§ 2704. Limits on liability

(a) General rule

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

(1) for a tank vessel the greater of—

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

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

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

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

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

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

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

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

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

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

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

(b) Division of liability for mobile offshore drilling units

(1) Treated first as tank vessel

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

(2) Treated as facility for excess liability

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

(c) Exceptions

(1) Acts of responsible party

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

(A) gross negligence or willful misconduct of, or

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

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

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

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

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

(3) OCS facility or vessel

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

(4) Certain tank vessels

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

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

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

(d) Adjusting limits of liability

(1) Onshore facilities

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

(2) Deepwater ports and associated vessels

(A) Study

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

(B) Report

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

(C) Rulemaking proceeding

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

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

(4) Adjustment to reflect Consumer Price Index

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

Footnotes

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


References in Text

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

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

Amendments

2010—Subsec. (a)(2). Pub. L. 111–281, § 903(e)(1), struck out first comma after “$800,000”.


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

“(A) $1,200 per gross ton; or

“(B)(i) in the case of a vessel greater than 3,000 gross tons, $10,000,000; or

“(ii) in the case of a vessel of 3,000 gross tons or less, $2,000,000;”.


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

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


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

Effective Date of 2010 Amendment

Effective Date of 2006 Amendment

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

Delegation of Functions

Specific functions of President under subsec. (d) of this section delegated to Administrator of Environmental Protection Agency, Secretary of Transportation, and Secretary of the Interior by section 4 of Ex. Ord. No. 12777, Oct. 18, 1991, 56 F.R. 54763, set out as a note under section 1321 of this title.

Report

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

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

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

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

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

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

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