

§ 1321. — Oil and hazardous substance liability.

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TITLE 33--NAVIGATION AND NAVIGABLE WATERS

CHAPTER 26--WATER POLLUTION PREVENTION AND CONTROL

SUBCHAPTER III--STANDARDS AND ENFORCEMENT

Sec. 1321. Oil and hazardous substance liability

(j) National Response System

(1) In general

Consistent with the National Contingency Plan required by subsection (c)(2) 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 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 personnel of Federal, State, and local agencies.

(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 and local 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; and
- (iii) work with State and local 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 and Federal, State, and local agencies, 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 any other information the President requires; and

(viii) 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 and facility response plans

(A) The President shall issue regulations which require an owner or operator of a tank vessel or facility described in subparagraph (B) 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.

(B) The tank vessels and facilities referred to in subparagraph (A) are the following:

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

(ii) An offshore facility.

(iii) 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.

(C) 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 response 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.

(D) 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 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; and

(iv) review each plan periodically thereafter.

(E) A tank 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, offshore facility, or onshore facility for which a response plan is reviewed by the President under subparagraph (D), the plan has been approved by the President; and

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

(F) Notwithstanding subparagraph (E), the President may authorize a tank 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 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.

(G) The owner or operator of a tank 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.

(H) 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 that is a vessel of the United States.

(6) Equipment requirements and inspection

Not later than 2 years after August 18, 1990, the President shall 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 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 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, Sec. 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 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 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, Sec. 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.

(June 30, 1948, ch. 758, title III, Sec. 311, as added Pub. L. 92-500, Sec. 2, Oct. 18, 1972, 86 Stat. 862; amended Pub. L. 93-207, Sec. 1(4), Dec. 28, 1973, 87 Stat. 906; Pub. L. 95-217, Secs. 57, 58(a)-(g), (i), (k)-(m), Dec. 27, 1977, 91 Stat. 1593-1596; Pub. L. 95-576, Sec. 1(b), Nov. 2, 1978, 92 Stat. 2467; Pub. L. 96-478, Sec. 13(b), Oct. 21, 1980, 94 Stat. 2303; Pub. L. 96-483, Sec. 8, Oct. 21, 1980, 94 Stat. 2362; Pub. L. 96-561, title II, Sec. 238(b), Dec. 22, 1980, 94 Stat. 3300; Pub. L. 97-164, title I, Sec. 161(5), Apr. 2, 1982, 96 Stat. 49; Pub. L. 100-4, title V, Sec. 502(b), Feb. 4, 1987, 101 Stat. 75; Pub. L. 101-380, title II, Sec. 2002(b), title IV, Secs. 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, Sec. 349, Oct. 6, 1992, 106 Stat. 1554; Pub. L. 102-572, title IX, Sec. 902(b)(1), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 104-208, div. A, title I, Sec. 101(a) [title II, Sec. 211(b)], Sept. 30, 1996, 110 Stat. 3009, 3009-41; Pub. L. 104-324, title XI, Secs. 1143, 1144, Oct. 19, 1996, 110 Stat. 3992; Pub. L. 105-383, title IV, Sec. 411, Nov. 13, 1998, 112 Stat. 3432.)

References in Text

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 (Sec. 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 1331 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 (Sec. 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 (Sec. 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, Sec. 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 313 of title 46, Appendix, referred to in subsec. (b)(12)(B), was repealed by Pub. L. 103-182, title VI, Sec. 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, Sec. 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 (Sec. 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)(G), is Pub. L. 101-380, Aug. 18, 1990, 104 Stat. 484, which is classified principally to chapter 40 (Sec. 2701 et seq.) of this title. Title I of the Act is classified generally to subchapter I (Sec. 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.

Codification

August 18, 1990, referred to in subsec. (j)(6), was in the original ``the date of enactment of this section'', which was translated as meaning the date of enactment of Pub. L. 101-380, which enacted subsec. (j)(2) to (8), to reflect the probable intent of Congress.

Amendments

1998--Subsec. (a)(2). Pub. L. 105-383, Sec. 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, Sec. 411(a)(1), substituted ``to prevent, minimize, or mitigate damage'' for ``to minimize or mitigate damage''.

Subsec. (a)(25). Pub. L. 105-383, Sec. 411(a)(2), added par. (25).

Subsec. (c)(4)(A). Pub. L. 105-383, Sec. 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, Sec. 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, Sec. 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, Sec. 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, Sec. 4201(b)(1)[(c)(1)], inserted ``containment and'' after ``refers to''.

Subsec. (a)(16). Pub. L. 101-380, Sec. 4201(b)(2)[(c)(2)], substituted semicolon for period at end.

Subsec. (a)(17). Pub. L. 101-380, Sec. 4201(b)(3)[(c)(3)], substituted ``otherwise'' for ``Otherwise'' and semicolon for period at end.

Subsec. (a)(18) to (24). Pub. L. 101-380, Sec. 4201(b)(4)[(c)(4)], added pars. (18) to (24).

Subsec. (b)(4). Pub. L. 101-380, Sec. 4204, inserted ``or the environment'' after ``the public health or welfare''.

Subsec. (b)(5). Pub. L. 101-380, Sec. 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, Sec. 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, Sec. 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, Sec. 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, Sec. 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, Sec. 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, Sec. 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)(ii) 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, Sec. 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, Sec. 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, Sec. 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, Sec. 4202(c), inserted `` , or with respect to any removal activities related to such discharge'' after ``within such State''.

Subsec. (p). Pub. L. 101-380, Sec. 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, Sec. 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, Sec. 1(b)(1), excluded discharges described in cls. (A) to (C) from term ``discharge''.

Subsec. (a)(17). Pub. L. 95-576, Sec. 1(b)(2), added par. (17).

Subsec. (b)(2)(B). Pub. L. 95-576, Sec. 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, Sec. 1(b)(4), substituted ``such quantities as may be harmful'' for ``harmful quantities''.

Subsec. (b)(4). Pub. L. 95-576, Sec. 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, Sec. 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, Sec. 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, Sec. 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, Sec. 58(d)(1), added pars. (15) and (16).

Subsec. (b)(1). Pub. L. 95-217, Sec. 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, Sec. 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, Sec. 57, added cl. (v).

Subsec. (b)(3). Pub. L. 95-217, Sec. 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, Sec. 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, Sec. 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, Sec. 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, Sec. 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 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,''.

Subsec. (c)(2)(D). Pub. L. 95-217, Sec. 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, Sec. 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, Sec. 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, Sec. 58(d)(5), (6), substituted ``\$50,000,000'' for ``\$8,000,000''.

Subsec. (f)(4), (5). Pub. L. 95-217, Sec. 58(g), added pars. (4) and (5).

Subsec. (g). Pub. L. 95-217, Sec. 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, Sec. 58(m), inserted reference to the Deepwater Port Act of 1974.

Subsec. (j)(2). Pub. L. 95-217, Sec. 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, Sec. 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, Sec. 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, Sec. 58(i), added subsecs. (q) and (r).

1973--Subsec. (f). Pub. L. 93-207, Sec. 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, Sec. 1(4)(C), substituted ``b(3)'' for ``b(2)'' wherever appearing.

Effective Date of 1996 Amendment

Section 101(a) [title II, Sec. 211(b)] of div. A of Pub. L. 104-208 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

Section 238(b) of Pub. L. 96-561 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

Section 58(h) of Pub. L. 95-217 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, Secs. 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.

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.

Report on Oil Spill Responder Immunity

Pub. L. 107-295, title IV, Sec. 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 nongovernmental 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

Section 2002(a) of Pub. L. 101-380 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

Section 2002(b)(2) of Pub. L. 101-380 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

Section 4201(c)[(d)] of Pub. L. 101-380 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].''

Implementation of National Planning and Response System

Section 4202(b) of Pub. L. 101-380 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

Section 58(j) of Pub. L. 95-217 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, Sec. 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, Sec. 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, Sec. 34, Feb. 28, 2003, 68 F.R. 10625, 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) Section 1 of Executive Order No. 12580 of January 23, 1987 [42 U.S.C. 9615 note], is amended to read as follows:

``Section 1. National Contingency Plan. (a)(1) The National Contingency Plan ('`the NCP''), shall provide for a National Response Team ('`the NRT'') composed of representatives of appropriate Federal departments and agencies for national planning and coordination of preparedness and response actions, and Regional Response Teams as the regional counterparts to the NRT for planning and coordination of regional preparedness and response actions.

``(2) The following agencies (in addition to other appropriate agencies) shall provide representatives to the National and Regional Response Teams to carry out their responsibilities under the NCP: Department of State, Department of Defense, Department of Justice, Department of the Interior, Department of Agriculture, Department of Commerce, Department of Labor, Department of Health and Human Services, Department of Transportation, Department of Energy, Environmental Protection Agency, Federal Emergency Management Agency, United States Coast Guard, and the Nuclear Regulatory Commission.

``(3) Except for periods of activation because of response action, the representative of the Environmental Protection Agency ('`EPA'') shall be the chairman, and the representative of the United States Coast Guard shall be the vice chairman, of the NRT and these agencies'

representatives shall be co-chairs of the Regional Response Teams ('`the RRTs``'). When the NRT or an RRT is activated for a response action, the EPA representative shall be the chairman when the release or threatened release or discharge or threatened discharge occurs in the inland zone, and the United States Coast Guard representative shall be the chairman when the release or threatened release or discharge or threatened discharge occurs in the coastal zone, unless otherwise agreed upon by the EPA and the United States Coast Guard representatives (inland and coastal zones are defined in the NCP).

``(4) The RRTs may include representatives from State governments, local governments (as agreed upon by the States), and Indian tribal governments. Subject to the functions and authorities delegated to Executive departments and agencies in other sections of this order, the NRT shall provide policy and program direction to the RRTs.

``(b)(1) The responsibility for the revision of the NCP and all the other functions vested in the President by Sections 105(a), (b), (c), and (g), 125, and 301(f) of the Act, by Section 311(d)(1) of the Federal Water Pollution Control Act, and by Section 4201(c) of the Oil Pollution Act of 1990 is delegated to the Administrator of the Environmental Protection Agency ('`the Administrator``').

``(2) The function vested in the President by Section 118(p) of the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99-499) ('`SARA``') is delegated to the Administrator.

``(c) In accord with Section 107(f)(2)(A) of the Act, Section 311(f)(5) of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1321(f)(5)), and Section 1006(b)(1) and (2) of the Oil Pollution Act of 1990, the following shall be among those designated in the NCP as Federal trustees for natural resources:

- [``](1) Secretary of Defense;
- [``](2) Secretary of the Interior;
- [``](3) Secretary of Agriculture;
- [``](4) Secretary of Commerce;
- [``](5) Secretary of Energy.

[``]In the event of a spill, the above named Federal trustees for natural resources shall designate one trustee to act as Lead Administrative Trustee, the duties of which shall be defined in the regulations promulgated pursuant to Section 1006(e)(1) of OPA. If there

are natural resource trustees other than those designated above which are acting in the event of a spill, those other trustees may join with the Federal trustees to name a Lead Administrative Trustee which shall exercise the duties defined in the regulations promulgated pursuant to Section 1006(e)(1) of OPA.

``(d) Revisions to the NCP shall be made in consultation with members of the NRT prior to publication for notice and comment.

``(e) All revisions to the NCP, whether in proposed or final form, shall be subject to review and approval by the Director of the Office of Management and Budget (``OMB'').''

(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 hazardous 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) The functions vested in the President by Section 1004(d) of OPA [33 U.S.C. 2704(d)], respecting the establishment of limits of liability, with respect to classes or categories of non-transportation-related onshore facilities, the reporting to Congress on the desirability of adjusting limits of liability with respect to non-transportation-related onshore facilities, and the adjustment of limits of liability to reflect significant increases in the Consumer Price Index with respect to non-transportation-related onshore facilities, are delegated to the Administrator, acting in consultation with the Secretary of Transportation, the Secretary of Energy, and the Attorney General.

(b) The functions vested in the President by Section 1004(d) of OPA, respecting the establishment of limits of liability, with respect to classes or categories of transportation-related onshore facilities, the reporting to Congress on the desirability of adjusting limits of

liability, with respect to vessels or transportation-related onshore facilities and deepwater ports subject to the DPA, and the adjustment of limits of liability to reflect significant increases in the Consumer Price Index with respect to vessels or transportation-related onshore facilities and deepwater ports subject to the DPA, are delegated to the Secretary of Transportation.

(c) The functions vested in the President by Section 1004(d) of OPA, respecting 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, and 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, are delegated to the Secretary of the Interior.

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.

Section Referred to in Other Sections

This section is referred to in sections 1266, 1314, 1318, 1319, 1322, 1376, 1402, 2701, 2702, 2703, 2704, 2712, 2735, 2752 of this title; title 8 section 1288; title 14 section 690; title 26 sections 9507, 9509; title 42 sections 6991b, 7412, 9601, 9602, 9605, 9606, 9607, 9611, 9651, 9652, 9654, 10601; title 43 sections 1356a, 1653, 1656; title 46 sections 2101, 3715.