

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

Pub. L. 104-324, title XI, §1125(b), Oct. 19, 1996, 110 Stat. 3983, 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)¹ 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 this² 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 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

¹ So in original. Probably should be “subsection (b)(2)”.

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