall approve or deny by final agency action an application submitted under this subsection within 180 days after the date such application is filed with the Administrator.

**(4) Submission of information**

The Administrator may allow an applicant under this subsection to submit information and supporting data until the earlier of the date the application is approved or denied or the last day that the Administrator has to approve or deny such application.

**(5) Treatment of pending applications**

For the purposes of this subsection, an application for an alternative requirement based on fundamentally different factors which is pending on February 4, 1987, shall be treated as having been submitted to the Administrator on the 180th day following February 4, 1987. The applicant may amend the application to take into account the provisions of this subsection.

**(6) Effect of submission of application**

An application for an alternative requirement under this subsection shall not stay the applicant's obligation to comply with the effluent limitation guideline or categorical pretreatment standard which is the subject of the application.

**(7) Effect of denial**

If an application for an alternative requirement which modifies the requirements of an effluent limitation or pretreatment standard under this subsection is denied by the Administrator, the applicant must comply with such limitation or standard as established or revised, as the case may be.

**(8) Reports**

By January 1, 1997, and January 1 of every odd-numbered year thereafter, the Administrator shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report on the status of applications for alter-

native requirements which modify the requirements of effluent limitations under section 1311 or 1314 of this title or any national categorical pretreatment standard under section 1317(b) of this title filed before, on, or after February 4, 1987.

**(o) Application fees**

The Administrator shall prescribe and collect from each applicant fees reflecting the reasonable administrative costs incurred in reviewing and processing applications for modifications submitted to the Administrator pursuant to subsections (c), (g), (i), (k), (m), and (n) of this section, section 1314(d)(4) of this title, and section 1326(a) of this title. All amounts collected by the Administrator under this subsection shall be deposited into a special fund of the Treasury entitled "Water Permits and Related Services" which shall thereafter be available for appropriation to carry out activities of the Environmental Protection Agency for which such fees were collected.

**(p) Modified permit for coal remining operations**

**(1) In general**

Subject to paragraphs (2) through (4) of this subsection, the Administrator, or the State in any case which the State has an approved permit program under section 1342(b) of this title, may issue a permit under section 1342 of this title which modifies the requirements of subsection (b)(2)(A) of this section with respect to the pH level of any pre-existing discharge, and with respect to pre-existing discharges of iron and manganese from the remined area of any coal remining operation or with respect to the pH level or level of iron or manganese in any pre-existing discharge affected by the remining operation. Such modified requirements shall apply the best available technology economically achievable on a case-by-case basis, using best professional judgment, to set specific numerical effluent limitations in each permit.

**(2) Limitations**

The Administrator or the State may only issue a permit pursuant to paragraph (1) if the applicant demonstrates to the satisfaction of the Administrator or the State, as the case may be, that the coal remining operation will result in the potential for improved water quality from the remining operation but in no event shall such a permit allow the pH level of any discharge, and in no event shall such a permit allow the discharges of iron and manganese, to exceed the levels being discharged from the remined area before the coal remining operation begins. No discharge from, or affected by, the remining operation shall exceed State water quality standards established under section 1313 of this title.

**(3) Definitions**

For purposes of this subsection—

**(A) Coal remining operation**

The term "coal remining operation" means a coal mining operation which begins after February 4, 1987 at a site on which coal mining was conducted before August 3, 1977.

**(B) Remined area**

The term "remined area" means only that area of any coal remining operation on which coal mining was conducted before August 3, 1977.

**(C) Pre-existing discharge**

The term "pre-existing discharge" means any discharge at the time of permit application under this subsection.

**(4) Applicability of strip mining laws**

Nothing in this subsection shall affect the application of the Surface Mining Control and Reclamation Act of 1977 [30 U.S.C. 1201 et seq.] to any coal remining operation, including the application of such Act to suspended solids.

(June 30, 1948, ch. 758, title III, §301, as added Pub. L. 92-500, §2, Oct. 18, 1972, 86 Stat. 844; amended Pub. L. 95-217, §§42-47, 53(c), Dec. 27, 1977, 91 Stat. 1582-1586, 1590; Pub. L. 97-117, §§21, 22(a)-(d), Dec. 29, 1981, 95 Stat. 1631, 1632; Pub. L. 97-440, Jan. 8, 1983, 96 Stat. 2289; Pub. L. 100-4, title III, §§301(a)-(e), 302(a)-(d), 303(a), (b)(1), (c)-(f), 304(a), 305, 306(a), (b), 307, Feb. 4, 1987, 101 Stat. 29-37; Pub. L. 100-688, title III, §3202(b), Nov. 18, 1988, 102 Stat. 4154; Pub. L. 103-431, §2, Oct. 31, 1994, 108 Stat. 4396; Pub. L. 104-66, title II, §2021(b), Dec. 21, 1995, 109 Stat. 727.)

REFERENCES IN TEXT

The Surface Mining Control and Reclamation Act of 1977, referred to in subsec. (p)(4), is Pub. L. 95-87, Aug. 3, 1977, 91 Stat. 445, as amended, which is classified generally to chapter 25 (§1201 et seq.) of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code, see Short Title note set out under section 1201 of Title 30 and Tables.

AMENDMENTS

1995—Subsec. (n)(8). Pub. L. 104-66 substituted "By January 1, 1997, and January 1 of every odd-numbered year thereafter, the Administrator shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure" for "Every 6 months after February 4, 1987, the Administrator shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation".

1994—Subsec. (j)(1)(A). Pub. L. 103-431, §2(1), inserted before semicolon at end " , and except as provided in paragraph (5)".

Subsec. (j)(5). Pub. L. 103-431, §2(2), added par. (5).

1988—Subsec. (f). Pub. L. 100-688 substituted " , any high-level radioactive waste, or any medical waste," for "or high-level radioactive waste".

1987—Subsec. (b)(2)(C). Pub. L. 100-4, §301(a), struck out "not later than July 1, 1984," before "with respect" and inserted "as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 1314(b) of this title, and in no case later than March 31, 1989" after "of this paragraph".

Subsec. (b)(2)(D). Pub. L. 100-4, §301(b), substituted "as expeditiously as practicable, but in no case later than three years after the date such limitations are promulgated under section 1314(b) of this title, and in no case later than March 31, 1989" for "not later than three years after the date such limitations are established".

Subsec. (b)(2)(E). Pub. L. 100-4, §301(c), substituted "as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 1314(b) of this title, and in no case later than March 31, 1989, compliance with" for "not later than July 1, 1984,".

Subsec. (b)(2)(F). Pub. L. 100-4, §301(d), substituted “as expeditiously as practicable but in no case” for “not” and “and in no case later than March 31, 1989” for “or not later than July 1, 1984, whichever is later, but in no case later than July 1, 1987”.

Subsec. (b)(3). Pub. L. 100-4, §301(e), added par. (3).

Subsec. (g)(1). Pub. L. 100-4, §302(a), substituted par. (1) for introductory provisions of former par. (1) which read as follows: “The Administrator, with the concurrence of the State, shall modify the requirements of subsection (b)(2)(A) of this section with respect to the discharge of any pollutant (other than pollutants identified pursuant to section 1314(a)(4) of this title, toxic pollutants subject to section 1317(a) of this title, and the thermal component of discharges) from any point source upon a showing by the owner or operator of such point source satisfactory to the Administrator that—”. Subpars (A) to (C) of former par. (1) were redesignated as subpars. (A) to (C) of par. (2).

Subsec. (g)(2). Pub. L. 100-4, §302(a), (d)(2), inserted introductory provisions of par. (2), and by so doing, redesignated subpars. (A) to (C) of former par. (1) as subpars. (A) to (C) of par. (2), realigned such subpars. with subpar. (A) of par. (4), and redesignated former par. (2) as (3).

Subsec. (g)(3). Pub. L. 100-4, §302(a), (d)(1), redesignated former par. (2) as (3), inserted heading, and aligned par. (3) with par. (4).

Subsec. (g)(4), (5). Pub. L. 100-4, §302(b), added pars. (4) and (5).

Subsec. (h). Pub. L. 100-4, §303(d)(2), (e), in closing provisions, inserted provision defining “primary or equivalent treatment” for purposes of par. (9) and provisions placing limitations on issuance of permits for discharge of pollutant into marine waters and saline estuarine waters and prohibiting issuance of permit for discharge of pollutant into New York Bight Apex.

Subsec. (h)(2). Pub. L. 100-4, §303(a), substituted “the discharge of pollutants in accordance with such modified requirements will not interfere, alone or in combination with pollutants from other sources,” for “such modified requirements will not interfere”.

Subsec. (h)(3). Pub. L. 100-4, §303(b)(1), inserted “, and the scope of such monitoring is limited to include only those scientific investigations which are necessary to study the effects of the proposed discharge” before semicolon at end.

Subsec. (h)(6) to (9). Pub. L. 100-4, §303(c), (d)(1), added par. (6), redesignated former pars. (6) and (7) as (7) and (8), respectively, substituted semicolon for period at end of par. (8), and added par. (9).

Subsec. (i)(1). Pub. L. 100-4, §304(a), substituted “February 4, 1987” for “December 27, 1977”.

Subsec. (j)(1)(A). Pub. L. 100-4, §303(f), inserted before semicolon at end “, except that a publicly owned treatment works which prior to December 31, 1982, had a contractual arrangement to use a portion of the capacity of an ocean outfall operated by another publicly owned treatment works which has applied for or received modification under subsection (h) of this section, may apply for a modification of subsection (h) of this section in its own right not later than 30 days after February 4, 1987”.

Subsec. (j)(2). Pub. L. 100-4, §302(c)(1), substituted “Subject to paragraph (3) of this section, any” for “Any”.

Subsec. (j)(3), (4). Pub. L. 100-4, §302(c)(2), added pars. (3) and (4).

Subsec. (k). Pub. L. 100-4, §305, substituted “two years after the date for compliance with such effluent limitation which would otherwise be applicable under such subsection” for “July 1, 1987” and inserted “or (b)(2)(E)” after “(b)(2)(A)” in two places.

Subsec. (l). Pub. L. 100-4, §306(b), substituted “Other than as provided in subsection (n) of this section, the” for “The”.

Subsecs. (n), (o). Pub. L. 100-4, §306(a), added subsecs. (n) and (o).

Subsec. (p). Pub. L. 100-4, §307, added subsec. (p).

1983—Subsec. (m). Pub. L. 97-440 added subsec. (m).

1981—Subsec. (b)(2)(B). Pub. L. 97-117, §21(b), struck out subpar. (B) which required that, not later than July 1, 1983, compliance by all publicly owned treatment works with the requirements in section 1281(g)(2)(A) of this title be achieved.

Subsec. (h). Pub. L. 97-117, §22(a) to (c), struck out in provision preceding par. (1) “in an existing discharge” after “discharge of any pollutant”, struck out par. (8), which required the applicant to demonstrate to the satisfaction of the Administrator that any funds available to the owner of such treatment works under subchapter II of this chapter be used to achieve the degree of effluent reduction required by section 1281(b) and (g)(2)(A) of this title or to carry out the requirements of this subsection, and inserted in provision following par. (7) a further provision that a municipality which applies secondary treatment be eligible to receive a permit which modifies the requirements of subsec. (b)(1)(B) of this section with respect to the discharge of any pollutant from any treatment works owned by such municipality into marine waters and that no permit issued under this subsection authorize the discharge of sewage sludge into marine waters.

Subsec. (i)(1), (2)(B). Pub. L. 97-117, §21(a), substituted “July 1, 1988,” for “July 1, 1983,” wherever appearing. Par. (2)(B) contained a reference to “July 1, 1983;” which was changed to “July 1, 1988;” as the probable intent of Congress in that reference to July 1, 1983, was to the outside date for compliance for a point source other than a publicly owned treatment works and subpar. (B) allows a time extension for such a point source up to the date granted in an extension for a publicly owned treatment works, which date was extended to July 1, 1988, by Pub. L. 97-117.

Subsec. (j)(1)(A). Pub. L. 97-117, §22(d), substituted “that the 365th day which begins after December 29, 1981” for “than 270 days after December 27, 1977”.

1977—Subsec. (b)(2)(A). Pub. L. 95-217, §42(b), substituted “for pollutants identified in subparagraphs (C), (D), and (F) of this paragraph” for “not later than July 1, 1983”.

Subsec. (b)(2)(C) to (F). Pub. L. 95-217, §42(a), added subpars. (C) to (F).

Subsec. (g). Pub. L. 95-217, §43, added subsec. (g).

Subsec. (h). Pub. L. 95-217, §44, added subsec. (h).

Subsec. (i). Pub. L. 95-217, §45, added subsec. (i).

Subsec. (j). Pub. L. 95-217, §46, added subsec. (j).

Subsec. (k). Pub. L. 95-217, §47, added subsec. (k).

Subsec. (l). Pub. L. 95-217, §53(c), added subsec. (l).

#### CHANGE OF NAME

Committee on Public Works and Transportation of House of Representatives treated as referring to Committee on Transportation and Infrastructure of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

#### EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100-4, title III, §302(e), Feb. 4, 1987, 101 Stat. 32, provided that:

“(1) GENERAL RULE.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to all requests for modifications under section 301(g) of the Federal Water Pollution Control Act [33 U.S.C. 1311(g)] pending on the date of the enactment of this Act [Feb. 4, 1987] and shall not have the effect of extending the deadline established in section 301(j)(1)(B) of such Act.

“(2) EXCEPTION.—The amendments made by this section shall not affect any application for a modification with respect to the discharge of ammonia, chlorine, color, iron, or total phenols (4AAP) under section 301(g) of the Federal Water Pollution Control Act pending on the date of the enactment of this Act; except that the Administrator must approve or disapprove such application not later than 365 days after the date of such enactment.”

Pub. L. 100-4, title III, §303(b)(2), Feb. 4, 1987, 101 Stat. 33, provided that: “The amendment made by subsection

(b) [amending this section] shall only apply to modifications and renewals of modifications which are tentatively or finally approved after the date of the enactment of this Act [Feb. 4, 1987]."

Pub. L. 100-4, title III, §303(g), Feb. 4, 1987, 101 Stat. 34, provided that: "The amendments made by subsections (a), (c), (d), and (e) of this section [amending this section] shall not apply to an application for a permit under section 301(h) of the Federal Water Pollution Control Act [33 U.S.C. 1311(h)] which has been tentatively or finally approved by the Administrator before the date of the enactment of this Act [Feb. 4, 1987]; except that such amendments shall apply to all renewals of such permits after such date of enactment."

Pub. L. 100-4, title III, §304(b), Feb. 4, 1987, 101 Stat. 34, provided that: "The amendment made by subsection (a) [amending this section] shall not apply to those treatment works which are subject to a compliance schedule established before the date of the enactment of this Act [Feb. 4, 1987] by a court order or a final administrative order."

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97-117, §22(e), Dec. 29, 1981, 95 Stat. 1632, provided that: "The amendments made by this section [amending this section] shall take effect on the date of enactment of this Act [Dec. 29, 1981], except that no applicant, other than the city of Avalon, California, who applies after the date of enactment of this Act for a permit pursuant to subsection (h) of section 301 of the Federal Water Pollution Control Act [33 U.S.C. 1311(h)] which modifies the requirements of subsection (b)(1)(B) of section 301 of such Act [33 U.S.C. 1311(b)(1)(B)] shall receive such permit during the one-year period which begins on the date of enactment of this Act."

REGULATIONS

Pub. L. 100-4, title III, §301(f), Feb. 4, 1987, 101 Stat. 30, provided that: "The Administrator shall promulgate final regulations establishing effluent limitations in accordance with sections 301(b)(2)(A) and 307(b)(1) of the Federal Water Pollution Control Act [33 U.S.C. 1311(b)(2)(A), 1317(b)(1)] for all toxic pollutants referred to in table 1 of Committee Print Numbered 95-30 of the Committee on Public Works and Transportation of the House of Representatives which are discharged from the categories of point sources in accordance with the following table:

"Category	Date by which the final regulation shall be promulgated
Organic chemicals and plastics and synthetic fibers .....	December 31, 1986.
Pesticides .....	December 31, 1986."

PHOSPHATE FERTILIZER EFFLUENT LIMITATION

Amendment by section 306(a), (b) of Pub. L. 100-4 not to be construed (A) to require the Administrator to permit the discharge of gypsum or gypsum waste into the navigable waters, (B) to affect the procedures and standards applicable to the Administrator in issuing permits under section 1342(a)(1)(B) of this title, and (C) to affect the authority of any State to deny or condition certification under section 1314 of this title with respect to the issuance of permits under section 1342(a)(1)(B) of this title, see section 306(c) of Pub. L. 100-4, set out as a note under section 1342 of this title.

DISCHARGES FROM POINT SOURCES IN UNITED STATES VIRGIN ISLANDS ATTRIBUTABLE TO MANUFACTURE OF RUM; EXEMPTION FROM FEDERAL WATER POLLUTION CONTROL REQUIREMENTS; CONDITIONS

Pub. L. 98-67, title II, §214(g), Aug. 5, 1983, 97 Stat. 393, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "Any discharge from a point source in the United States Virgin Islands in existence on the date of the enactment of this subsection [Aug. 5, 1983] which discharge is attributable to the manufacture of

rum (as defined in paragraphs (3) of section 7652(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) [26 U.S.C. 7652(c)(3)] shall not be subject to the requirements of section 301 (other than toxic pollutant discharges), section 306 or section 403 of the Federal Water Pollution Control Act [33 U.S.C. 1311, 1316, 1343] if—

"(1) such discharge occurs at least one thousand five hundred feet into the territorial sea from the line of ordinary low water from that portion of the coast which is in direct contact with the sea, and

"(2) the Governor of the United States Virgin Islands determines that such discharge will not interfere with the attainment or maintenance of that water quality which shall assure protection of public water supplies, and the protection and propagation of a balanced population of shellfish, fish, and wildlife, and allow recreational activities, in and on the water and will not result in the discharge of pollutants in quantities which may reasonably be anticipated to pose an unacceptable risk to human health or the environment because of bioaccumulation, persistency in the environment, acute toxicity, chronic toxicity (including carcinogenicity, mutagenicity, or teratogenicity), or synergistic propensities."

CERTAIN MUNICIPAL COMPLIANCE DEADLINES UNAFFECTED; EXCEPTION

Pub. L. 97-117, §21(a), Dec. 29, 1981, 95 Stat. 1631, provided in part that: "The amendment made by this subsection [amending this section] shall not be interpreted or applied to extend the date for compliance with section 301(b)(1)(B) or (C) of the Federal Water Pollution Control Act [33 U.S.C. 1311(b)(1)(B), (C)] beyond schedules for compliance in effect as of the date of enactment of this Act [Dec. 29, 1981], except in cases where reductions in the amount of financial assistance under this Act [Pub. L. 97-117, see Short Title of 1981 Amendment note set out under section 1251 of this title] or changed conditions affecting the rate of construction beyond the control of the owner or operator will make it impossible to complete construction by July 1, 1983."

TERRITORIAL SEA AND CONTIGUOUS ZONE OF UNITED STATES

For extension of territorial sea and contiguous zone of United States, see Proc. No. 5928 and Proc. No. 7219, respectively, set out as notes under section 1331 of Title 43, Public Lands.

§ 1312. Water quality related effluent limitations

(a) Establishment

Whenever, in the judgment of the Administrator or as identified under section 1314(7) of this title, discharges of pollutants from a point source or group of point sources, with the application of effluent limitations required under section 1311(b)(2) of this title, would interfere with the attainment or maintenance of that water quality in a specific portion of the navigable waters which shall assure protection of public health, public water supplies, agricultural and industrial uses, and the protection and propagation of a balanced population of shellfish, fish and wildlife, and allow recreational activities in and on the water, effluent limitations (including alternative effluent control strategies) for such point source or sources shall be established which can reasonably be expected to contribute to the attainment or maintenance of such water quality.

(b) Modifications of effluent limitations

(1) Notice and hearing

Prior to establishment of any effluent limitation pursuant to subsection (a) of this sec-

tion, the Administrator shall publish such proposed limitation and within 90 days of such publication hold a public hearing.

**(2) Permits**

**(A) No reasonable relationship**

The Administrator, with the concurrence of the State, may issue a permit which modifies the effluent limitations required by subsection (a) of this section for pollutants other than toxic pollutants if the applicant demonstrates at such hearing that (whether or not technology or other alternative control strategies are available) there is no reasonable relationship between the economic and social costs and the benefits to be obtained (including attainment of the objective of this chapter) from achieving such limitation.

**(B) Reasonable progress**

The Administrator, with the concurrence of the State, may issue a permit which modifies the effluent limitations required by subsection (a) of this section for toxic pollutants for a single period not to exceed 5 years if the applicant demonstrates to the satisfaction of the Administrator that such modified requirements (i) will represent the maximum degree of control within the economic capability of the owner and operator of the source, and (ii) will result in reasonable further progress beyond the requirements of section 1311(b)(2) of this title toward the requirements of subsection (a) of this section.

**(c) Delay in application of other limitations**

The establishment of effluent limitations under this section shall not operate to delay the application of any effluent limitation established under section 1311 of this title.

(June 30, 1948, ch. 758, title III, §302, as added Pub. L. 92-500, §2, Oct. 18, 1972, 86 Stat. 846; amended Pub. L. 100-4, title III, §308(e), Feb. 4, 1987, 101 Stat. 39.)

AMENDMENTS

1987—Subsec. (a). Pub. L. 100-4, §308(e)(2), inserted “or as identified under section 1314(l) of this title” after “Administrator” and “public health,” after “protection of”.

Subsec. (b). Pub. L. 100-4, §308(e)(1), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows:

“(1) Prior to establishment of any effluent limitation pursuant to subsection (a) of this section, the Administrator shall issue notice of intent to establish such limitation and within ninety days of such notice hold a public hearing to determine the relationship of the economic and social costs of achieving any such limitation or limitations, including any economic or social dislocation in the affected community or communities, to the social and economic benefits to be obtained (including the attainment of the objective of this chapter) and to determine whether or not such effluent limitations can be implemented with available technology or other alternative control strategies.

“(2) If a person affected by such limitation demonstrates at such hearing that (whether or not such technology or other alternative control strategies are available) there is no reasonable relationship between the economic and social costs and the benefits to be obtained (including attainment of the objective of this

chapter), such limitation shall not become effective and the Administrator shall adjust such limitation as it applies to such person.”

**§ 1313. Water quality standards and implementation plans**

**(a) Existing water quality standards**

(1) In order to carry out the purpose of this chapter, any water quality standard applicable to interstate waters which was adopted by any State and submitted to, and approved by, or is awaiting approval by, the Administrator pursuant to this Act as in effect immediately prior to October 18, 1972, shall remain in effect unless the Administrator determined that such standard is not consistent with the applicable requirements of this Act as in effect immediately prior to October 18, 1972. If the Administrator makes such a determination he shall, within three months after October 18, 1972, notify the State and specify the changes needed to meet such requirements. If such changes are not adopted by the State within ninety days after the date of such notification, the Administrator shall promulgate such changes in accordance with subsection (b) of this section.

(2) Any State which, before October 18, 1972, has adopted, pursuant to its own law, water quality standards applicable to intrastate waters shall submit such standards to the Administrator within thirty days after October 18, 1972. Each such standard shall remain in effect, in the same manner and to the same extent as any other water quality standard established under this chapter unless the Administrator determines that such standard is inconsistent with the applicable requirements of this Act as in effect immediately prior to October 18, 1972. If the Administrator makes such a determination he shall not later than the one hundred and twentieth day after the date of submission of such standards, notify the State and specify the changes needed to meet such requirements. If such changes are not adopted by the State within ninety days after such notification, the Administrator shall promulgate such changes in accordance with subsection (b) of this section.

(3)(A) Any State which prior to October 18, 1972, has not adopted pursuant to its own laws water quality standards applicable to intrastate waters shall, not later than one hundred and eighty days after October 18, 1972, adopt and submit such standards to the Administrator.

(B) If the Administrator determines that any such standards are consistent with the applicable requirements of this Act as in effect immediately prior to October 18, 1972, he shall approve such standards.

(C) If the Administrator determines that any such standards are not consistent with the applicable requirements of this Act as in effect immediately prior to October 18, 1972, he shall, not later than the ninetieth day after the date of submission of such standards, notify the State and specify the changes to meet such requirements. If such changes are not adopted by the State within ninety days after the date of notification, the Administrator shall promulgate such standards pursuant to subsection (b) of this section.

**(b) Proposed regulations**

(1) The Administrator shall promptly prepare and publish proposed regulations setting forth water quality standards for a State in accordance with the applicable requirements of this Act as in effect immediately prior to October 18, 1972, if—

(A) the State fails to submit water quality standards within the times prescribed in subsection (a) of this section.

(B) a water quality standard submitted by such State under subsection (a) of this section is determined by the Administrator not to be consistent with the applicable requirements of subsection (a) of this section.

(2) The Administrator shall promulgate any water quality standard published in a proposed regulation not later than one hundred and ninety days after the date he publishes any such proposed standard, unless prior to such promulgation, such State has adopted a water quality standard which the Administrator determines to be in accordance with subsection (a) of this section.

**(c) Review; revised standards; publication**

(1) The Governor of a State or the State water pollution control agency of such State shall from time to time (but at least once each three year period beginning with October 18, 1972) hold public hearings for the purpose of reviewing applicable water quality standards and, as appropriate, modifying and adopting standards. Results of such review shall be made available to the Administrator.

(2)(A) Whenever the State revises or adopts a new standard, such revised or new standard shall be submitted to the Administrator. Such revised or new water quality standard shall consist of the designated uses of the navigable waters involved and the water quality criteria for such waters based upon such uses. Such standards shall be such as to protect the public health or welfare, enhance the quality of water and serve the purposes of this chapter. Such standards shall be established taking into consideration their use and value for public water supplies, propagation of fish and wildlife, recreational purposes, and agricultural, industrial, and other purposes, and also taking into consideration their use and value for navigation.

(B) Whenever a State reviews water quality standards pursuant to paragraph (1) of this subsection, or revises or adopts new standards pursuant to this paragraph, such State shall adopt criteria for all toxic pollutants listed pursuant to section 1317(a)(1) of this title for which criteria have been published under section 1314(a) of this title, the discharge or presence of which in the affected waters could reasonably be expected to interfere with those designated uses adopted by the State, as necessary to support such designated uses. Such criteria shall be specific numerical criteria for such toxic pollutants. Where such numerical criteria are not available, whenever a State reviews water quality standards pursuant to paragraph (1), or revises or adopts new standards pursuant to this paragraph, such State shall adopt criteria based on biological monitoring or assessment methods consistent with information published pursuant

to section 1314(a)(8) of this title. Nothing in this section shall be construed to limit or delay the use of effluent limitations or other permit conditions based on or involving biological monitoring or assessment methods or previously adopted numerical criteria.

(3) If the Administrator, within sixty days after the date of submission of the revised or new standard, determines that such standard meets the requirements of this chapter, such standard shall thereafter be the water quality standard for the applicable waters of that State. If the Administrator determines that any such revised or new standard is not consistent with the applicable requirements of this chapter, he shall not later than the ninetieth day after the date of submission of such standard notify the State and specify the changes to meet such requirements. If such changes are not adopted by the State within ninety days after the date of notification, the Administrator shall promulgate such standard pursuant to paragraph (4) of this subsection.

(4) The Administrator shall promptly prepare and publish proposed regulations setting forth a revised or new water quality standard for the navigable waters involved—

(A) if a revised or new water quality standard submitted by such State under paragraph (3) of this subsection for such waters is determined by the Administrator not to be consistent with the applicable requirements of this chapter, or

(B) in any case where the Administrator determines that a revised or new standard is necessary to meet the requirements of this chapter.

The Administrator shall promulgate any revised or new standard under this paragraph not later than ninety days after he publishes such proposed standards, unless prior to such promulgation, such State has adopted a revised or new water quality standard which the Administrator determines to be in accordance with this chapter.

**(d) Identification of areas with insufficient controls; maximum daily load; certain effluent limitations revision**

(1)(A) Each State shall identify those waters within its boundaries for which the effluent limitations required by section 1311(b)(1)(A) and section 1311(b)(1)(B) of this title are not stringent enough to implement any water quality standard applicable to such waters. The State shall establish a priority ranking for such waters, taking into account the severity of the pollution and the uses to be made of such waters.

(B) Each State shall identify those waters or parts thereof within its boundaries for which controls on thermal discharges under section 1311 of this title are not stringent enough to assure protection and propagation of a balanced indigenous population of shellfish, fish, and wildlife.

(C) Each State shall establish for the waters identified in paragraph (1)(A) of this subsection, and in accordance with the priority ranking, the total maximum daily load, for those pollutants which the Administrator identifies under section 1314(a)(2) of this title as suitable for such

calculation. Such load shall be established at a level necessary to implement the applicable water quality standards with seasonal variations and a margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality.

(D) Each State shall estimate for the waters identified in paragraph (1)(B) of this subsection the total maximum daily thermal load required to assure protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife. Such estimates shall take into account the normal water temperatures, flow rates, seasonal variations, existing sources of heat input, and the dissipative capacity of the identified waters or parts thereof. Such estimates shall include a calculation of the maximum heat input that can be made into each such part and shall include a margin of safety which takes into account any lack of knowledge concerning the development of thermal water quality criteria for such protection and propagation in the identified waters or parts thereof.

(2) Each State shall submit to the Administrator from time to time, with the first such submission not later than one hundred and eighty days after the date of publication of the first identification of pollutants under section 1314(a)(2)(D) of this title, for his approval the waters identified and the loads established under paragraphs (1)(A), (1)(B), (1)(C), and (1)(D) of this subsection. The Administrator shall either approve or disapprove such identification and load not later than thirty days after the date of submission. If the Administrator approves such identification and load, such State shall incorporate them into its current plan under subsection (e) of this section. If the Administrator disapproves such identification and load, he shall not later than thirty days after the date of such disapproval identify such waters in such State and establish such loads for such waters as he determines necessary to implement the water quality standards applicable to such waters and upon such identification and establishment the State shall incorporate them into its current plan under subsection (e) of this section.

(3) For the specific purpose of developing information, each State shall identify all waters within its boundaries which it has not identified under paragraph (1)(A) and (1)(B) of this subsection and estimate for such waters the total maximum daily load with seasonal variations and margins of safety, for those pollutants which the Administrator identifies under section 1314(a)(2) of this title as suitable for such calculation and for thermal discharges, at a level that would assure protection and propagation of a balanced indigenous population of fish, shellfish, and wildlife.

(4) LIMITATIONS ON REVISION OF CERTAIN EFFLUENT LIMITATIONS.—

(A) STANDARD NOT ATTAINED.—For waters identified under paragraph (1)(A) where the applicable water quality standard has not yet been attained, any effluent limitation based on a total maximum daily load or other waste load allocation established under this section may be revised only if (i) the cumulative ef-

fect of all such revised effluent limitations based on such total maximum daily load or waste load allocation will assure the attainment of such water quality standard, or (ii) the designated use which is not being attained is removed in accordance with regulations established under this section.

(B) STANDARD ATTAINED.—For waters identified under paragraph (1)(A) where the quality of such waters equals or exceeds levels necessary to protect the designated use for such waters or otherwise required by applicable water quality standards, any effluent limitation based on a total maximum daily load or other waste load allocation established under this section, or any water quality standard established under this section, or any other permitting standard may be revised only if such revision is subject to and consistent with the antidegradation policy established under this section.

**(e) Continuing planning process**

(1) Each State shall have a continuing planning process approved under paragraph (2) of this subsection which is consistent with this chapter.

(2) Each State shall submit not later than 120 days after October 18, 1972, to the Administrator for his approval a proposed continuing planning process which is consistent with this chapter. Not later than thirty days after the date of submission of such a process the Administrator shall either approve or disapprove such process. The Administrator shall from time to time review each State's approved planning process for the purpose of insuring that such planning process is at all times consistent with this chapter. The Administrator shall not approve any State permit program under subchapter IV of this chapter for any State which does not have an approved continuing planning process under this section.

(3) The Administrator shall approve any continuing planning process submitted to him under this section which will result in plans for all navigable waters within such State, which include, but are not limited to, the following:

(A) effluent limitations and schedules of compliance at least as stringent as those required by section 1311(b)(1), section 1311(b)(2), section 1316, and section 1317 of this title, and at least as stringent as any requirements contained in any applicable water quality standard in effect under authority of this section;

(B) the incorporation of all elements of any applicable area-wide waste management plans under section 1288 of this title, and applicable basin plans under section 1289 of this title;

(C) total maximum daily load for pollutants in accordance with subsection (d) of this section;

(D) procedures for revision;

(E) adequate authority for intergovernmental cooperation;

(F) adequate implementation, including schedules of compliance, for revised or new water quality standards, under subsection (c) of this section;

(G) controls over the disposition of all residual waste from any water treatment process;

(H) an inventory and ranking, in order of priority, of needs for construction of waste treatment works required to meet the applicable requirements of sections 1311 and 1312 of this title.

**(f) Earlier compliance**

Nothing in this section shall be construed to affect any effluent limitation, or schedule of compliance required by any State to be implemented prior to the dates set forth in sections 1311(b)(1) and 1311(b)(2) of this title nor to preclude any State from requiring compliance with any effluent limitation or schedule of compliance at dates earlier than such dates.

**(g) Heat standards**

Water quality standards relating to heat shall be consistent with the requirements of section 1326 of this title.

**(h) Thermal water quality standards**

For the purposes of this chapter the term “water quality standards” includes thermal water quality standards.

**(i) Coastal recreation water quality criteria**

**(1) Adoption by States**

**(A) Initial criteria and standards**

Not later than 42 months after October 10, 2000, each State having coastal recreation waters shall adopt and submit to the Administrator water quality criteria and standards for the coastal recreation waters of the State for those pathogens and pathogen indicators for which the Administrator has published criteria under section 1314(a) of this title.

**(B) New or revised criteria and standards**

Not later than 36 months after the date of publication by the Administrator of new or revised water quality criteria under section 1314(a)(9) of this title, each State having coastal recreation waters shall adopt and submit to the Administrator new or revised water quality standards for the coastal recreation waters of the State for all pathogens and pathogen indicators to which the new or revised water quality criteria are applicable.

**(2) Failure of States to adopt**

**(A) In general**

If a State fails to adopt water quality criteria and standards in accordance with paragraph (1)(A) that are as protective of human health as the criteria for pathogens and pathogen indicators for coastal recreation waters published by the Administrator, the Administrator shall promptly propose regulations for the State setting forth revised or new water quality standards for pathogens and pathogen indicators described in paragraph (1)(A) for coastal recreation waters of the State.

**(B) Exception**

If the Administrator proposes regulations for a State described in subparagraph (A) under subsection (c)(4)(B) of this section, the Administrator shall publish any revised or

new standard under this subsection not later than 42 months after October 10, 2000.

**(3) Applicability**

Except as expressly provided by this subsection, the requirements and procedures of subsection (c) of this section apply to this subsection, including the requirement in subsection (c)(2)(A) of this section that the criteria protect public health and welfare.

(June 30, 1948, ch. 758, title III, §303, as added Pub. L. 92-500, §2, Oct. 18, 1972, 86 Stat. 846; amended Pub. L. 100-4, title III, §308(d), title IV, §404(b), Feb. 4, 1987, 101 Stat. 39, 68; Pub. L. 106-284, §2, Oct. 10, 2000, 114 Stat. 870.)

REFERENCES IN TEXT

This Act, referred to in subsecs. (a)(1), (2), (3)(B), (C) and (b)(1), means act June 30, 1948, ch. 758, 62 Stat. 1155, prior to the supersedure and reenactment of act June 30, 1948 by act Oct. 18, 1972, Pub. L. 92-500, 86 Stat. 816. Act June 30, 1948, ch. 758, as added by act Oct. 18, 1972, Pub. L. 92-500, 86 Stat. 816, enacted this chapter.

AMENDMENTS

2000—Subsec. (i). Pub. L. 106-284 added subsec. (i).  
1987—Subsec. (c)(2). Pub. L. 100-4, §308(d), designated existing provision as subpar. (A) and added subpar. (B).  
Subsec. (d)(4). Pub. L. 100-4, §404(b), added par. (4).

**§ 1313a. Revised water quality standards**

The review, revision, and adoption or promulgation of revised or new water quality standards pursuant to section 303(c) of the Federal Water Pollution Control Act [33 U.S.C. 1313(c)] shall be completed by the date three years after December 29, 1981. No grant shall be made under title II of the Federal Water Pollution Control Act [33 U.S.C. 1281 et seq.] after such date until water quality standards are reviewed and revised pursuant to section 303(c), except where the State has in good faith submitted such revised water quality standards and the Administrator has not acted to approve or disapprove such submission within one hundred and twenty days of receipt.

(Pub. L. 97-117, §24, Dec. 29, 1981, 95 Stat. 1632.)

REFERENCES IN TEXT

The Federal Water Pollution Control Act, referred to in text, is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92-500, §2, Oct. 18, 1972, 86 Stat. 816. Title II of the Act is classified generally to subchapter II (§1281 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of this title and Tables.

CODIFICATION

Section was enacted as part of the Municipal Wastewater Treatment Construction Grant Amendments of 1981, and not as part of the Federal Water Pollution Control Act which comprises this chapter.

**§ 1314. Information and guidelines**

**(a) Criteria development and publication**

(1) The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall develop and publish, within one year after October 18, 1972 (and from time to time thereafter revise) criteria for water quality accurately reflecting the latest scientific knowledge (A) on the kind and extent of all identifiable effects on health and welfare

including, but not limited to, plankton, fish, shellfish, wildlife, plant life, shorelines, beaches, esthetics, and recreation which may be expected from the presence of pollutants in any body of water, including ground water; (B) on the concentration and dispersal of pollutants, or their byproducts, through biological, physical, and chemical processes; and (C) on the effects of pollutants on biological community diversity, productivity, and stability, including information on the factors affecting rates of eutrophication and rates of organic and inorganic sedimentation for varying types of receiving waters.

(2) The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall develop and publish, within one year after October 18, 1972 (and from time to time thereafter revise) information (A) on the factors necessary to restore and maintain the chemical, physical, and biological integrity of all navigable waters, ground waters, waters of the contiguous zone, and the oceans; (B) on the factors necessary for the protection and propagation of shellfish, fish, and wildlife for classes and categories of receiving waters and to allow recreational activities in and on the water; and (C) on the measurement and classification of water quality; and (D) for the purpose of section 1313 of this title, on and the identification of pollutants suitable for maximum daily load measurement correlated with the achievement of water quality objectives.

(3) Such criteria and information and revisions thereof shall be issued to the States and shall be published in the Federal Register and otherwise made available to the public.

(4) The Administrator shall, within 90 days after December 27, 1977, and from time to time thereafter, publish and revise as appropriate information identifying conventional pollutants, including but not limited to, pollutants classified as biological oxygen demanding, suspended solids, fecal coliform, and pH. The thermal component of any discharge shall not be identified as a conventional pollutant under this paragraph.

(5)(A) The Administrator, to the extent practicable before consideration of any request under section 1311(g) of this title and within six months after December 27, 1977, shall develop and publish information on the factors necessary for the protection of public water supplies, and the protection and propagation of a balanced population of shellfish, fish and wildlife, and to allow recreational activities, in and on the water.

(B) The Administrator, to the extent practicable before consideration of any application under section 1311(h) of this title and within six months after December 27, 1977, shall develop and publish information on the factors necessary for the protection of public water supplies, and the protection and propagation of a balanced indigenous population of shellfish, fish and wildlife, and to allow recreational activities, in and on the water.

(6) The Administrator shall, within three months after December 27, 1977, and annually thereafter, for purposes of section 1311(h) of this title publish and revise as appropriate information identifying each water quality standard in

effect under this chapter or State law, the specific pollutants associated with such water quality standard, and the particular waters to which such water quality standard applies.

(7) GUIDANCE TO STATES.—The Administrator, after consultation with appropriate State agencies and on the basis of criteria and information published under paragraphs (1) and (2) of this subsection, shall develop and publish, within 9 months after February 4, 1987, guidance to the States on performing the identification required by subsection (1)(1) of this section.

(8) INFORMATION ON WATER QUALITY CRITERIA.—The Administrator, after consultation with appropriate State agencies and within 2 years after February 4, 1987, shall develop and publish information on methods for establishing and measuring water quality criteria for toxic pollutants on other bases than pollutant-by-pollutant criteria, including biological monitoring and assessment methods.

(9) REVISED CRITERIA FOR COASTAL RECREATION WATERS.—

(A) IN GENERAL.—Not later than 5 years after October 10, 2000, after consultation and in cooperation with appropriate Federal, State, tribal, and local officials (including local health officials), the Administrator shall publish new or revised water quality criteria for pathogens and pathogen indicators (including a revised list of testing methods, as appropriate), based on the results of the studies conducted under section 1254(v) of this title, for the purpose of protecting human health in coastal recreation waters.

(B) REVIEWS.—Not later than the date that is 5 years after the date of publication of water quality criteria under this paragraph, and at least once every 5 years thereafter, the Administrator shall review and, as necessary, revise the water quality criteria.

#### **(b) Effluent limitation guidelines**

For the purpose of adopting or revising effluent limitations under this chapter the Administrator shall, after consultation with appropriate Federal and State agencies and other interested persons, publish within one year of October 18, 1972, regulations, providing guidelines for effluent limitations, and, at least annually thereafter, revise, if appropriate, such regulations. Such regulations shall—

(1)(A) identify, in terms of amounts of constituents and chemical, physical, and biological characteristics of pollutants, the degree of effluent reduction attainable through the application of the best practicable control technology currently available for classes and categories of point sources (other than publicly owned treatment works); and

(B) specify factors to be taken into account in determining the control measures and practices to be applicable to point sources (other than publicly owned treatment works) within such categories or classes. Factors relating to the assessment of best practicable control technology currently available to comply with subsection (b)(1) of section 1311 of this title shall include consideration of the total cost of application of technology in relation to the effluent reduction benefits to be achieved from

such application, and shall also take into account the age of equipment and facilities involved, the process employed, the engineering aspects of the application of various types of control techniques, process changes, non-water quality environmental impact (including energy requirements), and such other factors as the Administrator deems appropriate;

(2)(A) identify, in terms of amounts of constituents and chemical, physical, and biological characteristics of pollutants, the degree of effluent reduction attainable through the application of the best control measures and practices achievable including treatment techniques, process and procedure innovations, operating methods, and other alternatives for classes and categories of point sources (other than publicly owned treatment works); and

(B) specify factors to be taken into account in determining the best measures and practices available to comply with subsection (b)(2) of section 1311 of this title to be applicable to any point source (other than publicly owned treatment works) within such categories or classes. Factors relating to the assessment of best available technology shall take into account the age of equipment and facilities involved, the process employed, the engineering aspects of the application of various types of control techniques, process changes, the cost of achieving such effluent reduction, non-water quality environmental impact (including energy requirements), and such other factors as the Administrator deems appropriate;

(3) identify control measures and practices available to eliminate the discharge of pollutants from categories and classes of point sources, taking into account the cost of achieving such elimination of the discharge of pollutants; and

(4)(A) identify, in terms of amounts of constituents and chemical, physical, and biological characteristics of pollutants, the degree of effluent reduction attainable through the application of the best conventional pollutant control technology (including measures and practices) for classes and categories of point sources (other than publicly owned treatment works); and

(B) specify factors to be taken into account in determining the best conventional pollutant control technology measures and practices to comply with section 1311(b)(2)(E) of this title to be applicable to any point source (other than publicly owned treatment works) within such categories or classes. Factors relating to the assessment of best conventional pollutant control technology (including measures and practices) shall include consideration of the reasonableness of the relationship between the costs of attaining a reduction in effluents and the effluent reduction benefits derived, and the comparison of the cost and level of reduction of such pollutants from the discharge from publicly owned treatment works to the cost and level of reduction of such pollutants from a class or category of industrial sources, and shall take into account the age of equipment and facilities involved, the process employed, the engineering aspects of the ap-

plication of various types of control techniques, process changes, non-water quality environmental impact (including energy requirements), and such other factors as the Administrator deems appropriate.

**(c) Pollution discharge elimination procedures**

The Administrator, after consultation, with appropriate Federal and State agencies and other interested persons, shall issue to the States and appropriate water pollution control agencies within 270 days after October 18, 1972 (and from time to time thereafter) information on the processes, procedures, or operating methods which result in the elimination or reduction of the discharge of pollutants to implement standards of performance under section 1316 of this title. Such information shall include technical and other data, including costs, as are available on alternative methods of elimination or reduction of the discharge of pollutants. Such information, and revisions thereof, shall be published in the Federal Register and otherwise shall be made available to the public.

**(d) Secondary treatment information; alternative waste treatment management techniques; innovative and alternative wastewater treatment processes; facilities deemed equivalent of secondary treatment**

(1) The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall publish within sixty days after October 18, 1972 (and from time to time thereafter) information, in terms of amounts of constituents and chemical, physical, and biological characteristics of pollutants, on the degree of effluent reduction attainable through the application of secondary treatment.

(2) The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall publish within nine months after October 18, 1972 (and from time to time thereafter) information on alternative waste treatment management techniques and systems available to implement section 1281 of this title.

(3) The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall promulgate within one hundred and eighty days after December 27, 1977, guidelines for identifying and evaluating innovative and alternative wastewater treatment processes and techniques referred to in section 1281(g)(5) of this title.

(4) For the purposes of this subsection, such biological treatment facilities as oxidation ponds, lagoons, and ditches and trickling filters shall be deemed the equivalent of secondary treatment. The Administrator shall provide guidance under paragraph (1) of this subsection on design criteria for such facilities, taking into account pollutant removal efficiencies and, consistent with the objectives of this chapter, assuring that water quality will not be adversely affected by deeming such facilities as the equivalent of secondary treatment.

**(e) Best management practices for industry**

The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, may publish regula-

tions, supplemental to any effluent limitations specified under subsections (b) and (c) of this section for a class or category of point sources, for any specific pollutant which the Administrator is charged with a duty to regulate as a toxic or hazardous pollutant under section 1317(a)(1) or 1321 of this title, to control plant site runoff, spillage or leaks, sludge or waste disposal, and drainage from raw material storage which the Administrator determines are associated with or ancillary to the industrial manufacturing or treatment process within such class or category of point sources and may contribute significant amounts of such pollutants to navigable waters. Any applicable controls established under this subsection shall be included as a requirement for the purposes of section 1311, 1312, 1316, 1317, or 1343 of this title, as the case may be, in any permit issued to a point source pursuant to section 1342 of this title.

**(f) Identification and evaluation of nonpoint sources of pollution; processes, procedures, and methods to control pollution**

The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall issue to appropriate Federal agencies, the States, water pollution control agencies, and agencies designated under section 1288 of this title, within one year after October 18, 1972 (and from time to time thereafter) information including (1) guidelines for identifying and evaluating the nature and extent of nonpoint sources of pollutants, and (2) processes, procedures, and methods to control pollution resulting from—

(A) agricultural and silvicultural activities, including runoff from fields and crop and forest lands;

(B) mining activities, including runoff and siltation from new, currently operating, and abandoned surface and underground mines;

(C) all construction activity, including runoff from the facilities resulting from such construction;

(D) the disposal of pollutants in wells or in subsurface excavations;

(E) salt water intrusion resulting from reductions of fresh water flow from any cause, including extraction of ground water, irrigation, obstruction, and diversion; and

(F) changes in the movement, flow, or circulation of any navigable waters or ground waters, including changes caused by the construction of dams, levees, channels, causeways, or flow diversion facilities.

Such information and revisions thereof shall be published in the Federal Register and otherwise made available to the public.

**(g) Guidelines for pretreatment of pollutants**

(1) For the purpose of assisting States in carrying out programs under section 1342 of this title, the Administrator shall publish, within one hundred and twenty days after October 18, 1972, and review at least annually thereafter and, if appropriate, revise guidelines for pretreatment of pollutants which he determines are not susceptible to treatment by publicly owned treatment works. Guidelines under this subsection shall be established to control and pre-

vent the discharge into the navigable waters, the contiguous zone, or the ocean (either directly or through publicly owned treatment works) of any pollutant which interferes with, passes through, or otherwise is incompatible with such works.

(2) When publishing guidelines under this subsection, the Administrator shall designate the category or categories of treatment works to which the guidelines shall apply.

**(h) Test procedures guidelines**

The Administrator shall, within one hundred and eighty days from October 18, 1972, promulgate guidelines establishing test procedures for the analysis of pollutants that shall include the factors which must be provided in any certification pursuant to section 1341 of this title or permit application pursuant to section 1342 of this title.

**(i) Guidelines for monitoring, reporting, enforcement, funding, personnel, and manpower**

The Administrator shall (1) within sixty days after October 18, 1972, promulgate guidelines for the purpose of establishing uniform application forms and other minimum requirements for the acquisition of information from owners and operators of point-sources of discharge subject to any State program under section 1342 of this title, and (2) within sixty days from October 18, 1972, promulgate guidelines establishing the minimum procedural and other elements of any State program under section 1342 of this title, which shall include:

(A) monitoring requirements;

(B) reporting requirements (including procedures to make information available to the public);

(C) enforcement provisions; and

(D) funding, personnel qualifications, and manpower requirements (including a requirement that no board or body which approves permit applications or portions thereof shall include, as a member, any person who receives, or has during the previous two years received, a significant portion of his income directly or indirectly from permit holders or applicants for a permit).

**(j) Lake restoration guidance manual**

The Administrator shall, within 1 year after February 4, 1987, and biennially thereafter, publish and disseminate a lake restoration guidance manual describing methods, procedures, and processes to guide State and local efforts to improve, restore, and enhance water quality in the Nation's publicly owned lakes.

**(k) Agreements with Secretaries of Agriculture, Army, and the Interior to provide maximum utilization of programs to achieve and maintain water quality; transfer of funds; authorization of appropriations**

(1) The Administrator shall enter into agreements with the Secretary of Agriculture, the Secretary of the Army, and the Secretary of the Interior, and the heads of such other departments, agencies, and instrumentalities of the United States as the Administrator determines, to provide for the maximum utilization of other Federal laws and programs for the purpose of

achieving and maintaining water quality through appropriate implementation of plans approved under section 1288 of this title and nonpoint source pollution management programs approved under section 1329 of this title.

(2) The Administrator is authorized to transfer to the Secretary of Agriculture, the Secretary of the Army, and the Secretary of the Interior and the heads of such other departments, agencies, and instrumentalities of the United States as the Administrator determines, any funds appropriated under paragraph (3) of this subsection to supplement funds otherwise appropriated to programs authorized pursuant to any agreement under paragraph (1).

(3) There is authorized to be appropriated to carry out the provisions of this subsection, \$100,000,000 per fiscal year for the fiscal years 1979 through 1983 and such sums as may be necessary for fiscal years 1984 through 1990.

**(I) Individual control strategies for toxic pollutants**

**(1) State list of navigable waters and development of strategies**

Not later than 2 years after February 4, 1987, each State shall submit to the Administrator for review, approval, and implementation under this subsection—

(A) a list of those waters within the State which after the application of effluent limitations required under section 1311(b)(2) of this title cannot reasonably be anticipated to attain or maintain (i) water quality standards for such waters reviewed, revised, or adopted in accordance with section 1313(c)(2)(B) of this title, due to toxic pollutants, or (ii) that water quality which shall assure protection of public health, public water supplies, agricultural and industrial uses, and the protection and propagation of a balanced population of shellfish, fish and wildlife, and allow recreational activities in and on the water;

(B) a list of all navigable waters in such State for which the State does not expect the applicable standard under section 1313 of this title will be achieved after the requirements of sections 1311(b), 1316, and 1317(b) of this title are met, due entirely or substantially to discharges from point sources of any toxic pollutants listed pursuant to section 1317(a) of this title;

(C) for each segment of the navigable waters included on such lists, a determination of the specific point sources discharging any such toxic pollutant which is believed to be preventing or impairing such water quality and the amount of each such toxic pollutant discharged by each such source; and

(D) for each such segment, an individual control strategy which the State determines will produce a reduction in the discharge of toxic pollutants from point sources identified by the State under this paragraph through the establishment of effluent limitations under section 1342 of this title and water quality standards under section 1313(c)(2)(B) of this title, which reduction is sufficient, in combination with existing controls on point and nonpoint sources of pollu-

tion, to achieve the applicable water quality standard as soon as possible, but not later than 3 years after the date of the establishment of such strategy.

**(2) Approval or disapproval**

Not later than 120 days after the last day of the 2-year period referred to in paragraph (1), the Administrator shall approve or disapprove the control strategies submitted under paragraph (1) by any State.

**(3) Administrator's action**

If a State fails to submit control strategies in accordance with paragraph (1) or the Administrator does not approve the control strategies submitted by such State in accordance with paragraph (1), then, not later than 1 year after the last day of the period referred to in paragraph (2), the Administrator, in cooperation with such State and after notice and opportunity for public comment, shall implement the requirements of paragraph (1) in such State. In the implementation of such requirements, the Administrator shall, at a minimum, consider for listing under this subsection any navigable waters for which any person submits a petition to the Administrator for listing not later than 120 days after such last day.

**(m) Schedule for review of guidelines**

**(1) Publication**

Within 12 months after February 4, 1987, and biennially thereafter, the Administrator shall publish in the Federal Register a plan which shall—

(A) establish a schedule for the annual review and revision of promulgated effluent guidelines, in accordance with subsection (b) of this section;

(B) identify categories of sources discharging toxic or nonconventional pollutants for which guidelines under subsection (b)(2) of this section and section 1316 of this title have not previously been published; and

(C) establish a schedule for promulgation of effluent guidelines for categories identified in subparagraph (B), under which promulgation of such guidelines shall be no later than 4 years after February 4, 1987, for categories identified in the first published plan or 3 years after the publication of the plan for categories identified in later published plans.

**(2) Public review**

The Administrator shall provide for public review and comment on the plan prior to final publication.

(June 30, 1948, ch. 758, title III, §304, as added Pub. L. 92-500, §2, Oct. 18, 1972, 86 Stat. 850; amended Pub. L. 95-217, §§48-51, 62(b), Dec. 27, 1977, 91 Stat. 1587, 1588, 1598; Pub. L. 97-117, §23, Dec. 29, 1981, 95 Stat. 1632; Pub. L. 100-4, title I, §101(f), title III, §§308(a), (c), (f), 315(c), 316(e), Feb. 4, 1987, 101 Stat. 9, 38-40, 52, 61; Pub. L. 106-284, §3(b), Oct. 10, 2000, 114 Stat. 871.)

CODIFICATION

Pub. L. 95-217, §50, Dec. 27, 1977, 91 Stat. 1588, provided in part that, upon the enactment of subsec. (e) of this

section by Pub. L. 95-217 and the concurrent redesignation of former subsections. (e) to (j) of this section as (f) to (k), respectively, all references to former subsections. (e) to (j) be changed to (f) to (k), respectively.

#### AMENDMENTS

2000—Subsec. (a)(9). Pub. L. 106-284 added par. (9).  
1987—Subsec. (a)(7), (8). Pub. L. 100-4, §308(c), added pars. (7) and (8).

Subsec. (j). Pub. L. 100-4, §315(c), amended subsec. (j) generally. Prior to amendment, subsec. (j) read as follows: "The Administrator shall issue information biennially on methods, procedures, and processes as may be appropriate to restore and enhance the quality of the Nation's publicly owned freshwater lakes."

Subsec. (k)(1). Pub. L. 100-4, §316(e), inserted "and nonpoint source pollution management programs approved under section 1329 of this title" before period at end.

Subsec. (k)(3). Pub. L. 100-4, §101(f), inserted "and such sums as may be necessary for fiscal years 1984 through 1990" after "1983".

Subsec. (l). Pub. L. 100-4, §308(a), added subsec. (l).

Subsec. (m). Pub. L. 100-4, §308(f), added subsec. (m).

1981—Subsec. (d)(4). Pub. L. 97-117 added par. (4).

1977—Subsec. (a)(4) to (6). Pub. L. 95-217, §48(a), added pars. (4) to (6).

Subsec. (b)(4). Pub. L. 95-217, §48(b), added par. (4).

Subsec. (d)(3). Pub. L. 95-217, §49, added par. (3).

Subsecs. (e) to (i). Pub. L. 95-217, §50, added subsec. (e) and redesignated former subsections. (e) to (h) as (f) to (i), respectively. Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 95-217, §§50, 62(b), redesignated former subsec. (i) as (j) and substituted "shall issue information biennially on methods" for "shall, within 270 days after October 18, 1972 (and from time to time thereafter), issue such information on methods". Former subsec. (j) redesignated (k).

Subsec. (k). Pub. L. 95-217, §§50, 51, redesignated former subsec. (j) as (k), substituted "The Administrator shall enter into agreements with the Secretary of Agriculture, the Secretary of the Army, and the Secretary of the Interior, and the heads of such other departments, agencies, and instrumentalities of the United States as the Administrator determines, to provide the maximum utilization of other Federal laws and programs" for "The Administrator shall, within six months from October 18, 1972, enter into agreements with the Secretary of Agriculture, the Secretary of the Army, and the Secretary of the Interior to provide for the maximum utilization of the appropriate programs authorized under other Federal law to be carried out by such Secretaries" in par. (1), made conforming amendments in par. (2), and in par. (3) authorized appropriations for fiscal years 1979 through 1983.

#### TRANSFER OF FUNCTIONS

Enforcement functions of Secretary or other official in Department of Agriculture, insofar as they involve lands and programs under jurisdiction of that Department, relating to compliance with this chapter with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas were transferred to the Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until the first anniversary of the date of initial operation of the Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§102(f), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out in the Appendix to Title 5, Government Organization and Employees. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102-486, set out as an Abolition of Office of Federal Inspector note under section 719e of Title 15, Commerce and Trade. Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alas-

ka Natural Gas Transportation Projects by section 720d(f) of Title 15.

#### REVIEW OF EFFLUENT GUIDELINES PROMULGATED PRIOR TO DECEMBER 27, 1977

Pub. L. 95-217, §73, Dec. 27, 1977, 91 Stat. 1609, directed Administrator, within 90 days after Dec. 27, 1977, to review every effluent guideline promulgated prior to that date which was final or interim final (other than those applicable to industrial categories listed in table 2 of Committee Print Numbered 95-30 of Committee on Public Works and Transportation of House of Representatives) and which applied to those pollutants identified pursuant to 33 U.S.C. 1314(a)(4) and, on or before July 1, 1980, to review every guideline applicable to industrial categories listed in such table 2, authorized Administrator, upon completion of each such review to make such adjustments in any such guidelines as may be necessary to carry out 33 U.S.C. 1314(b)(4), directed Administrator to publish the results of each such review, and provided for judicial review of Administrator's actions.

#### CONTIGUOUS ZONE OF UNITED STATES

For extension of contiguous zone of United States, see Proc. No. 7219, set out as a note under section 1331 of Title 43, Public Lands.

#### § 1315. State reports on water quality

(a) Omitted

(b)(1) Each State shall prepare and submit to the Administrator by April 1, 1975, and shall bring up to date by April 1, 1976, and biennially thereafter, a report which shall include—

(A) a description of the water quality of all navigable waters in such State during the preceding year, with appropriate supplemental descriptions as shall be required to take into account seasonal, tidal, and other variations, correlated with the quality of water required by the objective of this chapter (as identified by the Administrator pursuant to criteria published under section 1314(a) of this title) and the water quality described in subparagraph (B) of this paragraph;

(B) an analysis of the extent to which all navigable waters of such State provide for the protection and propagation of a balanced population of shellfish, fish, and wildlife, and allow recreational activities in and on the water;

(C) an analysis of the extent to which the elimination of the discharge of pollutants and a level of water quality which provides for the protection and propagation of a balanced population of shellfish, fish, and wildlife and allows recreational activities in and on the water, have been or will be achieved by the requirements of this chapter, together with recommendations as to additional action necessary to achieve such objectives and for what waters such additional action is necessary;

(D) an estimate of (i) the environmental impact, (ii) the economic and social costs necessary to achieve the objective of this chapter in such State, (iii) the economic and social benefits of such achievement, and (iv) an estimate of the date of such achievement; and

(E) a description of the nature and extent of nonpoint sources of pollutants, and recommendations as to the programs which must be undertaken to control each category of such sources, including an estimate of the costs of implementing such programs.

(2) The Administrator shall transmit such State reports, together with an analysis thereof, to Congress on or before October 1, 1975, and October 1, 1976, and biennially thereafter.

(June 30, 1948, ch. 758, title III, §305, as added Pub. L. 92-500, §2, Oct. 18, 1972, 86 Stat. 853; amended Pub. L. 95-217, §52, Dec. 27, 1977, 91 Stat. 1589.)

#### CODIFICATION

Subsec. (a) authorized the Administrator, in cooperation with the States and Federal agencies, to prepare a report describing the specific quality, during 1973, of all navigable waters and waters of the contiguous zone, including an inventory of all point sources of discharge of pollutants into these waters, and identifying those navigable waters capable of supporting fish and wildlife populations and allowing recreational activities, those which could reasonably be expected to attain this level by 1977 or 1983, and those which could attain this level sooner, and submit this report to Congress on or before Jan. 1, 1974.

#### AMENDMENTS

1977—Subsec. (b)(1). Pub. L. 95-217, §52(1), substituted “April 1, 1975, and shall bring up to date by April 1, 1976, and biennially thereafter” for “January 1, 1975, and shall bring up to date each year thereafter” in provisions preceding subpar. (A).

Subsec. (b)(2). Pub. L. 95-217, §52(2), substituted “on or before October 1, 1975, and October 1, 1976, and biennially thereafter” for “on or before October 1, 1975, and annually thereafter”.

### § 1316. National standards of performance

#### (a) Definitions

For purposes of this section:

(1) The term “standard of performance” means a standard for the control of the discharge of pollutants which reflects the greatest degree of effluent reduction which the Administrator determines to be achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants.

(2) The term “new source” means any source, the construction of which is commenced after the publication of proposed regulations prescribing a standard of performance under this section which will be applicable to such source, if such standard is thereafter promulgated in accordance with this section.

(3) The term “source” means any building, structure, facility, or installation from which there is or may be the discharge of pollutants.

(4) The term “owner or operator” means any person who owns, leases, operates, controls, or supervises a source.

(5) The term “construction” means any placement, assembly, or installation of facilities or equipment (including contractual obligations to purchase such facilities or equipment) at the premises where such equipment will be used, including preparation work at such premises.

#### (b) Categories of sources; Federal standards of performance for new sources

(1)(A) The Administrator shall, within ninety days after October 18, 1972, publish (and from time to time thereafter shall revise) a list of categories of sources, which shall, at the minimum, include:

pulp and paper mills;  
paperboard, builders paper and board mills;  
meat product and rendering processing;  
dairy product processing;  
grain mills;  
canned and preserved fruits and vegetables processing;  
canned and preserved seafood processing;  
sugar processing;  
textile mills;  
cement manufacturing;  
feedlots;  
electroplating;  
organic chemicals manufacturing;  
inorganic chemicals manufacturing;  
plastic and synthetic materials manufacturing;  
soap and detergent manufacturing;  
fertilizer manufacturing;  
petroleum refining;  
iron and steel manufacturing;  
nonferrous metals manufacturing;  
phosphate manufacturing;  
steam electric powerplants;  
ferroalloy manufacturing;  
leather tanning and finishing;  
glass and asbestos manufacturing;  
rubber processing; and  
timber products processing.

(B) As soon as practicable, but in no case more than one year, after a category of sources is included in a list under subparagraph (A) of this paragraph, the Administrator shall propose and publish regulations establishing Federal standards of performance for new sources within such category. The Administrator shall afford interested persons an opportunity for written comment on such proposed regulations. After considering such comments, he shall promulgate, within one hundred and twenty days after publication of such proposed regulations, such standards with such adjustments as he deems appropriate. The Administrator shall, from time to time, as technology and alternatives change, revise such standards following the procedure required by this subsection for promulgation of such standards. Standards of performance, or revisions thereof, shall become effective upon promulgation. In establishing or revising Federal standards of performance for new sources under this section, the Administrator shall take into consideration the cost of achieving such effluent reduction, and any non-water quality, environmental impact and energy requirements.

(2) The Administrator may distinguish among classes, types, and sizes within categories of new sources for the purpose of establishing such standards and shall consider the type of process employed (including whether batch or continuous).

(3) The provisions of this section shall apply to any new source owned or operated by the United States.

#### (c) State enforcement of standards of performance

Each State may develop and submit to the Administrator a procedure under State law for applying and enforcing standards of performance for new sources located in such State. If the Administrator finds that the procedure and the law

of any State require the application and enforcement of standards of performance to at least the same extent as required by this section, such State is authorized to apply and enforce such standards of performance (except with respect to new sources owned or operated by the United States).

**(d) Protection from more stringent standards**

Notwithstanding any other provision of this chapter, any point source the construction of which is commenced after October 18, 1972, and which is so constructed as to meet all applicable standards of performance shall not be subject to any more stringent standard of performance during a ten-year period beginning on the date of completion of such construction or during the period of depreciation or amortization of such facility for the purposes of section 167 or 169 (or both) of title 26 whichever period ends first.

**(e) Illegality of operation of new sources in violation of applicable standards of performance**

After the effective date of standards of performance promulgated under this section, it shall be unlawful for any owner or operator of any new source to operate such source in violation of any standard of performance applicable to such source.

(June 30, 1948, ch. 758, title III, §306, as added Pub. L. 92-500, §2, Oct. 18, 1972, 86 Stat. 854.)

DISCHARGES FROM POINT SOURCES IN UNITED STATES VIRGIN ISLANDS ATTRIBUTABLE TO MANUFACTURE OF RUM; EXEMPTION; CONDITIONS

Discharges from point sources in the United States Virgin Islands in existence on Aug. 5, 1983, attributable to the manufacture of rum not to be subject to the requirements of this section under certain conditions, see section 214(g) of Pub. L. 98-67, set out as a note under section 1311 of this title.

**§ 1317. Toxic and pretreatment effluent standards**

**(a) Toxic pollutant list; revision; hearing; promulgation of standards; effective date; consultation**

(1) On and after December 27, 1977, the list of toxic pollutants or combination of pollutants subject to this chapter shall consist of those toxic pollutants listed in table 1 of Committee Print Numbered 95-30 of the Committee on Public Works and Transportation of the House of Representatives, and the Administrator shall publish, not later than the thirtieth day after December 27, 1977, that list. From time to time thereafter, the Administrator may revise such list and the Administrator is authorized to add to or remove from such list any pollutant. The Administrator in publishing any revised list, including the addition or removal of any pollutant from such list, shall take into account toxicity of the pollutant, its persistence, degradability, the usual or potential presence of the affected organisms in any waters, the importance of the affected organisms, and the nature and extent of the effect of the toxic pollutant on such organisms. A determination of the Administrator under this paragraph shall be final except that if, on judicial review, such determination was based on arbitrary and capricious action of the

Administrator, the Administrator shall make a redetermination.

(2) Each toxic pollutant listed in accordance with paragraph (1) of this subsection shall be subject to effluent limitations resulting from the application of the best available technology economically achievable for the applicable category or class of point sources established in accordance with sections 1311(b)(2)(A) and 1314(b)(2) of this title. The Administrator, in his discretion, may publish in the Federal Register a proposed effluent standard (which may include a prohibition) establishing requirements for a toxic pollutant which, if an effluent limitation is applicable to a class or category of point sources, shall be applicable to such category or class only if such standard imposes more stringent requirements. Such published effluent standard (or prohibition) shall take into account the toxicity of the pollutant, its persistence, degradability, the usual or potential presence of the affected organisms in any waters, the importance of the affected organisms and the nature and extent of the effect of the toxic pollutant on such organisms, and the extent to which effective control is being or may be achieved under other regulatory authority. The Administrator shall allow a period of not less than sixty days following publication of any such proposed effluent standard (or prohibition) for written comment by interested persons on such proposed standard. In addition, if within thirty days of publication of any such proposed effluent standard (or prohibition) any interested person so requests, the Administrator shall hold a public hearing in connection therewith. Such a public hearing shall provide an opportunity for oral and written presentations, such cross-examination as the Administrator determines is appropriate on disputed issues of material fact, and the transcription of a verbatim record which shall be available to the public. After consideration of such comments and any information and material presented at any public hearing held on such proposed standard or prohibition, the Administrator shall promulgate such standard (or prohibition) with such modification as the Administrator finds are justified. Such promulgation by the Administrator shall be made within two hundred and seventy days after publication of proposed standard (or prohibition). Such standard (or prohibition) shall be final except that if, on judicial review, such standard was not based on substantial evidence, the Administrator shall promulgate a revised standard. Effluent limitations shall be established in accordance with sections 1311(b)(2)(A) and 1314(b)(2) of this title for every toxic pollutant referred to in table 1 of Committee Print Numbered 95-30 of the Committee on Public Works and Transportation of the House of Representatives as soon as practicable after December 27, 1977, but no later than July 1, 1980. Such effluent limitations or effluent standards (or prohibitions) shall be established for every other toxic pollutant listed under paragraph (1) of this subsection as soon as practicable after it is so listed.

(3) Each such effluent standard (or prohibition) shall be reviewed and, if appropriate, revised at least every three years.

(4) Any effluent standard promulgated under this section shall be at that level which the Administrator determines provides an ample margin of safety.

(5) When proposing or promulgating any effluent standard (or prohibition) under this section, the Administrator shall designate the category or categories of sources to which the effluent standard (or prohibition) shall apply. Any disposal of dredged material may be included in such a category of sources after consultation with the Secretary of the Army.

(6) Any effluent standard (or prohibition) established pursuant to this section shall take effect on such date or dates as specified in the order promulgating such standard, but in no case, more than one year from the date of such promulgation. If the Administrator determines that compliance within one year from the date of promulgation is technologically infeasible for a category of sources, the Administrator may establish the effective date of the effluent standard (or prohibition) for such category at the earliest date upon which compliance can be feasibly attained by sources within such category, but in no event more than three years after the date of such promulgation.

(7) Prior to publishing any regulations pursuant to this section the Administrator shall, to the maximum extent practicable within the time provided, consult with appropriate advisory committees, States, independent experts, and Federal departments and agencies.

**(b) Pretreatment standards; hearing; promulgation; compliance period; revision; application to State and local laws**

(1) The Administrator shall, within one hundred and eighty days after October 18, 1972, and from time to time thereafter, publish proposed regulations establishing pretreatment standards for introduction of pollutants into treatment works (as defined in section 1292 of this title) which are publicly owned for those pollutants which are determined not to be susceptible to treatment by such treatment works or which would interfere with the operation of such treatment works. Not later than ninety days after such publication, and after opportunity for public hearing, the Administrator shall promulgate such pretreatment standards. Pretreatment standards under this subsection shall specify a time for compliance not to exceed three years from the date of promulgation and shall be established to prevent the discharge of any pollutant through treatment works (as defined in section 1292 of this title) which are publicly owned, which pollutant interferes with, passes through, or otherwise is incompatible with such works. If, in the case of any toxic pollutant under subsection (a) of this section introduced by a source into a publicly owned treatment works, the treatment by such works removes all or any part of such toxic pollutant and the discharge from such works does not violate that effluent limitation or standard which would be applicable to such toxic pollutant if it were discharged by such source other than through a publicly owned treatment works, and does not prevent sludge use or disposal by such works in accordance with section 1345 of this title, then the pre-

treatment requirements for the sources actually discharging such toxic pollutant into such publicly owned treatment works may be revised by the owner or operator of such works to reflect the removal of such toxic pollutant by such works.

(2) The Administrator shall, from time to time, as control technology, processes, operating methods, or other alternatives change, revise such standards following the procedure established by this subsection for promulgation of such standards.

(3) When proposing or promulgating any pretreatment standard under this section, the Administrator shall designate the category or categories of sources to which such standard shall apply.

(4) Nothing in this subsection shall affect any pretreatment requirement established by any State or local law not in conflict with any pretreatment standard established under this subsection.

**(c) New sources of pollutants into publicly owned treatment works**

In order to insure that any source introducing pollutants into a publicly owned treatment works, which source would be a new source subject to section 1316 of this title if it were to discharge pollutants, will not cause a violation of the effluent limitations established for any such treatment works, the Administrator shall promulgate pretreatment standards for the category of such sources simultaneously with the promulgation of standards of performance under section 1316 of this title for the equivalent category of new sources. Such pretreatment standards shall prevent the discharge of any pollutant into such treatment works, which pollutant may interfere with, pass through, or otherwise be incompatible with such works.

**(d) Operation in violation of standards unlawful**

After the effective date of any effluent standard or prohibition or pretreatment standard promulgated under this section, it shall be unlawful for any owner or operator of any source to operate any source in violation of any such effluent standard or prohibition or pretreatment standard.

**(e) Compliance date extension for innovative pretreatment systems**

In the case of any existing facility that proposes to comply with the pretreatment standards of subsection (b) of this section by applying an innovative system that meets the requirements of section 1311(k) of this title, the owner or operator of the publicly owned treatment works receiving the treated effluent from such facility may extend the date for compliance with the applicable pretreatment standard established under this section for a period not to exceed 2 years—

(1) if the Administrator determines that the innovative system has the potential for industrywide application, and

(2) if the Administrator (or the State in consultation with the Administrator, in any case in which the State has a pretreatment program approved by the Administrator)—

(A) determines that the proposed extension will not cause the publicly owned treat-

ment works to be in violation of its permit under section 1342 of this title or of section 1345 of this title or to contribute to such a violation, and

(B) concurs with the proposed extension.

(June 30, 1948, ch. 758, title III, §307, as added Pub. L. 92-500, §2, Oct. 18, 1972, 86 Stat. 856; amended Pub. L. 95-217, §§53(a), (b), 54(a), Dec. 27, 1977, 91 Stat. 1589-1591; Pub. L. 100-4, title III, §309(a), Feb. 4, 1987, 101 Stat. 41.)

#### AMENDMENTS

1987—Subsec. (e). Pub. L. 100-4 added subsec. (e).

1977—Subsec. (a)(1). Pub. L. 95-217, §53(a), substituted “On and after December 27, 1977, the list of toxic pollutants or combination of pollutants subject to this chapter shall consist of those toxic pollutants listed in table 1 of Committee Print Numbered 95-30 of the Committee on Public Works and Transportation of the House of Representatives, and the Administrator shall publish, not later than the thirtieth day after December 27, 1977, that list” for “The Administrator shall, within ninety days after October 18, 1972, publish (and from time to time thereafter revise) a list which includes any toxic pollutant or combination of such pollutants for which an effluent standard (which may include a prohibition of the discharge of such pollutants or combination of such pollutants) will be established under this section” and inserted provision for the revision of the list and for the finality of the Administrator’s determination except when that determination is arbitrary and capricious.

Subsec. (a)(2). Pub. L. 95-217, §53(a), expanded provisions covering effluent limitations and the establishment of effluent standards (or prohibitions), introduced provisions relating to the application of the best available technology economically achievable for the applicable category or class of point sources established in accordance with sections 1311(b)(2)(A) and 1314(b)(2) of this title, inserted provision that published effluent standards take into account the extent to which effective control is being or may be achieved under other regulatory authority, inserted provision for a sixty day minimum period following publication of proposed effluent standards for written comment, substituted two hundred and seventy days for six months as the period following publication of proposed standards during which period standards (or prohibitions) must be promulgated, and inserted provision for the finality of effluent limitations (or prohibitions) except if, on judicial review, the standard was not based on substantial evidence.

Subsec. (a)(3). Pub. L. 95-217, §53(a), struck out provision for the immediate promulgation of revised effluent standards (or prohibitions) for pollutants or combinations of pollutants if, after public hearings, the Administrator found that a modification of such proposed standards (or prohibitions) was justified. See subsec. (a)(2) of this section.

Subsec. (a)(6). Pub. L. 95-217, §53(b), inserted provision that if the Administrator determines that compliance with effluent standards (or prohibitions) within one year from the date of promulgation is technologically infeasible for a category of sources, the Administrator may establish the effective date of the effluent standard (or prohibition) for that category at the earliest date upon which compliance can be feasibly attained by sources within such category, but in no event more than three years after the date of such promulgation.

Subsec. (b)(1). Pub. L. 95-217, §54(a), inserted provision that if, in the case of any toxic pollutant under subsection (a) of this section introduced by a source into a publicly owned treatment works, the treatment by the works removes all or any part of the toxic pollutant and the discharge from the works does not violate that effluent limitation or standard which would be applicable to the toxic pollutant if it were dis-

charged by the source other than through a publicly owned treatment works, and does not prevent sludge use or disposal by the works in accordance with section 1345 of this title, then the pretreatment requirements for the sources actually discharging the toxic pollutant into the publicly owned treatment works may be revised by the owner or operator of the works to reflect the removal of the toxic pollutant by the works.

#### CHANGE OF NAME

Committee on Public Works and Transportation of House of Representatives treated as referring to Committee on Transportation and Infrastructure of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

#### INCREASE IN EPA EMPLOYEES

Pub. L. 100-4, title III, §309(b), Feb. 4, 1987, 101 Stat. 41, provided that: “The Administrator shall take such actions as may be necessary to increase the number of employees of the Environmental Protection Agency in order to effectively implement pretreatment requirements under section 307 of the Federal Water Pollution Control Act [33 U.S.C. 1317].”

### § 1318. Records and reports; inspections

#### (a) Maintenance; monitoring equipment; entry; access to information

Whenever required to carry out the objective of this chapter, including but not limited to (1) developing or assisting in the development of any effluent limitation, or other limitation, prohibition, or effluent standard, pretreatment standard, or standard of performance under this chapter; (2) determining whether any person is in violation of any such effluent limitation, or other limitation, prohibition or effluent standard, pretreatment standard, or standard of performance; (3) any requirement established under this section; or (4) carrying out sections 1315, 1321, 1342, 1344 (relating to State permit programs), 1345, and 1364 of this title—

(A) the Administrator shall require the owner or operator of any point source to (i) establish and maintain such records, (ii) make such reports, (iii) install, use, and maintain such monitoring equipment or methods (including where appropriate, biological monitoring methods), (iv) sample such effluents (in accordance with such methods, at such locations, at such intervals, and in such manner as the Administrator shall prescribe), and (v) provide such other information as he may reasonably require; and

(B) the Administrator or his authorized representative (including an authorized contractor acting as a representative of the Administrator), upon presentation of his credentials—

(i) shall have a right of entry to, upon, or through any premises in which an effluent source is located or in which any records required to be maintained under clause (A) of this subsection are located, and

(ii) may at reasonable times have access to and copy any records, inspect any monitoring equipment or method required under clause (A), and sample any effluents which the owner or operator of such source is required to sample under such clause.

**(b) Availability to public; trade secrets exception; penalty for disclosure of confidential information**

Any records, reports, or information obtained under this section (1) shall, in the case of effluent data, be related to any applicable effluent limitations, toxic, pretreatment, or new source performance standards, and (2) shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that records, reports, or information, or particular part thereof (other than effluent data), to which the Administrator has access under this section, if made public would divulge methods or processes entitled to protection as trade secrets of such person, the Administrator shall consider such record, report, or information, or particular portion thereof confidential in accordance with the purposes of section 1905 of title 18. Any authorized representative of the Administrator (including an authorized contractor acting as a representative of the Administrator) who knowingly or willfully publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information which is required to be considered confidential under this subsection shall be fined not more than \$1,000 or imprisoned not more than 1 year, or both. Nothing in this subsection shall prohibit the Administrator or an authorized representative of the Administrator (including any authorized contractor acting as a representative of the Administrator) from disclosing records, reports, or information to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter or when relevant in any proceeding under this chapter.

**(c) Application of State law**

Each State may develop and submit to the Administrator procedures under State law for inspection, monitoring, and entry with respect to point sources located in such State. If the Administrator finds that the procedures and the law of any State relating to inspection, monitoring, and entry are applicable to at least the same extent as those required by this section, such State is authorized to apply and enforce its procedures for inspection, monitoring, and entry with respect to point sources located in such State (except with respect to point sources owned or operated by the United States).

**(d) Access by Congress**

Notwithstanding any limitation contained in this section or any other provision of law, all information reported to or otherwise obtained by the Administrator (or any representative of the Administrator) under this chapter shall be made available, upon written request of any duly authorized committee of Congress, to such committee.

(June 30, 1948, ch. 758, title III, §308, as added Pub. L. 92-500, §2, Oct. 18, 1972, 86 Stat. 858; amended Pub. L. 95-217, §67(c)(1), Dec. 27, 1977, 91 Stat. 1606; Pub. L. 100-4, title III, §310, title IV, §406(d)(1), Feb. 4, 1987, 101 Stat. 41, 73.)

AMENDMENTS

1987—Subsec. (a). Pub. L. 100-4, §406(d)(1), substituted “1345, and 1364” for “and 1364” in cl. (4).

Subsec. (a)(B). Pub. L. 100-4, §310(a)(2), inserted “(including an authorized contractor acting as a representative of the Administrator)” after “representative”.

Subsec. (b). Pub. L. 100-4, §310(a)(1), substituted a period and “Any authorized representative of the Administrator (including an authorized contractor acting as a representative of the Administrator) who knowingly or willfully publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information which is required to be considered confidential under this subsection shall be fined not more than \$1,000 or imprisoned not more than 1 year, or both. Nothing in this subsection shall prohibit the Administrator or an authorized representative of the Administrator (including any authorized contractor acting as a representative of the Administrator) from disclosing records, reports, or information to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter or when relevant in any proceeding under this chapter.” for “, except that such record, report, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter or when relevant in any proceeding under this chapter.”

Subsec. (d). Pub. L. 100-4, §310(b), added subsec. (d). 1977—Subsec. (a)(4). Pub. L. 95-217 inserted “1344 (relating to State permit programs),” after “sections 1315, 1321, 1342,” in provisions preceding subpar. (A).

**§ 1319. Enforcement**

**(a) State enforcement; compliance orders**

(1) Whenever, on the basis of any information available to him, the Administrator finds that any person is in violation of any condition or limitation which implements section 1311, 1312, 1316, 1317, 1318, 1328, or 1345 of this title in a permit issued by a State under an approved permit program under section 1342 or 1344 of this title he shall proceed under his authority in paragraph (3) of this subsection or he shall notify the person in alleged violation and such State of such finding. If beyond the thirtieth day after the Administrator's notification the State has not commenced appropriate enforcement action, the Administrator shall issue an order requiring such person to comply with such condition or limitation or shall bring a civil action in accordance with subsection (b) of this section.

(2) Whenever, on the basis of information available to him, the Administrator finds that violations of permit conditions or limitations as set forth in paragraph (1) of this subsection are so widespread that such violations appear to result from a failure of the State to enforce such permit conditions or limitations effectively, he shall so notify the State. If the Administrator finds such failure extends beyond the thirtieth day after such notice, he shall give public notice of such finding. During the period beginning with such public notice and ending when such State satisfies the Administrator that it will enforce such conditions and limitations (hereafter referred to in this section as the period of “federally assumed enforcement”), except where an extension has been granted under paragraph (5)(B) of this subsection, the Administrator shall enforce any permit condition or limitation with respect to any person—

(A) by issuing an order to comply with such condition or limitation, or

(B) by bringing a civil action under subsection (b) of this section.

(3) Whenever on the basis of any information available to him the Administrator finds that

any person is in violation of section 1311, 1312, 1316, 1317, 1318, 1328, or 1345 of this title, or is in violation of any permit condition or limitation implementing any of such sections in a permit issued under section 1342 of this title by him or by a State or in a permit issued under section 1344 of this title by a State, he shall issue an order requiring such person to comply with such section or requirement, or he shall bring a civil action in accordance with subsection (b) of this section.

(4) A copy of any order issued under this subsection shall be sent immediately by the Administrator to the State in which the violation occurs and other affected States. In any case in which an order under this subsection (or notice to a violator under paragraph (1) of this subsection) is issued to a corporation, a copy of such order (or notice) shall be served on any appropriate corporate officers. An order issued under this subsection relating to a violation of section 1318 of this title shall not take effect until the person to whom it is issued has had an opportunity to confer with the Administrator concerning the alleged violation.

(5)(A) Any order issued under this subsection shall be by personal service, shall state with reasonable specificity the nature of the violation, and shall specify a time for compliance not to exceed thirty days in the case of a violation of an interim compliance schedule or operation and maintenance requirement and not to exceed a time the Administrator determines to be reasonable in the case of a violation of a final deadline, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

(B) The Administrator may, if he determines (i) that any person who is a violator of, or any person who is otherwise not in compliance with, the time requirements under this chapter or in any permit issued under this chapter, has acted in good faith, and has made a commitment (in the form of contracts or other securities) of necessary resources to achieve compliance by the earliest possible date after July 1, 1977, but not later than April 1, 1979; (ii) that any extension under this provision will not result in the imposition of any additional controls on any other point or nonpoint source; (iii) that an application for a permit under section 1342 of this title was filed for such person prior to December 31, 1974; and (iv) that the facilities necessary for compliance with such requirements are under construction, grant an extension of the date referred to in section 1311(b)(1)(A) of this title to a date which will achieve compliance at the earliest time possible but not later than April 1, 1979.

(6) Whenever, on the basis of information available to him, the Administrator finds (A) that any person is in violation of section 1311(b)(1)(A) or (C) of this title, (B) that such person cannot meet the requirements for a time extension under section 1311(i)(2) of this title, and (C) that the most expeditious and appropriate means of compliance with this chapter by such person is to discharge into a publicly owned treatment works, then, upon request of such person, the Administrator may issue an order requiring such person to comply with this

chapter at the earliest date practicable, but not later than July 1, 1983, by discharging into a publicly owned treatment works if such works concur with such order. Such order shall include a schedule of compliance.

#### (b) Civil actions

The Administrator is authorized to commence a civil action for appropriate relief, including a permanent or temporary injunction, for any violation for which he is authorized to issue a compliance order under subsection (a) of this section. Any action under this subsection may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to restrain such violation and to require compliance. Notice of the commencement of such action shall be given immediately to the appropriate State.

#### (c) Criminal penalties

##### (1) Negligent violations

Any person who—

(A) negligently violates section 1311, 1312, 1316, 1317, 1318, 1321(b)(3), 1328, or 1345 of this title, or any permit condition or limitation implementing any of such sections in a permit issued under section 1342 of this title by the Administrator or by a State, or any requirement imposed in a pretreatment program approved under section 1342(a)(3) or 1342(b)(8) of this title or in a permit issued under section 1344 of this title by the Secretary of the Army or by a State; or

(B) negligently introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substance which such person knew or reasonably should have known could cause personal injury or property damage or, other than in compliance with all applicable Federal, State, or local requirements or permits, which causes such treatment works to violate any effluent limitation or condition in any permit issued to the treatment works under section 1342 of this title by the Administrator or a State;

shall be punished by a fine of not less than \$2,500 nor more than \$25,000 per day of violation, or by imprisonment for not more than 1 year, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than \$50,000 per day of violation, or by imprisonment of not more than 2 years, or by both.

##### (2) Knowing violations

Any person who—

(A) knowingly violates section 1311, 1312, 1316, 1317, 1318, 1321(b)(3), 1328, or 1345 of this title, or any permit condition or limitation implementing any of such sections in a permit issued under section 1342 of this title by the Administrator or by a State, or any requirement imposed in a pretreatment program approved under section 1342(a)(3) or 1342(b)(8) of this title or in a permit issued under section 1344 of this title by the Secretary of the Army or by a State; or

(B) knowingly introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substance which such person knew or reasonably should have known could cause personal injury or property damage or, other than in compliance with all applicable Federal, State, or local requirements or permits, which causes such treatment works to violate any effluent limitation or condition in a permit issued to the treatment works under section 1342 of this title by the Administrator or a State;

shall be punished by a fine of not less than \$5,000 nor more than \$50,000 per day of violation, or by imprisonment for not more than 3 years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than \$100,000 per day of violation, or by imprisonment of not more than 6 years, or by both.

### (3) Knowing endangerment

#### (A) General rule

Any person who knowingly violates section 1311, 1312, 1313, 1316, 1317, 1318, 1321(b)(3), 1328, or 1345 of this title, or any permit condition or limitation implementing any of such sections in a permit issued under section 1342 of this title by the Administrator or by a State, or in a permit issued under section 1344 of this title by the Secretary of the Army or by a State, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than \$250,000 or imprisonment of not more than 15 years, or both. A person which is an organization shall, upon conviction of violating this subparagraph, be subject to a fine of not more than \$1,000,000. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both fine and imprisonment.

#### (B) Additional provisions

For the purpose of subparagraph (A) of this paragraph—

(i) in determining whether a defendant who is an individual knew that his conduct placed another person in imminent danger of death or serious bodily injury—

(I) the person is responsible only for actual awareness or actual belief that he possessed; and

(II) knowledge possessed by a person other than the defendant but not by the defendant himself may not be attributed to the defendant;

except that in proving the defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to shield himself from relevant information;

(ii) it is an affirmative defense to prosecution that the conduct charged was con-

sent to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of—

(I) an occupation, a business, or a profession; or

(II) medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent;

and such defense may be established under this subparagraph by a preponderance of the evidence;

(iii) the term "organization" means a legal entity, other than a government, established or organized for any purpose, and such term includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons; and

(iv) the term "serious bodily injury" means bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

#### (4) False statements

Any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this chapter, shall upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than 2 years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than 4 years, or by both.

#### (5) Treatment of single operational upset

For purposes of this subsection, a single operational upset which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

#### (6) Responsible corporate officer as "person"

For the purpose of this subsection, the term "person" means, in addition to the definition contained in section 1362(5) of this title, any responsible corporate officer.

#### (7) Hazardous substance defined

For the purpose of this subsection, the term "hazardous substance" means (A) any substance designated pursuant to section 1321(b)(2)(A) of this title, (B) any element, compound, mixture, solution, or substance designated pursuant to section 9602 of title 42, (C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act [42 U.S.C. 6921] (but not including any waste

the regulation of which under the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.] has been suspended by Act of Congress), (D) any toxic pollutant listed under section 1317(a) of this title, and (E) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 2606 of title 15.

**(d) Civil penalties; factors considered in determining amount**

Any person who violates section 1311, 1312, 1316, 1317, 1318, 1328, or 1345 of this title, or any permit condition or limitation implementing any of such sections in a permit issued under section 1342 of this title by the Administrator, or by a State, or in a permit issued under section 1344 of this title by a State,<sup>1</sup> or any requirement imposed in a pretreatment program approved under section 1342(a)(3) or 1342(b)(8) of this title, and any person who violates any order issued by the Administrator under subsection (a) of this section, shall be subject to a civil penalty not to exceed \$25,000 per day for each violation. In determining the amount of a civil penalty the court shall consider the seriousness of the violation or violations, the economic benefit (if any) resulting from the violation, any history of such violations, any good-faith efforts to comply with the applicable requirements, the economic impact of the penalty on the violator, and such other matters as justice may require. For purposes of this subsection, a single operational upset which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

**(e) State liability for judgments and expenses**

Whenever a municipality is a party to a civil action brought by the United States under this section, the State in which such municipality is located shall be joined as a party. Such State shall be liable for payment of any judgment, or any expenses incurred as a result of complying with any judgment, entered against the municipality in such action to the extent that the laws of that State prevent the municipality from raising revenues needed to comply with such judgment.

**(f) Wrongful introduction of pollutant into treatment works**

Whenever, on the basis of any information available to him, the Administrator finds that an owner or operator of any source is introducing a pollutant into a treatment works in violation of subsection (d) of section 1317 of this title, the Administrator may notify the owner or operator of such treatment works and the State of such violation. If the owner or operator of the treatment works does not commence appropriate enforcement action within 30 days of the date of such notification, the Administrator may commence a civil action for appropriate relief, including but not limited to, a permanent or temporary injunction, against the owner or operator of such treatment works. In any such civil action the Administrator shall join the owner or operator of such source as a party to the action. Such action shall be brought in the

district court of the United States in the district in which the treatment works is located. Such court shall have jurisdiction to restrain such violation and to require the owner or operator of the treatment works and the owner or operator of the source to take such action as may be necessary to come into compliance with this chapter. Notice of commencement of any such action shall be given to the State. Nothing in this subsection shall be construed to limit or prohibit any other authority the Administrator may have under this chapter.

**(g) Administrative penalties**

**(1) Violations**

Whenever on the basis of any information available—

(A) the Administrator finds that any person has violated section 1311, 1312, 1316, 1317, 1318, 1328, or 1345 of this title, or has violated any permit condition or limitation implementing any of such sections in a permit issued under section 1342 of this title by the Administrator or by a State, or in a permit issued under section 1344 of this title by a State, or

(B) the Secretary of the Army (hereinafter in this subsection referred to as the "Secretary") finds that any person has violated any permit condition or limitation in a permit issued under section 1344 of this title by the Secretary,

the Administrator or Secretary, as the case may be, may, after consultation with the State in which the violation occurs, assess a class I civil penalty or a class II civil penalty under this subsection.

**(2) Classes of penalties**

**(A) Class I**

The amount of a class I civil penalty under paragraph (1) may not exceed \$10,000 per violation, except that the maximum amount of any class I civil penalty under this subparagraph shall not exceed \$25,000. Before issuing an order assessing a civil penalty under this subparagraph, the Administrator or the Secretary, as the case may be, shall give to the person to be assessed such penalty written notice of the Administrator's or Secretary's proposal to issue such order and the opportunity to request, within 30 days of the date the notice is received by such person, a hearing on the proposed order. Such hearing shall not be subject to section 554 or 556 of title 5, but shall provide a reasonable opportunity to be heard and to present evidence.

**(B) Class II**

The amount of a class II civil penalty under paragraph (1) may not exceed \$10,000 per day for each day during which the violation continues; except that the maximum amount of any class II civil penalty under this subparagraph shall not exceed \$125,000. Except as otherwise provided in this subsection, a class II civil penalty shall be assessed and collected in the same manner, and subject to the same provisions, as in the case of civil penalties assessed and collected after notice and opportunity for a hearing on

<sup>1</sup> So in original.

the record in accordance with section 554 of title 5. The Administrator and the Secretary may issue rules for discovery procedures for hearings under this subparagraph.

**(3) Determining amount**

In determining the amount of any penalty assessed under this subsection, the Administrator or the Secretary, as the case may be, shall take into account the nature, circumstances, extent and gravity of the violation, or violations, and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require. For purposes of this subsection, a single operational upset which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

**(4) Rights of interested persons**

**(A) Public notice**

Before issuing an order assessing a civil penalty under this subsection the Administrator or Secretary, as the case may be, shall provide public notice of and reasonable opportunity to comment on the proposed issuance of such order.

**(B) Presentation of evidence**

Any person who comments on a proposed assessment of a penalty under this subsection shall be given notice of any hearing held under this subsection and of the order assessing such penalty. In any hearing held under this subsection, such person shall have a reasonable opportunity to be heard and to present evidence.

**(C) Rights of interested persons to a hearing**

If no hearing is held under paragraph (2) before issuance of an order assessing a penalty under this subsection, any person who commented on the proposed assessment may petition, within 30 days after the issuance of such order, the Administrator or Secretary, as the case may be, to set aside such order and to provide a hearing on the penalty. If the evidence presented by the petitioner in support of the petition is material and was not considered in the issuance of the order, the Administrator or Secretary shall immediately set aside such order and provide a hearing in accordance with paragraph (2)(A) in the case of a class I civil penalty and paragraph (2)(B) in the case of a class II civil penalty. If the Administrator or Secretary denies a hearing under this subparagraph, the Administrator or Secretary shall provide to the petitioner, and publish in the Federal Register, notice of and the reasons for such denial.

**(5) Finality of order**

An order issued under this subsection shall become final 30 days after its issuance unless a petition for judicial review is filed under paragraph (8) or a hearing is requested under paragraph (4)(C). If such a hearing is denied, such order shall become final 30 days after such denial.

**(6) Effect of order**

**(A) Limitation on actions under other sections**

Action taken by the Administrator or the Secretary, as the case may be, under this subsection shall not affect or limit the Administrator's or Secretary's authority to enforce any provision of this chapter; except that any violation—

(i) with respect to which the Administrator or the Secretary has commenced and is diligently prosecuting an action under this subsection,

(ii) with respect to which a State has commenced and is diligently prosecuting an action under a State law comparable to this subsection, or

(iii) for which the Administrator, the Secretary, or the State has issued a final order not subject to further judicial review and the violator has paid a penalty assessed under this subsection, or such comparable State law, as the case may be,

shall not be the subject of a civil penalty action under subsection (d) of this section or section 1321(b) of this title or section 1365 of this title.

**(B) Applicability of limitation with respect to citizen suits**

The limitations contained in subparagraph (A) on civil penalty actions under section 1365 of this title shall not apply with respect to any violation for which—

(i) a civil action under section 1365(a)(1) of this title has been filed prior to commencement of an action under this subsection, or

(ii) notice of an alleged violation of section 1365(a)(1) of this title has been given in accordance with section 1365(b)(1)(A) of this title prior to commencement of an action under this subsection and an action under section 1365(a)(1) of this title with respect to such alleged violation is filed before the 120th day after the date on which such notice is given.

**(7) Effect of action on compliance**

No action by the Administrator or the Secretary under this subsection shall affect any person's obligation to comply with any section of this chapter or with the terms and conditions of any permit issued pursuant to section 1342 or 1344 of this title.

**(8) Judicial review**

Any person against whom a civil penalty is assessed under this subsection or who commented on the proposed assessment of such penalty in accordance with paragraph (4) may obtain review of such assessment—

(A) in the case of assessment of a class I civil penalty, in the United States District Court for the District of Columbia or in the district in which the violation is alleged to have occurred, or

(B) in the case of assessment of a class II civil penalty, in United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business,

by filing a notice of appeal in such court within the 30-day period beginning on the date the civil penalty order is issued and by simultaneously sending a copy of such notice by certified mail to the Administrator or the Secretary, as the case may be, and the Attorney General. The Administrator or the Secretary shall promptly file in such court a certified copy of the record on which the order was issued. Such court shall not set aside or remand such order unless there is not substantial evidence in the record, taken as a whole, to support the finding of a violation or unless the Administrator's or Secretary's assessment of the penalty constitutes an abuse of discretion and shall not impose additional civil penalties for the same violation unless the Administrator's or Secretary's assessment of the penalty constitutes an abuse of discretion.

#### (9) Collection

If any person fails to pay an assessment of a civil penalty—

(A) after the order making the assessment has become final, or

(B) after a court in an action brought under paragraph (8) has entered a final judgment in favor of the Administrator or the Secretary, as the case may be,

the Administrator or the Secretary shall request the Attorney General to bring a civil action in an appropriate district court to recover the amount assessed (plus interest at currently prevailing rates from the date of the final order or the date of the final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review. Any person who fails to pay on a timely basis the amount of an assessment of a civil penalty as described in the first sentence of this paragraph shall be required to pay, in addition to such amount and interest, attorneys fees and costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to 20 percent of the aggregate amount of such person's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

#### (10) Subpoenas

The Administrator or Secretary, as the case may be, may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, or documents in connection with hearings under this subsection. In case of contumacy or refusal to obey a subpoena issued pursuant to this paragraph and served upon any person, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the administrative law judge or to appear and produce documents before the administrative law judge, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

#### (11) Protection of existing procedures

Nothing in this subsection shall change the procedures existing on the day before February 4, 1987, under other subsections of this section for issuance and enforcement of orders by the Administrator.

(June 30, 1948, ch. 758, title III, §309, as added Pub. L. 92-500, §2, Oct. 18, 1972, 86 Stat. 859; amended Pub. L. 95-217, §§54(b), 55, 56, 67(c)(2), Dec. 27, 1977, 91 Stat. 1591, 1592, 1606; Pub. L. 100-4, title III, §§312, 313(a)(1), (b)(1), (c), 314(a), Feb. 4, 1987, 101 Stat. 42, 45, 46; Pub. L. 101-380, title IV, §4301(c), Aug. 18, 1990, 104 Stat. 537.)

#### REFERENCES IN TEXT

The Solid Waste Disposal Act, referred to in subsec. (c)(7), 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.

#### AMENDMENTS

1990—Subsec. (c)(1)(A), (2)(A), (3)(A). Pub. L. 101-380 inserted "1321(b)(3)," after "1318."

1987—Subsec. (c). Pub. L. 100-4, §312, amended subsec. (c) generally, revising provisions of par. (1), adding pars. (2), (3), (5), and (7), redesignating former pars. (2) and (4) as (3) and (6), respectively, and revising provisions of redesignated par. (4).

Subsec. (d). Pub. L. 100-4, §313(a)(1), inserted ", or any requirement imposed in a pretreatment program approved under section 1342(a)(3) or 1342(b)(8) of this title," after second reference to "State."

Pub. L. 100-4, §313(b)(1), substituted "\$25,000 per day for each violation" for "\$10,000 per day of such violation".

Pub. L. 100-4, §313(c), inserted at end "In determining the amount of a civil penalty the court shall consider the seriousness of the violation or violations, the economic benefit (if any) resulting from the violation, any history of such violations, any good-faith efforts to comply with the applicable requirements, the economic impact of the penalty on the violator, and such other matters as justice may require. For purposes of this subsection, a single operational upset which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation."

Subsec. (g). Pub. L. 100-4, §314(a), added subsec. (g).

1977—Subsec. (a)(1). Pub. L. 95-217, §§55(a), 67(c)(2)(A), substituted "1318, 1328, or 1345 of this title" for "or 1318 of this title" and "1342 or 1344 of this title" for "1342 of this title".

Subsec. (a)(2). Pub. L. 95-217, §56(a), substituted "except where an extension has been granted under paragraph (5)(B) of this subsection, the Administrator shall enforce any permit condition or limitation" for "the Administrator shall enforce any permit condition or limitation".

Subsec. (a)(3). Pub. L. 95-217, §§55(b), 67(c)(2)(B), substituted "1318, 1328, or 1345 of this title" for "or 1318 of this title" and inserted "or in a permit issued under section 1344 of this title by a State" after "in a permit issued under section 1342 of this title by him or by a State".

Subsec. (a)(4). Pub. L. 95-217, §56(b), struck out provision that any order issued under this subsection had to be by personal service and had to state with reasonable specificity the nature of the violation and a time for compliance, not to exceed thirty days, which the Administrator determined to be reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. See section subsec. (a)(5) of this section.

Subsec. (a)(5), (6). Pub. L. 95-217, §56(c), added pars. (5) and (6).

Subsec. (c)(1). Pub. L. 95-217, §67(c)(2)(C), substituted “by a State or in a permit issued under section 1344 of this title by a State, shall be punished” for “by a State, shall be punished”.

Subsec. (d). Pub. L. 95-217, §§55(c), 67(c)(2)(D), substituted “1318, 1328, or 1345 of this title” for “or 1318 of this title” and inserted “or in a permit issued under section 1344 of this title by a State.” after “permit issued under section 1342 of this title by the Administrator, or by a State.”.

Subsec. (f). Pub. L. 95-217, §54(b), added subsec. (f).

#### EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-380 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.

#### SAVINGS PROVISION

Pub. L. 100-4, title III, §313(a)(2), Feb. 4, 1987, 101 Stat. 45, provided that: “No State shall be required before July 1, 1988, to modify a permit program approved or submitted under section 402 of the Federal Water Pollution Control Act [33 U.S.C. 1342] as a result of the amendment made by paragraph (1) [amending this section].”

#### DEPOSIT OF CERTAIN PENALTIES INTO OIL SPILL LIABILITY TRUST FUND

Penalties paid pursuant to subsection (c) of this section and sections 1321 and 1501 et seq. of this title to be deposited in the Oil Spill Liability Trust Fund created under section 9509 of Title 26, Internal Revenue Code, see section 4304 of Pub. L. 101-380, set out as a note under section 9509 of Title 26.

#### INCREASED PENALTIES NOT REQUIRED UNDER STATE PROGRAMS

Pub. L. 100-4, title III, §313(b)(2), Feb. 4, 1987, 101 Stat. 45, provided that: “The Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.] shall not be construed as requiring a State to have a civil penalty for violations described in section 309(d) of such Act [33 U.S.C. 1319(d)] which has the same monetary amount as the civil penalty established by such section, as amended by paragraph (1) [amending this section]. Nothing in this paragraph shall affect the Administrator’s authority to establish or adjust by regulation a minimum acceptable State civil penalty.”

#### ACTIONS BY SURGEON GENERAL RELATING TO INTERSTATE POLLUTION

Act July 9, 1956, ch. 518, §5, 70 Stat. 507, provided that actions by the Surgeon General with respect to water pollutants under section 2(d) of act June 30, 1948, ch. 758, 62 Stat. 1155, as in effect prior to July 9, 1956, which had been completed prior to such date, would still be subject to the terms of section 2(d) of act June 30, 1948, in effect prior to the July 9, 1956 amendment, but that actions with respect to such pollutants would nevertheless subsequently be possible in accordance with the terms of act June 30, 1948, as amended by act July 9, 1956.

### § 1320. International pollution abatement

#### (a) Hearing; participation by foreign nations

Whenever the Administrator, upon receipts of reports, surveys, or studies from any duly constituted international agency, has reason to believe that pollution is occurring which endangers the health or welfare of persons in a foreign country, and the Secretary of State requests him to abate such pollution, he shall give formal notification thereof to the State water pollution control agency of the State or States in which such discharge or discharges originate and to

the appropriate interstate agency, if any. He shall also promptly call such a hearing, if he believes that such pollution is occurring in sufficient quantity to warrant such action, and if such foreign country has given the United States essentially the same rights with respect to the prevention and control of pollution occurring in that country as is given that country by this subsection. The Administrator, through the Secretary of State, shall invite the foreign country which may be adversely affected by the pollution to attend and participate in the hearing, and the representative of such country shall, for the purpose of the hearing and any further proceeding resulting from such hearing, have all the rights of a State water pollution control agency. Nothing in this subsection shall be construed to modify, amend, repeal, or otherwise affect the provisions of the 1909 Boundary Waters Treaty between Canada and the United States or the Water Utilization Treaty of 1944 between Mexico and the United States (59 Stat. 1219), relative to the control and abatement of pollution in waters covered by those treaties.

#### (b) Functions and responsibilities of Administrator not affected

The calling of a hearing under this section shall not be construed by the courts, the Administrator, or any person as limiting, modifying, or otherwise affecting the functions and responsibilities of the Administrator under this section to establish and enforce water quality requirements under this chapter.

#### (c) Hearing board; composition; findings of fact; recommendations; implementation of board’s decision

The Administrator shall publish in the Federal Register a notice of a public hearing before a hearing board of five or more persons appointed by the Administrator. A majority of the members of the board and the chairman who shall be designated by the Administrator shall not be officers or employees of Federal, State, or local governments. On the basis of the evidence presented at such hearing, the board shall within sixty days after completion of the hearing make findings of fact as to whether or not such pollution is occurring and shall thereupon by decision, incorporating its findings therein, make such recommendations to abate the pollution as may be appropriate and shall transmit such decision and the record of the hearings to the Administrator. All such decisions shall be public. Upon receipt of such decision, the Administrator shall promptly implement the board’s decision in accordance with the provisions of this chapter.

#### (d) Report by alleged polluter

In connection with any hearing called under this subsection, the board is authorized to require any person whose alleged activities result in discharges causing or contributing to pollution to file with it in such forms as it may prescribe, a report based on existing data, furnishing such information as may reasonably be required as to the character, kind, and quantity of such discharges and the use of facilities or other means to prevent or reduce such discharges by the person filing such a report. Such report shall

be made under oath or otherwise, as the board may prescribe, and shall be filed with the board within such reasonable period as it may prescribe, unless additional time is granted by it. Upon a showing satisfactory to the board by the person filing such report that such report or portion thereof (other than effluent data), to which the Administrator has access under this section, if made public would divulge trade secrets or secret processes of such person, the board shall consider such report or portion thereof confidential for the purposes of section 1905 of title 18. If any person required to file any report under this paragraph shall fail to do so within the time fixed by the board for filing the same, and such failure shall continue for thirty days after notice of such default, such person shall forfeit to the United States the sum of \$1,000 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States in the district court of the United States where such person has his principal office or in any district in which he does business. The Administrator may upon application therefor remit or mitigate any forfeiture provided for under this subsection.

**(e) Compensation of board members**

Board members, other than officers or employees of Federal, State, or local governments, shall be for each day (including travel-time) during which they are performing board business, entitled to receive compensation at a rate fixed by the Administrator but not in excess of the maximum rate of pay for grade GS-18, as provided in the General Schedule under section 5332 of title 5, and shall, notwithstanding the limitations of sections 5703 and 5704 of title 5, be fully reimbursed for travel, subsistence and related expenses.

**(f) Enforcement proceedings**

When any such recommendation adopted by the Administrator involves the institution of enforcement proceedings against any person to obtain the abatement of pollution subject to such recommendation, the Administrator shall institute such proceedings if he believes that the evidence warrants such proceedings. The district court of the United States shall consider and determine de novo all relevant issues, but shall receive in evidence the record of the proceedings before the conference or hearing board. The court shall have jurisdiction to enter such judgment and orders enforcing such judgment as it deems appropriate or to remand such proceedings to the Administrator for such further action as it may direct.

(June 30, 1948, ch. 758, title III, §310, as added Pub. L. 92-500, §2, Oct. 18, 1972, 86 Stat. 860.)

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

**§ 1321. Oil and hazardous substance liability**

**(a) Definitions**

For the purpose of this section, the term—

(1) “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;

(2) “discharge” includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping, but excludes (A) discharges in compliance with a permit under section 1342 of this title, (B) discharges resulting from circumstances identified and reviewed and made a part of the public record with respect to a permit issued or modified under section 1342 of this title, and subject to a condition in such permit,<sup>1</sup> (C) continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 1342 of this title, which are caused by events occurring within the scope of relevant operating or treatment systems, and (D) discharges incidental to mechanical removal authorized by the President under subsection (c) of this section;

(3) “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;

(4) “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 such vessel is engaged in commerce;

(5) “United States” means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands;

(6) “owner or operator” means (A) in the case of a vessel, any person owning, operating, or chartering by demise, such 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;

(7) “person” includes an individual, firm, corporation, association, and a partnership;

(8) “remove” or “removal” refers to containment and removal of the oil or hazardous substances from the water and shorelines or the taking of such other actions as may be necessary to prevent, 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;

(9) “contiguous zone” means the entire zone established or to be established by the United States under article 24 of the Convention on the Territorial Sea and the Contiguous Zone;

(10) “onshore facility” means any facility (including, but not limited to, motor vehicles

<sup>1</sup> So in original.

and rolling stock) of any kind located in, on, or under, any land within the United States other than submerged land;

(11) “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;

(12) “act of God” means an act occasioned by an unanticipated grave natural disaster;

(13) “barrel” means 42 United States gallons at 60 degrees Fahrenheit;

(14) “hazardous substance” means any substance designated pursuant to subsection (b)(2) of this section;

(15) “inland oil barge” means a non-self-propelled vessel carrying oil in bulk as cargo and certificated to operate only in the inland waters of the United States, while operating in such waters;

(16) “inland waters of the United States” means those waters of the United States lying inside the baseline from which the territorial sea is measured and those waters outside such baseline which are a part of the Gulf Intra-coastal Waterway;

(17) “otherwise subject to the jurisdiction of the United States” means subject to the jurisdiction of the United States by virtue of United States citizenship, United States vessel documentation or numbering, or as provided for by international agreement to which the United States is a party;

(18) “Area Committee” means an Area Committee established under subsection (j) of this section;

(19) “Area Contingency Plan” means an Area Contingency Plan prepared under subsection (j) of this section;

(20) “Coast Guard District Response Group” means a Coast Guard District Response Group established under subsection (j) of this section;

(21) “Federal On-Scene Coordinator” means a Federal On-Scene Coordinator designated in the National Contingency Plan;

(22) “National Contingency Plan” means the National Contingency Plan prepared and published under subsection (d) of this section;

(23) “National Response Unit” means the National Response Unit established under subsection (j) of this section;

(24) “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 an offshore facility or on-shore facility, the largest foreseeable discharge in adverse weather conditions;

(25) “removal costs” means—

(A) the costs of removal of oil or a hazardous substance that are incurred after it is discharged; and

(B) in any case in which there is a substantial threat of a discharge of oil or a hazardous substance, the costs to prevent, minimize, or mitigate that threat;

(26) “nontank vessel” means a self-propelled vessel that—

(A) is at least 400 gross tons as measured under section 14302 of title 46 or, for vessels not measured under that section, as measured under section 14502 of that title;

(B) is not a tank vessel;

(C) carries oil of any kind as fuel for main propulsion; and

(D) operates on the navigable waters of the United States, as defined in section 2101(17a) of that title;

(27) the term “best available science” means science that—

(A) maximizes the quality, objectivity, and integrity of information, including statistical information;

(B) uses peer-reviewed and publicly available data; and

(C) clearly documents and communicates risks and uncertainties in the scientific basis for such projects;

(28) the term “Chairperson” means the Chairperson of the Council;

(29) the term “coastal political subdivision” means any local political jurisdiction that is immediately below the State level of government, including a county, parish, or borough, with a coastline that is contiguous with any portion of the United States Gulf of Mexico;

(30) the term “Comprehensive Plan” means the comprehensive plan developed by the Council pursuant to subsection (t);

(31) the term “Council” means the Gulf Coast Ecosystem Restoration Council established pursuant to subsection (t);

(32) the term “Deepwater Horizon oil spill” means the blowout and explosion of the mobile offshore drilling unit *Deepwater Horizon* that occurred on April 20, 2010, and resulting hydrocarbon releases into the environment;

(33) the term “Gulf Coast region” means—

(A) in the Gulf Coast States, the coastal zones (as that term is defined in section 1453 of title 16),<sup>1</sup> except that, in this section, the term “coastal zones” includes land within the coastal zones that is held in trust by, or the use of which is by law subject solely to the discretion of, the Federal Government or officers or agents of the Federal Government)<sup>1</sup> that border the Gulf of Mexico;

(B) any adjacent land, water, and watersheds, that are within 25 miles of the coastal zones described in subparagraph (A) of the Gulf Coast States; and

(C) all Federal waters in the Gulf of Mexico;

(34) the term “Gulf Coast State” means any of the States of Alabama, Florida, Louisiana, Mississippi, and Texas; and

(35) the term “Trust Fund” means the Gulf Coast Restoration Trust Fund established pursuant to section 1602 of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012.

**(b) Congressional declaration of policy against discharges of oil or hazardous substances; designation of hazardous substances; study of higher standard of care incentives and report to Congress; liability; penalties; civil actions; penalty limitations, separate offenses, jurisdiction, mitigation of damages and costs, recovery of removal costs, alternative remedies, and withholding clearance of vessels**

(1) The Congress hereby declares that it is the policy of the United States that there should be no discharges of oil or hazardous substances into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or in connection with activities under the Outer Continental Shelf Lands Act [43 U.S.C. 1331 et seq.] or the Deepwater Port Act of 1974 [33 U.S.C. 1501 et seq.], or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson-Stevens Fishery Conservation and Management Act [16 U.S.C. 1801 et seq.]).

(2)(A) The Administrator shall develop, promulgate, and revise as may be appropriate, regulations designating as hazardous substances, other than oil as defined in this section, such elements and compounds which, when discharged in any quantity into or upon the navigable waters of the United States or adjoining shorelines or the waters of the contiguous zone or in connection with activities under the Outer Continental Shelf Lands Act [43 U.S.C. 1331 et seq.] or the Deepwater Port Act of 1974 [33 U.S.C. 1501 et seq.], or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson-Stevens Fishery Conservation and Management Act [16 U.S.C. 1801 et seq.]), present an imminent and substantial danger to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, shorelines, and beaches.

(B) The Administrator shall within 18 months after the date of enactment of this paragraph, conduct a study and report to the Congress on methods, mechanisms, and procedures to create incentives to achieve a higher standard of care in all aspects of the management and movement of hazardous substances on the part of owners, operators, or persons in charge of onshore facilities, offshore facilities, or vessels. The Administrator shall include in such study (1) limits of liability, (2) liability for third party damages, (3) penalties and fees, (4) spill prevention plans, (5) current practices in the insurance and banking industries, and (6) whether the penalty enacted in subclause (bb) of clause (iii) of subparagraph (B) of subsection (b)(2) of section 311 of Public Law 92-500 should be enacted.

(3) The discharge of oil or hazardous substances (i) into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or (ii) in connection with activities under the Outer Continental Shelf Lands Act [43 U.S.C. 1331 et seq.] or the Deepwater Port Act of 1974 [33 U.S.C. 1501 et seq.], or which may affect natural resources belonging to, appertaining to, or under

the exclusive management authority of the United States (including resources under the Magnuson-Stevens Fishery Conservation and Management Act [16 U.S.C. 1801 et seq.]), in such quantities as may be harmful as determined by the President under paragraph (4) of this subsection, is prohibited, except (A) in the case of such discharges into the waters of the contiguous zone or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson-Stevens Fishery Conservation and Management Act), where permitted under the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973, and (B) where permitted in quantities and at times and locations or under such circumstances or conditions as the President may, by regulation, determine not to be harmful. Any regulations issued under this subsection shall be consistent with maritime safety and with marine and navigation laws and regulations and applicable water quality standards.

(4) The President shall by regulation determine for the purposes of this section those quantities of oil and any hazardous substances the discharge of which may be harmful to the public health or welfare or the environment of the United States, including but not limited to fish, shellfish, wildlife, and public and private property, shorelines, and beaches.

(5) Any person in charge of a vessel or of an onshore facility or an offshore facility shall, as soon as he has knowledge of any discharge of oil or a hazardous substance from such vessel or facility in violation of paragraph (3) of this subsection, immediately notify the appropriate agency of the United States Government of such discharge. The Federal agency shall immediately notify the appropriate State agency of any State which is, or may reasonably be expected to be, affected by the discharge of oil or a hazardous substance. Any such person (A) in charge of a vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(i) of this subsection, or (B) in charge of a vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(ii) of this subsection and who is otherwise subject to the jurisdiction of the United States at the time of the discharge, or (C) in charge of an onshore facility or an offshore facility, who fails to notify immediately such agency of such discharge shall, upon conviction, be fined in accordance with title 18, or imprisoned for not more than 5 years, or both. Notification received pursuant to this paragraph shall not be used against any such natural person in any criminal case, except a prosecution for perjury or for giving a false statement.

**(6) ADMINISTRATIVE PENALTIES.—**

(A) VIOLATIONS.—Any owner, operator, or person in charge of any vessel, onshore facility, or offshore facility—

- (i) from which oil or a hazardous substance is discharged in violation of paragraph (3), or
- (ii) who fails or refuses to comply with any regulation issued under subsection (j) of this section to which that owner, operator, or person in charge is subject,

may be assessed a class I or class II civil penalty by the Secretary of the department in which the Coast Guard is operating, the Secretary of Transportation, or the Administrator.

(B) CLASSES OF PENALTIES.—

(i) CLASS I.—The amount of a class I civil penalty under subparagraph (A) may not exceed \$10,000 per violation, except that the maximum amount of any class I civil penalty under this subparagraph shall not exceed \$25,000. Before assessing a civil penalty under this clause, the Administrator or Secretary, as the case may be, shall give to the person to be assessed such penalty written notice of the Administrator's or Secretary's proposal to assess the penalty and the opportunity to request, within 30 days of the date the notice is received by such person, a hearing on the proposed penalty. Such hearing shall not be subject to section 554 or 556 of title 5, but shall provide a reasonable opportunity to be heard and to present evidence.

(ii) CLASS II.—The amount of a class II civil penalty under subparagraph (A) may not exceed \$10,000 per day for each day during which the violation continues; except that the maximum amount of any class II civil penalty under this subparagraph shall not exceed \$125,000. Except as otherwise provided in this subsection, a class II civil penalty shall be assessed and collected in the same manner, and subject to the same provisions, as in the case of civil penalties assessed and collected after notice and opportunity for a hearing on the record in accordance with section 554 of title 5. The Administrator and Secretary may issue rules for discovery procedures for hearings under this paragraph.

(C) RIGHTS OF INTERESTED PERSONS.—

(i) PUBLIC NOTICE.—Before issuing an order assessing a class II civil penalty under this paragraph the Administrator or Secretary, as the case may be, shall provide public notice of and reasonable opportunity to comment on the proposed issuance of such order.

(ii) PRESENTATION OF EVIDENCE.—Any person who comments on a proposed assessment of a class II civil penalty under this paragraph shall be given notice of any hearing held under this paragraph and of the order assessing such penalty. In any hearing held under this paragraph, such person shall have a reasonable opportunity to be heard and to present evidence.

(iii) RIGHTS OF INTERESTED PERSONS TO A HEARING.—If no hearing is held under subparagraph (B) before issuance of an order assessing a class II civil penalty under this paragraph, any person who commented on the proposed assessment may petition, within 30 days after the issuance of such order, the Administrator or Secretary, as the case may be, to set aside such order and to provide a hearing on the penalty. If the evidence presented by the petitioner in support of the petition is material and was not considered in the issuance of the order, the Administrator or Secretary shall immediately set aside such order and provide a hearing in

accordance with subparagraph (B)(ii). If the Administrator or Secretary denies a hearing under this clause, the Administrator or Secretary shall provide to the petitioner, and publish in the Federal Register, notice of and the reasons for such denial.

(D) FINALITY OF ORDER.—An order assessing a class II civil penalty under this paragraph shall become final 30 days after its issuance unless a petition for judicial review is filed under subparagraph (G) or a hearing is requested under subparagraph (C)(iii). If such a hearing is denied, such order shall become final 30 days after such denial.

(E) EFFECT OF ORDER.—Action taken by the Administrator or Secretary, as the case may be, under this paragraph shall not affect or limit the Administrator's or Secretary's authority to enforce any provision of this chapter; except that any violation—

(i) with respect to which the Administrator or Secretary has commenced and is diligently prosecuting an action to assess a class II civil penalty under this paragraph, or

(ii) for which the Administrator or Secretary has issued a final order assessing a class II civil penalty not subject to further judicial review and the violator has paid a penalty assessed under this paragraph,

shall not be the subject of a civil penalty action under section 1319(d), 1319(g), or 1365 of this title or under paragraph (7).

(F) EFFECT OF ACTION ON COMPLIANCE.—No action by the Administrator or Secretary under this paragraph shall affect any person's obligation to comply with any section of this chapter.

(G) JUDICIAL REVIEW.—Any person against whom a civil penalty is assessed under this paragraph or who commented on the proposed assessment of such penalty in accordance with subparagraph (C) may obtain review of such assessment—

(i) in the case of assessment of a class I civil penalty, in the United States District Court for the District of Columbia or in the district in which the violation is alleged to have occurred, or

(ii) in the case of assessment of a class II civil penalty, in United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business,

by filing a notice of appeal in such court within the 30-day period beginning on the date the civil penalty order is issued and by simultaneously sending a copy of such notice by certified mail to the Administrator or Secretary, as the case may be, and the Attorney General. The Administrator or Secretary shall promptly file in such court a certified copy of the record on which the order was issued. Such court shall not set aside or remand such order unless there is not substantial evidence in the record, taken as a whole, to support the finding of a violation or unless the Administrator's or Secretary's assessment of the penalty constitutes an abuse of discretion and shall not impose additional civil penalties for the

same violation unless the Administrator's or Secretary's assessment of the penalty constitutes an abuse of discretion.

(H) COLLECTION.—If any person fails to pay an assessment of a civil penalty—

(i) after the assessment has become final, or

(ii) after a court in an action brought under subparagraph (G) has entered a final judgment in favor of the Administrator or Secretary, as the case may be,

the Administrator or Secretary shall request the Attorney General to bring a civil action in an appropriate district court to recover the amount assessed (plus interest at currently prevailing rates from the date of the final order or the date of the final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review. Any person who fails to pay on a timely basis the amount of an assessment of a civil penalty as described in the first sentence of this subparagraph shall be required to pay, in addition to such amount and interest, attorneys fees and costs for collection proceedings and a quarterly non-payment penalty for each quarter during which such failure to pay persists. Such non-payment penalty shall be in an amount equal to 20 percent of the aggregate amount of such person's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

(I) SUBPOENAS.—The Administrator or Secretary, as the case may be, may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, or documents in connection with hearings under this paragraph. In case of contumacy or refusal to obey a subpoena issued pursuant to this subparagraph and served upon any person, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the administrative law judge or to appear and produce documents before the administrative law judge, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(7) CIVIL PENALTY ACTION.—

(A) DISCHARGE, GENERALLY.—Any person who is the owner, operator, or person in charge of any vessel, onshore facility, or offshore facility from which oil or a hazardous substance is discharged in violation of paragraph (3), shall be subject to a civil penalty in an amount up to \$25,000 per day of violation or an amount up to \$1,000 per barrel of oil or unit of reportable quantity of hazardous substances discharged.

(B) FAILURE TO REMOVE OR COMPLY.—Any person described in subparagraph (A) who, without sufficient cause—

(i) fails to properly carry out removal of the discharge under an order of the President pursuant to subsection (c) of this section; or

(ii) fails to comply with an order pursuant to subsection (e)(1)(B) of this section;

shall be subject to a civil penalty in an amount up to \$25,000 per day of violation or an amount up to 3 times the costs incurred by the Oil Spill Liability Trust Fund as a result of such failure.

(C) FAILURE TO COMPLY WITH REGULATION.—Any person who fails or refuses to comply with any regulation issued under subsection (j) of this section shall be subject to a civil penalty in an amount up to \$25,000 per day of violation.

(D) GROSS NEGLIGENCE.—In any case in which a violation of paragraph (3) was the result of gross negligence or willful misconduct of a person described in subparagraph (A), the person shall be subject to a civil penalty of not less than \$100,000, and not more than \$3,000 per barrel of oil or unit of reportable quantity of hazardous substance discharged.

(E) JURISDICTION.—An action to impose a civil penalty under this paragraph may be brought in the district court of the United States for the district in which the defendant is located, resides, or is doing business, and such court shall have jurisdiction to assess such penalty.

(F) LIMITATION.—A person is not liable for a civil penalty under this paragraph for a discharge if the person has been assessed a civil penalty under paragraph (6) for the discharge.

(8) DETERMINATION OF AMOUNT.—In determining the amount of a civil penalty under paragraphs (6) and (7), the Administrator, Secretary, or the court, as the case may be, shall consider the seriousness of the violation or violations, the economic benefit to the violator, if any, resulting from the violation, the degree of culpability involved, any other penalty for the same incident, any history of prior violations, the nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of the discharge, the economic impact of the penalty on the violator, and any other matters as justice may require.

(9) MITIGATION OF DAMAGE.—In addition to establishing a penalty for the discharge of oil or a hazardous substance, the Administrator or the Secretary of the department in which the Coast Guard is operating may act to mitigate the damage to the public health or welfare caused by such discharge. The cost of such mitigation shall be deemed a cost incurred under subsection (c) of this section for the removal of such substance by the United States Government.

(10) RECOVERY OF REMOVAL COSTS.—Any costs of removal incurred in connection with a discharge excluded by subsection (a)(2)(C) of this section shall be recoverable from the owner or operator of the source of the discharge in an action brought under section 1319(b) of this title.

(11) LIMITATION.—Civil penalties shall not be assessed under both this section and section 1319 of this title for the same discharge.

(12) WITHHOLDING CLEARANCE.—If any owner, operator, or person in charge of a vessel is liable for a civil penalty under this subsection, or if reasonable cause exists to believe that the owner, operator, or person in charge may be subject to a civil penalty under this subsection, the

Secretary of the Treasury, upon the request of the Secretary of the department in which the Coast Guard is operating or the Administrator, shall with respect to such vessel refuse or revoke—

(A) the clearance required by section 60105 of title 46;

(B) a permit to proceed under section 4367 of the Revised Statutes of the United States (46 U.S.C. App. 313);<sup>2</sup> and

(C) a permit to depart required under section 1443<sup>2</sup> of title 19;

as applicable. Clearance or a permit refused or revoked under this paragraph may be granted upon the filing of a bond or other surety satisfactory to the Secretary of the department in which the Coast Guard is operating or the Administrator.

**(c) Federal removal authority**

**(1) General removal requirement**

(A) The President shall, in accordance with the National Contingency Plan and any appropriate Area Contingency Plan, ensure effective and immediate removal of a discharge, and mitigation or prevention of a substantial threat of a discharge, of oil or a hazardous substance—

(i) into or on the navigable waters;

(ii) on the adjoining shorelines to the navigable waters;

(iii) into or on the waters of the exclusive economic zone; or

(iv) that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States.

(B) In carrying out this paragraph, the President may—

(i) remove or arrange for the removal of a discharge, and mitigate or prevent a substantial threat of a discharge, at any time;

(ii) direct or monitor all Federal, State, and private actions to remove a discharge; and

(iii) remove and, if necessary, destroy a vessel discharging, or threatening to discharge, by whatever means are available.

**(2) Discharge posing substantial threat to public health or welfare**

(A) If a discharge, or a substantial threat of a discharge, of oil or a hazardous substance from a vessel, offshore facility, or onshore facility is of such a size or character as to be a substantial threat to the public health or welfare of the United States (including but not limited to fish, shellfish, wildlife, other natural resources, and the public and private beaches and shorelines of the United States), the President shall direct all Federal, State, and private actions to remove the discharge or to mitigate or prevent the threat of the discharge.

(B) In carrying out this paragraph, the President may, without regard to any other provision of law governing contracting procedures or employment of personnel by the Federal Government—

(i) remove or arrange for the removal of the discharge, or mitigate or prevent the substantial threat of the discharge; and

(ii) remove and, if necessary, destroy a vessel discharging, or threatening to discharge, by whatever means are available.

**(3) Actions in accordance with National Contingency Plan**

(A) Each Federal agency, State, owner or operator, or other person participating in efforts under this subsection shall act in accordance with the National Contingency Plan or as directed by the President.

(B) An owner or operator participating in efforts under this subsection shall act in accordance with the National Contingency Plan and the applicable response plan required under subsection (j) of this section, or as directed by the President, except that the owner or operator may deviate from the applicable response plan if the President or the Federal On-Scene Coordinator determines that deviation from the response plan would provide for a more expeditious or effective response to the spill or mitigation of its environmental effects.

**(4) Exemption from liability**

(A) A person is not liable for removal costs or damages which result from actions taken or omitted to be taken in the course of rendering care, assistance, or advice consistent with the National Contingency Plan or as otherwise directed by the President relating to a discharge or a substantial threat of a discharge of oil or a hazardous substance.

(B) Subparagraph (A) does not apply—

(i) to a responsible party;

(ii) to a response under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.);

(iii) with respect to personal injury or wrongful death; or

(iv) if the person is grossly negligent or engages in willful misconduct.

(C) A responsible party is liable for any removal costs and damages that another person is relieved of under subparagraph (A).

**(5) Obligation and liability of owner or operator not affected**

Nothing in this subsection affects—

(A) the obligation of an owner or operator to respond immediately to a discharge, or the threat of a discharge, of oil; or

(B) the liability of a responsible party under the Oil Pollution Act of 1990 [33 U.S.C. 2701 et seq.].

**(6) “Responsible party” defined**

For purposes of this subsection, the term “responsible party” has the meaning given that term under section 1001 of the Oil Pollution Act of 1990 [33 U.S.C. 2701].

**(d) National Contingency Plan**

**(1) Preparation by President**

The President shall prepare and publish a National Contingency Plan for removal of oil and hazardous substances pursuant to this section.

<sup>2</sup> See References in Text note below.

**(2) Contents**

The National Contingency Plan shall provide for efficient, coordinated, and effective action to minimize damage from oil and hazardous substance discharges, including containment, dispersal, and removal of oil and hazardous substances, and shall include, but not be limited to, the following:

(A) Assignment of duties and responsibilities among Federal departments and agencies in coordination with State and local agencies and port authorities including, but not limited to, water pollution control and conservation and trusteeship of natural resources (including conservation of fish and wildlife).

(B) Identification, procurement, maintenance, and storage of equipment and supplies.

(C) Establishment or designation of Coast Guard strike teams, consisting of—

(i) personnel who shall be trained, prepared, and available to provide necessary services to carry out the National Contingency Plan;

(ii) adequate oil and hazardous substance pollution control equipment and material; and

(iii) a detailed oil and hazardous substance pollution and prevention plan, including measures to protect fisheries and wildlife.

(D) A system of surveillance and notice designed to safeguard against as well as ensure earliest possible notice of discharges of oil and hazardous substances and imminent threats of such discharges to the appropriate State and Federal agencies.

(E) Establishment of a national center to provide coordination and direction for operations in carrying out the Plan.

(F) Procedures and techniques to be employed in identifying, containing, dispersing, and removing oil and hazardous substances.

(G) A schedule, prepared in cooperation with the States, identifying—

(i) dispersants, other chemicals, and other spill mitigating devices and substances, if any, that may be used in carrying out the Plan,

(ii) the waters in which such dispersants, other chemicals, and other spill mitigating devices and substances may be used, and

(iii) the quantities of such dispersant, other chemicals, or other spill mitigating device or substance which can be used safely in such waters,

which schedule shall provide in the case of any dispersant, chemical, spill mitigating device or substance, or waters not specifically identified in such schedule that the President, or his delegate, may, on a case-by-case basis, identify the dispersants, other chemicals, and other spill mitigating devices and substances which may be used, the waters in which they may be used, and the quantities which can be used safely in such waters.

(H) A system whereby the State or States affected by a discharge of oil or hazardous

substance may act where necessary to remove such discharge and such State or States may be reimbursed in accordance with the Oil Pollution Act of 1990 [33 U.S.C. 2701 et seq.], in the case of any discharge of oil from a vessel or facility, for the reasonable costs incurred for that removal, from the Oil Spill Liability Trust Fund.

(I) Establishment of criteria and procedures to ensure immediate and effective Federal identification of, and response to, a discharge, or the threat of a discharge, that results in a substantial threat to the public health or welfare of the United States, as required under subsection (c)(2) of this section.

(J) Establishment of procedures and standards for removing a worst case discharge of oil, and for mitigating or preventing a substantial threat of such a discharge.

(K) Designation of the Federal official who shall be the Federal On-Scene Coordinator for each area for which an Area Contingency Plan is required to be prepared under subsection (j) of this section.

(L) Establishment of procedures for the coordination of activities of—

(i) Coast Guard strike teams established under subparagraph (C);

(ii) Federal On-Scene Coordinators designated under subparagraph (K);

(iii) District Response Groups established under subsection (j) of this section; and

(iv) Area Committees established under subsection (j) of this section.

(M) A fish and wildlife response plan, developed in consultation with the United States Fish and Wildlife Service, the National Oceanic and Atmospheric Administration, and other interested parties (including State fish and wildlife conservation officials), for the immediate and effective protection, rescue, and rehabilitation of, and the minimization of risk of damage to, fish and wildlife resources and their habitat that are harmed or that may be jeopardized by a discharge.

**(3) Revisions and amendments**

The President may, from time to time, as the President deems advisable, revise or otherwise amend the National Contingency Plan.

**(4) Actions in accordance with National Contingency Plan**

After publication of the National Contingency Plan, the removal of oil and hazardous substances and actions to minimize damage from oil and hazardous substance discharges shall, to the greatest extent possible, be in accordance with the National Contingency Plan.

**(e) Civil enforcement****(1) Orders protecting public health**

In addition to any action taken by a State or local government, when the President determines that there may be an imminent and substantial threat to the public health or welfare of the United States, including fish, shellfish, and wildlife, public and private property, shorelines, beaches, habitat, and other living

and nonliving natural resources under the jurisdiction or control of the United States, because of an actual or threatened discharge of oil or a hazardous substance from a vessel or facility in violation of subsection (b) of this section, the President may—

(A) require the Attorney General to secure any relief from any person, including the owner or operator of the vessel or facility, as may be necessary to abate such endangerment; or

(B) after notice to the affected State, take any other action under this section, including issuing administrative orders, that may be necessary to protect the public health and welfare.

**(2) Jurisdiction of district courts**

The district courts of the United States shall have jurisdiction to grant any relief under this subsection that the public interest and the equities of the case may require.

**(f) Liability for actual costs of removal**

(1) Except where an owner or operator can prove that a discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether any such act or omission was or was not negligent, or any combination of the foregoing clauses, such owner or operator of any vessel from which oil or a hazardous substance is discharged in violation of subsection (b)(3) of this section shall, notwithstanding any other provision of law, be liable to the United States Government for the actual costs incurred under subsection (c) of this section for the removal of such oil or substance by the United States Government in an amount not to exceed, in the case of an inland oil barge \$125 per gross ton of such barge, or \$125,000, whichever is greater, and in the case of any other vessel, \$150 per gross ton of such vessel (or, for a vessel carrying oil or hazardous substances as cargo, \$250,000), whichever is greater, except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, such owner or operator shall be liable to the United States Government for the full amount of such costs. Such costs shall constitute a maritime lien on such vessel which may be recovered in an action in rem in the district court of the United States for any district within which any vessel may be found. The United States may also bring an action against the owner or operator of such vessel in any court of competent jurisdiction to recover such costs.

(2) Except where an owner or operator of an onshore facility can prove that a discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether any such act or omission was or was not negligent, or any combination of the foregoing clauses, such owner or operator of any such facility from which oil or a hazardous substance is discharged in violation of subsection (b)(3) of this section shall be liable to the United States Government for the actual costs incurred under subsection

(c) of this section for the removal of such oil or substance by the United States Government in an amount not to exceed \$50,000,000, except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, such owner or operator shall be liable to the United States Government for the full amount of such costs. The United States may bring an action against the owner or operator of such facility in any court of competent jurisdiction to recover such costs. The Administrator is authorized, by regulation, after consultation with the Secretary of Commerce and the Small Business Administration, to establish reasonable and equitable classifications of those onshore facilities having a total fixed storage capacity of 1,000 barrels or less which he determines because of size, type, and location do not present a substantial risk of the discharge of oil or a hazardous substance in violation of subsection (b)(3) of this section, and apply with respect to such classifications differing limits of liability which may be less than the amount contained in this paragraph.

(3) Except where an owner or operator of an offshore facility can prove that a discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether any such act or omission was or was not negligent, or any combination of the foregoing clauses, such owner or operator of any such facility from which oil or a hazardous substance is discharged in violation of subsection (b)(3) of this section shall, notwithstanding any other provision of law, be liable to the United States Government for the actual costs incurred under subsection (c) of this section for the removal of such oil or substance by the United States Government in an amount not to exceed \$50,000,000, except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, such owner or operator shall be liable to the United States Government for the full amount of such costs. The United States may bring an action against the owner or operator of such a facility in any court of competent jurisdiction to recover such costs.

(4) The costs of removal of oil or a hazardous substance for which the owner or operator of a vessel or onshore or offshore facility is liable under subsection (f) of this section shall include any costs or expenses incurred by the Federal Government or any State government in the restoration or replacement of natural resources damaged or destroyed as a result of a discharge of oil or a hazardous substance in violation of subsection (b) of this section.

(5) The President, or the authorized representative of any State, shall act on behalf of the public as trustee of the natural resources to recover for the costs of replacing or restoring such resources. Sums recovered shall be used to restore, rehabilitate, or acquire the equivalent of such natural resources by the appropriate agencies of the Federal Government, or the State government.

**(g) Third party liability**

Where the owner or operator of a vessel (other than an inland oil barge) carrying oil or hazardous substances as cargo or an onshore or offshore facility which handles or stores oil or hazardous substances in bulk, from which oil or a hazardous substance is discharged in violation of subsection (b) of this section, alleges that such discharge was caused solely by an act or omission of a third party, such owner or operator shall pay to the United States Government the actual costs incurred under subsection (c) of this section for removal of such oil or substance and shall be entitled by subrogation to all rights of the United States Government to recover such costs from such third party under this subsection. In any case where an owner or operator of a vessel, of an onshore facility, or of an offshore facility, from which oil or a hazardous substance is discharged in violation of subsection (b)(3) of this section, proves that such discharge of oil or hazardous substance was caused solely by an act or omission of a third party, or was caused solely by such an act or omission in combination with an act of God, an act of war, or negligence on the part of the United States Government, such third party shall, notwithstanding any other provision of law, be liable to the United States Government for the actual costs incurred under subsection (c) of this section for removal of such oil or substance by the United States Government, except where such third party can prove that such discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of another party without regard to whether such act or omission was or was not negligent, or any combination of the foregoing clauses. If such third party was the owner or operator of a vessel which caused the discharge of oil or a hazardous substance in violation of subsection (b)(3) of this section, the liability of such third party under this subsection shall not exceed, in the case of an inland oil barge \$125 per gross ton of such barge, or \$125,000, whichever is greater, and in the case of any other vessel, \$150 per gross ton of such vessel (or, for a vessel carrying oil or hazardous substances as cargo, \$250,000), whichever is greater. In any other case the liability of such third party shall not exceed the limitation which would have been applicable to the owner or operator of the vessel or the onshore or offshore facility from which the discharge actually occurred if such owner or operator were liable. If the United States can show that the discharge of oil or a hazardous substance in violation of subsection (b)(3) of this section was the result of willful negligence or willful misconduct within the privity and knowledge of such third party, such third party shall be liable to the United States Government for the full amount of such removal costs. The United States may bring an action against the third party in any court of competent jurisdiction to recover such removal costs.

**(h) Rights against third parties who caused or contributed to discharge**

The liabilities established by this section shall in no way affect any rights which (1) the owner

or operator of a vessel or of an onshore facility or an offshore facility may have against any third party whose acts may in any way have caused or contributed to such discharge, or (2) The<sup>3</sup> United States Government may have against any third party whose actions may in any way have caused or contributed to the discharge of oil or hazardous substance.

**(i) Recovery of removal costs**

In any case where an owner or operator of a vessel or an onshore facility or an offshore facility from which oil or a hazardous substance is discharged in violation of subsection (b)(3) of this section acts to remove such oil or substance in accordance with regulations promulgated pursuant to this section, such owner or operator shall be entitled to recover the reasonable costs incurred in such removal upon establishing, in a suit which may be brought against the United States Government in the United States Court of Federal Claims, that such discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether such act or omission was or was not negligent, or of any combination of the foregoing causes.

**(j) National Response System****(1) In general**

Consistent with the National Contingency Plan required by subsection (c)(2)<sup>2</sup> of this section, as soon as practicable after October 18, 1972, and from time to time thereafter, the President shall issue regulations consistent with maritime safety and with marine and navigation laws (A) establishing methods and procedures for removal of discharged oil and hazardous substances, (B) establishing criteria for the development and implementation of local and regional oil and hazardous substance removal contingency plans, (C) establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from vessels and from onshore facilities and offshore facilities, and to contain such discharges, and (D) governing the inspection of vessels carrying cargoes of oil and hazardous substances and the inspection of such cargoes in order to reduce the likelihood of discharges of oil from vessels in violation of this section.

**(2) National Response Unit**

The Secretary of the department in which the Coast Guard is operating shall establish a National Response Unit at Elizabeth City, North Carolina. The Secretary, acting through the National Response Unit—

(A) shall compile and maintain a comprehensive computer list of spill removal resources, personnel, and equipment that is available worldwide and within the areas designated by the President pursuant to paragraph (4), and of information regarding previous spills, including data from universities, research institutions, State governments, and other nations, as appropriate, which shall be disseminated as appropriate

<sup>3</sup> So in original. Probably should not be capitalized.

to response groups and area committees, and which shall be available to Federal and State agencies and the public;

(B) shall provide technical assistance, equipment, and other resources requested by a Federal On-Scene Coordinator;

(C) shall coordinate use of private and public personnel and equipment to remove a worst case discharge, and to mitigate or prevent a substantial threat of such a discharge, from a vessel, offshore facility, or onshore facility operating in or near an area designated by the President pursuant to paragraph (4);

(D) may provide technical assistance in the preparation of Area Contingency Plans required under paragraph (4);

(E) shall administer Coast Guard strike teams established under the National Contingency Plan;

(F) shall maintain on file all Area Contingency Plans approved by the President under this subsection; and

(G) shall review each of those plans that affects its responsibilities under this subsection.

### (3) Coast Guard District Response Groups

(A) The Secretary of the department in which the Coast Guard is operating shall establish in each Coast Guard district a Coast Guard District Response Group.

(B) Each Coast Guard District Response Group shall consist of—

(i) the Coast Guard personnel and equipment, including firefighting equipment, of each port within the district;

(ii) additional prepositioned equipment; and

(iii) a district response advisory staff.

(C) Coast Guard district response groups—

(i) shall provide technical assistance, equipment, and other resources when required by a Federal On-Scene Coordinator;

(ii) shall maintain all Coast Guard response equipment within its district;

(iii) may provide technical assistance in the preparation of Area Contingency Plans required under paragraph (4); and

(iv) shall review each of those plans that affect its area of geographic responsibility.

### (4) Area Committees and Area Contingency Plans

(A) There is established for each area designated by the President an Area Committee comprised of members appointed by the President from qualified—

(i) personnel of Federal, State, and local agencies; and

(ii) members of federally recognized Indian tribes, where applicable.

(B) Each Area Committee, under the direction of the Federal On-Scene Coordinator for its area, shall—

(i) prepare for its area the Area Contingency Plan required under subparagraph (C);

(ii) work with State, local, and tribal officials to enhance the contingency planning of those officials and to assure preplanning of joint response efforts, including appropriate

procedures for mechanical recovery, dispersal, shoreline cleanup, protection of sensitive environmental areas, and protection, rescue, and rehabilitation of fisheries and wildlife, including advance planning with respect to the closing and reopening of fishing areas following a discharge; and

(iii) work with State, local, and tribal officials to expedite decisions for the use of dispersants and other mitigating substances and devices.

(C) Each Area Committee shall prepare and submit to the President for approval an Area Contingency Plan for its area. The Area Contingency Plan shall—

(i) when implemented in conjunction with the National Contingency Plan, be adequate to remove a worst case discharge, and to mitigate or prevent a substantial threat of such a discharge, from a vessel, offshore facility, or onshore facility operating in or near the area;

(ii) describe the area covered by the plan, including the areas of special economic or environmental importance that might be damaged by a discharge;

(iii) describe in detail the responsibilities of an owner or operator and of Federal, State, and local agencies in removing a discharge, and in mitigating or preventing a substantial threat of a discharge;

(iv) list the equipment (including firefighting equipment), dispersants or other mitigating substances and devices, and personnel available to an owner or operator, Federal, State, and local agencies, and tribal governments, to ensure an effective and immediate removal of a discharge, and to ensure mitigation or prevention of a substantial threat of a discharge;

(v) compile a list of local scientists, both inside and outside Federal Government service, with expertise in the environmental effects of spills of the types of oil typically transported in the area, who may be contacted to provide information or, where appropriate, participate in meetings of the scientific support team convened in response to a spill, and describe the procedures to be followed for obtaining an expedited decision regarding the use of dispersants;

(vi) describe in detail how the plan is integrated into other Area Contingency Plans and vessel, offshore facility, and onshore facility response plans approved under this subsection, and into operating procedures of the National Response Unit;

(vii) include a framework for advance planning and decisionmaking with respect to the closing and reopening of fishing areas following a discharge, including protocols and standards for the closing and reopening of fishing areas;

(viii) include any other information the President requires; and

(ix) be updated periodically by the Area Committee.

(D) The President shall—

(i) review and approve Area Contingency Plans under this paragraph; and

(ii) periodically review Area Contingency Plans so approved.

**(5) Tank vessel, nontank vessel, and facility response plans**

(A)(i) The President shall issue regulations which require an owner or operator of a tank vessel or facility described in subparagraph (C) to prepare and submit to the President a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge, of oil or a hazardous substance.

(ii) The President shall also issue regulations which require an owner or operator of a nontank vessel to prepare and submit to the President a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge, of oil.

(B) The Secretary of the Department in which the Coast Guard is operating may issue regulations which require an owner or operator of a tank vessel, a nontank vessel, or a facility described in subparagraph (C) that transfers noxious liquid substances in bulk to or from a vessel to prepare and submit to the Secretary a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge, of a noxious liquid substance that is not designated as a hazardous substance or regulated as oil in any other law or regulation. For purposes of this paragraph, the term “noxious liquid substance” has the same meaning when that term is used in the MARPOL Protocol described in section 1901(a)(3)<sup>2</sup> of this title.

(C) The tank vessels, nontank vessels, and facilities referred to in subparagraphs (A) and (B) are the following:

(i) A tank vessel, as defined under section 2101 of title 46.

(ii) A nontank vessel.

(iii) An offshore facility.

(iv) An onshore facility that, because of its location, could reasonably be expected to cause substantial harm to the environment by discharging into or on the navigable waters, adjoining shorelines, or the exclusive economic zone.

(D) A response plan required under this paragraph shall—

(i) be consistent with the requirements of the National Contingency Plan and Area Contingency Plans;

(ii) identify the qualified individual having full authority to implement removal actions, and require immediate communications between that individual and the appropriate Federal official and the persons providing personnel and equipment pursuant to clause (iii);

(iii) identify, and ensure by contract or other means approved by the President the availability of, private personnel and equipment necessary to remove to the maximum extent practicable a worst case discharge (including a discharge resulting from fire or explosion), and to mitigate or prevent a substantial threat of such a discharge;

(iv) describe the training, equipment testing, periodic unannounced drills, and re-

sponse actions of persons on the vessel or at the facility, to be carried out under the plan to ensure the safety of the vessel or facility and to mitigate or prevent the discharge, or the substantial threat of a discharge;

(v) be updated periodically; and

(vi) be resubmitted for approval of each significant change.

(E) With respect to any response plan submitted under this paragraph for an onshore facility that, because of its location, could reasonably be expected to cause significant and substantial harm to the environment by discharging into or on the navigable waters or adjoining shorelines or the exclusive economic zone, and with respect to each response plan submitted under this paragraph for a tank vessel, nontank vessel, or offshore facility, the President shall—

(i) promptly review such response plan;

(ii) require amendments to any plan that does not meet the requirements of this paragraph;

(iii) approve any plan that meets the requirements of this paragraph;

(iv) review each plan periodically thereafter; and

(v) in the case of a plan for a nontank vessel, consider any applicable State-mandated response plan in effect on August 9, 2004, and ensure consistency to the extent practicable.

(F) A tank vessel, nontank vessel, offshore facility, or onshore facility required to prepare a response plan under this subsection may not handle, store, or transport oil unless—

(i) in the case of a tank vessel, nontank vessel, offshore facility, or onshore facility for which a response plan is reviewed by the President under subparagraph (E), the plan has been approved by the President; and

(ii) the vessel or facility is operating in compliance with the plan.

(G) Notwithstanding subparagraph (E), the President may authorize a tank vessel, nontank vessel, offshore facility, or onshore facility to operate without a response plan approved under this paragraph, until not later than 2 years after the date of the submission to the President of a plan for the tank vessel, nontank vessel, or facility, if the owner or operator certifies that the owner or operator has ensured by contract or other means approved by the President the availability of private personnel and equipment necessary to respond, to the maximum extent practicable, to a worst case discharge or a substantial threat of such a discharge.

(H) The owner or operator of a tank vessel, nontank vessel, offshore facility, or onshore facility may not claim as a defense to liability under title I of the Oil Pollution Act of 1990 [33 U.S.C. 2701 et seq.] that the owner or operator was acting in accordance with an approved response plan.

(I) The Secretary shall maintain, in the Vessel Identification System established under chapter 125 of title 46, the dates of approval and review of a response plan under this paragraph for each tank vessel and nontank vessel that is a vessel of the United States.

**(6) Equipment requirements and inspection**

The President may require—

(A) periodic inspection of containment booms, skimmers, vessels, and other major equipment used to remove discharges; and

(B) vessels operating on navigable waters and carrying oil or a hazardous substance in bulk as cargo, and nontank vessels carrying oil of any kind as fuel for main propulsion, to carry appropriate removal equipment that employs the best technology economically feasible and that is compatible with the safe operation of the vessel.

**(7) Area drills**

The President shall periodically conduct drills of removal capability, without prior notice, in areas for which Area Contingency Plans are required under this subsection and under relevant tank vessel, nontank vessel, and facility response plans. The drills may include participation by Federal, State, and local agencies, the owners and operators of vessels and facilities in the area, and private industry. The President may publish annual reports on these drills, including assessments of the effectiveness of the plans and a list of amendments made to improve plans.

**(8) United States Government not liable**

The United States Government is not liable for any damages arising from its actions or omissions relating to any response plan required by this section.

**(k) Repealed. Pub. L. 101-380, title II, § 2002(b)(2), Aug. 18, 1990, 104 Stat. 507****(l) Administration**

The President is authorized to delegate the administration of this section to the heads of those Federal departments, agencies, and instrumentalities which he determines to be appropriate. Each such department, agency, and instrumentality, in order to avoid duplication of effort, shall, whenever appropriate, utilize the personnel, services, and facilities of other Federal departments, agencies, and instrumentalities.

**(m) Administrative provisions****(1) For vessels**

Anyone authorized by the President to enforce the provisions of this section with respect to any vessel may, except as to public vessels—

(A) board and inspect any vessel upon the navigable waters of the United States or the waters of the contiguous zone,

(B) with or without a warrant, arrest any person who in the presence or view of the authorized person violates the provisions of this section or any regulation issued thereunder, and

(C) execute any warrant or other process issued by an officer or court of competent jurisdiction.

**(2) For facilities****(A) Recordkeeping**

Whenever required to carry out the purposes of this section, the Administrator, the

Secretary of Transportation, or the Secretary of the Department in which the Coast Guard is operating shall require the owner or operator of a facility to which this section applies to establish and maintain such records, make such reports, install, use, and maintain such monitoring equipment and methods, and provide such other information as the Administrator or Secretary, as the case may be, may require to carry out the objectives of this section.

**(B) Entry and inspection**

Whenever required to carry out the purposes of this section, the Administrator, the Secretary of Transportation, or the Secretary of the Department in which the Coast Guard is operating or an authorized representative of the Administrator or Secretary, upon presentation of appropriate credentials, may—

(i) enter and inspect any facility to which this section applies, including any facility at which any records are required to be maintained under subparagraph (A); and

(ii) at reasonable times, have access to and copy any records, take samples, and inspect any monitoring equipment or methods required under subparagraph (A).

**(C) Arrests and execution of warrants**

Anyone authorized by the Administrator or the Secretary of the department in which the Coast Guard is operating to enforce the provisions of this section with respect to any facility may—

(i) with or without a warrant, arrest any person who violates the provisions of this section or any regulation issued thereunder in the presence or view of the person so authorized; and

(ii) execute any warrant or process issued by an officer or court of competent jurisdiction.

**(D) Public access**

Any records, reports, or information obtained under this paragraph shall be subject to the same public access and disclosure requirements which are applicable to records, reports, and information obtained pursuant to section 1318 of this title.

**(n) Jurisdiction**

The several district courts of the United States are invested with jurisdiction for any actions, other than actions pursuant to subsection (i)(1) of this section, arising under this section. In the case of Guam and the Trust Territory of the Pacific Islands, such actions may be brought in the district court of Guam, and in the case of the Virgin Islands such actions may be brought in the district court of the Virgin Islands. In the case of American Samoa and the Trust Territory of the Pacific Islands, such actions may be brought in the District Court of the United States for the District of Hawaii and such court shall have jurisdiction of such actions. In the case of the Canal Zone, such actions may be brought in the United States District Court for the District of the Canal Zone.

**(o) Obligation for damages unaffected; local authority not preempted; existing Federal authority not modified or affected**

(1) Nothing in this section shall affect or modify in any way the obligations of any owner or operator of any vessel, or of any owner or operator of any onshore facility or offshore facility to any person or agency under any provision of law for damages to any publicly owned or privately owned property resulting from a discharge of any oil or hazardous substance or from the removal of any such oil or hazardous substance.

(2) Nothing in this section shall be construed as preempting any State or political subdivision thereof from imposing any requirement or liability with respect to the discharge of oil or hazardous substance into any waters within such State, or with respect to any removal activities related to such discharge.

(3) Nothing in this section shall be construed as affecting or modifying any other existing authority of any Federal department, agency, or instrumentality, relative to onshore or offshore facilities under this chapter or any other provision of law, or to affect any State or local law not in conflict with this section.

**(p) Repealed. Pub. L. 101-380, title II, § 2002(b)(4), Aug. 18, 1990, 104 Stat. 507**

**(q) Establishment of maximum limit of liability with respect to onshore or offshore facilities**

The President is authorized to establish, with respect to any class or category of onshore or offshore facilities, a maximum limit of liability under subsections (f)(2) and (3) of this section of less than \$50,000,000, but not less than \$8,000,000.

**(r) Liability limitations not to limit liability under other legislation**

Nothing in this section shall be construed to impose, or authorize the imposition of, any limitation on liability under the Outer Continental Shelf Lands Act [43 U.S.C. 1331 et seq.] or the Deepwater Port Act of 1974 [33 U.S.C. 1501 et seq.].

**(s) Oil Spill Liability Trust Fund**

The Oil Spill Liability Trust Fund established under section 9509 of title 26 shall be available to carry out subsections (b), (c), (d), (j), and (l) of this section as those subsections apply to discharges, and substantial threats of discharges, of oil. Any amounts received by the United States under this section shall be deposited in the Oil Spill Liability Trust Fund except as provided in subsection (t).

**(t) Gulf Coast restoration and recovery**

**(1) State allocation and expenditures**

**(A) In general**

Of the total amounts made available in any fiscal year from the Trust Fund, 35 percent shall be available, in accordance with the requirements of this section, to the Gulf Coast States in equal shares for expenditure for ecological and economic restoration of the Gulf Coast region in accordance with this subsection.

**(B) Use of funds**

**(i) Eligible activities in the Gulf Coast region**

Subject to clause (iii), amounts provided to the Gulf Coast States under this subsection may only be used to carry out 1 or more of the following activities in the Gulf Coast region:

(I) Restoration and protection of the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast region.

(II) Mitigation of damage to fish, wildlife, and natural resources.

(III) Implementation of a federally approved marine, coastal, or comprehensive conservation management plan, including fisheries monitoring.

(IV) Workforce development and job creation.

(V) Improvements to or on State parks located in coastal areas affected by the Deepwater Horizon oil spill.

(VI) Infrastructure projects benefitting the economy or ecological resources, including port infrastructure.

(VII) Coastal flood protection and related infrastructure.

(VIII) Planning assistance.

(IX) Administrative costs of complying with this subsection.

**(ii) Activities to promote tourism and seafood in the Gulf Coast region**

Amounts provided to the Gulf Coast States under this subsection may be used to carry out 1 or more of the following activities:

(I) Promotion of tourism in the Gulf Coast Region, including recreational fishing.

(II) Promotion of the consumption of seafood harvested from the Gulf Coast Region.

**(iii) Limitation**

**(I) In general**

Of the amounts received by a Gulf Coast State under this subsection, not more than 3 percent may be used for administrative costs eligible under clause (i)(IX).

**(II) Claims for compensation**

Activities funded under this subsection may not be included in any claim for compensation paid out by the Oil Spill Liability Trust Fund after July 6, 2012.

**(C) Coastal political subdivisions**

**(i) Distribution**

In the case of a State where the coastal zone includes the entire State—

(I) 75 percent of funding shall be provided directly to the 8 disproportionately affected counties impacted by the Deepwater Horizon oil spill; and

(II) 25 percent shall be provided directly to nondisproportionately impacted counties within the State.

**(ii) Nondisproportionately impacted counties**

The total amounts made available to coastal political subdivisions in the State of Florida under clause (i)(II) shall be distributed according to the following weighted formula:

(I) 34 percent based on the weighted average of the population of the county.

(II) 33 percent based on the weighted average of the county per capita sales tax collections estimated for fiscal year 2012.

(III) 33 percent based on the inverse proportion of the weighted average distance from the Deepwater Horizon oil rig to each of the nearest and farthest points of the shoreline.

**(D) Louisiana****(i) In general**

Of the total amounts made available to the State of Louisiana under this paragraph:

(I) 70 percent shall be provided directly to the State in accordance with this subsection.

(II) 30 percent shall be provided directly to parishes in the coastal zone (as defined in section 1453 of title 16) of the State of Louisiana according to the following weighted formula:

(aa) 40 percent based on the weighted average of miles of the parish shoreline oiled.

(bb) 40 percent based on the weighted average of the population of the parish.

(cc) 20 percent based on the weighted average of the land mass of the parish.

**(ii) Conditions****(I) Land use plan**

As a condition of receiving amounts allocated under this paragraph, the chief executive of the eligible parish shall certify to the Governor of the State that the parish has completed a comprehensive land use plan.

**(II) Other conditions**

A coastal political subdivision receiving funding under this paragraph shall meet all of the conditions in subparagraph (E).

**(E) Conditions**

As a condition of receiving amounts from the Trust Fund, a Gulf Coast State, including the entities described in subparagraph (F), or a coastal political subdivision shall—

(i) agree to meet such conditions, including audit requirements, as the Secretary of the Treasury determines necessary to ensure that amounts disbursed from the Trust Fund will be used in accordance with this subsection;

(ii) certify in such form and in such manner as the Secretary of the Treasury determines necessary that the project or program for which the Gulf Coast State or coastal political subdivision is requesting amounts—

(I) is designed to restore and protect the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, coastal wetlands, or economy of the Gulf Coast;

(II) carries out 1 or more of the activities described in clauses (i) and (ii) of subparagraph (B);

(III) was selected based on meaningful input from the public, including broad-based participation from individuals, businesses, and nonprofit organizations; and

(IV) in the case of a natural resource protection or restoration project, is based on the best available science;

(iii) certify that the project or program and the awarding of a contract for the expenditure of amounts received under this paragraph are consistent with the standard procurement rules and regulations governing a comparable project or program in that State, including all applicable competitive bidding and audit requirements; and

(iv) develop and submit a multiyear implementation plan for the use of such amounts, which may include milestones, projected completion of each activity, and a mechanism to evaluate the success of each activity in helping to restore and protect the Gulf Coast region impacted by the Deepwater Horizon oil spill.

**(F) Approval by State entity, task force, or agency**

The following Gulf Coast State entities, task forces, or agencies shall carry out the duties of a Gulf Coast State pursuant to this paragraph:

**(i) Alabama****(I) In general**

In the State of Alabama, the Alabama Gulf Coast Recovery Council, which shall be comprised of only the following:

(aa) The Governor of Alabama, who shall also serve as Chairperson and preside over the meetings of the Alabama Gulf Coast Recovery Council.

(bb) The Director of the Alabama State Port Authority, who shall also serve as Vice Chairperson and preside over the meetings of the Alabama Gulf Coast Recovery Council in the absence of the Chairperson.

(cc) The Chairman of the Baldwin County Commission.

(dd) The President of the Mobile County Commission.

(ee) The Mayor of the city of Bayou La Batre.

(ff) The Mayor of the town of Dauphin Island.

(gg) The Mayor of the city of Fairhope.

(hh) The Mayor of the city of Gulf Shores.

(ii) The Mayor of the city of Mobile.

(jj) The Mayor of the city of Orange Beach.

**(II) Vote**

Each member of the Alabama Gulf Coast Recovery Council shall be entitled to 1 vote.

**(III) Majority vote**

All decisions of the Alabama Gulf Coast Recovery Council shall be made by majority vote.

**(IV) Limitation on administrative expenses**

Administrative duties for the Alabama Gulf Coast Recovery Council may only be performed by public officials and employees that are subject to the ethics laws of the State of Alabama.

**(ii) Louisiana**

In the State of Louisiana, the Coastal Protection and Restoration Authority of Louisiana.

**(iii) Mississippi**

In the State of Mississippi, the Mississippi Department of Environmental Quality.

**(iv) Texas**

In the State of Texas, the Office of the Governor or an appointee of the Office of the Governor.

**(G) Compliance with eligible activities**

If the Secretary of the Treasury determines that an expenditure by a Gulf Coast State or coastal political subdivision of amounts made available under this subsection does not meet one of the activities described in clauses (i) and (ii) of subparagraph (B), the Secretary shall make no additional amounts from the Trust Fund available to that Gulf Coast State or coastal political subdivision until such time as an amount equal to the amount expended for the unauthorized use—

(i) has been deposited by the Gulf Coast State or coastal political subdivision in the Trust Fund; or

(ii) has been authorized by the Secretary of the Treasury for expenditure by the Gulf Coast State or coastal political subdivision for a project or program that meets the requirements of this subsection.

**(H) Compliance with conditions**

If the Secretary of the Treasury determines that a Gulf Coast State or coastal political subdivision does not meet the requirements of this paragraph, including the conditions of subparagraph (E), where applicable, the Secretary of the Treasury shall make no amounts from the Trust Fund available to that Gulf Coast State or coastal political subdivision until all conditions of this paragraph are met.

**(I) Public input**

In meeting any condition of this paragraph, a Gulf Coast State may use an appropriate procedure for public consultation in that Gulf Coast State, including consulting with one or more established task forces or

other entities, to develop recommendations for proposed projects and programs that would restore and protect the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, coastal wetlands, and economy of the Gulf Coast.

**(J) Previously approved projects and programs**

A Gulf Coast State or coastal political subdivision shall be considered to have met the conditions of subparagraph (E) for a specific project or program if, before July 6, 2012—

(i) the Gulf Coast State or coastal political subdivision has established conditions for carrying out projects and programs that are substantively the same as the conditions described in subparagraph (E); and

(ii) the applicable project or program carries out 1 or more of the activities described in clauses (i) and (ii) of subparagraph (B).

**(K) Local preference**

In awarding contracts to carry out a project or program under this paragraph, a Gulf Coast State or coastal political subdivision may give a preference to individuals and companies that reside in, are headquartered in, or are principally engaged in business in the State of project execution.

**(L) Unused funds**

Funds allocated to a State or coastal political subdivision under this paragraph shall remain in the Trust Fund until such time as the State or coastal political subdivision develops and submits a plan identifying uses for those funds in accordance with subparagraph (E)(iv).

**(M) Judicial review**

If the Secretary of the Treasury determines that a Gulf Coast State or coastal political subdivision does not meet the requirements of this paragraph, including the conditions of subparagraph (E), the Gulf Coast State or coastal political subdivision may obtain expedited judicial review within 90 days after that decision in a district court of the United States, of appropriate jurisdiction and venue, that is located within the State seeking the review.

**(N) Cost-sharing****(i) In general**

A Gulf Coast State or coastal political subdivision may use, in whole or in part, amounts made available under this paragraph to that Gulf Coast State or coastal political subdivision to satisfy the non-Federal share of the cost of any project or program authorized by Federal law that is an eligible activity described in clauses (i) and (ii) of subparagraph (B).

**(ii) Effect on other funds**

The use of funds made available from the Trust Fund to satisfy the non-Federal share of the cost of a project or program that meets the requirements of clause (i)

shall not affect the priority in which other Federal funds are allocated or awarded.

**(2) Council establishment and allocation**

**(A) In general**

Of the total amount made available in any fiscal year from the Trust Fund, 30 percent shall be disbursed to the Council to carry out the Comprehensive Plan.

**(B) Council expenditures**

**(i) In general**

In accordance with this paragraph, the Council shall expend funds made available from the Trust Fund to undertake projects and programs, using the best available science, that would restore and protect the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, coastal wetlands, and economy of the Gulf Coast.

**(ii) Allocation and expenditure procedures**

The Secretary of the Treasury shall develop such conditions, including audit requirements, as the Secretary of the Treasury determines necessary to ensure that amounts disbursed from the Trust Fund to the Council to implement the Comprehensive Plan will be used in accordance with this paragraph.

**(iii) Administrative expenses**

Of the amounts received by the Council under this paragraph, not more than 3 percent may be used for administrative expenses, including staff.

**(C) Gulf Coast Ecosystem Restoration Council**

**(i) Establishment**

There is established as an independent entity in the Federal Government a council to be known as the “Gulf Coast Ecosystem Restoration Council”.

**(ii) Membership**

The Council shall consist of the following members, or in the case of a Federal agency, a designee at the level of the Assistant Secretary or the equivalent:

(I) The Secretary of the Interior.

(II) The Secretary of the Army.

(III) The Secretary of Commerce.

(IV) The Administrator of the Environmental Protection Agency.

(V) The Secretary of Agriculture.

(VI) The head of the department in which the Coast Guard is operating.

(VII) The Governor of the State of Alabama.

(VIII) The Governor of the State of Florida.

(IX) The Governor of the State of Louisiana.

(X) The Governor of the State of Mississippi.

(XI) The Governor of the State of Texas.

**(iii) Alternate**

A Governor appointed to the Council by the President may designate an alternate

to represent the Governor on the Council and vote on behalf of the Governor.

**(iv) Chairperson**

From among the Federal agency members of the Council, the representatives of States on the Council shall select, and the President shall appoint, 1 Federal member to serve as Chairperson of the Council.

**(v) Presidential appointment**

All Council members shall be appointed by the President.

**(vi) Council actions**

**(I) In general**

The following actions by the Council shall require the affirmative vote of the Chairperson and a majority of the State members to be effective:

(aa) Approval of a Comprehensive Plan and future revisions to a Comprehensive Plan.

(bb) Approval of State plans pursuant to paragraph (3)(B)(iv).

(cc) Approval of reports to Congress pursuant to clause (vii)(VII).

(dd) Approval of transfers pursuant to subparagraph (E)(i)(I).

(ee) Other significant actions determined by the Council.

**(II) Quorum**

A majority of State members shall be required to be present for the Council to take any significant action.

**(III) Affirmative vote requirement considered met**

For approval of State plans pursuant to paragraph (3)(B)(iv), the certification by a State member of the Council that the plan satisfies all requirements of clauses (i) and (ii) of paragraph (3)(B), when joined by an affirmative vote of the Federal Chairperson of the Council, shall be considered to satisfy the requirements for affirmative votes under subclause (I).

**(IV) Public transparency**

Appropriate actions of the Council, including significant actions and associated deliberations, shall be made available to the public via electronic means prior to any vote.

**(vii) Duties of Council**

The Council shall—

(I) develop the Comprehensive Plan and future revisions to the Comprehensive Plan;

(II) identify as soon as practicable the projects that—

(aa) have been authorized prior to July 6, 2012, but not yet commenced; and

(bb) if implemented quickly, would restore and protect the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, barrier islands, dunes, and coastal wetlands of the Gulf Coast region;

(III) establish such other 1 or more advisory committees as may be necessary to assist the Council, including a scientific advisory committee and a committee to advise the Council on public policy issues;

(IV) collect and consider scientific and other research associated with restoration of the Gulf Coast ecosystem, including research, observation, and monitoring carried out pursuant to sections 1604 and 1605 of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012;

(V) develop standard terms to include in contracts for projects and programs awarded pursuant to the Comprehensive Plan that provide a preference to individuals and companies that reside in, are headquartered in, or are principally engaged in business in a Gulf Coast State;

(VI) prepare an integrated financial plan and recommendations for coordinated budget requests for the amounts proposed to be expended by the Federal agencies represented on the Council for projects and programs in the Gulf Coast States; and

(VII) submit to Congress an annual report that—

(aa) summarizes the policies, strategies, plans, and activities for addressing the restoration and protection of the Gulf Coast region;

(bb) describes the projects and programs being implemented to restore and protect the Gulf Coast region, including—

(AA) a list of each project and program;

(BB) an identification of the funding provided to projects and programs identified in subitem (AA);

(CC) an identification of each recipient for funding identified in subitem (BB); and

(DD) a description of the length of time and funding needed to complete the objectives of each project and program identified in subitem (AA);

(cc) makes such recommendations to Congress for modifications of existing laws as the Council determines necessary to implement the Comprehensive Plan;

(dd) reports on the progress on implementation of each project or program—

(AA) after 3 years of ongoing activity of the project or program, if applicable; and

(BB) on completion of the project or program;

(ee) includes the information required to be submitted under section 1605(c)(4) of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012; and

(ff) submits the reports required under item (dd) to—

(AA) the Committee on Science, Space, and Technology, the Committee on Natural Resources, the Committee on Transportation and Infrastructure, and the Committee on Appropriations of the House of Representatives; and

(BB) the Committee on Environment and Public Works, the Committee on Commerce, Science, and Transportation, the Committee on Energy and Natural Resources, and the Committee on Appropriations of the Senate.

**(viii) Application of Federal Advisory Committee Act**

The Council, or any other advisory committee established under this subparagraph, shall not be considered an advisory committee under the Federal Advisory Committee Act (5 U.S.C. App.).

**(ix) Sunset**

The authority for the Council, and any other advisory committee established under this subparagraph, shall terminate on the date all funds in the Trust Fund have been expended.

**(D) Comprehensive plan**

**(i) Proposed plan**

**(I) In general**

Not later than 180 days after July 6, 2012, the Chairperson, on behalf of the Council and after appropriate public input, review, and comment, shall publish a proposed plan to restore and protect the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast region.

**(II) Inclusions**

The proposed plan described in subclause (I) shall include and incorporate the findings and information prepared by the President's Gulf Coast Restoration Task Force.

**(ii) Publication**

**(I) Initial plan**

Not later than 1 year after July 6, 2012, and after notice and opportunity for public comment, the Chairperson, on behalf of the Council and after approval by the Council, shall publish in the Federal Register the initial Comprehensive Plan to restore and protect the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast region.

**(II) Cooperation with Gulf Coast Restoration Task Force**

The Council shall develop the initial Comprehensive Plan in close coordination with the President's Gulf Coast Restoration Task Force.

**(III) Considerations**

In developing the initial Comprehensive Plan and subsequent updates, the

Council shall consider all relevant findings, reports, or research prepared or funded under section 1604 or 1605 of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012.

**(IV) Contents**

The initial Comprehensive Plan shall include—

(aa) such provisions as are necessary to fully incorporate in the Comprehensive Plan the strategy, projects, and programs recommended by the President's Gulf Coast Restoration Task Force;

(bb) a list of any project or program authorized prior to July 6, 2012, but not yet commenced, the completion of which would further the purposes and goals of this subsection and of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012;

(cc) a description of the manner in which amounts from the Trust Fund projected to be made available to the Council for the succeeding 10 years will be allocated; and

(dd) subject to available funding in accordance with clause (iii), a prioritized list of specific projects and programs to be funded and carried out during the 3-year period immediately following the date of publication of the initial Comprehensive Plan, including a table that illustrates the distribution of projects and programs by the Gulf Coast State.

**(V) Plan updates**

The Council shall update—

(aa) the Comprehensive Plan every 5 years in a manner comparable to the manner established in this subparagraph for each 5-year period for which amounts are expected to be made available to the Gulf Coast States from the Trust Fund; and

(bb) the 3-year list of projects and programs described in subclause (IV)(dd) annually.

**(iii) Restoration priorities**

Except for projects and programs described in clause (ii)(IV)(bb), in selecting projects and programs to include on the 3-year list described in clause (ii)(IV)(dd), based on the best available science, the Council shall give highest priority to projects that address 1 or more of the following criteria:

(I) Projects that are projected to make the greatest contribution to restoring and protecting the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast region, without regard to geographic location within the Gulf Coast region.

(II) Large-scale projects and programs that are projected to substantially contribute to restoring and protecting the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast ecosystem.

(III) Projects contained in existing Gulf Coast State comprehensive plans for the restoration and protection of natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast region.

(IV) Projects that restore long-term resiliency of the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands most impacted by the Deepwater Horizon oil spill.

**(E) Implementation**

**(i) In general**

The Council, acting through the Federal agencies represented on the Council and Gulf Coast States, shall expend funds made available from the Trust Fund to carry out projects and programs adopted in the Comprehensive Plan.

**(ii) Administrative responsibility**

**(I) In general**

Primary authority and responsibility for each project and program included in the Comprehensive Plan shall be assigned by the Council to a Gulf Coast State represented on the Council or a Federal agency.

**(II) Transfer of amounts**

Amounts necessary to carry out each project or program included in the Comprehensive Plan shall be transferred by the Secretary of the Treasury from the Trust Fund to that Federal agency or Gulf Coast State as the project or program is implemented, subject to such conditions as the Secretary of the Treasury, in consultation with the Secretary of the Interior and the Secretary of Commerce, established pursuant to section 1602 of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012.

**(III) Limitation on transfers**

**(aa) Grants to nongovernmental entities**

In the case of funds transferred to a Federal or State agency under subclause (II), the agency shall not make 1 or more grants or cooperative agreements to a nongovernmental entity if the total amount provided to the entity would equal or exceed 10 percent of the total amount provided to the agency for that particular project or program, unless the 1 or more grants have been reported in accordance with item (bb).

**(bb) Reporting of grantees**

At least 30 days prior to making a grant or entering into a cooperative agreement described in item (aa), the name of each grantee, including the amount and purpose of each grant or cooperative agreement, shall be published in the Federal Register and delivered to the congressional committees listed in subparagraph (C)(vii)(VII)(ff).

**(cc) Annual reporting of grantees**

Annually, the name of each grantee, including the amount and purposes of each grant or cooperative agreement, shall be published in the Federal Register and delivered to Congress as part of the report submitted pursuant to subparagraph (C)(vii)(VII).

**(IV) Project and program limitation**

The Council, a Federal agency, or a State may not carry out a project or program funded under this paragraph outside of the Gulf Coast region.

**(F) Coordination**

The Council and the Federal members of the Council may develop memoranda of understanding establishing integrated funding and implementation plans among the member agencies and authorities.

**(3) Oil spill restoration impact allocation****(A) In general****(i) Disbursement**

Of the total amount made available from the Trust Fund, 30 percent shall be disbursed pursuant to the formula in clause (ii) to the Gulf Coast States on the approval of the plan described in subparagraph (B)(i).

**(ii) Formula**

Subject to subparagraph (B), for each Gulf Coast State, the amount disbursed under this paragraph shall be based on a formula established by the Council by regulation that is based on a weighted average of the following criteria:

(I) 40 percent based on the proportionate number of miles of shoreline in each Gulf Coast State that experienced oiling on or before April 10, 2011, compared to the total number of miles of shoreline that experienced oiling as a result of the Deepwater Horizon oil spill.

(II) 40 percent based on the inverse proportion of the average distance from the mobile offshore drilling unit *Deepwater Horizon* at the time of the explosion to the nearest and farthest point of the shoreline that experienced oiling of each Gulf Coast State.

(III) 20 percent based on the average population in the 2010 decennial census of coastal counties bordering the Gulf of Mexico within each Gulf Coast State.

**(iii) Minimum allocation**

The amount disbursed to a Gulf Coast State for each fiscal year under clause (i)

shall be at least 5 percent of the total amounts made available under this paragraph.

**(B) Disbursement of funds****(i) In general**

The Council shall disburse amounts to the respective Gulf Coast States in accordance with the formula developed under subparagraph (A) for projects, programs, and activities that will improve the ecosystems or economy of the Gulf Coast region, subject to the condition that each Gulf Coast State submits a plan for the expenditure of amounts disbursed under this paragraph that meets the following criteria:

(I) All projects, programs, and activities included in the plan are eligible activities pursuant to clauses (i) and (ii) of paragraph (1)(B).

(II) The projects, programs, and activities included in the plan contribute to the overall economic and ecological recovery of the Gulf Coast.

(III) The plan takes into consideration the Comprehensive Plan and is consistent with the goals and objectives of the Plan, as described in paragraph (2)(B)(i).

**(ii) Funding****(I) In general**

Except as provided in subclause (II), the plan described in clause (i) may use not more than 25 percent of the funding made available for infrastructure projects eligible under subclauses (VI) and (VII) of paragraph (1)(B)(i).

**(II) Exception**

The plan described in clause (i) may propose to use more than 25 percent of the funding made available for infrastructure projects eligible under subclauses (VI) and (VII) of paragraph (1)(B)(i) if the plan certifies that—

(aa) ecosystem restoration needs in the State will be addressed by the projects in the proposed plan; and

(bb) additional investment in infrastructure is required to mitigate the impacts of the Deepwater Horizon Oil Spill to the ecosystem or economy.

**(iii) Development**

The plan described in clause (i) shall be developed by—

(I) in the State of Alabama, the Alabama Gulf Coast Recovery Council established under paragraph (1)(F)(i);

(II) in the State of Florida, a consortia<sup>4</sup> of local political subdivisions that includes at a minimum 1 representative of each affected county;

(III) in the State of Louisiana, the Coastal Protection and Restoration Authority of Louisiana;

(IV) in the State of Mississippi, the Office of the Governor or an appointee of the Office of the Governor; and

<sup>4</sup>So in original. Probably should be "consortium".

(V) in the State of Texas, the Office of the Governor or an appointee of the Office of the Governor.

**(iv) Approval**

Not later than 60 days after the date on which a plan is submitted under clause (i), the Council shall approve or disapprove the plan based on the conditions of clause (i).

**(C) Disapproval**

If the Council disapproves a plan pursuant to subparagraph (B)(iv), the Council shall—

(i) provide the reasons for disapproval in writing; and

(ii) consult with the State to address any identified deficiencies with the State plan.

**(D) Failure to submit adequate plan**

If a State fails to submit an adequate plan under this paragraph, any funds made available under this paragraph shall remain in the Trust Fund until such date as a plan is submitted and approved pursuant to this paragraph.

**(E) Judicial review**

If the Council fails to approve or take action within 60 days on a plan, as described in subparagraph (B)(iv), the State may obtain expedited judicial review within 90 days of that decision in a district court of the United States, of appropriate jurisdiction and venue, that is located within the State seeking the review.

**(F) Cost-sharing**

**(i) In general**

A Gulf Coast State or coastal political subdivision may use, in whole or in part, amounts made available to that Gulf Coast State or coastal political subdivision under this paragraph to satisfy the non-Federal share of any project or program that—

(I) is authorized by other Federal law; and

(II) is an eligible activity described in clause (i) or (ii) of paragraph (1)(B).

**(ii) Effect on other funds**

The use of funds made available from the Trust Fund under this paragraph to satisfy the non-Federal share of the cost of a project or program described in clause (i) shall not affect the priority in which other Federal funds are allocated or awarded.

**(4) Authorization of interest transfers**

Of the total amount made available for any fiscal year from the Trust Fund that is equal to the interest earned by the Trust Fund and proceeds from investments made by the Trust Fund in the preceding fiscal year—

(A) 50 percent shall be divided equally between—

(i) the Gulf Coast Ecosystem Restoration Science, Observation, Monitoring, and Technology program authorized in section 1604 of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012; and

(ii) the centers of excellence research grants authorized in section 1605 of that Act; and

(B) 50 percent shall be made available to the Gulf Coast Ecosystem Restoration Council to carry out the Comprehensive Plan pursuant to paragraph (2).

(June 30, 1948, ch. 758, title III, §311, as added Pub. L. 92-500, §2, Oct. 18, 1972, 86 Stat. 862; amended Pub. L. 93-207, §1(4), Dec. 28, 1973, 87 Stat. 906; Pub. L. 95-217, §§57, 58(a)-(g), (i), (k)-(m), Dec. 27, 1977, 91 Stat. 1593-1596; Pub. L. 95-576, §1(b), Nov. 2, 1978, 92 Stat. 2467; Pub. L. 96-478, §13(b), Oct. 21, 1980, 94 Stat. 2303; Pub. L. 96-483, §8, Oct. 21, 1980, 94 Stat. 2362; Pub. L. 96-561, title II, §238(b), Dec. 22, 1980, 94 Stat. 3300; Pub. L. 97-164, title I, §161(5), Apr. 2, 1982, 96 Stat. 49; Pub. L. 100-4, title V, §502(b), Feb. 4, 1987, 101 Stat. 75; Pub. L. 101-380, title II, §2002(b), title IV, §§4201(a), (b), (b)[(c)], 4202(a), (c), 4204, 4301(a), (b), 4305, 4306, Aug. 18, 1990, 104 Stat. 507, 523-527, 532, 533, 540, 541; Pub. L. 102-388, title III, §349, Oct. 6, 1992, 106 Stat. 1554; Pub. L. 102-572, title IX, §902(b)(1), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 104-208, div. A, title I, §101(a) [title II, §211(b)], Sept. 30, 1996, 110 Stat. 3009, 3009-41; Pub. L. 104-324, title XI, §§1143, 1144, Oct. 19, 1996, 110 Stat. 3992; Pub. L. 105-383, title IV, §411, Nov. 13, 1998, 112 Stat. 3432; Pub. L. 108-293, title VII, §701(a), (b), (d), Aug. 9, 2004, 118 Stat. 1067, 1068; Pub. L. 109-241, title VI, §608, title IX, §901(i), July 11, 2006, 120 Stat. 558, 564; Pub. L. 112-90, §10, Jan. 3, 2012, 125 Stat. 1912; Pub. L. 112-141, div. A, title I, §1603, July 6, 2012, 126 Stat. 589; Pub. L. 113-281, title III, §313, Dec. 18, 2014, 128 Stat. 3048.)

REFERENCES IN TEXT

The Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012, referred to in subsecs. (a)(35) and (t)(2)(C)(vii)(IV), (VII)(ee), (D)(ii)(III), (IV)(bb), (E)(ii)(II), (4)(A), is subtitle F (§§1601-1608) of title I of div. A of Pub. L. 112-141, July 6, 2012, 126 Stat. 588, which is set out as a note below.

The Outer Continental Shelf Lands Act, referred to in subsecs. (b)(1), (2)(A), (3) and (r), 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 1301 of Title 43 and Tables.

The Deepwater Port Act of 1974, referred to in subsecs. (b)(1), (2)(A), (3) and (r), 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.

The Magnuson-Stevens Fishery Conservation and Management Act, referred to in subsec. (b)(1), (2)(A), (3), is Pub. L. 94-265, Apr. 13, 1976, 90 Stat. 331, as amended, which is classified principally to chapter 38 (§1801 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of Title 16 and Tables.

The date of enactment of this paragraph, referred to in subsec. (b)(2)(B), probably means the date of enactment of Pub. L. 95-576, which amended subsec. (b)(2)(B) and which was approved Nov. 2, 1978.

The penalty enacted in subclause (bb) of clause (iii) of subparagraph (B) of subsection (b)(2) of section 311 of Public Law 92-500, referred to in subsec. (b)(2)(B), probably means the penalty provision of subsec.

(b)(2)(B)(iii)(bb) of this section as added by Pub. L. 92-500, § 2, Oct. 18, 1972, 86 Stat. 864, prior to the amendment to subsec. (b)(2)(B) by section 1(b)(3) of Pub. L. 95-576. Prior to amendment, subsec. (b)(2)(B)(iii)(bb) read as follows: “a penalty determined by the number of units discharged multiplied by the amount established for such unit under clause (iv) of this subparagraph, but such penalty shall not be more than \$5,000,000 in the case of a discharge from a vessel and \$500,000 in the case of a discharge from an onshore or offshore facility.”

Section 4367 of the Revised Statutes of the United States (46 U.S.C. App. 313), referred to in subsec. (b)(12)(B), was repealed by Pub. L. 103-182, title VI, § 690(a)(21), Dec. 8, 1993, 107 Stat. 2223.

Section 1443 of title 19, referred to in subsec. (b)(12)(C), was repealed by Pub. L. 103-182, title VI, § 690(b)(6), Dec. 8, 1993, 107 Stat. 2223.

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, referred to in subsec. (c)(4)(B)(ii), is 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.

The Oil Pollution Act of 1990, referred to in subsecs. (c)(5)(B), (d)(2)(H), and (j)(5)(H), is Pub. L. 101-380, Aug. 18, 1990, 104 Stat. 484, which is classified principally to chapter 40 (§2701 et seq.) of this title, Title I of the Act is classified generally to subchapter I (§2701 et seq.) of chapter 40 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

Subsection (c)(2) of this section, referred to in subsec. (j)(1), was generally amended by Pub. L. 101-380, title IV, § 4201(a), Aug. 18, 1990, 104 Stat. 523, and no longer contains provisions establishing a National Contingency Plan. However, such provisions are contained in subsec. (d) of this section.

Par. (3) of section 1901(a) of this title, referred to in subsec. (j)(5)(B), was redesignated par. (4) by Pub. L. 110-280, §3(1), July 21, 2008, 122 Stat. 2611.

The Federal Advisory Committee Act, referred to in subsec. (t)(2)(C)(viii), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, which is set out in the Appendix to Title 5, Government Organization and Employees.

#### CODIFICATION

In subsec. (b)(12)(A), “section 60105 of title 46” substituted for “section 4197 of the Revised Statutes of the United States (46 App. U.S.C. 91)” 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

2014—Subsec. (j)(4)(A). Pub. L. 113-281, §313(1), substituted “qualified—” for “qualified personnel of Federal, State, and local agencies.” in introductory provisions and added cls. (i) and (ii).

Subsec. (j)(4)(B)(ii). Pub. L. 113-281, §313(2), substituted “, local, and tribal” for “and local” and “wildlife, including advance planning with respect to the closing and reopening of fishing areas following a discharge;” for “wildlife;”

Subsec. (j)(4)(B)(iii). Pub. L. 113-281, §313(3), substituted “, local, and tribal” for “and local”.

Subsec. (j)(4)(C)(iv). Pub. L. 113-281, §313(4)(A), substituted “, Federal, State, and local agencies, and tribal governments” for “and Federal, State, and local agencies”.

Subsec. (j)(4)(C)(vii) to (ix). Pub. L. 113-281, §313(4)(B), (C), added cl. (vii) and redesignated former cls. (vii) and (viii) as (viii) and (ix), respectively.

2012—Subsec. (a)(27) to (35). Pub. L. 112-141, §1603(1), added pars. (27) to (35).

Subsec. (b)(6)(A). Pub. L. 112-90, §10(b), substituted “operating, the Secretary of Transportation, or” for “operating or” in concluding provisions.

Subsec. (m)(2)(A), (B). Pub. L. 112-90, §10(a), which directed amendment of subpars. (A) and (B) by substituting “Administrator, the Secretary of Transportation, or” for “Administrator or” was executed by making the substitution the first place appearing in each subpar., to reflect the probable intent of Congress.

Subsec. (s). Pub. L. 112-141, §1603(2), inserted “except as provided in subsection (t)” before period at end.

Subsec. (t). Pub. L. 112-141, §1603(3), added subsec. (t). 2006—Subsec. (a)(26). Pub. L. 109-241, §608, amended par. (26) generally. Prior to amendment, par. (26) read as follows: “‘nontank vessel’ means a self-propelled vessel of 400 gross tons as measured under section 14302 of title 46 or greater, other than a tank vessel, that carries oil of any kind as fuel for main propulsion and that—

“(A) is a vessel of the United States; or

“(B) operates on the navigable waters of the United States.”

Subsec. (j)(5)(A)(ii), (B), (F), and (G). Pub. L. 109-241, §901(i)(1), substituted “nontank” for “non-tank” wherever appearing.

Subsec. (j)(5)(H). Pub. L. 109-241, §901(i)(2), amended directory language of Pub. L. 108-293, §701(b)(9). See 2004 Amendment note below.

2004—Subsec. (a)(26). Pub. L. 108-293, §701(a), added par. (26).

Subsec. (j)(5). Pub. L. 108-293, §701(b)(1), inserted “, nontank vessel,” after “vessel” in heading.

Subsec. (j)(5)(A). Pub. L. 108-293, §701(b)(2), (d)(3), designated existing text as cl. (i), substituted “subparagraph (C)” for “subparagraph (B)”, and added cl. (ii).

Subsec. (j)(5)(B). Pub. L. 108-293, §701(d)(2), added subpar. (B). Former subpar. (B) redesignated (C).

Pub. L. 108-293, §701(b)(3), (4), inserted “, nontank vessels,” after “vessels” in introductory provisions, added cl. (ii), and redesignated former cls. (ii) and (iii) as (iii) and (iv), respectively.

Subsec. (j)(5)(C). Pub. L. 108-293, §701(d)(1), (4), redesignated subpar. (B) as (C) and substituted “subparagraphs (A) and (B)” for “subparagraph (A)” in introductory provisions. Former subpar. (C) redesignated (D).

Subsec. (j)(5)(D). Pub. L. 108-293, §701(d)(1), redesignated subpar. (C) as (D). Former subpar. (D) redesignated (E).

Pub. L. 108-293, §701(b)(5), inserted “, nontank vessel,” after “vessel” in introductory provisions and added cl. (v).

Subsec. (j)(5)(E). Pub. L. 108-293, §701(d)(1), redesignated subpar. (D) as (E). Former subpar. (E) redesignated (F).

Pub. L. 108-293, §701(b)(6), inserted “non-tank vessel,” after “vessel,” in two places.

Subsec. (j)(5)(F). Pub. L. 108-293, §701(d)(1), (5), redesignated subpar. (E) as (F) and substituted “subparagraph (E),” for “subparagraph (D),” in cl. (i). Former subpar. (F) redesignated (G).

Pub. L. 108-293, §701(b)(7), inserted “non-tank vessel,” after “vessel,” and substituted “vessel, non-tank vessel, or” for “vessel or”.

Subsec. (j)(5)(G). Pub. L. 108-293, §701(d)(1), redesignated subpar. (F) as (G). Former subpar. (G) redesignated (H).

Pub. L. 108-293, §701(b)(8), inserted “nontank vessel,” after “vessel.”

Subsec. (j)(5)(H). Pub. L. 108-293, §701(d)(1), redesignated subpar. (G) as (H). Former subpar. (H) redesignated (I).

Pub. L. 108-293, §701(b)(9), as amended by Pub. L. 109-241, §901(i)(2), inserted “and nontank vessel” after “each tank vessel”.

Subsec. (j)(5)(I). Pub. L. 108-293, §701(d)(1), redesignated subpar. (H) as (I).

Subsec. (j)(6). Pub. L. 108-293, §701(b)(10), substituted “The President may require—” for “Not later than 2 years after August 18, 1990, the President shall require—” in introductory provisions.

Subsec. (j)(6)(B). Pub. L. 108-293, §701(b)(11), inserted “, and nontank vessels carrying oil of any kind as fuel for main propulsion,” after “cargo”.

Subsec. (j)(7). Pub. L. 108-293, §701(b)(12), inserted “, nontank vessel,” after “vessel”.

1998—Subsec. (a)(2). Pub. L. 105-383, §411(b), substituted “, (C)” for “and (C)” and inserted “, and (D) discharges incidental to mechanical removal authorized by the President under subsection (c) of this section” before semicolon at end.

Subsec. (a)(8). Pub. L. 105-383, §411(a)(1), substituted “to prevent, minimize, or mitigate damage” for “to minimize or mitigate damage”.

Subsec. (a)(25). Pub. L. 105-383, §411(a)(2), added par. (25).

Subsec. (c)(4)(A). Pub. L. 105-383, §411(a)(3), inserted “relating to a discharge or a substantial threat of a discharge of oil or a hazardous substance” before period at end.

1996—Subsec. (b)(1), (2)(A), (3). Pub. L. 104-208 substituted “Magnuson-Stevens Fishery” for “Magnuson Fishery” wherever appearing.

Subsec. (c)(3)(B). Pub. L. 104-324, §1144, inserted “, except that the owner or operator may deviate from the applicable response plan if the President or the Federal On-Scene Coordinator determines that deviation from the response plan would provide for a more expeditious or effective response to the spill or mitigation of its environmental effects” before period at end.

Subsec. (j)(2)(A). Pub. L. 104-324, §1143(1), inserted “and of information regarding previous spills, including data from universities, research institutions, State governments, and other nations, as appropriate, which shall be disseminated as appropriate to response groups and area committees, and” after “paragraph (4),”.

Subsec. (j)(4)(C)(v). Pub. L. 104-324, §1143(2), inserted “compile a list of local scientists, both inside and outside Federal Government service, with expertise in the environmental effects of spills of the types of oil typically transported in the area, who may be contacted to provide information or, where appropriate, participate in meetings of the scientific support team convened in response to a spill, and” before “describe”.

1992—Subsec. (b)(12). Pub. L. 102-388 added par. (12).

Subsec. (i). Pub. L. 102-572 substituted “United States Court of Federal Claims” for “United States Claims Court”.

1990—Subsec. (a)(8). Pub. L. 101-380, §4201(b)(1)[(c)(1)], inserted “containment and” after “refers to”.

Subsec. (a)(16). Pub. L. 101-380, §4201(b)(2)[(c)(2)], substituted semicolon for period at end.

Subsec. (a)(17). Pub. L. 101-380, §4201(b)(3)[(c)(3)], substituted “otherwise” for “Otherwise” and semicolon for period at end.

Subsec. (a)(18) to (24). Pub. L. 101-380, §4201(b)(4)[(c)(4)], added pars. (18) to (24).

Subsec. (b)(4). Pub. L. 101-380, §4204, inserted “or the environment” after “the public health or welfare”.

Subsec. (b)(5). Pub. L. 101-380, §4301(a), inserted after first sentence “The Federal agency shall immediately notify the appropriate State agency of any State which is, or may reasonably be expected to be, affected by the discharge of oil or a hazardous substance.”, substituted “fined in accordance with title 18, United States Code, or imprisoned for not more than 5 years, or both” for “fined not more than \$10,000, or imprisoned for not more than one year, or both”, struck out “or information obtained by the exploitation of such notification” before “shall not be used”, and inserted “natural” before “person in any”.

Subsec. (b)(6) to (11). Pub. L. 101-380, §4301(b), added pars. (6) to (11) and struck out former par. (6) which related to assessment of civil penalties, limited to \$5,000 for each offense, against any owner, operator, or person in charge of any onshore or offshore facility from which oil or a hazardous substance was discharged in violation of par. (3).

Subsec. (c). Pub. L. 101-380, §4201(a), amended subsec. (c) generally, substituting present provisions for provisions authorizing President to arrange for removal of discharge of oil or a hazardous substance into or upon the navigable waters of the U.S., unless he determined such removal would be properly conducted by owner or

operator of the vessel causing discharge, and directed President to prepare and publish a National Contingency Plan within 60 days after October 18, 1972.

Subsec. (d). Pub. L. 101-380, §4201(b), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: “Whenever a marine disaster in or upon the navigable waters of the United States has created a substantial threat of a pollution hazard to the public health or welfare of the United States, including, but not limited to, fish, shellfish, and wildlife and the public and private shorelines and beaches of the United States, because of a discharge, or an imminent discharge, of large quantities of oil, or of a hazardous substance from a vessel the United States may (A) coordinate and direct all public and private efforts directed at the removal or elimination of such threat; and (B) summarily remove, and, if necessary, destroy such vessel by whatever means are available without regard to any provisions of law governing the employment of personnel or the expenditure of appropriated funds. Any expense incurred under this subsection or under the Intervention on the High Seas Act (or the convention defined in section 2(3) thereof) shall be a cost incurred by the United States Government for the purposes of subsection (f) of this section in the removal of oil or hazardous substance.”

Subsec. (e). Pub. L. 101-380, §4306, amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: “In addition to any other action taken by a State or local government, when the President determines there is an imminent and substantial threat to the public health or welfare of the United States, including, but not limited to, fish, shellfish, and wildlife and public and private property, shorelines, and beaches within the United States, because of an actual or threatened discharge of oil or hazardous substance into or upon the navigable waters of the United States from an onshore or offshore facility, the President may require the United States attorney of the district in which the threat occurs to secure such relief as may be necessary to abate such threat, and the district courts of the United States shall have jurisdiction to grant such relief as the public interest and the equities of the case may require.”

Subsec. (i). Pub. L. 101-380, §2002(b)(1), struck out par. (1) designation before “In any case” and struck out pars. (2) and (3) which read as follows:

“(2) The provisions of this subsection shall not apply in any case where liability is established pursuant to the Outer Continental Shelf Lands Act, or the Deepwater Port Act of 1974.

“(3) Any amount paid in accordance with a judgment of the United States Claims Court pursuant to this section shall be paid from the funds established pursuant to subsection (k) of this section.”

Subsec. (j). Pub. L. 101-380, §4202(a), amended heading, inserted heading for par. (1) and realigned its margin, added pars. (2) to (8), and struck out former par. (2) which read as follows: “Any owner or operator of a vessel or an onshore facility or an offshore facility and any other person subject to any regulation issued under paragraph (1) of this subsection who fails or refuses to comply with the provisions of any such regulations, shall be liable to a civil penalty of not more than \$5,000 for each such violation. This paragraph shall not apply to any owner or operator of any vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(i) of subsection (b) of this section unless such owner, operator, or person in charge is otherwise subject to the jurisdiction of the United States. Each violation shall be a separate offense. The President may assess and compromise such penalty. No penalty shall be assessed until the owner, operator, or other person charged shall have been given notice and an opportunity for a hearing on such charge. In determining the amount of the penalty, or the amount agreed upon in compromise, the gravity of the violation, and the demonstrated good faith of the owner, operator, or other person charged in attempting to achieve rapid compliance, after notification of a violation, shall be considered by the President.”

Subsec. (k). Pub. L. 101-380, §2002(b)(2), struck out subsec. (k) which authorized appropriations and supplemental appropriations to create and maintain a revolving fund to carry out subsecs. (c), (d), (i), and (l) of this section.

Subsec. (l). Pub. L. 101-380, §2002(b)(3), struck out after first sentence "Any moneys in the fund established by subsection (k) of this section shall be available to such Federal departments, agencies, and instrumentalities to carry out the provisions of subsections (c) and (i) of this section."

Subsec. (m). Pub. L. 101-380, §4305, amended subsec. (m) generally. Prior to amendment, subsec. (m) read as follows: "Anyone authorized by the President to enforce the provisions of this section may, except as to public vessels, (A) board and inspect any vessel upon the navigable waters of the United States or the waters of the contiguous zone, (B) with or without a warrant arrest any person who violates the provisions of this section or any regulation issued thereunder in his presence or view, and (C) execute any warrant or other process issued by an officer or court of competent jurisdiction."

Subsec. (o)(2). Pub. L. 101-380, §4202(c), inserted ", or with respect to any removal activities related to such discharge" after "within such State".

Subsec. (p). Pub. L. 101-380, §2002(b)(4), struck out subsec. (p) which provided for establishment and maintenance of evidence of financial responsibility by vessels over 300 gross tons carrying oil or hazardous substances.

Subsec. (s). Pub. L. 101-380, §2002(b)(5), added subsec. (s).

1987—Subsec. (a)(5). Pub. L. 100-4 substituted "the Commonwealth of the Northern Mariana Islands" for "the Canal Zone".

1982—Subsec. (i)(1), (3). Pub. L. 97-164 substituted "Claims Court" for "Court of Claims".

1980—Subsec. (b)(1), (2)(A), (3). Pub. L. 96-561 substituted "Magnuson Fishery Conservation and Management Act" for "Fishery Conservation and Management Act of 1976".

Subsec. (b)(3)(A). Pub. L. 96-478 struck out "of oil" after "in the case of such discharges" and substituted "Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973" for "International Convention for the Prevention of Pollution of the Sea by Oil, 1954, as amended".

Subsec. (c)(1). Pub. L. 96-561 substituted "Magnuson Fishery Conservation and Management Act" for "Fishery Conservation and Management Act of 1976".

Subsec. (k). Pub. L. 96-483 designated existing provisions as par. (1) and added par. (2).

1978—Subsec. (a)(2). Pub. L. 95-576, §1(b)(1), excluded discharges described in cls. (A) to (C) from term "discharge".

Subsec. (a)(17). Pub. L. 95-576, §1(b)(2), added par. (17).

Subsec. (b)(2)(B). Pub. L. 95-576, §1(b)(3), substituted requirement that a study be made respecting methods, mechanisms, and procedures for creating incentives to achieve higher standard of care in management and movement of hazardous substances, including consideration of enumerated items, and a report made to Congress within 18 months after Nov. 2, 1978, for provisions concerning actual removability of any designated hazardous substance, liability during two year period commencing Oct. 18, 1972 based on toxicity, degradability, and dispersal characteristics of the substance limited to \$50,000 and without limitation in cases of willful negligence or willful misconduct, liability after such two year period ranging from \$500 to \$5,000 based on toxicity, etc., or liability for penalty determined by number of units discharged multiplied by amount established for the unit limited to \$5,000,000 in the case of a discharge from a vessel and to \$500,000 in the case of a discharge from onshore or offshore facility, establishment by regulation of a unit of measurement based upon the usual trade practice for each designated hazardous substance and establishment for such unit a fixed monetary amount ranging from \$100 to \$1,000 based on toxicity, etc.

Subsec. (b)(3). Pub. L. 95-576, §1(b)(4), substituted "such quantities as may be harmful" for "harmful quantities".

Subsec. (b)(4). Pub. L. 95-576, §1(b)(5), struck out ", to be issued as soon as possible after October 18, 1972," after "regulation" and substituted "substances" for "substance" and "discharge of which may be harmful" for "discharge of which, at such times, locations, circumstances, and conditions, will be harmful".

Subsec. (b)(5). Pub. L. 95-576, §1(b)(6), inserted "at the time of the discharge" after "otherwise subject to the jurisdiction of the United States".

Subsec. (b)(6)(A) to (E). Pub. L. 95-576, §1(b)(7), designated existing provisions as subpar. (A), inserted "at the time of the discharge" after "jurisdiction of the United States", and added subpars. (B) to (E).

1977—Subsec. (a)(11). Pub. L. 95-217, §58(k), inserted ", 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," after "United States".

Subsec. (a)(15), (16). Pub. L. 95-217, §58(d)(1), added pars. (15) and (16).

Subsec. (b)(1). Pub. L. 95-217, §58(a)(1), inserted reference to activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976).

Subsec. (b)(2)(A). Pub. L. 95-217, §58(a)(2), inserted reference to activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976).

Subsec. (b)(2)(B)(v). Pub. L. 95-217, §57, added cl. (v).

Subsec. (b)(3). Pub. L. 95-217, §58(a)(3), (4), designated part of existing provisions preceding cl. (A) as cl. (i) and added cl. (ii), and, in cl. (A), inserted "or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976)" after "waters of the contiguous zone" and struck out "article IV of" before "the International Convention for the Prevention of Pollution of the Sea by Oil, 1954".

Subsec. (b)(4). Pub. L. 95-217, §58(a)(5), struck out provisions under which, in the case of the discharge of oil into or upon the waters of the contiguous zone, only those discharges which threatened the fishery resources of the contiguous zone or threatened to pollute or contribute to the pollution of the territory or the territorial sea of the United States could be determined to be harmful.

Subsec. (b)(5). Pub. L. 95-217, §58(a)(6), added cls. (A), (B), and (C) between "Any such person" and "who fails to notify".

Subsec. (b)(6). Pub. L. 95-217, §58(a)(7), (8), substituted "Any owner, operator, or person in charge of any onshore facility, or offshore facility" for "Any owner or operator of any vessel, onshore facility, or offshore facility" in provision relating to violations of par. (3) of this subsection, and inserted provisions directing the assessment of a civil penalty of not more than \$5,000 for each offense by the Secretary of the department in which the Coast Guard is operating to be assessed against any owner, operator, or person in charge of any vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(i) of this subsection, and any owner, operator, or person in charge of a vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(ii) who is otherwise subject to the jurisdiction of the United States.

Subsec. (c)(1). Pub. L. 95-217, §58(b), (c)(1), inserted "or there is a substantial threat of such discharge," after "Whenever any oil or a hazardous substance is discharged," and "or in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or which may affect natu-

ral resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976)' after "waters of the contiguous zone."

Subsec. (c)(2)(D). Pub. L. 95-217, § 58(e), substituted "and imminent threats of such discharges to the appropriate State and Federal agencies;" for "to the appropriate Federal agency;"

Subsec. (d). Pub. L. 95-217, § 58(c)(2), inserted "or under the Intervention on the High Seas Act (or the convention defined in section 2(3) thereof)" after "Any expense incurred under this subsection".

Subsec. (f)(1). Pub. L. 95-217, § 58(d)(2), substituted "in the case of an inland oil barge \$125 per gross ton of such barge, or \$125,000, whichever is greater, and in the case of any other vessel, \$150 per gross ton of such vessel (or, for a vessel carrying oil or hazardous substances as cargo, \$250,000), whichever is greater," for "\$100 per gross ton of such vessel or \$14,000,000, whichever is lesser."

Subsec. (f)(2), (3). Pub. L. 95-217, § 58(d)(5), (6), substituted "\$50,000,000" for "\$8,000,000".

Subsec. (f)(4), (5). Pub. L. 95-217, § 58(g), added pars. (4) and (5).

Subsec. (g). Pub. L. 95-217, § 58(d)(3), (f), substituted "in the case of an inland oil barge \$125 per gross ton of such barge, or \$125,000, whichever is greater, and in the case of any other vessel, \$150 per gross ton of such vessel (or, for a vessel carrying oil or hazardous substances as cargo, \$250,000), whichever is greater" for "\$100 per gross ton of such vessel or \$14,000,000, whichever is the lesser" in the existing provisions and inserted provision under which, where the owner or operator of a vessel (other than an inland oil barge) carrying oil or hazardous substances as cargo or an onshore or offshore facility which handles or stores oil or hazardous substances in bulk, from which oil or a hazardous substance is discharged in violation of subsec. (b) of this section, alleges that the discharge was caused solely by an act or omission of a third party, the owner or operator must pay to the United States Government the actual costs incurred under subsec. (c) of this section for removal of the oil or substance and shall be entitled by subrogation to all rights of the United States Government to recover the costs from the third party under this subsection.

Subsec. (i)(2). Pub. L. 95-217, § 58(m), inserted reference to the Deepwater Port Act of 1974.

Subsec. (j)(2). Pub. L. 95-217, § 58(c)(3), inserted provision that subsec. (j)(2) shall not apply to any owner or operator of any vessel from which oil or a hazardous substance is discharged in violation of subsec. (b)(3)(ii) of this section unless the owner, operator, or person in charge is otherwise subject to the jurisdiction of the United States.

Subsec. (k). Pub. L. 95-217, § 58(l), substituted "such sums as may be necessary to maintain such fund at a level of \$35,000,000" for "not to exceed \$35,000,000".

Subsec. (p)(1). Pub. L. 95-217, § 58(d)(4), substituted "in the case of an inland oil barge \$125 per gross ton of such barge, or \$125,000, whichever is greater, and in the case of any other vessel, \$150 per gross ton of such vessel (or, for a vessel carrying oil or hazardous substances as cargo, \$250,000), whichever is greater," for "\$100 per gross ton, or \$14,000,000 whichever is the lesser."

Subsecs. (q), (r). Pub. L. 95-217, § 58(i), added subsecs. (q) and (r).

1973—Subsec. (f). Pub. L. 93-207, § 1(4)(A), (B), substituted "(b)(3)" for "(b)(2)" wherever appearing in pars. (1) to (3), and substituted "Administrator" for "Secretary" in last sentence of par. (2).

Subsecs. (g), (i). Pub. L. 93-207, § 1(4)(C), substituted "(b)(3)" for "(b)(2)" wherever appearing.

#### EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112-141 effective Oct. 1, 2012, see section 3(a) of Pub. L. 112-141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of Title 23, Highways.

#### EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-241, title IX, § 901(i)(2), July 11, 2006, 120 Stat. 564, provided in part that the amendment made by section 901(i)(2) is effective Aug. 9, 2004.

#### EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-208, div. A, title I, § 101(a) [title II, § 211(b)], Sept. 30, 1996, 110 Stat. 3009, 3009-41, provided that the amendment made by that section is effective 15 days after Oct. 11, 1996.

#### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-572 effective Oct. 29, 1992, see section 911 of Pub. L. 102-572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

#### EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-380 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.

#### EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-164 effective Oct. 1, 1982, see section 402 of Pub. L. 97-164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

#### EFFECTIVE DATE OF 1980 AMENDMENTS

Pub. L. 96-561, title II, § 238(b), Dec. 22, 1980, 94 Stat. 3300, provided that the amendment made by that section is effective 15 days after Dec. 22, 1980.

Amendment by Pub. L. 96-478 effective Oct. 2, 1983, see section 14(a) of Pub. L. 96-478, set out as an Effective Date note under section 1901 of this title.

#### EFFECTIVE DATE OF 1977 AMENDMENT

Pub. L. 95-217, § 58(h), Dec. 27, 1977, 91 Stat. 1596, provided that: "The amendments made by paragraphs (5) and (6) of subsection (d) of this section [amending this section] shall take effect 180 days after the date of enactment of the Clean Water Act of 1977 [Dec. 27, 1977]."

#### 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.

Enforcement functions of Administrator or other official of the Environmental Protection Agency under this section relating to spill prevention, containment and countermeasure plans with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas were transferred to the Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until the first anniversary of the date of initial operation of the Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§ 102(a), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out in the Appendix to Title 5, Government Organization and Employees. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102-486, set out as an Abolition of Office of Federal Inspector note under section 719e of Title 15, Commerce and Trade. Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of Title 15.

## DELEGATION OF FUNCTIONS

For delegation of certain functions of President under this section, see Ex. Ord. No. 12580, Jan. 23, 1987, 52 F.R. 2923, as amended, set out as a note under section 9615 of Title 42, The Public Health and Welfare.

## TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

## TERMINATION OF UNITED STATES DISTRICT COURT FOR THE DISTRICT OF THE CANAL ZONE

For termination of the United States District Court for the District of the Canal Zone at end of the “transition period”, being the 30-month period beginning Oct. 1, 1979, and ending midnight Mar. 31, 1982, see Paragraph 5 of Article XI of the Panama Canal Treaty of 1977 and sections 2101 and 2201 to 2203 of Pub. L. 96-70, title II, Sept. 27, 1979, 93 Stat. 493, formerly classified to sections 3831 and 3841 to 3843, respectively, of Title 22, Foreign Relations and Intercourse.

## COAST GUARD RESPONSE PLAN REQUIREMENTS

Pub. L. 113-281, title III, §317, Dec. 18, 2014, 128 Stat. 3050, provided that:

“(a) VESSEL RESPONSE PLAN CONTENTS.—The Secretary of the department in which the Coast Guard is operating shall require that each vessel response plan prepared for a mobile offshore drilling unit includes information from the facility response plan prepared for the mobile offshore drilling unit regarding the planned response to a worst case discharge, and to a threat of such a discharge.

“(b) DEFINITIONS.—In this section:

“(1) MOBILE OFFSHORE DRILLING UNIT.—The term ‘mobile offshore drilling unit’ has the meaning given that term in section 1001 of the Oil Pollution Act of 1990 (33 U.S.C. 2701).

“(2) RESPONSE PLAN.—The term ‘response plan’ means a response plan prepared under section 311(j) of the Federal Water Pollution Control Act (33 U.S.C. 1321(j)).

“(3) WORST CASE DISCHARGE.—The term ‘worst case discharge’ has the meaning given that term under section 311(a) of the Federal Water Pollution Control Act (33 U.S.C. 1321(a)).

“(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to require the Coast Guard to review or approve a facility response plan for a mobile offshore drilling unit.”

## RESOURCES AND ECOSYSTEMS SUSTAINABILITY, TOURIST OPPORTUNITIES, AND REVIVED ECONOMIES OF THE GULF COAST STATES

Pub. L. 112-141, div. A, title I, subtitle F, July 6, 2012, 126 Stat. 588, provided that:

## “SEC. 1601. SHORT TITLE.

“This subtitle may be cited as the ‘Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012’.

## “SEC. 1602. GULF COAST RESTORATION TRUST FUND.

“(a) ESTABLISHMENT.—There is established in the Treasury of the United States a trust fund to be known as the ‘Gulf Coast Restoration Trust Fund’ (referred to in this section as the ‘Trust Fund’), consisting of such amounts as are deposited in the Trust Fund under this Act [probably means this subtitle] or any other provision of law.

“(b) TRANSFERS.—The Secretary of the Treasury shall deposit in the Trust Fund an amount equal to 80 percent of all administrative and civil penalties paid by responsible parties after the date of enactment of this Act [July 6, 2012] in connection with the explosion on,

and sinking of, the mobile offshore drilling unit *Deep-water Horizon* pursuant to a court order, negotiated settlement, or other instrument in accordance with section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321).

“(c) EXPENDITURES.—Amounts in the Trust Fund, including interest earned on advances to the Trust Fund and proceeds from investment under subsection (d), shall—

“(1) be available for expenditure, without further appropriation, solely for the purpose and eligible activities of this subtitle and the amendments made by this subtitle [amending this section]; and

“(2) remain available until expended, without fiscal year limitation.

“(d) INVESTMENT.—Amounts in the Trust Fund shall be invested in accordance with section 9702 of title 31, United States Code, and any interest on, and proceeds from, any such investment shall be available for expenditure in accordance with this subtitle and the amendments made by this subtitle.

“(e) ADMINISTRATION.—Not later than 180 days after the date of enactment of this Act, after providing notice and an opportunity for public comment, the Secretary of the Treasury, in consultation with the Secretary of the Interior and the Secretary of Commerce, shall establish such procedures as the Secretary determines to be necessary to deposit amounts in, and expend amounts from, the Trust Fund pursuant to this subtitle, including—

“(1) procedures to assess whether the programs and activities carried out under this subtitle and the amendments made by this subtitle achieve compliance with applicable requirements, including procedures by which the Secretary of the Treasury may determine whether an expenditure by a Gulf Coast State or coastal political subdivision (as those terms are defined in section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321)) pursuant to such a program or activity achieves compliance;

“(2) auditing requirements to ensure that amounts in the Trust Fund are expended as intended; and

“(3) procedures for identification and allocation of funds available to the Secretary under other provisions of law that may be necessary to pay the administrative expenses directly attributable to the management of the Trust Fund.

“(f) SUNSET.—The authority for the Trust Fund shall terminate on the date all funds in the Trust Fund have been expended.

## “SEC. 1603. GULF COAST NATURAL RESOURCES RESTORATION AND ECONOMIC RECOVERY.

“[Amended this section.]

## “SEC. 1604. GULF COAST ECOSYSTEM RESTORATION SCIENCE, OBSERVATION, MONITORING, AND TECHNOLOGY PROGRAM.

“(a) DEFINITIONS.—In this section:

“(1) ADMINISTRATOR.—The term ‘Administrator’ means the Administrator of the National Oceanic and Atmospheric Administration.

“(2) COMMISSION.—The term ‘Commission’ means the Gulf States Marine Fisheries Commission.

“(3) DIRECTOR.—The term ‘Director’ means the Director of the United States Fish and Wildlife Service.

“(4) PROGRAM.—The term ‘program’ means the Gulf Coast Ecosystem Restoration Science, Observation, Monitoring, and Technology program established under this section.

“(b) ESTABLISHMENT OF PROGRAM.—

“(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act [July 6, 2012], the Administrator, in consultation with the Director, shall establish the Gulf Coast Ecosystem Restoration Science, Observation, Monitoring, and Technology program to carry out research, observation, and monitoring to support, to the maximum extent practicable, the long-term sustainability of the ecosystem, fish stocks, fish habitat, and the recreational, commercial, and charter fishing industry in the Gulf of Mexico.

“(2) EXPENDITURE OF FUNDS.—For each fiscal year, amounts made available to carry out this subsection may be expended for, with respect to the Gulf of Mexico—

“(A) marine and estuarine research;

“(B) marine and estuarine ecosystem monitoring and ocean observation;

“(C) data collection and stock assessments;

“(D) pilot programs for—

“(i) fishery independent data; and

“(ii) reduction of exploitation of spawning aggregations; and

“(E) cooperative research.

“(3) COOPERATION WITH THE COMMISSION.—For each fiscal year, amounts made available to carry out this subsection may be transferred to the Commission to establish a fisheries monitoring and research program, with respect to the Gulf of Mexico.

“(4) CONSULTATION.—The Administrator and the Director shall consult with the Regional Gulf of Mexico Fishery Management Council and the Commission in carrying out the program.

“(c) SPECIES INCLUDED.—The research, monitoring, assessment, and programs eligible for amounts made available under the program shall include all marine, estuarine, aquaculture, and fish species in State and Federal waters of the Gulf of Mexico.

“(d) RESEARCH PRIORITIES.—In distributing funding under this subsection, priority shall be given to integrated, long-term projects that—

“(1) build on, or are coordinated with, related research activities; and

“(2) address current or anticipated marine ecosystem, fishery, or wildlife management information needs.

“(e) DUPLICATION.—In carrying out this section, the Administrator, in consultation with the Director, shall seek to avoid duplication of other research and monitoring activities.

“(f) COORDINATION WITH OTHER PROGRAMS.—The Administrator, in consultation with the Director, shall develop a plan for the coordination of projects and activities between the program and other existing Federal and State science and technology programs in the States of Alabama, Florida, Louisiana, Mississippi, and Texas, as well as between the centers of excellence.

“(g) LIMITATION ON EXPENDITURES.—

“(1) IN GENERAL.—Not more than 3 percent of funds provided in subsection (h) shall be used for administrative expenses.

“(2) NOAA.—The funds provided in subsection (h) may not be used—

“(A) for any existing or planned research led by the National Oceanic and Atmospheric Administration, unless agreed to in writing by the grant recipient;

“(B) to implement existing regulations or initiate new regulations promulgated or proposed by the National Oceanic and Atmospheric Administration; or

“(C) to develop or approve a new limited access privilege program (as that term is used in section 303A of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1853a)) for any fishery under the jurisdiction of the South Atlantic, Mid-Atlantic, New England, or Gulf of Mexico Fishery Management Councils.

“(h) FUNDING.—Of the total amount made available for each fiscal year for the Gulf Coast Restoration Trust Fund established under section 1602, 2.5 percent shall be available to carry out the program.

“(i) SUNSET.—The program shall cease operations when all funds in the Gulf Coast Restoration Trust Fund established under section 1602 have been expended.

“SEC. 1605. CENTERS OF EXCELLENCE RESEARCH GRANTS.

“(a) IN GENERAL.—Of the total amount made available for each fiscal year from the Gulf Coast Restora-

tion Trust Fund established under section 1602, 2.5 percent shall be made available to the Gulf Coast States (as defined in section 311(a) of the Federal Water Pollution Control Act [33 U.S.C. 1321(a)] (as added by section 1603 of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012)), in equal shares, exclusively for grants in accordance with subsection (c) to establish centers of excellence to conduct research only on the Gulf Coast Region (as defined in section 311 of the Federal Water Pollution Control Act (33 [sic] U.S.C. 1321)).

“(b) APPROVAL BY STATE ENTITY, TASK FORCE, OR AGENCY.—The duties of a Gulf Coast State under this section shall be carried out by the applicable Gulf Coast State entities, task forces, or agencies listed in section 311(t)(1)(F) of the Federal Water Pollution Control Act (as added by section 1603 of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012), and for the State of Florida, a consortium of public and private research institutions within the State, which shall include the Florida Department of Environmental Protection and the Florida Fish and Wildlife Conservation Commission, for that Gulf Coast State.

“(c) GRANTS.—

“(1) IN GENERAL.—A Gulf Coast State shall use the amounts made available to carry out this section to award competitive grants to nongovernmental entities and consortia in the Gulf Coast region (including public and private institutions of higher education) for the establishment of centers of excellence as described in subsection (d).

“(2) APPLICATION.—To be eligible to receive a grant under this subsection, an entity or consortium described in paragraph (1) shall submit to a Gulf Coast State an application at such time, in such manner, and containing such information as the Gulf Coast State determines to be appropriate.

“(3) PRIORITY.—In awarding grants under this subsection, a Gulf Coast State shall give priority to entities and consortia that demonstrate the ability to establish the broadest cross-section of participants with interest and expertise in any discipline described in subsection (d) on which the proposal of the center of excellence will be focused.

“(4) REPORTING.—

“(A) IN GENERAL.—Each Gulf Coast State shall provide annually to the Gulf Coast Ecosystem Restoration Council established under section 311(t)(2)(C) of the Federal Water Pollution Control Act [31 U.S.C. 1321(t)(2)(C)] (as added by section 1603 of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012) information regarding all grants, including the amount, discipline or disciplines, and recipients of the grants, and in the case of any grant awarded to a consortium, the membership of the consortium.

“(B) INCLUSION.—The Gulf Coast Ecosystem Restoration Council shall include the information received under subparagraph (A) in the annual report to Congress of the Council required under section 311(t)(2)(C)(vii)(VII) of the Federal Water Pollution Control Act (as added by section 1603 of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012).

“(d) DISCIPLINES.—Each center of excellence shall focus on science, technology, and monitoring in at least 1 of the following disciplines:

“(1) Coastal and deltaic sustainability, restoration and protection, including solutions and technology that allow citizens to live in a safe and sustainable manner in a coastal delta in the Gulf Coast Region.

“(2) Coastal fisheries and wildlife ecosystem research and monitoring in the Gulf Coast Region.

“(3) Offshore energy development, including research and technology to improve the sustainable and safe development of energy resources in the Gulf of Mexico.

“(4) Sustainable and resilient growth, economic and commercial development in the Gulf Coast Region.

“(5) Comprehensive observation, monitoring, and mapping of the Gulf of Mexico.

“SEC. 1606. EFFECT.

“(a) DEFINITION OF DEEPWATER HORIZON OIL SPILL.—In this section, the term ‘Deepwater Horizon oil spill’ has the meaning given the term in section 311(a) of the Federal Water Pollution Control Act (33 U.S.C. 1321(a)).

“(b) EFFECT AND APPLICATION.—Nothing in this subtitle or any amendment made by this subtitle—

“(1) supersedes or otherwise affects any other provision of Federal law, including, in particular, laws providing recovery for injury to natural resources under the Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.) and laws for the protection of public health and the environment; or

“(2) applies to any fine collected under section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321) for any incident other than the Deepwater Horizon oil spill.

“(c) USE OF FUNDS.—Funds made available under this subtitle may be used only for eligible activities specifically authorized by this subtitle and the amendments made by this subtitle.

“SEC. 1607. RESTORATION AND PROTECTION ACTIVITY LIMITATIONS.

“(a) WILLING SELLER.—Funds made available under this subtitle may only be used to acquire land or interests in land by purchase, exchange, or donation from a willing seller.

“(b) ACQUISITION OF FEDERAL LAND.—None of the funds made available under this subtitle may be used to acquire land in fee title by the Federal Government unless—

“(1) the land is acquired by exchange or donation; or

“(2) the acquisition is necessary for the restoration and protection of the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast region and has the concurrence of the Governor of the State in which the acquisition will take place.

“SEC. 1608. INSPECTOR GENERAL.

“The Office of the Inspector General of the Department of the Treasury shall have authority to conduct, supervise, and coordinate audits and investigations of projects, programs, and activities funded under this subtitle and the amendments made by this subtitle.”

RULEMAKINGS

Pub. L. 111-281, title VII, § 701(a), (b), Oct. 15, 2010, 124 Stat. 2980, provided that:

“(a) STATUS REPORT.—

“(1) IN GENERAL.—Not later than 90 days after the date of enactment of this Act [Oct. 15, 2010], the Secretary of the department in which the Coast Guard is operating shall provide a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on the status of all Coast Guard rulemakings required or otherwise being developed (but for which no final rule has been issued as of the date of enactment of this Act) under section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321).

“(2) INFORMATION REQUIRED.—The Secretary shall include in the report required in paragraph (1)—

“(A) a detailed explanation with respect to each such rulemaking as to—

“(i) what steps have been completed;

“(ii) what areas remain to be addressed; and

“(iii) the cause of any delays; and

“(B) the date by which a final rule may reasonably be expected to be issued.

“(b) FINAL RULES.—The Secretary shall issue a final rule in each pending rulemaking described in subsection (a) as soon as practicable, but in no event later

than 18 months after the date of enactment of this Act.”

IMPLEMENTATION DATE FOR VESSEL RESPONSE PLANS FOR NONTANK VESSELS

Pub. L. 108-293, title VII, § 701(c), Aug. 9, 2004, 118 Stat. 1068, provided that: “No later than one year after the date of enactment of this Act [Aug. 9, 2004], the owner or operator of a nontank vessel (as defined [sic] section 311(j)(9) [311(a)(26)] of the Federal Water Pollution Control Act (33 U.S.C. 1321(j)(9) [1321(a)(26)]), as amended by this section) shall prepare and submit a vessel response plan for such vessel.”

REPORT ON OIL SPILL RESPONDER IMMUNITY

Pub. L. 107-295, title IV, § 440, Nov. 25, 2002, 116 Stat. 2130, provided that:

“(a) REPORT TO CONGRESS.—Not later than January 1, 2004, the Secretary of the department in which the Coast Guard is operating, jointly with the Secretary of Commerce and the Secretary of the Interior, and after consultation with the Administrator of the Environmental Protection Agency and the Attorney General, shall submit a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives on the immunity from criminal and civil penalties provided under existing law of a private responder (other than a responsible party) in the case of the incidental take of federally listed fish or wildlife that results from, but is not the purpose of, carrying out an otherwise lawful activity conducted by that responder during an oil spill removal activity where the responder was acting in a manner consistent with the National Contingency Plan or as otherwise directed by the Federal On-Scene Coordinator for the spill, and on the circumstances under which such penalties have been or could be imposed on a private responder. The report shall take into consideration the procedures under the Inter-Agency Memorandum for addressing incidental takes.

“(b) DEFINITIONS.—In this section—

“(1) the term ‘Federal On-Scene Coordinator’ has the meaning given that term in section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321);

“(2) the term ‘incidental take’ has the meaning given that term in the Inter-Agency Memorandum;

“(3) the term ‘Inter-Agency Memorandum’ means the Inter-Agency Memorandum of Agreement Regarding Oil Spill Planning and Response Activities under the Federal Water Pollution Control Act’s National Oil and Hazardous Substances Pollution Contingency Plan and the Endangered Species Act [of 1973, 16 U.S.C. 1531 et seq.], effective on July 22, 2001;

“(4) the terms ‘National Contingency Plan’, ‘removal’, and ‘responsible party’ have the meanings given those terms under section 1001 of the Oil Pollution Act of 1990 (33 U.S.C. 2701); and

“(5) the term ‘private responder’ means a non-governmental entity or individual that is carrying out an oil spill removal activity at the direction of a Federal agency or a responsible party.”

OIL SPILL LIABILITY UNDER OIL POLLUTION ACT OF 1990

Pub. L. 101-380, title II, § 2002(a), Aug. 18, 1990, 104 Stat. 507, provided that: “Subsections (f), (g), (h), and (i) of section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321) shall not apply with respect to any incident for which liability is established under section 1002 of this Act [33 U.S.C. 2702].”

TRANSFER OF MONEYS TO OIL SPILL LIABILITY TRUST FUND

Pub. L. 101-380, title II, § 2002(b)(2), Aug. 18, 1990, 104 Stat. 507, provided that: “Subsection (k) [of this section] is repealed. Any amounts remaining in the revolving fund established under that subsection shall be deposited in the [Oil Spill Liability Trust] Fund. The

Fund shall assume all liability incurred by the revolving fund established under that subsection.”

#### REVISION OF NATIONAL CONTINGENCY PLAN

Pub. L. 101-380, title IV, § 4201(c)(d), Aug. 18, 1990, 104 Stat. 527, provided that: “Not later than one year after the date of the enactment of this Act [Aug. 18, 1990], the President shall revise and republish the National Contingency Plan prepared under section 311(c)(2) of the Federal Water Pollution Control Act [33 U.S.C. 1321(c)(2)] (as in effect immediately before the date of the enactment of this Act) to implement the amendments made by this section and section 4202 [amending this section].”

[For delegation of functions of President under section 4201(c) of Pub. L. 101-380, set out above, see Ex. Ord. No. 12580, Jan. 23, 1987, 52 F.R. 2923, as amended, set out as a note under section 9615 of Title 42, The Public Health and Welfare.]

#### IMPLEMENTATION OF NATIONAL PLANNING AND RESPONSE SYSTEM

Pub. L. 101-380, title IV, § 4202(b), Aug. 18, 1990, 104 Stat. 531, provided that:

“(1) AREA COMMITTEES AND CONTINGENCY PLANS.—(A) Not later than 6 months after the date of the enactment of this Act [Aug. 18, 1990], the President shall designate the areas for which Area Committees are established under section 311(j)(4) of the Federal Water Pollution Control Act [33 U.S.C. 1321(j)(4)], as amended by this Act. In designating such areas, the President shall ensure that all navigable waters, adjoining shorelines, and waters of the exclusive economic zone are subject to an Area Contingency Plan under that section.

“(B) Not later than 18 months after the date of the enactment of this Act, each Area Committee established under that section shall submit to the President the Area Contingency Plan required under that section.

“(C) Not later than 24 months after the date of the enactment of this Act, the President shall—

“(i) promptly review each plan;

“(ii) require amendments to any plan that does not meet the requirements of section 311(j)(4) of the Federal Water Pollution Control Act; and

“(iii) approve each plan that meets the requirements of that section.

“(2) NATIONAL RESPONSE UNIT.—Not later than one year after the date of the enactment of this Act, the Secretary of the department in which the Coast Guard is operating shall establish a National Response Unit in accordance with section 311(j)(2) of the Federal Water Pollution Control Act, as amended by this Act.

“(3) COAST GUARD DISTRICT RESPONSE GROUPS.—Not later than 1 year after the date of the enactment of this Act, the Secretary of the department in which the Coast Guard is operating shall establish Coast Guard District Response Groups in accordance with section 311(j)(3) of the Federal Water Pollution Control Act, as amended by this Act.

“(4) TANK VESSEL AND FACILITY RESPONSE PLANS; TRANSITION PROVISION; EFFECTIVE DATE OF PROHIBITION.—(A) Not later than 24 months after the date of the enactment of this Act, the President shall issue regulations for tank vessel and facility response plans under section 311(j)(5) of the Federal Water Pollution Control Act, as amended by this Act.

“(B) During the period beginning 30 months after the date of the enactment of this paragraph [Aug. 18, 1990] and ending 36 months after that date of enactment, a tank vessel or facility for which a response plan is required to be prepared under section 311(j)(5) of the Federal Water Pollution Control Act, as amended by this Act, may not handle, store, or transport oil unless the owner or operator thereof has submitted such a plan to the President.

“(C) Subparagraph (E) of section 311(j)(5) of the Federal Water Pollution Control Act, as amended by this Act, shall take effect 36 months after the date of the enactment of this Act.”

#### DEPOSIT OF CERTAIN PENALTIES INTO OIL SPILL LIABILITY TRUST FUND

Penalties paid pursuant to this section and sections 1319(c) and 1501 et seq. of this title to be deposited in the Oil Spill Liability Trust Fund created under section 9509 of Title 26, Internal Revenue Code, see section 4304 of Pub. L. 101-380, set out as a note under section 9509 of Title 26.

#### ALLOWABLE DELAY IN ESTABLISHING FINANCIAL RESPONSIBILITY FOR INCREASE IN AMOUNTS UNDER 1977 AMENDMENT

Pub. L. 95-217, § 58(j), Dec. 27, 1977, 91 Stat. 1596, provided that: “No vessel subject to the increased amounts which result from the amendments made by subsections (d)(2), (d)(3), and (d)(4) of this section [amending this section] shall be required to establish any evidence of financial responsibility under section 311(p) of the Federal Water Pollution Control Act [subsec. (p) of this section] for such increased amounts before October 1, 1978.”

#### TERRITORIAL SEA AND CONTIGUOUS ZONE OF UNITED STATES

For extension of territorial sea and contiguous zone of United States, see Proc. No. 5928 and Proc. No. 7219, respectively, set out as notes under section 1331 of Title 43, Public Lands.

#### EXECUTIVE ORDER NO. 11735

Ex. Ord. No. 11735, Aug. 3, 1973, 38 F.R. 21243, as amended by Ex. Ord. No. 12418, May 5, 1983, 48 F.R. 20891, which assigned functions of the President regarding water pollution, was revoked by Ex. Ord. No. 12777, § 8(i), Oct. 18, 1991, 56 F.R. 54769, set out below.

#### EXECUTIVE ORDER NO. 12418

Ex. Ord. No. 12418, May 5, 1983, 48 F.R. 20891, which transferred certain functions relating to the financial responsibility of vessels for water pollution and established authority of Federal agencies to respond to discharges or substantial threats of discharges of oil and hazardous substances, was revoked by Ex. Ord. No. 12777, § 8(i), Oct. 18, 1991, 56 F.R. 54769, set out below.

#### EX. ORD. NO. 12777. IMPLEMENTATION OF THIS SECTION AND OIL POLLUTION ACT OF 1990

Ex. Ord. No. 12777, Oct. 18, 1991, 56 F.R. 54757, as amended by Ex. Ord. No. 13286, § 34, Feb. 28, 2003, 68 F.R. 10625; Ex. Ord. No. 13638, § 1, Mar. 15, 2013, 78 F.R. 17589, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including Section 311 of the Federal Water Pollution Control Act, (“FWPCA”) (33 U.S.C. 1321), as amended by the Oil Pollution Act of 1990 (Public Law 101-380) (“OPA”), and by Section 301 of Title 3 of the United States Code, it is hereby ordered as follows:

SECTION 1. *National Contingency Plan, Area Committees, and Area Contingency Plans.* (a) [Amended Ex. Ord. No. 12580, set out as a note under section 9615 of Title 42, The Public Health and Welfare.]

(b) The functions vested in the President by Section 311(j)(4) of FWPCA, and Section 4202(b)(1) of OPA [set out as a note above], respecting the designation of Areas, the appointment of Area Committee members, the requiring of information to be included in Area Contingency Plans, and the review and approval of Area Contingency Plans are delegated to the Administrator of the Environmental Protection Agency (“Administrator”) for the inland zone and the Secretary of the Department in which the Coast Guard is operating for the coastal zone (inland and coastal zones are defined in the NCP).

SEC. 2. *National Response System.* (a) The functions vested in the President by Section 311(j)(1)(A) of FWPCA, respecting the establishment of methods and procedures for the removal of discharged oil and haz-

ardous substances, and by Section 311(j)(1)(B) of FWPCA respecting the establishment of criteria for the development and implementation of local and regional oil and hazardous substance removal contingency plans, are delegated to the Administrator for the inland zone and the Secretary of the Department in which the Coast Guard is operating for the coastal zone.

(b)(1) The functions vested in the President by Section 311(j)(1)(C) of FWPCA, respecting the establishment of procedures, methods, and equipment and other requirements for equipment to prevent and to contain discharges of oil and hazardous substances from non-transportation-related onshore facilities, are delegated to the Administrator.

(2) The functions vested in the President by Section 311(j)(1)(C) of FWPCA, respecting the establishment of procedures, methods, and equipment and other requirements for equipment to prevent and to contain discharges of oil and hazardous substances from vessels and transportation-related onshore facilities and deepwater ports subject to the Deepwater Ports [Port] Act of 1974 (“DPA”) [33 U.S.C. 1501 et seq.], are delegated to the Secretary of Transportation and the Secretary of the Department in which the Coast Guard is operating.

(3) The functions vested in the President by Section 311(j)(1)(C) of FWPCA, respecting the establishment of procedures, methods, and equipment and other requirements for equipment to prevent and to contain discharges of oil and hazardous substances from offshore facilities, including associated pipelines, other than deepwater ports subject to the DPA, are delegated to the Secretary of the Interior.

(c) The functions vested in the President by Section 311(j)(1)(D) of FWPCA, respecting the inspection of vessels carrying cargoes of oil and hazardous substances and the inspection of such cargoes, are delegated to the Secretary of the Department in which the Coast Guard is operating.

(d)(1) The functions vested in the President by Section 311(j)(5) of FWPCA and Section 4202(b)(4) of OPA [set out as a note above], respecting the issuance of regulations requiring the owners or operators of non-transportation-related onshore facilities to prepare and submit response plans, the approval of means to ensure the availability of private personnel and equipment, the review and approval of such response plans, and the authorization of non-transportation-related onshore facilities to operate without approved response plans, are delegated to the Administrator.

(2) The functions vested in the President by Section 311(j)(5) of FWPCA and Section 4202(b)(4) of OPA, respecting the issuance of regulations requiring the owners or operators of tank vessels, transportation-related onshore facilities and deepwater ports subject to the DPA, to prepare and submit response plans, the approval of means to ensure the availability of private personnel and equipment, the review and approval of such response plans, and the authorization of tank vessels, transportation-related onshore facilities and deepwater ports subject to the DPA to operate without approved response plans, are delegated to the Secretary of Transportation and the Secretary of the Department in which the Coast Guard is operating.

(3) The functions vested in the President by Section 311(j)(5) of FWPCA and Section 4202(b)(4) of OPA, respecting the issuance of regulations requiring the owners or operators of offshore facilities, including associated pipelines, other than deepwater ports subject to the DPA, to prepare and submit response plans, the approval of means to ensure the availability of private personnel and equipment, the review and approval of such response plans, and the authorization of offshore facilities, including associated pipelines, other than deepwater ports subject to the DPA, to operate without approved response plans, are delegated to the Secretary of the Interior.

(e)(1) The functions vested in the President by Section 311(j)(6)(A) of FWPCA, respecting the requirements for periodic inspections of containment booms and equipment used to remove discharges at non-transportation-related onshore facilities, are delegated to the Administrator.

(2) The functions vested in the President by Section 311(j)(6)(A) of FWPCA, respecting the requirements for periodic inspections of containment booms and equipment used to remove discharges on vessels, and at transportation-related onshore facilities and deepwater ports subject to the DPA, are delegated to the Secretary of the Department in which the Coast Guard is operating.

(3) The functions vested in the President by Section 311(j)(6)(A) of FWPCA, respecting the requirements for periodic inspections of containment booms and equipment used to remove discharges at offshore facilities, including associated pipelines, other than deepwater ports subject to the DPA, are delegated to the Secretary of the Interior.

(f) The functions vested in the President by Section 311(j)(6)(B) of FWPCA, respecting requirements for vessels to carry appropriate removal equipment, are delegated to the Secretary of the Department in which the Coast Guard is operating.

(g)(1) The functions vested in the President by Section 311(j)(7) of FWPCA, respecting periodic drills of removal capability under relevant response plans for onshore and offshore facilities located in the inland zone, and the publishing of annual reports on those drills, are delegated to the Administrator.

(2) The functions vested in the President by Section 311(j)(7) of FWPCA, respecting periodic drills of removal capability under relevant response plans for tank vessels, and for onshore and offshore facilities located in the coastal zone, and the publishing of annual reports on those drills, are delegated to the Secretary of the Department in which the Coast Guard is operating.

(h) No provision of Section 2 of this order, including, but not limited to, any delegation or assignment of any function hereunder, shall in any way affect, or be construed or interpreted to affect the authority of any Department or agency, or the head of any Department or agency under any provision of law other than Section 311(j) of FWPCA or Section 4202(b)(4) of OPA.

(i) The functions vested in the President by Section 311(j) of FWPCA or Section 4202(b)(4) of OPA which have been delegated or assigned by Section 2 of this order may be redelegated to the head of any Executive department or agency with his or her consent.

SEC. 3. *Removal.* The functions vested in the President by Section 311(c) of FWPCA and Section 1011 of OPA [33 U.S.C. 2711], respecting an effective and immediate removal or arrangement for removal of a discharge and mitigation or prevention of a substantial threat of a discharge of oil or a hazardous substance, the direction and monitoring of all Federal, State and private actions, the removal and destruction of a vessel, the issuance of directions, consulting with affected trustees, and removal completion determinations, are delegated to the Administrator for the inland zone and to the Secretary of the Department in which the Coast Guard is operating for the coastal zone.

SEC. 4. *Liability Limit Adjustment.* (a)(1) The following functions vested in the President by section 1004(d) of OPA are delegated to the Secretary of the department in which the Coast Guard is operating, acting in consultation with the Administrator, the Secretary of Transportation, the Secretary of the Interior, and the Attorney General:

(A) the adjustment of the limits of liability listed in section 1004(a) of OPA for vessels, onshore facilities, and deepwater ports subject to the DPA, to reflect significant increases in the Consumer Price Index;

(B) the establishment of limits of liability under section 1004(d)(1), with respect to classes or categories of marine transportation-related onshore facilities, and the adjustment of any such limits of liability established under section 1004(d)(1), and of any limits of liability established under section 1004(d)(2) with respect to deepwater ports subject to the DPA,

to reflect significant increases in the Consumer Price Index; and

(C) the reporting to Congress on the desirability of adjusting limits of liability, with respect to vessels, marine transportation-related onshore facilities, and deepwater ports subject to the DPA.

(2) The Administrator and the Secretary of Transportation will provide necessary regulatory analysis support to ensure timely regulatory Consumer Price Index adjustments by the Secretary of the department in which the Coast Guard is operating of the limits of liability listed in section 1004(a) of OPA for onshore facilities under subparagraph (a)(1)(A) of this section.

(b) The following functions vested in the President by section 1004(d) of OPA are delegated to the Administrator, acting in consultation with the Secretary of the department in which the Coast Guard is operating, the Secretary of Transportation, the Secretary of the Interior, the Secretary of Energy, and the Attorney General:

(1) the establishment of limits of liability under section 1004(d)(1), with respect to classes or categories of non-transportation-related onshore facilities, and the adjustment of any such limits of liability established under section 1004(d)(1) by the Administrator to reflect significant increases in the Consumer Price Index; and

(2) the reporting to Congress on the desirability of adjusting limits of liability with respect to non-transportation-related onshore facilities.

(c) The following functions vested in the President by section 1004(d) of OPA are delegated to the Secretary of Transportation, acting in consultation with the Secretary of the department in which the Coast Guard is operating, the Administrator, the Secretary of the Interior, and the Attorney General:

(1) the establishment of limits of liability under section 1004(d)(1), with respect to classes or categories of non-marine transportation-related onshore facilities, and the adjustment of any such limits of liability established under section 1004(d)(1) by the Secretary of Transportation to reflect significant increases in the Consumer Price Index; and

(2) the reporting to Congress on the desirability of adjusting limits of liability, with respect to non-marine transportation-related onshore facilities.

(d) The following functions vested in the President by section 1004(d) of OPA are delegated to the Secretary of the Interior, acting in consultation with the Secretary of the department in which the Coast Guard is operating, the Administrator, the Secretary of Transportation, and the Attorney General:

(1) the adjustment of limits of liability to reflect significant increases in the Consumer Price Index with respect to offshore facilities, including associated pipelines, other than deepwater ports subject to the DPA; and

(2) the reporting to Congress on the desirability of adjusting limits of liability with respect to offshore facilities, including associated pipelines, other than deepwater ports subject to the DPA.

SEC. 5. *Financial Responsibility.* (a)(1) The functions vested in the President by Section 1016(e) of OPA [33 U.S.C. 2716(e)], respecting (in the case of offshore facilities other than deepwater ports) the issuance of regulations concerning financial responsibility, the determination of acceptable methods of financial responsibility, and the specification of necessary or unacceptable terms, conditions, or defenses, are delegated to the Secretary of the Interior.

(2) The functions vested in the President by Section 1016(e) of OPA, respecting (in the case of deepwater ports) the issuance of regulations concerning financial responsibility, the determination of acceptable methods of financial responsibility, and the specification of necessary or unacceptable terms, conditions, or defenses, are delegated to the Secretary of the Department in which the Coast Guard is operating.

(b)(1) The functions vested in the President by Section 4303 of OPA [33 U.S.C. 2716a], respecting (in cases involving vessels) the assessment of civil penalties, the

compromising, modification or remission, with or without condition, and the referral for collection of such imposed penalties, and requests to the Attorney General to secure necessary judicial relief, are delegated to the Secretary of the Department in which the Coast Guard is operating.

(2) The functions vested in the President by Section 4303 of OPA, respecting (in cases involving offshore facilities other than deepwater ports) the assessment of civil penalties, the compromising, modification or remission, with or without condition, and the referral for collection of such imposed penalties, and requests to the Attorney General to secure necessary judicial relief, are delegated to the Secretary of the Interior.

(3) The functions vested in the President by Section 4303 of OPA, respecting (in cases involving deepwater ports) the assessment of civil penalties, the compromising, modification or remission, with or without condition, and the referral for collection of such imposed penalties, and requests to the Attorney General to secure necessary judicial relief, are delegated to the Secretary of the Department in which the Coast Guard is operating.

SEC. 6. *Enforcement.* (a) The functions vested in the President by Section 311(m)(1) of FWPCA, respecting the enforcement of Section 311 with respect to vessels, are delegated to the Secretary of the Department in which the Coast Guard is operating.

(b) The functions vested in the President by Section 311(e) of FWPCA, respecting determinations of imminent and substantial threat, requesting the Attorney General to secure judicial relief, and other action including issuing administrative orders, are delegated to the Administrator for the inland zone and to the Secretary of the Department in which the Coast Guard is operating for the coastal zone.

SEC. 7. *Management of the Oil Spill Liability Trust Fund and Claims.* (a)(1)(A) The functions vested in the President by Section 1012(a)(1), (3), and (4) of OPA [33 U.S.C. 2712(a)(1), (3), (4)] respecting payment of removal costs and claims and determining consistency with the National Contingency Plan (NCP) are delegated to the Secretary of the Department in which the Coast Guard is operating.

(B) The functions vested in the President by Section 6002(b) of the OPA [33 U.S.C. 2752(b)] respecting making amounts, not to exceed \$50,000,000 and subject to normal budget controls, in any fiscal year, available from the Fund (i) to carry out Section 311(c) of FWPCA, and (ii) to initiate the assessment of natural resources damages required under Section 1006 of OPA [33 U.S.C. 2706] are delegated to the Secretary of the Department in which the Coast Guard is operating. Such Secretary shall make amounts available from the Fund to initiate the assessment of natural resources damages exclusively to the Federal trustees designated in the NCP. Such Federal trustees shall allocate such amounts among all trustees required to assess natural resources damages under Section 1006 of OPA.

(2) The functions vested in the President by Section 1012(a)(2) of OPA [33 U.S.C. 2712(a)(2)], respecting the payment of costs and determining consistency with the NCP, are delegated to the Federal trustees designated in the NCP.

(3) The functions vested in the President by Section 1012(a)(5) of OPA, respecting the payment of costs and expenses of departments and agencies having responsibility for the implementation, administration, and enforcement of the Oil Pollution Act of 1990 and subsections (b), (c), (d), (j) and (l) of Section 311 of FWPCA, are delegated to each head of such department and agency.

(b) The functions vested in the President by Section 1012(c) of OPA, respecting designation of Federal officials who may obligate money, are delegated to each head of the departments and agencies to whom functions have been delegated under section 7(a) of this order for the purpose of carrying out such functions.

(c)(1) The functions vested in the President by Section 1012(d) and (e) of OPA, respecting the obligation of

the Trust Fund on the request of a Governor or pursuant to an agreement with a State, entrance into agreements with States, agreement upon terms and conditions, and the promulgation of regulations concerning such obligation and entrance into such agreement, are delegated to the Secretary of the Department in which the Coast Guard is operating, in consultation with the Administrator.

(2) The functions vested in the President by Section 1013(e) of OPA [33 U.S.C. 2713(e)], respecting the promulgation and amendment of regulations for the presentation, filing, processing, settlement, and adjudication of claims under OPA against the Trust Fund, are delegated to the Secretary of the Department in which the Coast Guard is operating, in consultation with the Attorney General.

(3) The functions vested in the President by Section 1012(a) of OPA, respecting the payment of costs, damages, and claims, delegated herein to the Secretary of the Department in which the Coast Guard is operating, include, *inter alia*, the authority to process, settle, and administratively adjudicate such costs, damages, and claims, regardless of amount.

(d)(1) The Coast Guard is designated the “appropriate agency” for the purpose of receiving the notice of discharge of oil or hazardous substances required by Section 311(b)(5) of FWPCA, and the Secretary of the Department in which the Coast Guard is operating is authorized to issue regulations implementing this designation.

(2) The functions vested in the President by Section 1014 of OPA [33 U.S.C. 2714], respecting designation of sources of discharges or threats, notification to responsible parties, promulgation of regulations respecting advertisements, the advertisement of designation, and notification of claims procedures, are delegated to the Secretary of the Department in which the Coast Guard is operating.

SEC. 8. *Miscellaneous.* (a) The functions vested in the President by Section 311(b)(3) and (4) of FWPCA, as amended by the Oil Pollution Act of 1990, respecting the determination of quantities of oil and any hazardous substances the discharge of which may be harmful to the public health or welfare or the environment and the determinations of quantities, time, locations, circumstances, or conditions, which are not harmful, are delegated to the Administrator.

(b) The functions vested in the President by Section 311(d)(2)(G) of FWPCA, respecting schedules of dispersant, chemical, and other spill mitigating devices or substances, are delegated to the Administrator.

(c) The functions vested in the President by Section 1006(b)(3) and (4) of OPA [33 U.S.C. 2706(b)(3), (4)] respecting the receipt of designations of State and Indian tribe trustees for natural resources are delegated to the Administrator.

(d) The function vested in the President by Section 3004 of OPA [104 Stat. 508], with respect to encouraging the development of an international inventory of equipment and personnel, is delegated to the Secretary of the Department in which the Coast Guard is operating, in consultation with the Secretary of State.

(e) The functions vested in the President by Section 4113 of OPA [104 Stat. 516], respecting a study on the use of liners or other secondary means of containment for onshore facilities, and the implementation of the recommendations of the study, are delegated to the Administrator.

(f) The function vested in the President by Section 5002(c)(2)(D) of OPA [33 U.S.C. 2732(c)(2)(D)], respecting the designating of an employee of the Federal Government who shall represent the Federal Government on the Oil Terminal Facilities and Oil Tanker Operations Associations, is delegated to the Secretary of the Department in which the Coast Guard is operating.

(g) The functions vested in the President by Section 5002(o) of OPA, respecting the annual certification of alternative voluntary advisory groups, are delegated to the Secretary of the Department in which the Coast Guard is operating.

(h) The function vested in the President by Section 7001(a)(3) of OPA [33 U.S.C. 2761(a)(3)], respecting the appointment of Federal agencies to membership on the Interagency Coordinating Committee on Oil Pollution Research, is delegated to the Secretary of the Department in which the Coast Guard is operating.

(i) Executive Order No. 11735 of August 3, 1973, Executive Order No. 12123 of February 26, 1979, Executive Order No. 12418 of May 5, 1983 and the memorandum of August 24, 1990, delegating certain authorities of the President under the Oil Pollution Act of 1990 are revoked.

SEC. 9. *Consultation.* Authorities and functions delegated or assigned by this order shall be exercised subject to consultation with the Secretaries of departments and the heads of agencies with statutory responsibilities which may be significantly affected, including, but not limited to, the Department of Justice.

SEC. 10. *Litigation.* (a) Notwithstanding any other provision of this order, any representation pursuant to or under this order in any judicial proceedings shall be by or through the Attorney General. The conduct and control of all litigation arising under the Oil Pollution Act of 1990 [see Short Title note set out under section 2701 of this title] shall be the responsibility of the Attorney General.

(b) Notwithstanding any other provision of this order, the authority under the Oil Pollution Act of 1990 to require the Attorney General to commence litigation is retained by the President.

(c) Notwithstanding any other provision of this order, the Secretaries of the Departments of Transportation, Commerce, Interior, Agriculture, the Secretary of the Department in which the Coast Guard is operating, and/or the Administrator of the Environmental Protection Agency may request that the Attorney General commence litigation under the Oil Pollution Act of 1990.

(d) The Attorney General, in his discretion, is authorized to require that, with respect to a particular oil spill, an agency refrain from taking administrative enforcement action without first consulting with the Attorney General.

EX. ORD. NO. 13626. GULF COAST ECOSYSTEM RESTORATION

Ex. Ord. No. 13626, Sept. 10, 2012, 77 F.R. 56749, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 311 of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C. 1321), section 1006 of the Oil Pollution Act of 1990 (33 U.S.C. 2706), and section 301 of title 3, United States Code, it is hereby ordered as follows:

SECTION 1. *Policy.* Executive Order 13554 of October 5, 2010, was issued after the blowout and explosion of the mobile offshore drilling unit Deepwater Horizon that occurred on April 20, 2010, and resulted in the largest oil spill in U.S. history (Deepwater Horizon Oil Spill). Executive Order 13554 recognized the Gulf Coast as a national treasure and addressed the longstanding ecological decline of that region, which was compounded by the Deepwater Horizon Oil Spill. In doing so, Executive Order 13554 established a Gulf Coast Ecosystem Restoration Task Force (Task Force) to coordinate intergovernmental efforts, planning, and the exchange of information in order to better implement Gulf Coast ecosystem restoration and facilitate appropriate accountability and support throughout the restoration process.

Since the implementation of Executive Order 13554, the Federal Government’s Gulf Coast ecosystem restoration planning efforts have advanced significantly. The Task Force’s Gulf of Mexico Regional Ecosystem Restoration Strategy (Strategy), created with input from Federal, State, tribal, and local governments, and thousands of involved citizens and organizations across the region, serves as a comprehensive restoration plan for addressing ecological concerns in the Gulf of Mex-

ico. In light of the release of the Strategy, the ongoing work of the Natural Resource Damage Trustee Council (Trustee Council) under the Oil Pollution Act, and the recent passage of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act) (title I, subtitle F of Public Law 112-141), this order affirms the Federal Government's Gulf Coast ecosystem restoration efforts and realigns responsibilities to ensure the most effective governmental planning and coordination to reach these goals.

SEC. 2. *Termination of the Gulf Coast Ecosystem Restoration Task Force.* The progress of the Task Force is noteworthy. It has completed the Strategy and the preliminary planning and coordination tasks that it was intended to produce and has significantly advanced important ecosystem restoration goals for the Gulf of Mexico. In light of the recent creation, described below, of the Gulf Coast Ecosystem Restoration Council (Gulf Restoration Council), which will build upon the Task Force's already successful collaboration between Federal, State, and tribal governments and, as directed by statute, include and incorporate in its proposed comprehensive plan the findings and information prepared by the Task Force, the Task Force shall terminate no later than 60 days after the Gulf Restoration Council commences its work. The functions of the Task Force will be performed by the Gulf Restoration Council and the Trustee Council to the extent practicable, as set forth in this order. Prior to its termination, the Task Force will provide such assistance as is appropriate to the Gulf Restoration Council.

SEC. 3. *The Gulf Coast Restoration Trust Fund and the Gulf Coast Ecosystem Restoration Council.*

(a) *Gulf Coast Restoration Trust Fund.* The RESTORE Act, which was signed into law as part of the Moving Ahead for Progress in the 21st Century Act (Public Law 112-141), established a mechanism for providing funding to the Gulf region to restore ecosystems and rebuild local economies damaged by the Deepwater Horizon Oil Spill. The RESTORE Act established in the Treasury of the United States the Gulf Coast Restoration Trust Fund (Trust Fund), consisting of 80 percent of an amount equal to any administrative and civil penalties paid after the date of the RESTORE Act by the responsible parties in connection with the Deepwater Horizon Oil Spill to the United States pursuant to a court order, negotiated settlement, or other instrument in accordance with section 311 of the FWPCA (33 U.S.C. 1321).

(b) *Gulf Coast Ecosystem Restoration Council.* The RESTORE Act established the Gulf Restoration Council, an independent entity charged with developing a comprehensive plan for ecosystem restoration in the Gulf Coast (Comprehensive Plan), as well as any future revisions to the Comprehensive Plan. Among its other duties, the Gulf Restoration Council is tasked with identifying projects and programs aimed at restoring and protecting the natural resources and ecosystems of the Gulf Coast region, to be funded from a portion of the Trust Fund; establishing such other advisory committees as may be necessary to assist the Gulf Restoration Council, including a scientific advisory committee and a committee to advise the Gulf Restoration Council on public policy issues; gathering information relevant to Gulf Coast restoration, including through research, modeling, and monitoring; and providing an annual report to the Congress on implementation progress. Consistent with the RESTORE Act, the Comprehensive Plan developed by the Gulf Restoration Council will include provisions necessary to fully incorporate the Strategy, projects, and programs recommended by the Task Force.

(c) Federal members of the Gulf Restoration Council and Trustee Council, as well as all Federal entities involved in Gulf Coast restoration, shall work closely with one another to advance their common goals, reduce duplication, and maximize consistency among their efforts. All Federal members are directed to consult with each other and with all non-federal members

in carrying out their duties on the Gulf Restoration Council.

SEC. 4. *Ongoing Role of the Natural Resource Damage Assessment Trustee Council.* (a) Executive Order 13554 recognized the role of the Trustee Council, and designated trustees as provided in 33 U.S.C. 2706, with trusteeship over natural resources injured, lost, or destroyed as a result of the Deepwater Horizon Oil Spill. Specifically, Executive Order 13554 recognized the importance of carefully coordinating the work of the Task Force with the Trustee Council, whose members have statutory responsibility to assess natural resources damages from the Deepwater Horizon Oil Spill, to restore trust resources, and seek compensation for lost use of those trust resources. Section 3(b) of Executive Order 13554 instructed the Task Force to "support the Natural Resource Damage Assessment process by referring potential ecosystem restoration actions to the \* \* \* Trustee Council for consideration and facilitating coordination among the relevant departments, agencies, and offices, as appropriate, subject to the independent statutory responsibilities of the trustees." The Department of Commerce (through the National Oceanic and Atmospheric Administration), the Department of the Interior (through the Fish and Wildlife Service and the National Park Service), and the Department of Justice have worked to identify linkages and opportunities for the Task Force to complement the restoration progress of the Trustee Council.

(b) Section 7(e) of Executive Order 13554 provides that nothing in that order shall interfere with the statutory responsibilities and authority of the Trustee Council or the individual trustees to carry out their statutory responsibilities to assess natural resource damages and implement restoration actions under 33 U.S.C. 2706 and other applicable law. Agencies that were members of the Task Force shall continue to comply with these requirements.

SEC. 5. *Designating Trustees for Natural Resource Damage Assessment.* Given their authorities, programs, and expertise, the Environmental Protection Agency (EPA) and the Department of Agriculture (USDA) have institutional capacities that can contribute significantly to the Natural Resource Damage Assessment and restoration efforts, including scientific and policy expertise as well as experience gained in the Task Force process and other planning efforts in the Gulf area. In addition, EPA's and USDA's relevant authorities cover a range of natural resources and their supporting ecosystems, including waters, sediments, barrier islands, wetlands, soils, land management, air resources, and drinking water supplies. The inclusion of EPA and USDA as trustees participating in the Natural Resource Damage Assessment and restoration efforts will maximize coordination across the Federal Government and enhance overall efficiencies regarding Gulf Coast ecosystem restoration. Accordingly, without limiting the designations in Executive Order 12777 of October 18, 1991, or any other existing designations, and pursuant to section 2706(b)(2) of title 33, United States Code, I hereby designate the Administrator of EPA and the Secretary of Agriculture as additional trustees for Natural Resource Damage Assessment and restoration solely in connection with injury to, destruction of, loss of, or loss of use of natural resources, including their supporting ecosystems, resulting from the Deepwater Horizon Oil Spill. The addition of these Federal trustees does not, in and of itself, alter any existing agreements among or between the trustees and any other entity. All Federal trustees are directed to consult, coordinate, and cooperate with each other in carrying out all of their trustee duties and responsibilities.

The Administrator of EPA is hereby directed to revise Subpart G of the National Oil and Hazardous Substances Pollution Contingency Plan to reflect the designations for the Deepwater Horizon Oil Spill discussed in this section.

SEC. 6. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(1) the authority granted by law to a department or agency, or the head thereof; or

(ii) the functions of the Trustee Council, or those of the Director of the Office of Management and Budget, relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) Executive Order 13554 of October 5, 2010, is hereby revoked concurrent with the termination of the Task Force under the terms described in section 2 of this order.

BARACK OBAMA.

### § 1321a. Prevention of small oil spills

#### (a) Prevention and education program

The Under Secretary of Commerce for Oceans and Atmosphere, in consultation with the Secretary of the Department in which the Coast Guard is operating and other appropriate agencies, shall establish an oil spill prevention and education program for small vessels. The program shall provide for assessment, outreach, and training and voluntary compliance activities to prevent and improve the effective response to oil spills from vessels and facilities not required to prepare a vessel response plan under the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), including recreational vessels, commercial fishing vessels, marinas, and aquaculture facilities. The Under Secretary may provide grants to sea grant colleges and institutes designated under section 1126 of this title and to State agencies, tribal governments, and other appropriate entities to carry out—

(1) regional assessments to quantify the source, incidence and volume of small oil spills, focusing initially on regions in the country where, in the past 10 years, the incidence of such spills is estimated to be the highest;

(2) voluntary, incentive-based clean marina programs that encourage marina operators, recreational boaters, and small commercial vessel operators to engage in environmentally sound operating and maintenance procedures and best management practices to prevent or reduce pollution from oil spills and other sources;

(3) cooperative oil spill prevention education programs that promote public understanding of the impacts of spilled oil and provide useful information and techniques to minimize pollution, including methods to remove oil and reduce oil contamination of bilge water, prevent accidental spills during maintenance and refueling and properly cleanup and dispose of oil and hazardous substances; and

(4) support for programs, including outreach and education to address derelict vessels and the threat of such vessels sinking and discharging oil and other hazardous substances, including outreach and education to involve efforts to the owners of such vessels.

#### (b) Authorization of appropriations

There are authorized to be appropriated to the Under Secretary of Commerce for Oceans and

Atmosphere to carry out this section, \$10,000,000 for each of fiscal years 2010 through 2014.

(Pub. L. 111-281, title VII, §705, Oct. 15, 2010, 124 Stat. 2982.)

#### REFERENCES IN TEXT

The Federal Water Pollution Control Act, referred to in subsec. (a), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92-500, §2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of this title and Tables.

#### CODIFICATION

Section was enacted as part of the Coast Guard Authorization Act of 2010, and not as part of the Federal Water Pollution Control Act which comprises this chapter.

### § 1321b. Improved coordination with tribal governments

#### (a) In general

Within 6 months after October 15, 2010, the Secretary of the Department in which the Coast Guard is operating shall complete the development of a tribal consultation policy, which recognizes and protects to the maximum extent practicable tribal treaty rights and trust assets in order to improve the Coast Guard's consultation and coordination with the tribal governments of federally recognized Indian tribes with respect to oil spill prevention, preparedness, response and natural resource damage assessment.

#### (b) Inclusion of tribal government

The Secretary of the Department in which the Coast Guard is operating shall ensure that, as soon as practicable after identifying an oil spill that is likely to have a significant impact on natural or cultural resources owned or directly utilized by a federally recognized Indian tribe, the Coast Guard will—

(1) ensure that representatives of the tribal government of the affected tribes are included as part of the incident command system established by the Coast Guard to respond to the spill;

(2) share information about the oil spill with the tribal government of the affected tribe; and

(3) to the extent practicable, involve tribal governments in deciding how to respond to the spill.

#### (c) Cooperative arrangements

The Coast Guard may enter into memoranda of agreement and associated protocols with Indian tribal governments in order to establish cooperative arrangements for oil pollution prevention, preparedness, and response. Such memoranda may be entered into prior to the development of the tribal consultation and coordination policy to provide Indian tribes grant and contract assistance. Such memoranda of agreement and associated protocols with Indian tribal governments may include—

(1) arrangements for the assistance of the tribal government to participate in the development of the National Contingency Plan and local Area Contingency Plans to the extent they affect tribal lands, cultural and natural resources;

(2) arrangements for the assistance of the tribal government to develop the capacity to implement the National Contingency Plan and local Area Contingency Plans to the extent they affect tribal lands, cultural and natural resources;

(3) provisions on coordination in the event of a spill, including agreements that representatives of the tribal government will be included as part of the regional response team co-chaired by the Coast Guard and the Environmental Protection Agency to establish policies for responding to oil spills;

(4) arrangements for the Coast Guard to provide training of tribal incident commanders and spill responders for oil spill preparedness and response;

(5) demonstration projects to assist tribal governments in building the capacity to protect tribal treaty rights and trust assets from oil spills; and

(6) such additional measures the Coast Guard determines to be necessary for oil pollution prevention, preparedness, and response.

**(d) Funding for tribal participation**

Subject to the availability of appropriations, the Commandant of the Coast Guard shall provide assistance to participating tribal governments in order to facilitate the implementation of cooperative arrangements under subsection (c) and ensure the participation of tribal governments in such arrangements. There are authorized to be appropriated to the Commandant \$500,000 for each of fiscal years 2010 through 2014 to be used to carry out this section.

(Pub. L. 111–281, title VII, § 706, Oct. 15, 2010, 124 Stat. 2983.)

CODIFICATION

Section was enacted as part of the Coast Guard Authorization Act of 2010, and not as part of the Federal Water Pollution Control Act which comprises this chapter.

**§ 1321c. International efforts on enforcement**

The Secretary of the department in which the Coast Guard is operating, in consultation with the heads of other appropriate Federal agencies, shall ensure that the Coast Guard pursues stronger enforcement in the International Maritime Organization of agreements related to oil discharges, including joint enforcement operations, training, and stronger compliance mechanisms.

(Pub. L. 111–281, title VII, § 709, Oct. 15, 2010, 124 Stat. 2986.)

CODIFICATION

Section was enacted as part of the Coast Guard Authorization Act of 2010, and not as part of the Federal Water Pollution Control Act which comprises this chapter.

**§ 1322. Marine sanitation devices**

**(a) Definitions**

For the purpose of this section, the term—

(1) “new vessel” includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of

transportation on the navigable waters, the construction of which is initiated after promulgation of standards and regulations under this section;

(2) “existing vessel” includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on the navigable waters, the construction of which is initiated before promulgation of standards and regulations under this section;

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

(4) “United States” includes the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Canal Zone, and the Trust Territory of the Pacific Islands;

(5) “marine sanitation device” includes any equipment for installation on board a vessel which is designed to receive, retain, treat, or discharge sewage, and any process to treat such sewage;

(6) “sewage” means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes except that, with respect to commercial vessels on the Great Lakes, such term shall include graywater;

(7) “manufacturer” means any person engaged in the manufacturing, assembling, or importation of marine sanitation devices or of vessels subject to standards and regulations promulgated under this section;

(8) “person” means an individual, partnership, firm, corporation, association, or agency of the United States, but does not include an individual on board a public vessel;

(9) “discharge” includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping;

(10) “commercial vessels” means those vessels used in the business of transporting property for compensation or hire, or in transporting property in the business of the owner, lessee, or operator of the vessel;

(11) “graywater” means galley, bath, and shower water;

(12) “discharge incidental to the normal operation of a vessel”—

(A) means a discharge, including—

(i) graywater, bilge water, cooling water, weather deck runoff, ballast water, oil water separator effluent, and any other pollutant discharge from the operation of a marine propulsion system, shipboard maneuvering system, crew habitability system, or installed major equipment, such as an aircraft carrier elevator or a catapult, or from a protective, preservative, or absorptive application to the hull of the vessel; and

(ii) a discharge in connection with the testing, maintenance, and repair of a system described in clause (i) whenever the vessel is waterborne; and

(B) does not include—

(i) a discharge of rubbish, trash, garbage, or other such material discharged overboard;

(ii) an air emission resulting from the operation of a vessel propulsion system, motor driven equipment, or incinerator; or

(iii) a discharge that is not covered by part 122.3 of title 40, Code of Federal Regulations (as in effect on February 10, 1996);

(13) “marine pollution control device” means any equipment or management practice, for installation or use on board a vessel of the Armed Forces, that is—

(A) designed to receive, retain, treat, control, or discharge a discharge incidental to the normal operation of a vessel; and

(B) determined by the Administrator and the Secretary of Defense to be the most effective equipment or management practice to reduce the environmental impacts of the discharge consistent with the considerations set forth in subsection (n)(2)(B) of this section; and

(14) “vessel of the Armed Forces” means—

(A) any vessel owned or operated by the Department of Defense, other than a time or voyage chartered vessel; and

(B) any vessel owned or operated by the Department of Transportation that is designated by the Secretary of the department in which the Coast Guard is operating as a vessel equivalent to a vessel described in subparagraph (A).

**(b) Federal standards of performance**

(1) As soon as possible, after October 18, 1972, and subject to the provisions of section 1254(j) of this title, the Administrator, after consultation with the Secretary of the department in which the Coast Guard is operating, after giving appropriate consideration to the economic costs involved, and within the limits of available technology, shall promulgate Federal standards of performance for marine sanitation devices (hereafter in this section referred to as “standards”) which shall be designed to prevent the discharge of untreated or inadequately treated sewage into or upon the navigable waters from new vessels and existing vessels, except vessels not equipped with installed toilet facilities. Such standards and standards established under subsection (c)(1)(B) of this section shall be consistent with maritime safety and the marine and navigation laws and regulations and shall be coordinated with the regulations issued under this subsection by the Secretary of the department in which the Coast Guard is operating. The Secretary of the department in which the Coast Guard is operating shall promulgate regulations, which are consistent with standards promulgated under this subsection and subsection (c) of this section and with maritime safety and the marine and navigation laws and regulations governing the design, construction, installation, and operation of any marine sanitation device on board such vessels.

(2) Any existing vessel equipped with a marine sanitation device on the date of promulgation of initial standards and regulations under this section, which device is in compliance with such

initial standards and regulations, shall be deemed in compliance with this section until such time as the device is replaced or is found not to be in compliance with such initial standards and regulations.

**(c) Initial standards; effective dates; revision; waiver**

(1)(A) Initial standards and regulations under this section shall become effective for new vessels two years after promulgation; and for existing vessels five years after promulgation. Revisions of standards and regulations shall be effective upon promulgation, unless another effective date is specified, except that no revision shall take effect before the effective date of the standard or regulation being revised.

(B) The Administrator shall, with respect to commercial vessels on the Great Lakes, establish standards which require at a minimum the equivalent of secondary treatment as defined under section 1314(d) of this title. Such standards and regulations shall take effect for existing vessels after such time as the Administrator determines to be reasonable for the upgrading of marine sanitation devices to attain such standard.

(2) The Secretary of the department in which the Coast Guard is operating with regard to his regulatory authority established by this section, after consultation with the Administrator, may distinguish among classes, type, and sizes of vessels as well as between new and existing vessels, and may waive applicability of standards and regulations as necessary or appropriate for such classes, types, and sizes of vessels (including existing vessels equipped with marine sanitation devices on the date of promulgation of the initial standards required by this section), and, upon application, for individual vessels.

**(d) Vessels owned and operated by the United States**

The provisions of this section and the standards and regulations promulgated hereunder apply to vessels owned and operated by the United States unless the Secretary of Defense finds that compliance would not be in the interest of national security. With respect to vessels owned and operated by the Department of Defense, regulations under the last sentence of subsection (b)(1) of this section and certifications under subsection (g)(2) of this section shall be promulgated and issued by the Secretary of Defense.

**(e) Pre-promulgation consultation**

Before the standards and regulations under this section are promulgated, the Administrator and the Secretary of the department in which the Coast Guard is operating shall consult with the Secretary of State; the Secretary of Health and Human Services; the Secretary of Defense; the Secretary of the Treasury; the Secretary of Commerce; other interested Federal agencies; and the States and industries interested; and otherwise comply with the requirements of section 553 of title 5.

**(f) Regulation by States or political subdivisions thereof; complete prohibition upon discharge of sewage**

(1)(A) Except as provided in subparagraph (B), after the effective date of the initial standards

and regulations promulgated under this section, no State or political subdivision thereof shall adopt or enforce any statute or regulation of such State or political subdivision with respect to the design, manufacture, or installation or use of any marine sanitation device on any vessel subject to the provisions of this section.

(B) A State may adopt and enforce a statute or regulation with respect to the design, manufacture, or installation or use of any marine sanitation device on a houseboat, if such statute or regulation is more stringent than the standards and regulations promulgated under this section. For purposes of this paragraph, the term "houseboat" means a vessel which, for a period of time determined by the State in which the vessel is located, is used primarily as a residence and is not used primarily as a means of transportation.

(2) If, after promulgation of the initial standards and regulations and prior to their effective date, a vessel is equipped with a marine sanitation device in compliance with such standards and regulations and the installation and operation of such device is in accordance with such standards and regulations, such standards and regulations shall, for the purposes of paragraph (1) of this subsection, become effective with respect to such vessel on the date of such compliance.

(3) After the effective date of the initial standards and regulations promulgated under this section, if any State determines that the protection and enhancement of the quality of some or all of the waters within such State require greater environmental protection, such State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into such waters, except that no such prohibition shall apply until the Administrator determines that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for such water to which such prohibition would apply. Upon application of the State, the Administrator shall make such determination within 90 days of the date of such application.

(4)(A) If the Administrator determines upon application by a State that the protection and enhancement of the quality of specified waters within such State requires such a prohibition, he shall by regulation completely prohibit the discharge from a vessel of any sewage (whether treated or not) into such waters.

(B) Upon application by a State, the Administrator shall, by regulation, establish a drinking water intake zone in any waters within such State and prohibit the discharge of sewage from vessels within that zone.

**(g) Sales limited to certified devices; certification of test device; recordkeeping; reports**

(1) No manufacturer of a marine sanitation device shall sell, offer for sale, or introduce or deliver for introduction in interstate commerce, or import into the United States for sale or resale any marine sanitation device manufactured after the effective date of the standards and regulations promulgated under this section unless such device is in all material respects substantially the same as a test device certified under this subsection.

(2) Upon application of the manufacturer, the Secretary of the department in which the Coast Guard is operating shall so certify a marine sanitation device if he determines, in accordance with the provisions of this paragraph, that it meets the appropriate standards and regulations promulgated under this section. The Secretary of the department in which the Coast Guard is operating shall test or require such testing of the device in accordance with procedures set forth by the Administrator as to standards of performance and for such other purposes as may be appropriate. If the Secretary of the department in which the Coast Guard is operating determines that the device is satisfactory from the standpoint of safety and any other requirements of maritime law or regulation, and after consideration of the design, installation, operation, material, or other appropriate factors, he shall certify the device. Any device manufactured by such manufacturer which is in all material respects substantially the same as the certified test device shall be deemed to be in conformity with the appropriate standards and regulations established under this section.

(3) Every manufacturer shall establish and maintain such records, make such reports, and provide such information as the Administrator or the Secretary of the department in which the Coast Guard is operating may reasonably require to enable him to determine whether such manufacturer has acted or is acting in compliance with this section and regulations issued thereunder and shall, upon request of an officer or employee duly designated by the Administrator or the Secretary of the department in which the Coast Guard is operating, permit such officer or employee at reasonable times to have access to and copy such records. All information reported to or otherwise obtained by the Administrator or the Secretary of the Department in which the Coast Guard is operating or their representatives pursuant to this subsection which contains or relates to a trade secret or other matter referred to in section 1905 of title 18 shall be considered confidential for the purpose of that section, except that such information may be disclosed to other officers or employees concerned with carrying out this section. This paragraph shall not apply in the case of the construction of a vessel by an individual for his own use.

**(h) Sale and resale of properly equipped vessels; operability of certified marine sanitation devices**

After the effective date of standards and regulations promulgated under this section, it shall be unlawful—

(1) for the manufacturer of any vessel subject to such standards and regulations to manufacture for sale, to sell or offer for sale, or to distribute for sale or resale any such vessel unless it is equipped with a marine sanitation device which is in all material respects substantially the same as the appropriate test device certified pursuant to this section;

(2) for any person, prior to the sale or delivery of a vessel subject to such standards and regulations to the ultimate purchaser, wrongfully to remove or render inoperative any cer-

tified marine sanitation device or element of design of such device installed in such vessel;

(3) for any person to fail or refuse to permit access to or copying of records or to fail to make reports or provide information required under this section; and

(4) for a vessel subject to such standards and regulations to operate on the navigable waters of the United States, if such vessel is not equipped with an operable marine sanitation device certified pursuant to this section.

**(i) Jurisdiction to restrain violations; contempts**

The district courts of the United States shall have jurisdictions to restrain violations of subsection (g)(1) of this section and subsections (h)(1) through (3) of this section. Actions to restrain such violations shall be brought by, and in, the name of the United States. In case of contumacy or refusal to obey a subpoena served upon any person under this subsection, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce documents, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

**(j) Penalties**

Any person who violates subsection (g)(1) of this section, clause (1) or (2) of subsection (h) of this section, or subsection (n)(8) of this section shall be liable to a civil penalty of not more than \$5,000 for each violation. Any person who violates clause (4) of subsection (h) of this section or any regulation issued pursuant to this section shall be liable to a civil penalty of not more than \$2,000 for each violation. Each violation shall be a separate offense. The Secretary of the department in which the Coast Guard is operating may assess and compromise any such penalty. No penalty shall be assessed until the person charged shall have been given notice and an opportunity for a hearing on such charge. In determining the amount of the penalty, or the amount agreed upon in compromise, the gravity of the violation, and the demonstrated good faith of the person charged in attempting to achieve rapid compliance, after notification of a violation, shall be considered by said Secretary.

**(k) Enforcement authority**

The provisions of this section shall be enforced by the Secretary of the department in which the Coast Guard is operating and he may utilize by agreement, with or without reimbursement, law enforcement officers or other personnel and facilities of the Administrator, other Federal agencies, or the States to carry out the provisions of this section. The provisions of this section may also be enforced by a State.

**(l) Boarding and inspection of vessels; execution of warrants and other process**

Anyone authorized by the Secretary of the department in which the Coast Guard is operating to enforce the provisions of this section may, except as to public vessels, (1) board and inspect any vessel upon the navigable waters of the

United States and (2) execute any warrant or other process issued by an officer or court of competent jurisdiction.

**(m) Enforcement in United States possessions**

In the case of Guam and the Trust Territory of the Pacific Islands, actions arising under this section may be brought in the district court of Guam, and in the case of the Virgin Islands such actions may be brought in the district court of the Virgin Islands. In the case of American Samoa and the Trust Territory of the Pacific Islands, such actions may be brought in the District Court of the United States for the District of Hawaii and such court shall have jurisdiction of such actions. In the case of the Canal Zone, such actions may be brought in the District Court for the District of the Canal Zone.

**(n) Uniform national discharge standards for vessels of Armed Forces**

**(1) Applicability**

This subsection shall apply to vessels of the Armed Forces and discharges, other than sewage, incidental to the normal operation of a vessel of the Armed Forces, unless the Secretary of Defense finds that compliance with this subsection would not be in the national security interests of the United States.

**(2) Determination of discharges required to be controlled by marine pollution control devices**

**(A) In general**

The Administrator and the Secretary of Defense, after consultation with the Secretary of the department in which the Coast Guard is operating, the Secretary of Commerce, and interested States, shall jointly determine the discharges incidental to the normal operation of a vessel of the Armed Forces for which it is reasonable and practicable to require use of a marine pollution control device to mitigate adverse impacts on the marine environment. Notwithstanding subsection (a)(1) of section 553 of title 5, the Administrator and the Secretary of Defense shall promulgate the determinations in accordance with such section. The Secretary of Defense shall require the use of a marine pollution control device on board a vessel of the Armed Forces in any case in which it is determined that the use of such a device is reasonable and practicable.

**(B) Considerations**

In making a determination under subparagraph (A), the Administrator and the Secretary of Defense shall take into consideration—

- (i) the nature of the discharge;
  - (ii) the environmental effects of the discharge;
  - (iii) the practicability of using the marine pollution control device;
  - (iv) the effect that installation or use of the marine pollution control device would have on the operation or operational capability of the vessel;
  - (v) applicable United States law;
  - (vi) applicable international standards;
- and

(vii) the economic costs of the installation and use of the marine pollution control device.

**(3) Performance standards for marine pollution control devices**

**(A) In general**

For each discharge for which a marine pollution control device is determined to be required under paragraph (2), the Administrator and the Secretary of Defense, in consultation with the Secretary of the department in which the Coast Guard is operating, the Secretary of State, the Secretary of Commerce, other interested Federal agencies, and interested States, shall jointly promulgate Federal standards of performance for each marine pollution control device required with respect to the discharge. Notwithstanding subsection (a)(1) of section 553 of title 5, the Administrator and the Secretary of Defense shall promulgate the standards in accordance with such section.

**(B) Considerations**

In promulgating standards under this paragraph, the Administrator and the Secretary of Defense shall take into consideration the matters set forth in paragraph (2)(B).

**(C) Classes, types, and sizes of vessels**

The standards promulgated under this paragraph may—

- (i) distinguish among classes, types, and sizes of vessels;
- (ii) distinguish between new and existing vessels; and
- (iii) provide for a waiver of the applicability of the standards as necessary or appropriate to a particular class, type, age, or size of vessel.

**(4) Regulations for use of marine pollution control devices**

The Secretary of Defense, after consultation with the Administrator and the Secretary of the department in which the Coast Guard is operating, shall promulgate such regulations governing the design, construction, installation, and use of marine pollution control devices on board vessels of the Armed Forces as are necessary to achieve the standards promulgated under paragraph (3).

**(5) Deadlines; effective date**

**(A) Determinations**

The Administrator and the Secretary of Defense shall—

- (i) make the initial determinations under paragraph (2) not later than 2 years after February 10, 1996; and
- (ii) every 5 years—
  - (I) review the determinations; and
  - (II) if necessary, revise the determinations based on significant new information.

**(B) Standards**

The Administrator and the Secretary of Defense shall—

- (i) promulgate standards of performance for a marine pollution control device

under paragraph (3) not later than 2 years after the date of a determination under paragraph (2) that the marine pollution control device is required; and

(ii) every 5 years—

- (I) review the standards; and
- (II) if necessary, revise the standards, consistent with paragraph (3)(B) and based on significant new information.

**(C) Regulations**

The Secretary of Defense shall promulgate regulations with respect to a marine pollution control device under paragraph (4) as soon as practicable after the Administrator and the Secretary of Defense promulgate standards with respect to the device under paragraph (3), but not later than 1 year after the Administrator and the Secretary of Defense promulgate the standards. The regulations promulgated by the Secretary of Defense under paragraph (4) shall become effective upon promulgation unless another effective date is specified in the regulations.

**(D) Petition for review**

The Governor of any State may submit a petition requesting that the Secretary of Defense and the Administrator review a determination under paragraph (2) or a standard under paragraph (3), if there is significant new information, not considered previously, that could reasonably result in a change to the particular determination or standard after consideration of the matters set forth in paragraph (2)(B). The petition shall be accompanied by the scientific and technical information on which the petition is based. The Administrator and the Secretary of Defense shall grant or deny the petition not later than 2 years after the date of receipt of the petition.

**(6) Effect on other laws**

**(A) Prohibition on regulation by States or political subdivisions of States**

Beginning on the effective date of—

- (i) a determination under paragraph (2) that it is not reasonable and practicable to require use of a marine pollution control device regarding a particular discharge incidental to the normal operation of a vessel of the Armed Forces; or
- (ii) regulations promulgated by the Secretary of Defense under paragraph (4);

except as provided in paragraph (7), neither a State nor a political subdivision of a State may adopt or enforce any statute or regulation of the State or political subdivision with respect to the discharge or the design, construction, installation, or use of any marine pollution control device required to control discharges from a vessel of the Armed Forces.

**(B) Federal laws**

This subsection shall not affect the application of section 1321 of this title to discharges incidental to the normal operation of a vessel.

**(7) Establishment of State no-discharge zones****(A) State prohibition****(i) In general**

After the effective date of—

(I) a determination under paragraph (2) that it is not reasonable and practicable to require use of a marine pollution control device regarding a particular discharge incidental to the normal operation of a vessel of the Armed Forces; or

(II) regulations promulgated by the Secretary of Defense under paragraph (4);

if a State determines that the protection and enhancement of the quality of some or all of the waters within the State require greater environmental protection, the State may prohibit 1 or more discharges incidental to the normal operation of a vessel, whether treated or not treated, into the waters. No prohibition shall apply until the Administrator makes the determinations described in subclauses (II) and (III) of subparagraph (B)(i).

**(ii) Documentation**

To the extent that a prohibition under this paragraph would apply to vessels of the Armed Forces and not to other types of vessels, the State shall document the technical or environmental basis for the distinction.

**(B) Prohibition by the Administrator****(i) In general**

Upon application of a State, the Administrator shall by regulation prohibit the discharge from a vessel of 1 or more discharges incidental to the normal operation of a vessel, whether treated or not treated, into the waters covered by the application if the Administrator determines that—

(I) the protection and enhancement of the quality of the specified waters within the State require a prohibition of the discharge into the waters;

(II) adequate facilities for the safe and sanitary removal of the discharge incidental to the normal operation of a vessel are reasonably available for the waters to which the prohibition would apply; and

(III) the prohibition will not have the effect of discriminating against a vessel of the Armed Forces by reason of the ownership or operation by the Federal Government, or the military function, of the vessel.

**(ii) Approval or disapproval**

The Administrator shall approve or disapprove an application submitted under clause (i) not later than 90 days after the date on which the application is submitted to the Administrator. Notwithstanding clause (i)(II), the Administrator shall not disapprove an application for the sole reason that there are not adequate facilities to remove any discharge incidental to the normal operation of a vessel from vessels of the Armed Forces.

**(C) Applicability to foreign flagged vessels**

A prohibition under this paragraph—

(i) shall not impose any design, construction, manning, or equipment standard on a foreign flagged vessel engaged in innocent passage unless the prohibition implements a generally accepted international rule or standard; and

(ii) that relates to the prevention, reduction, and control of pollution shall not apply to a foreign flagged vessel engaged in transit passage unless the prohibition implements an applicable international regulation regarding the discharge of oil, oily waste, or any other noxious substance into the waters.

**(8) Prohibition relating to vessels of the Armed Forces**

After the effective date of the regulations promulgated by the Secretary of Defense under paragraph (4), it shall be unlawful for any vessel of the Armed Forces subject to the regulations to—

(A) operate in the navigable waters of the United States or the waters of the contiguous zone, if the vessel is not equipped with any required marine pollution control device meeting standards established under this subsection; or

(B) discharge overboard any discharge incidental to the normal operation of a vessel in waters with respect to which a prohibition on the discharge has been established under paragraph (7).

**(9) Enforcement**

This subsection shall be enforceable, as provided in subsections (j) and (k) of this section, against any agency of the United States responsible for vessels of the Armed Forces notwithstanding any immunity asserted by the agency.

**(o) Management practices for recreational vessels****(1) Applicability**

This subsection applies to any discharge, other than a discharge of sewage, from a recreational vessel that is—

(A) incidental to the normal operation of the vessel; and

(B) exempt from permitting requirements under section 1342(r) of this title.

**(2) Determination of discharges subject to management practices****(A) Determination****(i) In general**

The Administrator, in consultation with the Secretary of the department in which the Coast Guard is operating, the Secretary of Commerce, and interested States, shall determine the discharges incidental to the normal operation of a recreational vessel for which it is reasonable and practicable to develop management practices to mitigate adverse impacts on the waters of the United States.

**(ii) Promulgation**

The Administrator shall promulgate the determinations under clause (i) in accordance with section 553 of title 5.

**(iii) Management practices**

The Administrator shall develop management practices for recreational vessels in any case in which the Administrator determines that the use of those practices is reasonable and practicable.

**(B) Considerations**

In making a determination under subparagraph (A), the Administrator shall consider—

- (i) the nature of the discharge;
- (ii) the environmental effects of the discharge;
- (iii) the practicability of using a management practice;
- (iv) the effect that the use of a management practice would have on the operation, operational capability, or safety of the vessel;
- (v) applicable Federal and State law;
- (vi) applicable international standards; and
- (vii) the economic costs of the use of the management practice.

**(C) Timing**

The Administrator shall—

- (i) make the initial determinations under subparagraph (A) not later than 1 year after July 29, 2008; and
- (ii) every 5 years thereafter—
  - (I) review the determinations; and
  - (II) if necessary, revise the determinations based on any new information available to the Administrator.

**(3) Performance standards for management practices****(A) In general**

For each discharge for which a management practice is developed under paragraph (2), the Administrator, in consultation with the Secretary of the department in which the Coast Guard is operating, the Secretary of Commerce, other interested Federal agencies, and interested States, shall promulgate, in accordance with section 553 of title 5, Federal standards of performance for each management practice required with respect to the discharge.

**(B) Considerations**

In promulgating standards under this paragraph, the Administrator shall take into account the considerations described in paragraph (2)(B).

**(C) Classes, types, and sizes of vessels**

The standards promulgated under this paragraph may—

- (i) distinguish among classes, types, and sizes of vessels;
- (ii) distinguish between new and existing vessels; and
- (iii) provide for a waiver of the applicability of the standards as necessary or appropriate to a particular class, type, age, or size of vessel.

**(D) Timing**

The Administrator shall—

(i) promulgate standards of performance for a management practice under subparagraph (A) not later than 1 year after the date of a determination under paragraph (2) that the management practice is reasonable and practicable; and

(ii) every 5 years thereafter—

(I) review the standards; and

(II) if necessary, revise the standards, in accordance with subparagraph (B) and based on any new information available to the Administrator.

**(4) Regulations for the use of management practices****(A) In general**

The Secretary of the department in which the Coast Guard is operating shall promulgate such regulations governing the design, construction, installation, and use of management practices for recreational vessels as are necessary to meet the standards of performance promulgated under paragraph (3).

**(B) Regulations****(i) In general**

The Secretary shall promulgate the regulations under this paragraph as soon as practicable after the Administrator promulgates standards with respect to the practice under paragraph (3), but not later than 1 year after the date on which the Administrator promulgates the standards.

**(ii) Effective date**

The regulations promulgated by the Secretary under this paragraph shall be effective upon promulgation unless another effective date is specified in the regulations.

**(iii) Consideration of time**

In determining the effective date of a regulation promulgated under this paragraph, the Secretary shall consider the period of time necessary to communicate the existence of the regulation to persons affected by the regulation.

**(5) Effect of other laws**

This subsection shall not affect the application of section 1321 of this title to discharges incidental to the normal operation of a recreational vessel.

**(6) Prohibition relating to recreational vessels**

After the effective date of the regulations promulgated by the Secretary of the department in which the Coast Guard is operating under paragraph (4), the owner or operator of a recreational vessel shall neither operate in nor discharge any discharge incidental to the normal operation of the vessel into, the waters of the United States or the waters of the contiguous zone, if the owner or operator of the vessel is not using any applicable management practice meeting standards established under this subsection.

(June 30, 1948, ch. 758, title III, §312, as added Pub. L. 92-500, §2, Oct. 18, 1972, 86 Stat. 871; amended Pub. L. 95-217, §59, Dec. 27, 1977, 91 Stat. 1596; Pub. L. 96-88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 100-4, title III, §311,

Feb. 4, 1987, 101 Stat. 42; Pub. L. 104-106, div. A, title III, § 325(b)-(c)(2), Feb. 10, 1996, 110 Stat. 254-259; Pub. L. 110-288, § 4, July 29, 2008, 122 Stat. 2650.)

## REFERENCES IN TEXT

For definition of Canal Zone, referred to in subsecs. (a)(4) and (m), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

## AMENDMENTS

2008—Subsec. (o). Pub. L. 110-288 added subsec. (o).  
 1996—Subsec. (a)(8). Pub. L. 104-106, § 325(c)(1)(A), substituted “corporation, association, or agency of the United States,” for “corporation, or association.”  
 Subsec. (a)(12) to (14). Pub. L. 104-106, § 325(c)(1)(B), (C), added pars. (12) to (14).  
 Subsec. (j). Pub. L. 104-106, § 325(c)(2), substituted “subsection (g)(1) of this section, clause (1) or (2) of subsection (h) of this section, or subsection (n)(8) of this section shall be liable” for “subsection (g)(1) of this section or clause (1) or (2) of subsection (h) of this section shall be liable.”  
 Subsec. (n). Pub. L. 104-106, § 325(b), added subsec. (n).  
 1987—Subsec. (f)(1). Pub. L. 100-4, § 311(a), designated existing provision as subpar. (A), substituted “Except as provided in subparagraph (B), after” for “After”, and added subpar. (B).  
 Subsec. (k). Pub. L. 100-4, § 311(b), inserted at end “The provisions of this section may also be enforced by a State.”  
 1977—Subsec. (a)(6). Pub. L. 95-217, § 59(a), inserted “except that, with respect to commercial vessels on the Great Lakes, such term shall include graywater” after “receive or retain body wastes”.  
 Subsec. (a)(10), (11). Pub. L. 95-217, § 59(b), added pars. (10) and (11).  
 Subsec. (b)(1). Pub. L. 95-217, § 59(c), inserted references to standards established under subsec. (c)(1)(B) of this section and to standards promulgated under subsec. (c) of this section.  
 Subsec. (c)(1). Pub. L. 95-217, § 59(d), designated existing provisions as subpar. (A) and added subpar. (B).  
 Subsec. (f)(4). Pub. L. 95-217, § 59(e), designated existing provisions as subpar. (A) and added subpar. (B).

## CHANGE OF NAME

“Secretary of Health and Human Services” substituted for “Secretary of Health, Education, and Welfare” in subsec. (e) pursuant to section 509(b) of Pub. L. 96-88 which is classified to section 3508(b) of Title 20, Education.

## 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.

## TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

## TERMINATION OF UNITED STATES DISTRICT COURT FOR THE DISTRICT OF THE CANAL ZONE

For termination of the United States District Court for the District of the Canal Zone at end of the “transition period”, being the 30-month period beginning Oct. 1, 1979, and ending midnight Mar. 31, 1982, see Paragraph 5 of Article XI of the Panama Canal Treaty of 1977 and sections 2101 and 2201 to 2203 of Pub. L. 96-70,

title II, Sept. 27, 1979, 93 Stat. 493, formerly classified to sections 3831 and 3841 to 3843, respectively, of Title 22, Foreign Relations and Intercourse.

## PURPOSE OF 1996 AMENDMENT

Pub. L. 104-106, div. A, title III, § 325(a), Feb. 10, 1996, 110 Stat. 254, provided that: “The purposes of this section [amending this section and section 1362 of this title and enacting provisions set out as a note below] are to—

- “(1) enhance the operational flexibility of vessels of the Armed Forces domestically and internationally;
- “(2) stimulate the development of innovative vessel pollution control technology; and
- “(3) advance the development by the United States Navy of environmentally sound ships.”

## COOPERATION IN NATIONAL DISCHARGE STANDARDS DEVELOPMENT

Pub. L. 104-106, div. A, title III, § 325(d), Feb. 10, 1996, 110 Stat. 259, provided that: “The Administrator of the Environmental Protection Agency and the Secretary of Defense may, by mutual agreement, with or without reimbursement, provide for the use of information, reports, personnel, or other resources of the Environmental Protection Agency or the Department of Defense to carry out section 312(n) of the Federal Water Pollution Control Act [33 U.S.C. 1322(n)] (as added by subsection (b)), including the use of the resources—

- “(1) to determine—
  - “(A) the nature and environmental effect of discharges incidental to the normal operation of a vessel of the Armed Forces;
  - “(B) the practicability of using marine pollution control devices on vessels of the Armed Forces; and
  - “(C) the effect that installation or use of marine pollution control devices on vessels of the Armed Forces would have on the operation or operational capability of the vessels; and
- “(2) to establish performance standards for marine pollution control devices on vessels of the Armed Forces.”

## CLEAN VESSELS

Pub. L. 102-587, title V, subtitle F, Nov. 4, 1992, 106 Stat. 5086, as amended by Pub. L. 109-59, title X, § 10131, Aug. 10, 2005, 119 Stat. 1931, provided that:

## “SEC. 5601. SHORT TITLE.

“This subtitle may be cited as the ‘Clean Vessel Act of 1992’.

## “SEC. 5602. FINDINGS; PURPOSE.

“(a) FINDINGS.—The Congress finds the following:

“(1) The discharge of untreated sewage by vessels is prohibited under Federal law in all areas within the navigable waters of the United States.

“(2) The discharge of treated sewage by vessels is prohibited under either Federal or State law in many of the United States bodies of water where recreational boaters operate.

“(3) There is currently an inadequate number of pumpout stations for type III marine sanitation devices where recreational vessels normally operate.

“(4) Sewage discharged by recreational vessels because of an inadequate number of pumpout stations is a substantial contributor to localized degradation of water quality in the United States.

“(b) PURPOSE.—The purpose of this subtitle is to provide funds to States for the construction, renovation, operation, and maintenance of pumpout stations and waste reception facilities.

## “SEC. 5603. DETERMINATION AND PLAN REGARDING STATE MARINE SANITATION DEVICE PUMPOUT STATION NEEDS.

“(a) SURVEY.—Within 3 months after the notification under section 5605(b), each coastal State shall conduct a survey to determine—

- “(1) the number and location of all operational pumpout stations and waste reception facilities at

public and private marinas, mooring areas, docks, and other boating access facilities within the coastal zone of the State; and

“(2) the number of recreational vessels in the coastal waters of the State with type III marine sanitation devices or portable toilets, and the areas of those coastal waters where those vessels congregate.

“(b) PLAN.—Within 6 months after the notification under section 5605(b), and based on the survey conducted under subsection (a), each coastal State shall—

“(1) develop and submit to the Secretary of the Interior a plan for any construction or renovation of pumpout stations and waste reception facilities that are necessary to ensure that, based on the guidance issued under section 5605(a), there are pumpout stations and waste reception facilities in the State that are adequate and reasonably available to meet the needs of recreational vessels using the coastal waters of the State; and

“(2) submit to the Secretary of the Interior with that plan a list of all stations and facilities in the coastal zone of the State which are operational on the date of submittal.

“(c) PLAN APPROVAL.—

“(1) IN GENERAL.—Not later than 60 days after a plan is submitted by a State under subsection (b), the Secretary of the Interior shall approve or disapprove the plan, based on—

“(A) the adequacy of the survey conducted by the State under subsection (a); and

“(B) the ability of the plan, based on the guidance issued under section 5605(a), to meet the construction and renovation needs of the recreational vessels identified in the survey.

“(2) NOTIFICATION OF STATE; MODIFICATION.—The Secretary of the Interior shall promptly notify the affected Governor of the approval or disapproval of a plan. If a plan is disapproved, the Secretary of the Interior shall recommend necessary modifications and return the plan to the affected Governor.

“(3) RESUBMITTAL.—Not later than 60 days after receiving a plan returned by the Secretary of the Interior, the Governor shall make the appropriate changes and resubmit the plan.

“(d) INDICATION OF STATIONS AND FACILITIES ON NOAA CHARTS.—

“(1) IN GENERAL.—The Under Secretary of Commerce for Oceans and Atmosphere shall indicate, on charts published by the National Oceanic and Atmospheric Administration for the use of operators of recreational vessels, the locations of pumpout stations and waste reception facilities.

“(2) NOTIFICATION OF NOAA.—

“(A) LISTS OF STATIONS AND FACILITIES.—The Secretary of the Interior shall transmit to the Under Secretary of Commerce for Oceans and Atmosphere each list of operational stations and facilities submitted by a State under subsection (b)(2), by not later than 30 days after the date of receipt of that list.

“(B) COMPLETION OF PROJECT.—The Director of the United States Fish and Wildlife Service shall notify the Under Secretary of the location of each station or facility at which a construction or renovation project is completed by a State with amounts made available under the Act of August 9, 1950 (16 U.S.C. 777a et seq. [16 U.S.C. 777 et seq.]), as amended by this subtitle, by not later than 30 days after the date of notification by a State of the completion of the project.

“SEC. 5604. FUNDING.

“(a) TRANSFER.—[Amended section 777c of Title 16, Conservation.]

“(b) ACCESS INCREASE.—[Amended section 777g of Title 16, Conservation.]

“(c) GRANT PROGRAM.—

“(1) MATCHING GRANTS.—The Secretary of the Interior may obligate an amount not to exceed the amount made available under section 4(b)(2) of the

Act of August 9, 1950 (16 U.S.C. 777c(b)(2) [now 16 U.S.C. 777c(b)(3)], as amended by this Act), to make grants to—

“(A) coastal States to pay not more than 75 percent of the cost to a coastal State of—

“(i) conducting a survey under section 5603(a);

“(ii) developing and submitting a plan and accompanying list under section 5603(b);

“(iii) constructing and renovating pumpout stations and waste reception facilities; and

“(iv) conducting a program to educate recreational boaters about the problem of human body waste discharges from vessels and inform them of the location of pumpout stations and waste reception facilities.

“(B) inland States, which can demonstrate to the Secretary of the Interior that there are an inadequate number of pumpout stations and waste reception facilities to meet the needs of recreational vessels in the waters of that State, to pay 75 percent of the cost to that State of—

“(i) constructing and renovating pumpout stations and waste reception facilities in the inland State; and

“(ii) conducting a program to educate recreational boaters about the problem of human body waste discharges from vessels and inform them of the location of pumpout stations and waste reception facilities.

“(2) PRIORITY.—In awarding grants under this subsection, the Secretary of the Interior shall give priority consideration to grant applications that—

“(A) provide for public/private partnership efforts to develop and operate pumpout stations and waste reception facilities; and

“(B) propose innovative ways to increase the availability and use of pumpout stations and waste reception facilities.

“(d) DISCLAIMER.—Nothing in this subtitle shall be interpreted to preclude a State from carrying out the provisions of this subtitle with funds other than those described in this section.

“SEC. 5605. GUIDANCE AND NOTIFICATION.

“(a) ISSUANCE OF GUIDANCE.—Not later than 3 months after the date of the enactment of this subtitle [Nov. 4, 1992], the Secretary of the Interior shall, after consulting with the Administrator of the Environmental Protection Agency, the Under Secretary of Commerce for Oceans and Atmosphere, and the Commandant of the Coast Guard, issue for public comment pumpout station and waste reception facility guidance. The Secretary of the Interior shall finalize the guidance not later than 6 months after the date of enactment of this subtitle. The guidance shall include—

“(1) guidance regarding the types of pumpout stations and waste reception facilities that may be appropriate for construction, renovation, operation, or maintenance with amounts available under the Act of August 9, 1950 (16 U.S.C. 777a et seq. [16 U.S.C. 777 et seq.]), as amended by this subtitle, and appropriate location of the stations and facilities within a marina or boatyard;

“(2) guidance defining what constitutes adequate and reasonably available pumpout stations and waste reception facilities in boating areas;

“(3) guidance on appropriate methods for disposal of vessel sewage from pumpout stations and waste reception facilities;

“(4) guidance on appropriate connector fittings to facilitate the sanitary and expeditious discharge of sewage from vessels;

“(5) guidance on the waters most likely to be affected by the discharge of sewage from vessels; and

“(6) other information that is considered necessary to promote the establishment of pumpout facilities to reduce sewage discharges from vessels and to protect United States waters.

“(b) NOTIFICATION.—Not later than one month after the guidance issued under subsection (a) is finalized,

the Secretary of the Interior shall provide notification in writing to the fish and wildlife, water pollution control, and coastal zone management authorities of each State, of—

- “(1) the availability of amounts under the Act of August 9, 1950 (16 U.S.C. 777a et seq. [16 U.S.C. 777 et seq.]) to implement the Clean Vessel Act of 1992; and
- “(2) the guidance developed under subsection (a).

“SEC. 5606. EFFECT ON STATE FUNDING ELIGIBILITY.

“This subtitle shall not be construed or applied to jeopardize any funds available to a coastal State under the Act of August 9, 1950 (16 U.S.C. 777a et seq. [16 U.S.C. 777 et seq.]), if the coastal State is, in good faith, pursuing a survey and plan designed to meet the purposes of this subtitle.

“SEC. 5607. APPLICABILITY.

“The requirements of section 5603 shall not apply to a coastal State if within six months after the date of enactment of this subtitle [Nov. 4, 1992] the Secretary of the Interior certifies that—

- “(1) the State has developed and is implementing a plan that will ensure that there will be pumpout stations and waste reception facilities adequate to meet the needs of recreational vessels in the coastal waters of the State; or
- “(2) existing pumpout stations and waste reception facilities in the coastal waters of the State are adequate to meet those needs.

“SEC. 5608. DEFINITIONS.

“For the purposes of this subtitle the term:

“(1) ‘coastal State’—

“(A) means a State of the United States in, or bordering on the Atlantic, Pacific, or Arctic Ocean; the Gulf of Mexico; Long Island Sound; or one or more of the Great Lakes;

“(B) includes Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa; and

“(C) does not include a State for which the ratio of the number of recreational vessels in the State numbered under chapter 123 of title 46, United States Code, to number of miles of shoreline (as that term is defined in section 926.2(d) of title 15, Code of Federal Regulations, as in effect on January 1, 1991), is less than one.

“(2) ‘coastal waters’ means—

“(A) in the Great Lakes area, the waters within the territorial jurisdiction of the United States consisting of the Great Lakes, their connecting waters, harbors, roadsteads, and estuary-type areas such as bays, shallows, and marshes; and

“(B) in other areas, those waters, adjacent to the shorelines, which contain a measurable percentage of sea water, including sounds, bay, lagoons, bays, ponds, and estuaries.

“(3) ‘coastal zone’ has the same meaning that term has in section 304(1) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453(1));

“(4) ‘inland State’ means a State which is not a coastal state;

“(5) ‘type III marine sanitation device’ means any equipment for installation on board a vessel which is specifically designed to receive, retain, and discharge human body wastes;

“(6) ‘pumpout station’ means a facility that pumps or receives human body wastes out of type III marine sanitation devices installed on board vessels;

“(7) ‘recreational vessel’ means a vessel—

“(A) manufactured for operation, or operated, primarily for pleasure; or

“(B) leased, rented, or chartered to another for the latter’s pleasure; and

“(8) ‘waste reception facility’ means a facility specifically designed to receive wastes from portable toilets carried on vessels, and does not include lavatories.”

CONTIGUOUS ZONE OF UNITED STATES

For extension of contiguous zone of United States, see Proc. No. 7219, set out as a note under section 1331 of Title 43, Public Lands.

§ 1323. Federal facilities pollution control

(a) Compliance with pollution control requirements by Federal entities

Each department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any property or facility, or (2) engaged in any activity resulting, or which may result, in the discharge or runoff of pollutants, and each officer, agent, or employee thereof in the performance of his official duties, shall be subject to, and comply with, all Federal, State, interstate, and local requirements, administrative authority, and process and sanctions respecting the control and abatement of water pollution in the same manner, and to the same extent as any nongovernmental entity including the payment of reasonable service charges. The preceding sentence shall apply (A) to any requirement whether substantive or procedural (including any recordkeeping or reporting requirement, any requirement respecting permits and any other requirement, whatsoever), (B) to the exercise of any Federal, State, or local administrative authority, and (C) to any process and sanction, whether enforced in Federal, State, or local courts or in any other manner. This subsection shall apply notwithstanding any immunity of such agencies, officers, agents, or employees under any law or rule of law. Nothing in this section shall be construed to prevent any department, agency, or instrumentality of the Federal Government, or any officer, agent, or employee thereof in the performance of his official duties, from removing to the appropriate Federal district court any proceeding to which the department, agency, or instrumentality or officer, agent, or employee thereof is subject pursuant to this section, and any such proceeding may be removed in accordance with section 1441 et seq. of title 28. No officer, agent, or employee of the United States shall be personally liable for any civil penalty arising from the performance of his official duties, for which he is not otherwise liable, and the United States shall be liable only for those civil penalties arising under Federal law or imposed by a State or local court to enforce an order or the process of such court. The President may exempt any effluent source of any department, agency, or instrumentality in the executive branch from compliance with any such a requirement if he determines it to be in the paramount interest of the United States to do so; except that no exemption may be granted from the requirements of section 1316 or 1317 of this title. No such exemptions shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation. Any exemption shall be for a period not in excess of one year, but additional exemptions may be granted for periods of not to exceed one year upon the President’s making a new determination. The

President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with his reason for granting such exemption. In addition to any such exemption of a particular effluent source, the President may, if he determines it to be in the paramount interest of the United States to do so, issue regulations exempting from compliance with the requirements of this section any weaponry, equipment, aircraft, vessels, vehicles, or other classes or categories of property, and access to such property, which are owned or operated by the Armed Forces of the United States (including the Coast Guard) or by the National Guard of any State and which are uniquely military in nature. The President shall reconsider the need for such regulations at three-year intervals.

**(b) Cooperation with Federal entities and limitation on facility construction**

(1) The Administrator shall coordinate with the head of each department, agency, or instrumentality of the Federal Government having jurisdiction over any property or facility utilizing federally owned wastewater facilities to develop a program of cooperation for utilizing wastewater control systems utilizing those innovative treatment processes and techniques for which guidelines have been promulgated under section 1314(d)(3) of this title. Such program shall include an inventory of property and facilities which could utilize such processes and techniques.

(2) Construction shall not be initiated for facilities for treatment of wastewater at any Federal property or facility after September 30, 1979, if alternative methods for wastewater treatment at such property or facility utilizing innovative treatment processes and techniques, including but not limited to methods utilizing recycle and reuse techniques and land treatment are not utilized, unless the life cycle cost of the alternative treatment works exceeds the life cycle cost of the most cost effective alternative by more than 15 per centum. The Administrator may waive the application of this paragraph in any case where the Administrator determines it to be in the public interest, or that compliance with this paragraph would interfere with the orderly compliance with conditions of a permit issued pursuant to section 1342 of this title.

**(c) Reasonable service charges**

**(1) In general**

For the purposes of this chapter, reasonable service charges described in subsection (a) include any reasonable nondiscriminatory fee, charge, or assessment that is—

(A) based on some fair approximation of the proportionate contribution of the property or facility to stormwater pollution (in terms of quantities of pollutants, or volume or rate of stormwater discharge or runoff from the property or facility); and

(B) used to pay or reimburse the costs associated with any stormwater management program (whether associated with a separate storm sewer system or a sewer system that manages a combination of stormwater and

sanitary waste), including the full range of programmatic and structural costs attributable to collecting stormwater, reducing pollutants in stormwater, and reducing the volume and rate of stormwater discharge, regardless of whether that reasonable fee, charge, or assessment is denominated a tax.

**(2) Limitation on accounts**

**(A) Limitation**

The payment or reimbursement of any fee, charge, or assessment described in paragraph (1) shall not be made using funds from any permanent authorization account in the Treasury.

**(B) Reimbursement or payment obligation of Federal Government**

Each department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government, as described in subsection (a), shall not be obligated to pay or reimburse any fee, charge, or assessment described in paragraph (1), except to the extent and in an amount provided in advance by any appropriations Act to pay or reimburse the fee, charge, or assessment.

(June 30, 1948, ch. 758, title III, §313, as added Pub. L. 92-500, §2, Oct. 18, 1972, 86 Stat. 875; amended Pub. L. 95-217, §§60, 61(a), Dec. 27, 1977, 91 Stat. 1597, 1598; Pub. L. 111-378, §1, Jan. 4, 2011, 124 Stat. 4128.)

AMENDMENTS

2011—Subsec. (c). Pub. L. 111-378 added subsec. (c).

1977—Subsec. (a). Pub. L. 95-217, §§60, 61(a), designated existing provisions as subsec. (a) and inserted provisions making officers, agents, or employees of Federal departments, agencies, or instrumentalities subject to Federal, State, interstate, and local requirements, administrative authority, process, and sanctions respecting the control and abatement of water pollution in the same manner and to the same extent as non-governmental entities, including the payment of reasonable service charges, inserted provisions covering Federal employee liability, and inserted provisions relating to military source exemptions and the issuance of regulations covering those exemptions.

Subsec. (b). Pub. L. 95-217, §60, added subsec. (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.

MARINE GUIDANCE SYSTEMS

Pub. L. 105-383, title IV, §425(b), Nov. 13, 1998, 112 Stat. 3441, provided that: "The Secretary of Transportation shall, within 12 months after the date of the enactment of this Act [Nov. 13, 1998], evaluate and report to the Congress on the suitability of marine sector laser lighting, cold cathode lighting, and ultraviolet enhanced vision technologies for use in guiding marine vessels and traffic."

FEDERAL COMPLIANCE WITH POLLUTION CONTROL STANDARDS

For provisions relating to the responsibility of the head of each Executive agency for compliance with ap-

licable pollution control standards, see Ex. Ord. No. 12088, Oct. 13, 1978, 43 F.R. 47707, set out as a note under section 4321 of Title 42, The Public Health and Welfare.

EXECUTIVE ORDER No. 11258

Ex. Ord. No. 11258, Nov. 17, 1965, 30 F.R. 14483, which related to prevention, control, and abatement of water pollution by federal activities, was superseded by Ex. Ord. No. 11286, July 2, 1966, 31 F.R. 9261.

EXECUTIVE ORDER No. 11288

Ex. Ord. No. 11288, July 2, 1966, 31 F.R. 9261, which provided for prevention, control, and abatement of water pollution from federal activities, was superseded by Ex. Ord. No. 11507, Feb. 4, 1970, 35 F.R. 2573.

**§ 1324. Clean lakes**

**(a) Establishment and scope of program**

**(1) State program requirements**

Each State on a biennial basis shall prepare and submit to the Administrator for his approval—

(A) an identification and classification according to eutrophic condition of all publicly owned lakes in such State;

(B) a description of procedures, processes, and methods (including land use requirements), to control sources of pollution of such lakes;

(C) a description of methods and procedures, in conjunction with appropriate Federal agencies, to restore the quality of such lakes;

(D) methods and procedures to mitigate the harmful effects of high acidity, including innovative methods of neutralizing and restoring buffering capacity of lakes and methods of removing from lakes toxic metals and other toxic substances mobilized by high acidity;

(E) a list and description of those publicly owned lakes in such State for which uses are known to be impaired, including those lakes which are known not to meet applicable water quality standards or which require implementation of control programs to maintain compliance with applicable standards and those lakes in which water quality has deteriorated as a result of high acidity that may reasonably be due to acid deposition; and

(F) an assessment of the status and trends of water quality in lakes in such State, including but not limited to, the nature and extent of pollution loading from point and nonpoint sources and the extent to which the use of lakes is impaired as a result of such pollution, particularly with respect to toxic pollution.

**(2) Submission as part of 1315(b)(1) report**

The information required under paragraph (1) shall be included in the report required under section 1315(b)(1) of this title, beginning with the report required under such section by April 1, 1988.

**(3) Report of Administrator**

Not later than 180 days after receipt from the States of the biennial information required under paragraph (1), the Administrator shall submit to the Committee on Public

Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on the status of water quality in lakes in the United States, including the effectiveness of the methods and procedures described in paragraph (1)(D).

**(4) Eligibility requirement**

Beginning after April 1, 1988, a State must have submitted the information required under paragraph (1) in order to receive grant assistance under this section.

**(b) Financial assistance to States**

The Administrator shall provide financial assistance to States in order to carry out methods and procedures approved by him under subsection (a) of this section. The Administrator shall provide financial assistance to States to prepare the identification and classification surveys required in subsection (a)(1) of this section.

**(c) Maximum amount of grant; authorization of appropriations**

(1) The amount granted to any State for any fiscal year under subsection (b) of this section shall not exceed 70 per centum of the funds expended by such State in such year for carrying out approved methods and procedures under subsection (a) of this section.

(2) There is authorized to be appropriated \$50,000,000 for each of fiscal years 2001 through 2005 for grants to States under subsection (b) of this section which such sums shall remain available until expended. The Administrator shall provide for an equitable distribution of such sums to the States with approved methods and procedures under subsection (a) of this section.

**(d) Demonstration program**

**(1) General requirements**

The Administrator is authorized and directed to establish and conduct at locations throughout the Nation a lake water quality demonstration program. The program shall, at a minimum—

(A) develop cost effective technologies for the control of pollutants to preserve or enhance lake water quality while optimizing multiple lakes uses;

(B) control nonpoint sources of pollution which are contributing to the degradation of water quality in lakes;

(C) evaluate the feasibility of implementing regional consolidated pollution control strategies;

(D) demonstrate environmentally preferred techniques for the removal and disposal of contaminated lake sediments;

(E) develop improved methods for the removal of silt, stumps, aquatic growth, and other obstructions which impair the quality of lakes;

(F) construct and evaluate silt traps and other devices or equipment to prevent or abate the deposit of sediment in lakes; and

(G) demonstrate the costs and benefits of utilizing dredged material from lakes in the reclamation of despoiled land.

**(2) Geographical requirements**

Demonstration projects authorized by this subsection shall be undertaken to reflect a va-

riety of geographical and environmental conditions. As a priority, the Administrator shall undertake demonstration projects at Lake Champlain, New York and Vermont; Lake Houston, Texas; Beaver Lake, Arkansas; Greenwood Lake and Belcher Creek, New Jersey; Deal Lake, New Jersey; Alcyon Lake, New Jersey; Gorton's Pond, Rhode Island; Lake Washington, Rhode Island; Lake Bomoseen, Vermont; Sauk Lake, Minnesota; Otsego Lake, New York; Oneida Lake, New York; Raystown Lake, Pennsylvania; Swan Lake, Itasca County, Minnesota; Walker Lake, Nevada; Lake Tahoe, California and Nevada; Ten Mile Lakes, Oregon; Woahink Lake, Oregon; Highland Lake, Connecticut; Lily Lake, New Jersey; Strawbridge Lake, New Jersey; Baboosic Lake, New Hampshire; French Pond, New Hampshire; Dillon Reservoir, Ohio; Tohopekaliga Lake, Florida; Lake Apopka, Florida; Lake George, New York; Lake Wallenpaupack, Pennsylvania; Lake Allatoona, Georgia; and Lake Worth, Texas.

### (3) Reports

Notwithstanding section 3003 of the Federal Reports Elimination and Sunset Act of 1995 (31 U.S.C. 1113 note; 109 Stat. 734-736), by January 1, 1997, and January 1 of every odd-numbered year thereafter, the Administrator shall report to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate on work undertaken pursuant to this subsection. Upon completion of the program authorized by this subsection, the Administrator shall submit to such committees a final report on the results of such program, along with recommendations for further measures to improve the water quality of the Nation's lakes.

### (4) Authorization of appropriations

#### (A) In general

There is authorized to be appropriated to carry out this subsection not to exceed \$40,000,000 for fiscal years beginning after September 30, 1986, to remain available until expended.

#### (B) Special authorizations

##### (i) Amount

There is authorized to be appropriated to carry out subsection (b) of this section with respect to subsection (a)(1)(D) of this section not to exceed \$25,000,000 for fiscal years beginning after September 30, 1986, to remain available until expended.

##### (ii) Distribution of funds

The Administrator shall provide for an equitable distribution of sums appropriated pursuant to this subparagraph among States carrying out approved methods and procedures. Such distribution shall be based on the relative needs of each such State for the mitigation of the harmful effects on lakes and other surface waters of high acidity that may reasonably be due to acid deposition or acid mine drainage.

##### (iii) Grants as additional assistance

The amount of any grant to a State under this subparagraph shall be in addi-

tion to, and not in lieu of, any other Federal financial assistance.

(June 30, 1948, ch. 758, title III, §314, as added Pub. L. 92-500, §2, Oct. 18, 1972, 86 Stat. 875; amended Pub. L. 95-217, §§4(f), 62(a), Dec. 27, 1977, 91 Stat. 1567, 1598; Pub. L. 96-483, §1(f), Oct. 21, 1980, 94 Stat. 2360; Pub. L. 100-4, title I, §101(g), title III, §315(a), (b), (d), Feb. 4, 1987, 101 Stat. 9, 49, 50, 52; Pub. L. 101-596, title III, §302, Nov. 16, 1990, 104 Stat. 3006; Pub. L. 104-66, title II, §2021(c), Dec. 21, 1995, 109 Stat. 727; Pub. L. 105-362, title V, §501(b), Nov. 10, 1998, 112 Stat. 3283; Pub. L. 106-457, title VII, §§701, 702, Nov. 7, 2000, 114 Stat. 1976; Pub. L. 107-303, title III, §302(b)(1), Nov. 27, 2002, 116 Stat. 2361.)

#### REFERENCES IN TEXT

Section 3003 of the Federal Reports Elimination and Sunset Act of 1995, referred to in subsec. (d)(3), is section 3003 of Pub. L. 104-66, which is set out as a note under section 1113 of Title 31, Money and Finance.

#### AMENDMENTS

2002—Subsec. (a)(3), (4). Pub. L. 107-303 repealed Pub. L. 105-362, §501(b). See 1998 Amendment note below.

2000—Subsec. (c)(2). Pub. L. 106-457, §701, substituted “\$50,000,000 for each of fiscal years 2001 through 2005” for “\$50,000,000 for the fiscal year ending June 30, 1973; \$100,000,000 for the fiscal year 1974; \$150,000,000 for the fiscal year 1975, \$50,000,000 for fiscal year 1977, \$60,000,000 for fiscal year 1978, \$60,000,000 for fiscal year 1979, \$60,000,000 for fiscal year 1980, \$30,000,000 for fiscal year 1981, \$30,000,000 for fiscal year 1982, such sums as may be necessary for fiscal years 1983 through 1985, and \$30,000,000 per fiscal year for each of the fiscal years 1986 through 1990”.

Subsec. (d)(2). Pub. L. 106-457, §702(1), inserted “Otsego Lake, New York; Oneida Lake, New York; Raystown Lake, Pennsylvania; Swan Lake, Itasca County, Minnesota; Walker Lake, Nevada; Lake Tahoe, California and Nevada; Ten Mile Lakes, Oregon; Woahink Lake, Oregon; Highland Lake, Connecticut; Lily Lake, New Jersey; Strawbridge Lake, New Jersey; Baboosic Lake, New Hampshire; French Pond, New Hampshire; Dillon Reservoir, Ohio; Tohopekaliga Lake, Florida; Lake Apopka, Florida; Lake George, New York; Lake Wallenpaupack, Pennsylvania; Lake Allatoona, Georgia;” after “Sauk Lake, Minnesota;”.

Subsec. (d)(3). Pub. L. 106-457, §702(2), substituted “Notwithstanding section 3003 of the Federal Reports Elimination and Sunset Act of 1995 (31 U.S.C. 1113 note; 109 Stat. 734-736), by” for “By”.

Subsec. (d)(4)(B)(i). Pub. L. 106-457, §702(3), substituted “\$25,000,000” for “\$15,000,000”.

1998—Subsec. (a)(3), (4). Pub. L. 105-362, §501(b), which directed the redesignation of par. (4) as (3) and striking out of heading and text of par. (3), was repealed by Pub. L. 107-303. See Effective Date of 2002 Amendment note below.

1995—Subsec. (d)(3). Pub. L. 104-66 substituted “By January 1, 1997, and January 1 of every odd-numbered year thereafter, the Administrator shall report to the Committee on Transportation and Infrastructure” for “The Administrator shall report annually to the Committee on Public Works and Transportation”.

1990—Subsec. (d)(2). Pub. L. 101-596 inserted “Lake Champlain, New York and Vermont;” before “Lake Houston, Texas”.

1987—Subsec. (a). Pub. L. 100-4, §315(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “Each State shall prepare or establish, and submit to the Administrator for his approval—

“(1) an identification and classification according to eutrophic condition of all publicly owned fresh water lakes in such State;

“(2) procedures, processes, and methods (including land use requirements), to control sources of pollution of such lakes; and

“(3) methods and procedures, in conjunction with appropriate Federal agencies, to restore the quality of such lakes.”

Subsec. (b). Pub. L. 100-4, §315(d)(1), substituted “subsection (a) of this section” for “this section” in first sentence.

Subsec. (c)(1). Pub. L. 100-4, §315(d)(2), substituted “subsection (b) of this section” for first reference to “this section” and “subsection (a) of this section” for second reference to “this section”.

Subsec. (c)(2). Pub. L. 100-4, §§101(g), 315(d)(3), struck out “and” after “1981,” and inserted “, such sums as may be necessary for fiscal years 1983 through 1985, and \$30,000,000 per fiscal year for each of the fiscal years 1986 through 1990” after “1982”, and substituted “subsection (b) of this section” for first reference to “this section” and “subsection (a) of this section” for second reference to “this section”.

Subsec. (d). Pub. L. 100-4, §315(b), added subsec. (d).

1980—Subsec. (c)(2). Pub. L. 96-483 inserted authorization of \$30,000,000 for each of fiscal years 1981 and 1982.

1977—Subsec. (b). Pub. L. 95-217, §62(a), inserted provision directing the Administrator to provide financial assistance to States to prepare the identification and classification surveys required in subsec. (a)(1) of this section.

Subsec. (c)(2). Pub. L. 95-217, §4(f), substituted “\$150,000,000 for the fiscal year 1975, \$50,000,000 for fiscal year 1977, \$60,000,000 for fiscal year 1978, \$60,000,000 for fiscal year 1979, and \$60,000,000 for fiscal year 1980” for “and \$150,000,000 for the fiscal year 1975”.

#### EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-303 effective Nov. 10, 1998, and Federal Water Pollution Act (33 U.S.C. 1251 et seq.) to be applied and administered on and after Nov. 27, 2002, as if amendments made by section 501(a)-(d) of Pub. L. 105-362 had not been enacted, see section 302(b) of Pub. L. 107-303, set out as a note under section 1254 of this title.

### § 1325. National Study Commission

#### (a) Establishment

There is established a National Study Commission, which shall make a full and complete investigation and study of all of the technological aspects of achieving, and all aspects of the total economic, social, and environmental effects of achieving or not achieving, the effluent limitations and goals set forth for 1983 in section 1311(b)(2) of this title.

#### (b) Membership; chairman

Such Commission shall be composed of fifteen members, including five members of the Senate, who are members of the Environment and Public Works committee, appointed by the President of the Senate, five members of the House, who are members of the Public Works and Transportation committee, appointed by the Speaker of the House, and five members of the public appointed by the President. The Chairman of such Commission shall be elected from among its members.

#### (c) Contract authority

In the conduct of such study, the Commission is authorized to contract with the National Academy of Sciences and the National Academy of Engineering (acting through the National Research Council), the National Institute of Ecology, Brookings Institution, and other non-governmental entities, for the investigation of matters within their competence.

#### (d) Cooperation of departments, agencies, and instrumentalities of executive branch

The heads of the departments, agencies and instrumentalities of the executive branch of the Federal Government shall cooperate with the Commission in carrying out the requirements of this section, and shall furnish to the Commission such information as the Commission deems necessary to carry out this section.

#### (e) Report to Congress

A report shall be submitted to the Congress of the results of such investigation and study, together with recommendations, not later than three years after October 18, 1972.

#### (f) Compensation and allowances

The members of the Commission who are not officers or employees of the United States, while attending conferences or meetings of the Commission or while otherwise serving at the request of the Chairman shall be entitled to receive compensation at a rate not in excess of the maximum rate of pay for Grade GS-18, as provided in the General Schedule under section 5332 of title 5, including traveltime and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence as authorized by law for persons in the Government service employed intermittently.

#### (g) Appointment of personnel

In addition to authority to appoint personnel subject to the provisions of title 5 governing appointments in the competitive service, and to pay such personnel in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, the Commission shall have authority to enter into contracts with private or public organizations who shall furnish the Commission with such administrative and technical personnel as may be necessary to carry out the purpose of this section. Personnel furnished by such organizations under this subsection are not, and shall not be considered to be, Federal employees for any purposes, but in the performance of their duties shall be guided by the standards which apply to employees of the legislative branches under rules 41 and 43<sup>1</sup> of the Senate and House of Representatives, respectively.

#### (h) Authorization of appropriation

There is authorized to be appropriated, for use in carrying out this section, not to exceed \$17,250,000.

(June 30, 1948, ch. 758, title III, §315, as added Pub. L. 92-500, §2, Oct. 18, 1972, 86 Stat. 875; amended Pub. L. 93-207, §1(5), Dec. 28, 1973, 87 Stat. 906; Pub. L. 93-592, §5, Jan. 2, 1975, 88 Stat. 1925; Pub. L. 94-238, Mar. 23, 1976, 90 Stat. 250; H. Res. 988, Oct. 8, 1974; S. Res. 4, Feb. 4, 1977.)

#### REFERENCES IN TEXT

Travel expenses, including per diem in lieu of subsistence as authorized by law, referred to subsec. (f), probably refers to the allowances authorized by section 5703 of Title 5, Government Organization and Employees.

<sup>1</sup> See References in Text note below.

The General Schedule, referred to in subsec. (g), is set out under section 5332 of Title 5.

The Rules of the House of Representatives for the One Hundred Sixth Congress were adopted and amended generally by House Resolution No. 5, One Hundred Sixth Congress, Jan. 6, 1999. Provisions formerly appearing in rule 43, referred to in subsec. (g), were contained in rule XXIV, which was subsequently renumbered Rule XXIII by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

#### AMENDMENTS

1976—Subsec. (h). Pub. L. 94-238 substituted “\$17,250,000” for “\$17,000,000”.

1975—Subsec. (h). Pub. L. 93-592 substituted “\$17,000,000” for “\$15,000,000”.

1973—Subsecs. (g), (h). Pub. L. 93-207 added subsec. (g) and redesignated former subsec. (g) as (h).

#### CHANGE OF NAME

Committee on Public Works of Senate abolished and replaced by Committee on Environment and Public Works of Senate, effective Feb. 11, 1977. See Rule XXV of Standing Rules of Senate, as amended by Senate Resolution No. 4 (popularly cited as the “Committee System Reorganization Amendments of 1977”), approved Feb. 4, 1977.

Committee on Public Works of House of Representatives changed to Committee on Public Works and Transportation of House of Representatives, effective Jan. 3, 1975, by House Resolution No. 988, 93d Congress. Committee on Public Works and Transportation of House of Representatives treated as referring to Committee on Transportation and Infrastructure of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

#### REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

### § 1326. Thermal discharges

#### (a) Effluent limitations that will assure protection and propagation of balanced, indigenous population of shellfish, fish, and wildlife

With respect to any point source otherwise subject to the provisions of section 1311 of this title or section 1316 of this title, whenever the owner or operator of any such source, after opportunity for public hearing, can demonstrate to the satisfaction of the Administrator (or, if appropriate, the State) that any effluent limitation proposed for the control of the thermal component of any discharge from such source will require effluent limitations more stringent than necessary to assure the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife in and on the body of water into which the discharge is to be made, the Administrator (or, if appropriate, the State) may impose an effluent limitation under such sections for such plant, with respect to the thermal component of such discharge (taking into account the interaction of such thermal component with other pollutants), that will assure the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife in and on that body of water.

#### (b) Cooling water intake structures

Any standard established pursuant to section 1311 of this title or section 1316 of this title and applicable to a point source shall require that the location, design, construction, and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impact.

#### (c) Period of protection from more stringent effluent limitations following discharge point source modification commenced after October 18, 1972

Notwithstanding any other provision of this chapter, any point source of a discharge having a thermal component, the modification of which point source is commenced after October 18, 1972, and which, as modified, meets effluent limitations established under section 1311 of this title or, if more stringent, effluent limitations established under section 1313 of this title and which effluent limitations will assure protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife in or on the water into which the discharge is made, shall not be subject to any more stringent effluent limitation with respect to the thermal component of its discharge during a ten year period beginning on the date of completion of such modification or during the period of depreciation or amortization of such facility for the purpose of section 167 or 169 (or both) of title 26, whichever period ends first.

(June 30, 1948, ch. 758, title III, § 316, as added Pub. L. 92-500, § 2, Oct. 18, 1972, 86 Stat. 876; amended Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095.)

#### AMENDMENTS

1986—Subsec. (c). Pub. L. 99-514 substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”, which for purposes of codification was translated as “title 26” thus requiring no change in text.

### § 1327. Omitted

#### CODIFICATION

Section, act June 30, 1948, ch. 758, title III, § 317, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 877, authorized Administrator to investigate and study feasibility of alternate methods of financing cost of preventing, controlling, and abating pollution as directed by Water Quality Improvement Act of 1970 and to report to Congress, not later than two years after Oct. 18, 1972, the results of investigation and study accompanied by recommendations for financing these programs for fiscal years beginning after 1976.

### § 1328. Aquaculture

#### (a) Authority to permit discharge of specific pollutants

The Administrator is authorized, after public hearings, to permit the discharge of a specific pollutant or pollutants under controlled conditions associated with an approved aquaculture project under Federal or State supervision pursuant to section 1342 of this title.

#### (b) Procedures and guidelines

The Administrator shall by regulation establish any procedures and guidelines which the Administrator deems necessary to carry out this

section. Such regulations shall require the application to such discharge of each criterion, factor, procedure, and requirement applicable to a permit issued under section 1342 of this title, as the Administrator determines necessary to carry out the objective of this chapter.

**(c) State administration**

Each State desiring to administer its own permit program within its jurisdiction for discharge of a specific pollutant or pollutants under controlled conditions associated with an approved aquaculture project may do so if upon submission of such program the Administrator determines such program is adequate to carry out the objective of this chapter.

(June 30, 1948, ch. 758, title III, §318, as added Pub. L. 92-500, §2, Oct. 18, 1972, 86 Stat. 877; amended Pub. L. 95-217, §63, Dec. 27, 1977, 91 Stat. 1599.)

AMENDMENTS

1977—Subsec. (a). Pub. L. 95-217 inserted “pursuant to section 1342 of this title” after “Federal or State supervision”.

Subsec. (b). Pub. L. 95-217 struck out “, not later than January 1, 1974,” after “The Administrator shall by regulation” in existing provisions and inserted provisions that the regulations require the application to the discharge of each criterion, factor, procedure, and requirement applicable to a permit issued under section 1342 of this title, as the Administrator determines necessary to carry out the objectives of this chapter.

Subsec. (c). Pub. L. 95-217 added subsec. (c).

**§ 1329. Nonpoint source management programs**

**(a) State assessment reports**

**(1) Contents**

The Governor of each State shall, after notice and opportunity for public comment, prepare and submit to the Administrator for approval, a report which—

(A) identifies those navigable waters within the State which, without additional action to control nonpoint sources of pollution, cannot reasonably be expected to attain or maintain applicable water quality standards or the goals and requirements of this chapter;

(B) identifies those categories and subcategories of nonpoint sources or, where appropriate, particular nonpoint sources which add significant pollution to each portion of the navigable waters identified under subparagraph (A) in amounts which contribute to such portion not meeting such water quality standards or such goals and requirements;

(C) describes the process, including inter-governmental coordination and public participation, for identifying best management practices and measures to control each category and subcategory of nonpoint sources and, where appropriate, particular nonpoint sources identified under subparagraph (B) and to reduce, to the maximum extent practicable, the level of pollution resulting from such category, subcategory, or source; and

(D) identifies and describes State and local programs for controlling pollution added from nonpoint sources to, and improving the

quality of, each such portion of the navigable waters, including but not limited to those programs which are receiving Federal assistance under subsections (h) and (i) of this section.

**(2) Information used in preparation**

In developing the report required by this section, the State (A) may rely upon information developed pursuant to sections 1288, 1313(e), 1314(f), 1315(b), and 1324 of this title, and other information as appropriate, and (B) may utilize appropriate elements of the waste treatment management plans developed pursuant to sections 1288(b) and 1313 of this title, to the extent such elements are consistent with and fulfill the requirements of this section.

**(b) State management programs**

**(1) In general**

The Governor of each State, for that State or in combination with adjacent States, shall, after notice and opportunity for public comment, prepare and submit to the Administrator for approval a management program which such State proposes to implement in the first four fiscal years beginning after the date of submission of such management program for controlling pollution added from nonpoint sources to the navigable waters within the State and improving the quality of such waters.

**(2) Specific contents**

Each management program proposed for implementation under this subsection shall include each of the following:

(A) An identification of the best management practices and measures which will be undertaken to reduce pollutant loadings resulting from each category, subcategory, or particular nonpoint source designated under paragraph (1)(B), taking into account the impact of the practice on ground water quality.

(B) An identification of programs (including, as appropriate, nonregulatory or regulatory programs for enforcement, technical assistance, financial assistance, education, training, technology transfer, and demonstration projects) to achieve implementation of the best management practices by the categories, subcategories, and particular nonpoint sources designated under subparagraph (A).

(C) A schedule containing annual milestones for (i) utilization of the program implementation methods identified in subparagraph (B), and (ii) implementation of the best management practices identified in subparagraph (A) by the categories, subcategories, or particular nonpoint sources designated under paragraph (1)(B). Such schedule shall provide for utilization of the best management practices at the earliest practicable date.

(D) A certification of the attorney general of the State or States (or the chief attorney of any State water pollution control agency which has independent legal counsel) that the laws of the State or States, as the case may be, provide adequate authority to im-

plement such management program or, if there is not such adequate authority, a list of such additional authorities as will be necessary to implement such management program. A schedule and commitment by the State or States to seek such additional authorities as expeditiously as practicable.

(E) Sources of Federal and other assistance and funding (other than assistance provided under subsections (h) and (i) of this section) which will be available in each of such fiscal years for supporting implementation of such practices and measures and the purposes for which such assistance will be used in each of such fiscal years.

(F) An identification of Federal financial assistance programs and Federal development projects for which the State will review individual assistance applications or development projects for their effect on water quality pursuant to the procedures set forth in Executive Order 12372 as in effect on September 17, 1983, to determine whether such assistance applications or development projects would be consistent with the program prepared under this subsection; for the purposes of this subparagraph, identification shall not be limited to the assistance programs or development projects subject to Executive Order 12372 but may include any programs listed in the most recent Catalog of Federal Domestic Assistance which may have an effect on the purposes and objectives of the State's nonpoint source pollution management program.

**(3) Utilization of local and private experts**

In developing and implementing a management program under this subsection, a State shall, to the maximum extent practicable, involve local public and private agencies and organizations which have expertise in control of nonpoint sources of pollution.

**(4) Development on watershed basis**

A State shall, to the maximum extent practicable, develop and implement a management program under this subsection on a watershed-by-watershed basis within such State.

**(c) Administrative provisions**

**(1) Cooperation requirement**

Any report required by subsection (a) of this section and any management program and report required by subsection (b) of this section shall be developed in cooperation with local, substate regional, and interstate entities which are actively planning for the implementation of nonpoint source pollution controls and have either been certified by the Administrator in accordance with section 1288 of this title, have worked jointly with the State on water quality management planning under section 1285(j) of this title, or have been designated by the State legislative body or Governor as water quality management planning agencies for their geographic areas.

**(2) Time period for submission of reports and management programs**

Each report and management program shall be submitted to the Administrator during the 18-month period beginning on February 4, 1987.

**(d) Approval or disapproval of reports and management programs**

**(1) Deadline**

Subject to paragraph (2), not later than 180 days after the date of submission to the Administrator of any report or management program under this section (other than subsections (h), (i), and (k) of this section), the Administrator shall either approve or disapprove such report or management program, as the case may be. The Administrator may approve a portion of a management program under this subsection. If the Administrator does not disapprove a report, management program, or portion of a management program in such 180-day period, such report, management program, or portion shall be deemed approved for purposes of this section.

**(2) Procedure for disapproval**

If, after notice and opportunity for public comment and consultation with appropriate Federal and State agencies and other interested persons, the Administrator determines that—

(A) the proposed management program or any portion thereof does not meet the requirements of subsection (b)(2) of this section or is not likely to satisfy, in whole or in part, the goals and requirements of this chapter;

(B) adequate authority does not exist, or adequate resources are not available, to implement such program or portion;

(C) the schedule for implementing such program or portion is not sufficiently expeditious; or

(D) the practices and measures proposed in such program or portion are not adequate to reduce the level of pollution in navigable waters in the State resulting from nonpoint sources and to improve the quality of navigable waters in the State;

the Administrator shall within 6 months of the receipt of the proposed program notify the State of any revisions or modifications necessary to obtain approval. The State shall thereupon have an additional 3 months to submit its revised management program and the Administrator shall approve or disapprove such revised program within three months of receipt.

**(3) Failure of State to submit report**

If a Governor of a State does not submit the report required by subsection (a) of this section within the period specified by subsection (c)(2) of this section, the Administrator shall, within 30 months after February 4, 1987, prepare a report for such State which makes the identifications required by paragraphs (1)(A) and (1)(B) of subsection (a) of this section. Upon completion of the requirement of the preceding sentence and after notice and opportunity for comment, the Administrator shall report to Congress on his actions pursuant to this section.

**(e) Local management programs; technical assistance**

If a State fails to submit a management program under subsection (b) of this section or the

Administrator does not approve such a management program, a local public agency or organization which has expertise in, and authority to, control water pollution resulting from nonpoint sources in any area of such State which the Administrator determines is of sufficient geographic size may, with approval of such State, request the Administrator to provide, and the Administrator shall provide, technical assistance to such agency or organization in developing for such area a management program which is described in subsection (b) of this section and can be approved pursuant to subsection (d) of this section. After development of such management program, such agency or organization shall submit such management program to the Administrator for approval. If the Administrator approves such management program, such agency or organization shall be eligible to receive financial assistance under subsection (h) of this section for implementation of such management program as if such agency or organization were a State for which a report submitted under subsection (a) of this section and a management program submitted under subsection (b) of this section were approved under this section. Such financial assistance shall be subject to the same terms and conditions as assistance provided to a State under subsection (h) of this section.

**(f) Technical assistance for States**

Upon request of a State, the Administrator may provide technical assistance to such State in developing a management program approved under subsection (b) of this section for those portions of the navigable waters requested by such State.

**(g) Interstate management conference**

**(1) Convening of conference; notification; purpose**

If any portion of the navigable waters in any State which is implementing a management program approved under this section is not meeting applicable water quality standards or the goals and requirements of this chapter as a result, in whole or in part, of pollution from nonpoint sources in another State, such State may petition the Administrator to convene, and the Administrator shall convene, a management conference of all States which contribute significant pollution resulting from nonpoint sources to such portion. If, on the basis of information available, the Administrator determines that a State is not meeting applicable water quality standards or the goals and requirements of this chapter as a result, in whole or in part, of significant pollution from nonpoint sources in another State, the Administrator shall notify such States. The Administrator may convene a management conference under this paragraph not later than 180 days after giving such notification, whether or not the State which is not meeting such standards requests such conference. The purpose of such conference shall be to develop an agreement among such States to reduce the level of pollution in such portion resulting from nonpoint sources and to improve the water quality of such portion. Not-

ing in such agreement shall supersede or abrogate rights to quantities of water which have been established by interstate water compacts, Supreme Court decrees, or State water laws. This subsection shall not apply to any pollution which is subject to the Colorado River Basin Salinity Control Act [43 U.S.C. 1571 et seq.]. The requirement that the Administrator convene a management conference shall not be subject to the provisions of section 1365 of this title.

**(2) State management program requirement**

To the extent that the States reach agreement through such conference, the management programs of the States which are parties to such agreements and which contribute significant pollution to the navigable waters or portions thereof not meeting applicable water quality standards or goals and requirements of this chapter will be revised to reflect such agreement. Such management programs shall be consistent with Federal and State law.

**(h) Grant program**

**(1) Grants for implementation of management programs**

Upon application of a State for which a report submitted under subsection (a) of this section and a management program submitted under subsection (b) of this section is approved under this section, the Administrator shall make grants, subject to such terms and conditions as the Administrator considers appropriate, under this subsection to such State for the purpose of assisting the State in implementing such management program. Funds reserved pursuant to section 1285(j)(5) of this title may be used to develop and implement such management program.

**(2) Applications**

An application for a grant under this subsection in any fiscal year shall be in such form and shall contain such other information as the Administrator may require, including an identification and description of the best management practices and measures which the State proposes to assist, encourage, or require in such year with the Federal assistance to be provided under the grant.

**(3) Federal share**

The Federal share of the cost of each management program implemented with Federal assistance under this subsection in any fiscal year shall not exceed 60 percent of the cost incurred by the State in implementing such management program and shall be made on condition that the non-Federal share is provided from non-Federal sources.

**(4) Limitation on grant amounts**

Notwithstanding any other provision of this subsection, not more than 15 percent of the amount appropriated to carry out this subsection may be used to make grants to any one State, including any grants to any local public agency or organization with authority to control pollution from nonpoint sources in any area of such State.

**(5) Priority for effective mechanisms**

For each fiscal year beginning after September 30, 1987, the Administrator may give prior-

ity in making grants under this subsection, and shall give consideration in determining the Federal share of any such grant, to States which have implemented or are proposing to implement management programs which will—

(A) control particularly difficult or serious nonpoint source pollution problems, including, but not limited to, problems resulting from mining activities;

(B) implement innovative methods or practices for controlling nonpoint sources of pollution, including regulatory programs where the Administrator deems appropriate;

(C) control interstate nonpoint source pollution problems; or

(D) carry out ground water quality protection activities which the Administrator determines are part of a comprehensive nonpoint source pollution control program, including research, planning, ground water assessments, demonstration programs, enforcement, technical assistance, education, and training to protect ground water quality from nonpoint sources of pollution.

**(6) Availability for obligation**

The funds granted to each State pursuant to this subsection in a fiscal year shall remain available for obligation by such State for the fiscal year for which appropriated. The amount of any such funds not obligated by the end of such fiscal year shall be available to the Administrator for granting to other States under this subsection in the next fiscal year.

**(7) Limitation on use of funds**

States may use funds from grants made pursuant to this section for financial assistance to persons only to the extent that such assistance is related to the costs of demonstration projects.

**(8) Satisfactory progress**

No grant may be made under this subsection in any fiscal year to a State which in the preceding fiscal year received a grant under this subsection unless the Administrator determines that such State made satisfactory progress in such preceding fiscal year in meeting the schedule specified by such State under subsection (b)(2) of this section.

**(9) Maintenance of effort**

No grant may be made to a State under this subsection in any fiscal year unless such State enters into such agreements with the Administrator as the Administrator may require to ensure that such State will maintain its aggregate expenditures from all other sources for programs for controlling pollution added to the navigable waters in such State from nonpoint sources and improving the quality of such waters at or above the average level of such expenditures in its two fiscal years preceding February 4, 1987.

**(10) Request for information**

The Administrator may request such information, data, and reports as he considers necessary to make the determination of continuing eligibility for grants under this section.

**(11) Reporting and other requirements**

Each State shall report to the Administrator on an annual basis concerning (A) its progress in meeting the schedule of milestones submitted pursuant to subsection (b)(2)(C) of this section, and (B) to the extent that appropriate information is available, reductions in nonpoint source pollutant loading and improvements in water quality for those navigable waters or watersheds within the State which were identified pursuant to subsection (a)(1)(A) of this section resulting from implementation of the management program.

**(12) Limitation on administrative costs**

For purposes of this subsection, administrative costs in the form of salaries, overhead, or indirect costs for services provided and charged against activities and programs carried out with a grant under this subsection shall not exceed in any fiscal year 10 percent of the amount of the grant in such year, except that costs of implementing enforcement and regulatory activities, education, training, technical assistance, demonstration projects, and technology transfer programs shall not be subject to this limitation.

**(i) Grants for protecting groundwater quality**

**(1) Eligible applicants and activities**

Upon application of a State for which a report submitted under subsection (a) of this section and a plan submitted under subsection (b) of this section is approved under this section, the Administrator shall make grants under this subsection to such State for the purpose of assisting such State in carrying out groundwater quality protection activities which the Administrator determines will advance the State toward implementation of a comprehensive nonpoint source pollution control program. Such activities shall include, but not be limited to, research, planning, groundwater assessments, demonstration programs, enforcement, technical assistance, education and training to protect the quality of groundwater and to prevent contamination of groundwater from nonpoint sources of pollution.

**(2) Applications**

An application for a grant under this subsection shall be in such form and shall contain such information as the Administrator may require.

**(3) Federal share; maximum amount**

The Federal share of the cost of assisting a State in carrying out groundwater protection activities in any fiscal year under this subsection shall be 50 percent of the costs incurred by the State in carrying out such activities, except that the maximum amount of Federal assistance which any State may receive under this subsection in any fiscal year shall not exceed \$150,000.

**(4) Report**

The Administrator shall include in each report transmitted under subsection (m) of this section a report on the activities and programs implemented under this subsection during the preceding fiscal year.

**(j) Authorization of appropriations**

There is authorized to be appropriated to carry out subsections (h) and (i) of this section not to exceed \$70,000,000 for fiscal year 1988, \$100,000,000 per fiscal year for each of fiscal years 1989 and 1990, and \$130,000,000 for fiscal year 1991; except that for each of such fiscal years not to exceed \$7,500,000 may be made available to carry out subsection (i) of this section. Sums appropriated pursuant to this subsection shall remain available until expended.

**(k) Consistency of other programs and projects with management programs**

The Administrator shall transmit to the Office of Management and Budget and the appropriate Federal departments and agencies a list of those assistance programs and development projects identified by each State under subsection (b)(2)(F) of this section for which individual assistance applications and projects will be reviewed pursuant to the procedures set forth in Executive Order 12372 as in effect on September 17, 1983. Beginning not later than sixty days after receiving notification by the Administrator, each Federal department and agency shall modify existing regulations to allow States to review individual development projects and assistance applications under the identified Federal assistance programs and shall accommodate, according to the requirements and definitions of Executive Order 12372, as in effect on September 17, 1983, the concerns of the State regarding the consistency of such applications or projects with the State nonpoint source pollution management program.

**(l) Collection of information**

The Administrator shall collect and make available, through publications and other appropriate means, information pertaining to management practices and implementation methods, including, but not limited to, (1) information concerning the costs and relative efficiencies of best management practices for reducing nonpoint source pollution; and (2) available data concerning the relationship between water quality and implementation of various management practices to control nonpoint sources of pollution.

**(m) Reports of Administrator****(1) Annual reports**

Not later than January 1, 1988, and each January 1 thereafter, the Administrator shall transmit to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate, a report for the preceding fiscal year on the activities and programs implemented under this section and the progress made in reducing pollution in the navigable waters resulting from nonpoint sources and improving the quality of such waters.

**(2) Final report**

Not later than January 1, 1990, the Administrator shall transmit to Congress a final report on the activities carried out under this section. Such report, at a minimum, shall—

(A) describe the management programs being implemented by the States by types

and amount of affected navigable waters, categories and subcategories of nonpoint sources, and types of best management practices being implemented;

(B) describe the experiences of the States in adhering to schedules and implementing best management practices;

(C) describe the amount and purpose of grants awarded pursuant to subsections (h) and (i) of this section;

(D) identify, to the extent that information is available, the progress made in reducing pollutant loads and improving water quality in the navigable waters;

(E) indicate what further actions need to be taken to attain and maintain in those navigable waters (i) applicable water quality standards, and (ii) the goals and requirements of this chapter;

(F) include recommendations of the Administrator concerning future programs (including enforcement programs) for controlling pollution from nonpoint sources; and

(G) identify the activities and programs of departments, agencies, and instrumentalities of the United States which are inconsistent with the management programs submitted by the States and recommend modifications so that such activities and programs are consistent with and assist the States in implementation of such management programs.

**(n) Set aside for administrative personnel**

Not less than 5 percent of the funds appropriated pursuant to subsection (j) of this section for any fiscal year shall be available to the Administrator to maintain personnel levels at the Environmental Protection Agency at levels which are adequate to carry out this section in such year.

(June 30, 1948, ch. 758, title III, §319, as added Pub. L. 100-4, title III, §316(a), Feb. 4, 1987, 101 Stat. 52; amended Pub. L. 105-362, title V, §501(c), Nov. 10, 1998, 112 Stat. 3283; Pub. L. 107-303, title III, §302(b)(1), Nov. 27, 2002, 116 Stat. 2361.)

## REFERENCES IN TEXT

Executive Order 12372, referred to in subsecs. (b)(2)(F) and (k), is Ex. Ord. No. 12372, July 14, 1982, 47 F.R. 30959, as amended, which is set out under section 6506 of Title 31, Money and Finance.

The Colorado River Basin Salinity Control Act, referred to in subsec. (g)(1), is Pub. L. 93-320, June 24, 1974, 88 Stat. 266, as amended, which is classified principally to chapter 32A (§1571 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1571 of Title 43 and Tables.

## AMENDMENTS

2002—Subsecs. (i)(4), (m), (n). Pub. L. 107-303 repealed Pub. L. 105-362, §501(c). See 1998 Amendment note below.

1998—Subsec. (i)(4). Pub. L. 105-362, §501(c)(1), which directed the striking out of heading and text of par. (4), was repealed by Pub. L. 107-303. See Effective Date of 2002 Amendment note below.

Subsecs. (m), (n). Pub. L. 105-362, §501(c)(2), (3), which directed the redesignation of subsec. (n) as (m) and striking out of heading and text of former subsec. (m), was repealed by Pub. L. 107-303. See Effective Date of 2002 Amendment note below.

## CHANGE OF NAME

Committee on Public Works and Transportation of House of Representatives treated as referring to Committee on Transportation and Infrastructure of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

## EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-303 effective Nov. 10, 1998, and Federal Water Pollution Act (33 U.S.C. 1251 et seq.) to be applied and administered on and after Nov. 27, 2002, as if amendments made by section 501(a)-(d) of Pub. L. 105-362 had not been enacted, see section 302(b) of Pub. L. 107-303, set out as a note under section 1254 of this title.

**§ 1330. National estuary program****(a) Management conference****(1) Nomination of estuaries**

The Governor of any State may nominate to the Administrator an estuary lying in whole or in part within the State as an estuary of national significance and request a management conference to develop a comprehensive management plan for the estuary. The nomination shall document the need for the conference, the likelihood of success, and information relating to the factors in paragraph (2).

**(2) Convening of conference****(A) In general**

In any case where the Administrator determines, on his own initiative or upon nomination of a State under paragraph (1), that the attainment or maintenance of that water quality in an estuary which assures protection of public water supplies and the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife, and allows recreational activities, in and on the water, requires the control of point and nonpoint sources of pollution to supplement existing controls of pollution in more than one State, the Administrator shall select such estuary and convene a management conference.

**(B) Priority consideration**

The Administrator shall give priority consideration under this section to Long Island Sound, New York and Connecticut; Narragansett Bay, Rhode Island; Buzzards Bay, Massachusetts; Massachusetts Bay, Massachusetts (including Cape Cod Bay and Boston Harbor); Puget Sound, Washington; New York-New Jersey Harbor, New York and New Jersey; Delaware Bay, Delaware and New Jersey; Delaware Inland Bays, Delaware; Albemarle Sound, North Carolina; Sarasota Bay, Florida; San Francisco Bay, California; Santa Monica Bay, California; Galveston Bay, Texas; Barataria-Terrebonne Bay estuary complex, Louisiana; Indian River Lagoon, Florida; Lake Pontchartrain Basin, Louisiana and Mississippi; and Peconic Bay, New York.

**(3) Boundary dispute exception**

In any case in which a boundary between two States passes through an estuary and such

boundary is disputed and is the subject of an action in any court, the Administrator shall not convene a management conference with respect to such estuary before a final adjudication has been made of such dispute.

**(b) Purposes of conference**

The purposes of any management conference convened with respect to an estuary under this subsection shall be to—

(1) assess trends in water quality, natural resources, and uses of the estuary;

(2) collect, characterize, and assess data on toxics, nutrients, and natural resources within the estuarine zone to identify the causes of environmental problems;

(3) develop the relationship between the in-place loads and point and nonpoint loadings of pollutants to the estuarine zone and the potential uses of the zone, water quality, and natural resources;

(4) develop a comprehensive conservation and management plan that recommends priority corrective actions and compliance schedules addressing point and nonpoint sources of pollution to restore and maintain the chemical, physical, and biological integrity of the estuary, including restoration and maintenance of water quality, a balanced indigenous population of shellfish, fish and wildlife, and recreational activities in the estuary, and assure that the designated uses of the estuary are protected;

(5) develop plans for the coordinated implementation of the plan by the States as well as Federal and local agencies participating in the conference;

(6) monitor the effectiveness of actions taken pursuant to the plan; and

(7) review all Federal financial assistance programs and Federal development projects in accordance with the requirements of Executive Order 12372, as in effect on September 17, 1983, to determine whether such assistance program or project would be consistent with and further the purposes and objectives of the plan prepared under this section.

For purposes of paragraph (7), such programs and projects shall not be limited to the assistance programs and development projects subject to Executive Order 12372, but may include any programs listed in the most recent Catalog of Federal Domestic Assistance which may have an effect on the purposes and objectives of the plan developed under this section.

**(c) Members of conference**

The members of a management conference convened under this section shall include, at a minimum, the Administrator and representatives of—

(1) each State and foreign nation located in whole or in part in the estuarine zone of the estuary for which the conference is convened;

(2) international, interstate, or regional agencies or entities having jurisdiction over all or a significant part of the estuary;

(3) each interested Federal agency, as determined appropriate by the Administrator;

(4) local governments having jurisdiction over any land or water within the estuarine

zone, as determined appropriate by the Administrator; and

(5) affected industries, public and private educational institutions, and the general public, as determined appropriate by the Administrator.

**(d) Utilization of existing data**

In developing a conservation and management plan under this section, the management conference shall survey and utilize existing reports, data, and studies relating to the estuary that have been developed by or made available to Federal, interstate, State, and local agencies.

**(e) Period of conference**

A management conference convened under this section shall be convened for a period not to exceed 5 years. Such conference may be extended by the Administrator, and if terminated after the initial period, may be reconvened by the Administrator at any time thereafter, as may be necessary to meet the requirements of this section.

**(f) Approval and implementation of plans**

**(1) Approval**

Not later than 120 days after the completion of a conservation and management plan and after providing for public review and comment, the Administrator shall approve such plan if the plan meets the requirements of this section and the affected Governor or Governors concur.

**(2) Implementation**

Upon approval of a conservation and management plan under this section, such plan shall be implemented. Funds authorized to be appropriated under subchapters II and VI of this chapter and section 1329 of this title may be used in accordance with the applicable requirements of this chapter to assist States with the implementation of such plan.

**(g) Grants**

**(1) Recipients**

The Administrator is authorized to make grants to State, interstate, and regional water pollution control agencies and entities, State coastal zone management agencies, interstate agencies, other public or nonprofit private agencies, institutions, organizations, and individuals.

**(2) Purposes**

Grants under this subsection shall be made to pay for activities necessary for the development and implementation of a comprehensive conservation and management plan under this section.

**(3) Federal share**

The Federal share of a grant to any person (including a State, interstate, or regional agency or entity) under this subsection for a fiscal year—

(A) shall not exceed—

(i) 75 percent of the annual aggregate costs of the development of a comprehensive conservation and management plan; and

(ii) 50 percent of the annual aggregate costs of the implementation of the plan; and

(B) shall be made on condition that the non-Federal share of the costs are provided from non-Federal sources.

**(h) Grant reporting**

Any person (including a State, interstate, or regional agency or entity) that receives a grant under subsection (g) of this section shall report to the Administrator not later than 18 months after receipt of such grant and biennially thereafter on the progress being made under this section.

**(i) Authorization of appropriations**

There are authorized to be appropriated to the Administrator not to exceed \$35,000,000 for each of fiscal years 2001 through 2010 for—

(1) expenses related to the administration of management conferences under this section, not to exceed 10 percent of the amount appropriated under this subsection;

(2) making grants under subsection (g) of this section; and

(3) monitoring the implementation of a conservation and management plan by the management conference or by the Administrator, in any case in which the conference has been terminated.

The Administrator shall provide up to \$5,000,000 per fiscal year of the sums authorized to be appropriated under this subsection to the Administrator of the National Oceanic and Atmospheric Administration to carry out subsection (j) of this section.

**(j) Research**

**(1) Programs**

In order to determine the need to convene a management conference under this section or at the request of such a management conference, the Administrator shall coordinate and implement, through the National Marine Pollution Program Office and the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration, as appropriate, for one or more estuarine zones—

(A) a long-term program of trend assessment monitoring measuring variations in pollutant concentrations, marine ecology, and other physical or biological environmental parameters which may affect estuarine zones, to provide the Administrator the capacity to determine the potential and actual effects of alternative management strategies and measures;

(B) a program of ecosystem assessment assisting in the development of (i) baseline studies which determine the state of estuarine zones and the effects of natural and anthropogenic changes, and (ii) predictive models capable of translating information on specific discharges or general pollutant loadings within estuarine zones into a set of probable effects on such zones;

(C) a comprehensive water quality sampling program for the continuous monitoring of nutrients, chlorine, acid precipitation dissolved oxygen, and potentially toxic pollutants (including organic chemicals and metals) in estuarine zones, after consultation with interested State, local, interstate,

or international agencies and review and analysis of all environmental sampling data presently collected from estuarine zones; and

(D) a program of research to identify the movements of nutrients, sediments and pollutants through estuarine zones and the impact of nutrients, sediments, and pollutants on water quality, the ecosystem, and designated or potential uses of the estuarine zones.

## (2) Reports

The Administrator, in cooperation with the Administrator of the National Oceanic and Atmospheric Administration, shall submit to the Congress no less often than biennially a comprehensive report on the activities authorized under this subsection including—

(A) a listing of priority monitoring and research needs;

(B) an assessment of the state and health of the Nation's estuarine zones, to the extent evaluated under this subsection;

(C) a discussion of pollution problems and trends in pollutant concentrations with a direct or indirect effect on water quality, the ecosystem, and designated or potential uses of each estuarine zone, to the extent evaluated under this subsection; and

(D) an evaluation of pollution abatement activities and management measures so far implemented to determine the degree of improvement toward the objectives expressed in subsection (b)(4) of this section.

## (k) Definitions

For purposes of this section, the terms “estuary” and “estuarine zone” have the meanings such terms have in section 1254(n)(4) of this title, except that the term “estuarine zone” shall also include associated aquatic ecosystems and those portions of tributaries draining into the estuary up to the historic height of migration of anadromous fish or the historic head of tidal influence, whichever is higher.

(June 30, 1948, ch. 758, title III, § 320, as added Pub. L. 100-4, title III, § 317(b), Feb. 4, 1987, 101 Stat. 61; amended Pub. L. 100-202, § 101(f) [title II, 201], Dec. 22, 1987, 101 Stat. 1329-187, 1329-197; Pub. L. 100-653, title X, § 1004, Nov. 14, 1988, 102 Stat. 3836; Pub. L. 100-688, title II, § 2001, Nov. 18, 1988, 102 Stat. 4151; Pub. L. 105-362, title V, § 501(a)(2), Nov. 10, 1998, 112 Stat. 3283; Pub. L. 106-457, title III, §§ 301-303, Nov. 7, 2000, 114 Stat. 1972; Pub. L. 107-303, title III, § 302(b)(1), Nov. 27, 2002, 116 Stat. 2361; Pub. L. 108-399, § 1, Oct. 30, 2004, 118 Stat. 2253.)

### REFERENCES IN TEXT

Executive Order 12372, referred to in subsec. (b), is Ex. Ord. No. 12372, July 14, 1982, 47 F.R. 30959, as amended, which is set out under section 6506 of Title 31, Money and Finance.

### AMENDMENTS

2004—Subsec. (i). Pub. L. 108-399 substituted “2010” for “2005” in introductory provisions.

2002—Subsec. (k). Pub. L. 107-303 repealed Pub. L. 105-362, § 501(a)(2). See 1998 Amendment note below.

2000—Subsec. (a)(2)(B). Pub. L. 106-457, § 301, inserted “Lake Pontchartrain Basin, Louisiana and Mississippi;” before “and Peconic Bay, New York.”

Subsec. (g)(2), (3). Pub. L. 106-457, § 302, added pars. (2) and (3) and struck out former pars. (2) and (3) which read as follows:

“(2) PURPOSES.—Grants under this subsection shall be made to pay for assisting research, surveys, studies, and modeling and other technical work necessary for the development of a conservation and management plan under this section.

“(3) FEDERAL SHARE.—The amount of grants to any person (including a State, interstate, or regional agency or entity) under this subsection for a fiscal year shall not exceed 75 percent of the costs of such research, survey, studies, and work and shall be made on condition that the non-Federal share of such costs are provided from non-Federal sources.”

Subsec. (i). Pub. L. 106-457, § 303, substituted “\$35,000,000 for each of fiscal years 2001 through 2005” for “\$12,000,000 per fiscal year for each of fiscal years 1987, 1988, 1989, 1990, and 1991”.

1998—Subsec. (k). Pub. L. 105-362, § 501(a)(2), which directed the substitution of “section 1254(n)(3)” for “section 1254(n)(4)”, was repealed by Pub. L. 107-303. See Effective Date of 2002 Amendment note below.

1988—Subsec. (a)(2)(B). Pub. L. 100-653, § 1004, and Pub. L. 100-688, § 2001(1), made identical amendments, inserting “Massachusetts Bay, Massachusetts (including Cape Cod Bay and Boston Harbor);” after “Buzzards Bay, Massachusetts;”.

Pub. L. 100-688, § 2001(2), substituted “California; Galveston” for “California; and Galveston”.

Pub. L. 100-688, § 2001(3), which directed insertion of “; Barataria-Terrebonne Bay estuary complex, Louisiana; Indian River Lagoon, Florida; and Peconic Bay, New York” after “Galveston Bay, Texas;” was executed by making insertion after “Galveston Bay, Texas” as probable intent of Congress.

1987—Subsec. (a)(2)(B). Pub. L. 100-202 inserted “Santa Monica Bay, California;”.

### EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-303 effective Nov. 10, 1998, and Federal Water Pollution Act (33 U.S.C. 1251 et seq.) to be applied and administered on and after Nov. 27, 2002, as if amendments made by section 501(a)-(d) of Pub. L. 105-362 had not been enacted, see section 302(b) of Pub. L. 107-303, set out as a note under section 1254 of this title.

### MASSACHUSETTS BAY PROTECTION; DEFINITION; FINDINGS AND PURPOSE; FUNDING SOURCES

Pub. L. 100-653, title X, §§ 1002, 1003, 1005, Nov. 14, 1988, 102 Stat. 3835, 3836, provided that:

#### “SEC. 1002. DEFINITION.

“For purposes of this title [amending section 1330 of this title and enacting provisions set out as notes under sections 1251 and 1330 of this title], the term ‘Massachusetts Bay’ includes Massachusetts Bay, Cape Cod Bay, and Boston Harbor, consisting of an area extending from Cape Ann, Massachusetts south to the northern reach of Cape Cod, Massachusetts.

#### “SEC. 1003. FINDINGS AND PURPOSE.

“(a) FINDINGS.—The Congress finds and declares that—

“(1) Massachusetts Bay comprises a single major estuarine and oceanographic system extending from Cape Ann, Massachusetts south to the northern reaches of Cape Cod, encompassing Boston Harbor, Massachusetts Bay, and Cape Cod Bay;

“(2) several major riverine systems, including the Charles, Neponset, and Mystic Rivers, drain the watersheds of eastern Massachusetts into the Bay;

“(3) the shorelines of Massachusetts Bay, first occupied in the middle 1600's, are home to over 4 million people and support a thriving industrial and recreational economy;

“(4) Massachusetts Bay supports important commercial fisheries, including lobsters, finfish, and shellfisheries, and is home to or frequented by several endangered species and marine mammals;

“(5) Massachusetts Bay also constitutes an important recreational resource, providing fishing, swimming, and boating opportunities to the region;

“(6) rapidly expanding coastal populations and pollution pose increasing threats to the long-term health and integrity of Massachusetts Bay;

“(7) while the cleanup of Boston Harbor will contribute significantly to improving the overall environmental quality of Massachusetts Bay, expanded efforts encompassing the entire ecosystem will be necessary to ensure its long-term health;

“(8) the concerted efforts of all levels of Government, the private sector, and the public at large will be necessary to protect and enhance the environmental integrity of Massachusetts Bay; and

“(9) the designation of Massachusetts Bay as an Estuary of National Significance and the development of a comprehensive plan for protecting and restoring the Bay may contribute significantly to its long-term health and environmental integrity.

“(b) PURPOSE.—The purpose of this title is to protect and enhance the environmental quality of Massachusetts Bay by providing for its designation as an Estuary of National Significance and by providing for the preparation of a comprehensive restoration plan for the Bay.

“SEC. 1005. FUNDING SOURCES.

“Within one year of enactment [Nov. 14, 1988], the Administrator of the United States Environmental Protection Agency and the Governor of Massachusetts shall undertake to identify and make available sources of funding to support activities pertaining to Massachusetts Bay undertaken pursuant to or authorized by section 320 of the Clean Water Act [33 U.S.C. 1330], and shall make every effort to coordinate existing research, monitoring or control efforts with such activities.”

PURPOSES AND POLICIES OF NATIONAL ESTUARY PROGRAM

Pub. L. 100-4, title III, §317(a), Feb. 4, 1987, 101 Stat. 61, provided that:

“(1) FINDINGS.—Congress finds and declares that—

“(A) the Nation’s estuaries are of great importance for fish and wildlife resources and recreation and economic opportunity;

“(B) maintaining the health and ecological integrity of these estuaries is in the national interest;

“(C) increasing coastal population, development, and other direct and indirect uses of these estuaries threaten their health and ecological integrity;

“(D) long-term planning and management will contribute to the continued productivity of these areas, and will maximize their utility to the Nation; and

“(E) better coordination among Federal and State programs affecting estuaries will increase the effectiveness and efficiency of the national effort to protect, preserve, and restore these areas.

“(2) PURPOSES.—The purposes of this section [enacting this section] are to—

“(A) identify nationally significant estuaries that are threatened by pollution, development, or overuse;

“(B) promote comprehensive planning for, and conservation and management of, nationally significant estuaries;

“(C) encourage the preparation of management plans for estuaries of national significance; and

“(D) enhance the coordination of estuarine research.”

SUBCHAPTER IV—PERMITS AND LICENSES

§ 1341. Certification

(a) Compliance with applicable requirements; application; procedures; license suspension

(1) Any applicant for a Federal license or permit to conduct any activity including, but not limited to, the construction or operation of fa-

cilities, which may result in any discharge into the navigable waters, shall provide the licensing or permitting agency a certification from the State in which the discharge originates or will originate, or, if appropriate, from the interstate water pollution control agency having jurisdiction over the navigable waters at the point where the discharge originates or will originate, that any such discharge will comply with the applicable provisions of sections 1311, 1312, 1313, 1316, and 1317 of this title. In the case of any such activity for which there is not an applicable effluent limitation or other limitation under sections 1311(b) and 1312 of this title, and there is not an applicable standard under sections 1316 and 1317 of this title, the State shall so certify, except that any such certification shall not be deemed to satisfy section 1371(c) of this title. Such State or interstate agency shall establish procedures for public notice in the case of all applications for certification by it and, to the extent it deems appropriate, procedures for public hearings in connection with specific applications. In any case where a State or interstate agency has no authority to give such a certification, such certification shall be from the Administrator. If the State, interstate agency, or Administrator, as the case may be, fails or refuses to act on a request for certification, within a reasonable period of time (which shall not exceed one year) after receipt of such request, the certification requirements of this subsection shall be waived with respect to such Federal application. No license or permit shall be granted until the certification required by this section has been obtained or has been waived as provided in the preceding sentence. No license or permit shall be granted if certification has been denied by the State, interstate agency, or the Administrator, as the case may be.

(2) Upon receipt of such application and certification the licensing or permitting agency shall immediately notify the Administrator of such application and certification. Whenever such a discharge may affect, as determined by the Administrator, the quality of the waters of any other State, the Administrator within thirty days of the date of notice of application for such Federal license or permit shall so notify such other State, the licensing or permitting agency, and the applicant. If, within sixty days after receipt of such notification, such other State determines that such discharge will affect the quality of its waters so as to violate any water quality requirements in such State, and within such sixty-day period notifies the Administrator and the licensing or permitting agency in writing of its objection to the issuance of such license or permit and requests a public hearing on such objection, the licensing or permitting agency shall hold such a hearing. The Administrator shall at such hearing submit his evaluation and recommendations with respect to any such objection to the licensing or permitting agency. Such agency, based upon the recommendations of such State, the Administrator, and upon any additional evidence, if any, presented to the agency at the hearing, shall condition such license or permit in such manner as may be necessary to insure compliance with applicable water quality requirements. If the im-