

uses and occupancies of the real property on which the facility is located since the property was first developed.

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

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

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

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

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

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

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

(D) Interim standards and practices

(i) Real property purchased before May 31, 1997

With respect to real property purchased before May 31, 1997, in making a determination with respect to a responsible party described in subparagraph (A), a court shall take into account—

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

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

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

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

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

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

With respect to real property purchased on or after May 31, 1997, until the Secretary promulgates the regulations described in clause (ii), the procedures of the American Society for Testing and Materials, including the document known as

“Standard E1527-97”, entitled “Standard Practice for Environmental Site Assessment: Phase I Environmental Site Assessment Process”, shall satisfy the requirements in subparagraph (A).

(E) Site inspection and title search

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

(5) Previous owner or operator

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

(6) Limitation on defense

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

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

REFERENCES IN TEXT

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

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

AMENDMENTS

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

§ 2704. Limits on liability

(a) General rule

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

¹ So in original. Probably should be preceded by “section”.

(1) for a tank vessel the greater of—

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

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

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

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

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

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

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

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

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

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

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

(b) Division of liability for mobile offshore drilling units

(1) Treated first as tank vessel

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

(2) Treated as facility for excess liability

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

(c) Exceptions

(1) Acts of responsible party

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

(A) gross negligence or willful misconduct of, or

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

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

(2) Failure or refusal of responsible party

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

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

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

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

(3) OCS facility or vessel

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

(4) Certain tank vessels

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

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

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

(d) Adjusting limits of liability

(1) Onshore facilities

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

(2) Deepwater ports and associated vessels

(A) Study

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

(B) Report

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

(C) Rulemaking proceeding

If the Secretary determines, based on the results of the study conducted under this² subparagraph (A), that the use of deepwater ports in connection with the transportation of oil by vessel results in a lower operational or environmental risk than the use of other ports, the Secretary shall initiate, not later than the 180th day following the date of submission of the report to the Congress under subparagraph (B), a rulemaking proceeding to lower the limits of liability under this section for deepwater ports as the Secretary determines appropriate. The Secretary may establish a limit of liability of less than \$350,000,000, but not less than \$50,000,000, in accordance with paragraph (1).

(3) Periodic reports

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

(4) Adjustment to reflect Consumer Price Index

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

(Pub. L. 101-380, title I, §1004, Aug. 18, 1990, 104 Stat. 491; Pub. L. 104-55, §2(d)(1), Nov. 20, 1995, 109 Stat. 546; Pub. L. 105-383, title IV, §406, Nov. 13, 1998, 112 Stat. 3429; Pub. L. 109-241, title VI, §603(a)(1), (2), (b), July 11, 2006, 120 Stat. 553, 554; Pub. L. 111-281, title IX, §903(a)(2), (e)(1), Oct. 15, 2010, 124 Stat. 3010, 3011.)

REFERENCES IN TEXT

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

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

AMENDMENTS

2010—Subsec. (a)(2). Pub. L. 111-281, §903(e)(1), struck out first comma after “\$300,000”.

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

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

“(A) \$1,200 per gross ton; or
 “(B)(i) in the case of a vessel greater than 3,000 gross tons, \$10,000,000; or
 “(ii) in the case of a vessel of 3,000 gross tons or less, \$2,000,000;”.

Subsec. (a)(2). Pub. L. 109-241, §603(a)(2), as amended by Pub. L. 111-281, §903(a)(2), substituted “\$950 per gross ton” for “\$600 per gross ton” and “\$800,000,” for “\$500,000”.

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

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

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

Subsec. (c)(4). Pub. L. 105-383, §406(2), added par. (4). 1995—Subsec. (a)(1). Pub. L. 104-55 substituted “for a tank vessel (except a tank vessel on which the only oil carried as cargo is an animal fat or vegetable oil, as those terms are used in section 2720 of this title)” for “for a tank vessel.”

EFFECTIVE DATE OF 2010 AMENDMENT

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

EFFECTIVE DATE OF 2006 AMENDMENT

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

DELEGATION OF FUNCTIONS

For delegation of functions of President under subsec. (d) of this section, see section 4 of Ex. Ord. No. 12777, set out as a note under section 1321 of this title.

REPORT

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

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

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

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

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

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

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

§ 2705. Interest; partial payment of claims**(a) General rule**

The responsible party or the responsible party's guarantor is liable to a claimant for inter-