

Executive Documents

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.

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

The responsible party or the responsible party's guarantor is liable to a claimant for interest on the amount paid in satisfaction of a claim under this Act for the period described in subsection (b). The responsible party shall establish a procedure for the payment or settlement of claims for interim, short-term damages. Payment or settlement of a claim for interim, short-term damages representing less than the full amount of damages to which the claimant ultimately may be entitled shall not preclude recovery by the claimant for damages not reflected in the paid or settled partial claim.

(b) Period**(1) In general**

Except as provided in paragraph (2), the period for which interest shall be paid is the period beginning on the 30th day following the date on which the claim is presented to the responsible party or guarantor and ending on the date on which the claim is paid.

(2) Exclusion of period due to offer by guarantor

If the guarantor offers to the claimant an amount equal to or greater than that finally paid in satisfaction of the claim, the period described in paragraph (1) does not include the period beginning on the date the offer is made and ending on the date the offer is accepted. If the offer is made within 60 days after the date on which the claim is presented under section 2713(a) of this title, the period described in paragraph (1) does not include any period before the offer is accepted.

(3) Exclusion of periods in interests of justice

If in any period a claimant is not paid due to reasons beyond the control of the responsible party or because it would not serve the interests of justice, no interest shall accrue under this section during that period.

(4) Calculation of interest

The interest paid under this section shall be calculated at the average of the highest rate for commercial and finance company paper of maturities of 180 days or less obtaining on each of the days included within the period for which interest must be paid to the claimant, as published in the Federal Reserve Bulletin.

(5) Interest not subject to liability limits**(A) In general**

Interest (including prejudgment interest) under this paragraph is in addition to damages and removal costs for which claims may be asserted under section 2702 of this title and shall be paid without regard to any limitation of liability under section 2704 of this title.

(B) Payment by guarantor

The payment of interest under this subsection by a guarantor is subject to section 2716(g) of this title.

(Pub. L. 101-380, title I, §1005, Aug. 18, 1990, 104 Stat. 493; Pub. L. 104-324, title XI, §1142(a), Oct. 19, 1996, 110 Stat. 3991.)

Editorial Notes

REFERENCES IN TEXT

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

AMENDMENTS

1996—Pub. L. 104-324, §1142(a)(1), inserted “; partial payment of claims” after “Interest” in section catchline.

Subsec. (a). Pub. L. 104-324, §1142(a)(2), inserted at end “The responsible party shall establish a procedure for the payment or settlement of claims for interim, short-term damages. Payment or settlement of a claim for interim, short-term damages representing less than the full amount of damages to which the claimant ultimately may be entitled shall not preclude recovery by the claimant for damages not reflected in the paid or settled partial claim.”

§ 2706. Natural resources**(a) Liability**

In the case of natural resource damages under section 2702(b)(2)(A) of this title, liability shall be—

(1) to the United States Government for natural resources belonging to, managed by, controlled by, or appertaining to the United States;

(2) to any State for natural resources belonging to, managed by, controlled by, or appertaining to such State or political subdivision thereof;

(3) to any Indian tribe for natural resources belonging to, managed by, controlled by, or appertaining to such Indian tribe; and

(4) in any case in which section 2707 of this title applies, to the government of a foreign country for natural resources belonging to, managed by, controlled by, or appertaining to such country.

(b) Designation of trustees**(1) In general**

The President, or the authorized representative of any State, Indian tribe, or foreign government, shall act on behalf of the public, Indian tribe, or foreign country as trustee of natural resources to present a claim for and to recover damages to the natural resources.

(2) Federal trustees

The President shall designate the Federal officials who shall act on behalf of the public as trustees for natural resources under this Act.

(3) State trustees

The Governor of each State shall designate State and local officials who may act on behalf of the public as trustee for natural re-

sources under this Act and shall notify the President of the designation.

(4) Indian tribe trustees

The governing body of any Indian tribe shall designate tribal officials who may act on behalf of the tribe or its members as trustee for natural resources under this Act and shall notify the President of the designation.

(5) Foreign trustees

The head of any foreign government may designate the trustee who shall act on behalf of that government as trustee for natural resources under this Act.

(c) Functions of trustees

(1) Federal trustees

The Federal officials designated under subsection (b)(2)—

(A) shall assess natural resource damages under section 2702(b)(2)(A) of this title for the natural resources under their trusteeship;

(B) may, upon request of and reimbursement from a State or Indian tribe and at the Federal officials' discretion, assess damages for the natural resources under the State's or tribe's trusteeship; and

(C) shall develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent, of the natural resources under their trusteeship.

(2) State trustees

The State and local officials designated under subsection (b)(3)—

(A) shall assess natural resource damages under section 2702(b)(2)(A) of this title for the purposes of this Act for the natural resources under their trusteeship; and

(B) shall develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent, of the natural resources under their trusteeship.

(3) Indian tribe trustees

The tribal officials designated under subsection (b)(4)—

(A) shall assess natural resource damages under section 2702(b)(2)(A) of this title for the purposes of this Act for the natural resources under their trusteeship; and

(B) shall develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent, of the natural resources under their trusteeship.

(4) Foreign trustees

The trustees designated under subsection (b)(5)—

(A) shall assess natural resource damages under section 2702(b)(2)(A) of this title for the purposes of this Act for the natural resources under their trusteeship; and

(B) shall develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent, of the natural resources under their trusteeship.

(5) Notice and opportunity to be heard

Plans shall be developed and implemented under this section only after adequate public

notice, opportunity for a hearing, and consideration of all public comment.

(d) Measure of damages

(1) In general

The measure of natural resource damages under section 2702(b)(2)(A) of this title is—

(A) the cost of restoring, rehabilitating, replacing, or acquiring the equivalent of, the damaged natural resources;

(B) the diminution in value of those natural resources pending restoration; plus

(C) the reasonable cost of assessing those damages.

(2) Determine costs with respect to plans

Costs shall be determined under paragraph (1) with respect to plans adopted under subsection (c).

(3) No double recovery

There shall be no double recovery under this Act for natural resource damages, including with respect to the costs of damage assessment or restoration, rehabilitation, replacement, or acquisition for the same incident and natural resource.

(e) Damage assessment regulations

(1) Regulations

The President, acting through the Under Secretary of Commerce for Oceans and Atmosphere and in consultation with the Administrator of the Environmental Protection Agency, the Director of the United States Fish and Wildlife Service, and the heads of other affected agencies, not later than 2 years after August 18, 1990, shall promulgate regulations for the assessment of natural resource damages under section 2702(b)(2)(A) of this title resulting from a discharge of oil for the purpose of this Act.

(2) Rebuttable presumption

Any determination or assessment of damages to natural resources for the purposes of this Act made under subsection (d) by a Federal, State, or Indian trustee in accordance with the regulations promulgated under paragraph (1) shall have the force and effect of a rebuttable presumption on behalf of the trustee in any administrative or judicial proceeding under this Act.

(f) Use of recovered sums

Sums recovered under this Act by a Federal, State, Indian, or foreign trustee for natural resource damages under section 2702(b)(2)(A) of this title shall be retained by the trustee in a revolving trust account, without further appropriation, for use only to reimburse or pay costs incurred by the trustee under subsection (c) with respect to the damaged natural resources. Any amounts in excess of those required for these reimbursements and costs shall be deposited in the Fund.

(g) Compliance

Review of actions by any Federal official where there is alleged to be a failure of that official to perform a duty under this section that is not discretionary with that official may be had by any person in the district court in which the

person resides or in which the alleged damage to natural resources occurred. The court may award costs of litigation (including reasonable attorney and expert witness fees) to any prevailing or substantially prevailing party. Nothing in this subsection shall restrict any right which any person may have to seek relief under any other provision of law.

(Pub. L. 101-380, title I, §1006, Aug. 18, 1990, 104 Stat. 494.)

Editorial Notes

REFERENCES IN TEXT

This Act, referred to in subsecs. (b)(2)–(5), (c)(2)(A), (3)(A), (4)(A), (d)(3), (e), and (f), 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.

Statutory Notes and Related Subsidiaries

NOAA OIL AND HAZARDOUS SUBSTANCE SPILL COST REIMBURSEMENT

Pub. L. 102-567, title II, §205, Oct. 29, 1992, 106 Stat. 4282, provided that:

“(a) TREATMENT OF AMOUNTS RECEIVED AS REIMBURSEMENT OF EXPENSES.—Notwithstanding any other provision of law, amounts received by the United States as reimbursement of expenses related to oil or hazardous substance spill response activities, or natural resource damage assessment, restoration, rehabilitation, replacement, or acquisition activities, conducted (or to be conducted) by the National Oceanic and Atmospheric Administration—

“(1) shall be deposited into the Fund;

“(2) shall be available, without fiscal year limitation and without apportionment, for use in accordance with the law under which the activities are conducted; and

“(3) shall not be considered to be an augmentation of appropriations.

“(b) APPLICATION.—Subsection (a) shall apply to amounts described in subsection (a) that are received—

“(1) after the date of the enactment of this Act [Oct. 29, 1992]; or

“(2) with respect to the oil spill associated with the grounding of the EXXON VALDEZ.

“(c) DEFINITIONS.—For purposes of this section—

“(1) the term ‘Fund’ means the Damage Assessment and Restoration Revolving Fund of the National Oceanic and Atmospheric Administration referred to in title I of Public Law 101-515 under the heading ‘National Oceanic and Atmospheric Administration’ (104 Stat. 2105) [set out as a note below]; and

“(2) the term ‘expenses’ includes incremental and base salaries, ships, aircraft, and associated indirect costs, except the term does not include base salaries and benefits of National Oceanic and Atmospheric Administration Support Coordinators.”

DAMAGE ASSESSMENT AND RESTORATION REVOLVING FUND; DEPOSITS; AVAILABILITY; TRANSFER

Pub. L. 101-515, title I, Nov. 5, 1990, 104 Stat. 2105, provided that: “For contingency planning, response and natural resource damage assessment and restoration activities, pursuant to the Comprehensive Environmental Response, Compensation[,] and Liability Act [of 1980], as amended [42 U.S.C. 9601 et seq.], the Federal Water Pollution Control Act, as amended [33 U.S.C. 1251 et seq.], the Marine Protection, Research[,] and Sanctuaries Act [of 1972], as amended [16 U.S.C. 1431 et seq., 1447 et seq.; 33 U.S.C. 1401 et seq., 2801 et seq.], and the Oil Pollution Act of 1990 [33 U.S.C. 2701 et seq.], \$5,000,000 to remain available until expended: *Provided*,

That notwithstanding any other provision of law, in fiscal year 1991 and thereafter, sums provided by any party or governmental entity for natural resource damage assessment, response or restoration activities conducted or to be conducted by the National Oceanic and Atmospheric Administration as a result of any injury to the marine environment and/or resources for which the National Oceanic and Atmospheric Administration acts as trustee of said marine environment and/or resources, shall be deposited in the Damage Assessment and Restoration Revolving Fund and said funds so deposited shall remain available until expended: *Provided further*, That for purposes of obligation and expenditure in fiscal year 1991 and thereafter, sums available in the Damage Assessment and Restoration Revolving Fund may be transferred, upon the approval of the Secretary of Commerce or his delegate, to the Operations, Research, and Facilities appropriation of the National Oceanic and Atmospheric Administration.”

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DELEGATION OF FUNCTIONS

Functions of President under subsec. (b)(3) and (4) of this section delegated to Administrator of Environmental Protection Agency by section 8(c) of Ex. Ord. No. 12777, Oct. 18, 1991, 56 F.R. 54768, set out as a note under section 1321 of this title.

§ 2707. Recovery by foreign claimants

(a) Required showing by foreign claimants

(1) In general

In addition to satisfying the other requirements of this Act, to recover removal costs or damages resulting from an incident a foreign claimant shall demonstrate that—

(A) the claimant has not been otherwise compensated for the removal costs or damages; and

(B) recovery is authorized by a treaty or executive agreement between the United States and the claimant’s country, or the Secretary of State, in consultation with the Attorney General and other appropriate officials, has certified that the claimant’s country provides a comparable remedy for United States claimants.

(2) Exceptions

Paragraph (1)(B) shall not apply with respect to recovery by a resident of Canada in the case of an incident described in subsection (b)(4).

(b) Discharges in foreign countries

A foreign claimant may make a claim for removal costs and damages resulting from a discharge, or substantial threat of a discharge, of oil in or on the territorial sea, internal waters, or adjacent shoreline of a foreign country, only if the discharge is from—

(1) an Outer Continental Shelf facility or a deepwater port;

(2) a vessel in the navigable waters;

(3) a vessel carrying oil as cargo between 2 places in the United States; or

(4) a tanker that received the oil at the terminal of the pipeline constructed under the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1651 et seq.), for transportation to a place in the United States, and the discharge or threat occurs prior to delivery of the oil to that place.

(c) “Foreign claimant” defined

In this section, the term “foreign claimant” means—