

11, and applying generally accepted accounting principles;

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

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

### (3) Rulemaking authority

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

### (g) Limitation on guarantor's liability

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

### (h) Continuation of regulations

Any regulation relating to financial responsibility, which has been issued pursuant to any provision of law repealed or superseded by this Act, and which is in effect on the date immediately preceding the effective date of this Act, is deemed and shall be construed to be a regulation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 Such a regulation shall remain in full force and effect unless and until superseded by a new regulation issued under this section.

### (i) Unified certificate

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

(Pub. L. 101-380, title I, §1016, Aug. 18, 1990, 104 Stat. 502; Pub. L. 104-55, §2(d)(2), Nov. 20, 1995, 109 Stat. 547; Pub. L. 104-324, title XI, §1125(a), Oct. 19, 1996, 110 Stat. 3981; Pub. L. 111-281, title VII, §712, Oct. 15, 2010, 124 Stat. 2988.)

#### REFERENCES IN TEXT

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

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

#### CODIFICATION

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

#### AMENDMENTS

2010—Subsec. (a)(3). Pub. L. 111-281 added par. (3).

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

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

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

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

#### EFFECTIVE DATE OF 1996 AMENDMENT

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

#### DELEGATION OF FUNCTIONS

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

## § 2716a. Financial responsibility civil penalties

### (a) Administrative

Any person who, after notice and an opportunity for a hearing, is found to have failed to comply with the requirements of section 2716 of this title or the regulations issued under that section, or with a denial or detention order issued under subsection (c)(2) of that section, shall be liable to the United States for a civil penalty, not to exceed \$25,000 per day of violation. The amount of the civil penalty shall be assessed by the President by written notice. In determining the amount of the penalty, the President shall take into account the nature,

circumstances, extent, and gravity of the violation, the degree of culpability, any history of prior violation, ability to pay, and such other matters as justice may require. The President may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which had been imposed under this paragraph. If any person fails to pay an assessed civil penalty after it has become final, the President may refer the matter to the Attorney General for collection.

**(b) Judicial**

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

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

CODIFICATION

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

DELEGATION OF FUNCTIONS

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

**§ 2717. Litigation, jurisdiction, and venue**

**(a) Review of regulations**

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

**(b) Jurisdiction**

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

**(c) State court jurisdiction**

A State trial court of competent jurisdiction over claims for removal costs or damages, as de-

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

**(d) Assessment and collection of tax**

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

**(e) Savings provision**

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

**(f) Period of limitations**

**(1) Damages**

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

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

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

**(2) Removal costs**

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

**(3) Contribution**

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

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

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

**(4) Subrogation**

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

**(5) Commencement**

The time limitations contained herein shall not begin to run—

<sup>1</sup> So in original. The word "this" probably should not appear.