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33 U.S.C. 1321

43 CFR 11.92 (a)(1)
43 CFR 11.92 (a)(2)

secrets or secret processes of such person, the board shall consider such report or portion thereof confidential for the purposes of section 1905 of title 18 of the United States Code [18 USCS §§ 1905]. If any person required to file any report under this paragraph shall fail to do so within the time fixed by the board for filing the same, and such failure shall continue for thirty days after notice of such default, such person shall forfeit to the United States the sum of $1,000 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States in the district court of the United States where such person has his principal office or in any district in which he does business. The Administrator may upon application therefor remit or mitigate any forfeiture provided for under this subsection.

(e) Compensation of board members. Board members, other than officers or employees of Federal, State or local governments, shall be for each day (including travel-time) during which they are performing board business, entitled to receive compensation at a rate fixed by the Administrator but not in excess of the maximum rate of pay for grade GS-18, as provided in the General Schedule under section 5332 of title 5 of the United States Code [5 USCS § 5332], and shall, notwithstanding the limitations of sections 5703 and 5704 of title 5 of the United States Code [5 USCS §§ 5703, 5704], be fully reimbursed for travel, subsistence, and related expenses.

(f) Enforcement proceedings. When any such recommendation adopted by the Administrator involves the institution of enforcement proceedings against any person to obtain the abatement of pollution subject to such recommendation, the Administrator shall institute such proceedings if he believes that the evidence warrants such proceedings. The district court of the United States shall consider and determine de novo all relevant issues, but shall receive in evidence the record of the proceedings before the conference or hearing board. The court shall have jurisdiction to enter such judgment and orders enforcing such judgment as it deems appropriate or to remand such proceedings to the Administrator for such further action as it may direct.

(June 30, 1948, ch 758, Title III, § 310, as added, Oct. 18, 1972, P. L. 92-500, § 2, 86 Stat. 860.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This Act", referred to in this section, is Act June 30, 1948, ch 758, Titles I–V, as added Oct. 18, 1972, P. L. 92-500, § 2, 86 Stat. 816 and Dec. 27, 1977, P. L. 95-217, §§ 39–41, 91 Stat. 1581, popularly known as the Federal Water Pollution Control Act or the Clean Water Act, which is classified to 33 USCS §§ 1251 et seq. For previous versions of this Act, see Explanatory note at 33 USCS § 1251.

CROSS REFERENCES

Intervention on the high seas, 33 USCS §§ 1471 et seq.

International and national coordination of environmental efforts, 42 USCS § 4332.

RESEARCH GUIDE

Am Jur:

61A Am Jur 2d, Pollution Control §§ 4, 132, 212, 233.

Law Review Articles:

International Joint Commission (United States-Canada) and the International Boundary and Water Commission (United States-Mexico): Potential for Environmental Control Along the Boundaries. 6 NYU J of International L & Politics 499, Winter, 1973.

Boundary Waters Treaty of 1909: Does It Provide an Environmental Cause of Action? 20 SD L Rev 147, Winter, 1975.

INTERPRETIVE NOTES AND DECISIONS

Decision under 33 USCS § 1320 must be "on the basis of the evidence presented"; hearing contemplated by section results only in "recommendations" for abating international pollution and might well be intended by Congress to be legislative type of hearing producing policy of general application. Seacoast Anti-Pollution League v Costle (1978, CA1) 572 F2d 872, cert den 439 US 824, 58 L Ed 2d 117, 99 S Ct 94 and later app (CA1) 597 F2d 306.

EPA administrator has authority to apply ocean dumping criteria promulgated under Marine Protection, Research, and Sancturaries Act of 1972 [33 USCS §§ 1420, 1444 et seq.] to set National Pollutant Discharge Elimination System permit conditions for ocean discharges in absence of promulgated ocean discharge guidelines under 33 USCS § 1343. Re Continental Oil Co. (1978) USEPA NPDES Permit Op No. 72.

§ 1321. Oil and hazardous substance liability

(a) Definitions. For the purpose of this section, the term—

(1) "oil" means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil;

(2) "discharge" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping, but excludes (A) discharges in compliance with a permit under section 402 of this Act [42 USCS § 1342], (B) discharges resulting from circumstances identified and reviewed and made a part of the public record with respect to a permit issued or modified under section 402 of this Act [42 USCS § 1342], and subject to a condition in such permit, and (C) continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of this Act [42 USCS § 1342], which are caused by events occurring within the scope of relevant operating or treatment systems;

(3) "vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water other than a public vessel;

(4) "public vessel" means a vessel owned or bareboat chartered and operated by the United States, or by a State or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce;

(5) "United States" means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands;

(6) "owner or operator" means (A) in the case of a vessel, any person owning, operating, or chartering by demise, such vessel, and (B) in the case of an onshore facility, and an offshore facility, any person owning or operating such onshore facility or offshore facility, and (C) in the case of any abandoned offshore facility, the person who owned or operated such facility immediately prior to such abandonment;

(7) "person" includes an individual, firm, corporation, association, and a partnership;

(8) "remove" or "removal" refers to removal of the oil or hazardous substances from the water and shorelines or the taking of such other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines and beaches;

(9) "contiguous zone" means the entire zone established or to be established by the United States under article 24 of the Convention on the Territorial Sea and the Contiguous Zone [15 UST 1606];

(10) "onshore facility" means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land within the United States other than submerged land;

(11) "offshore facility" means any facility of any kind located in, on, or under, any of the navigable waters of the United States, 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, other than a vessel or a public vessel;

(12) "act of God" means an act occasioned by an unanticipated grave natural disaster;

(13) "barrel" means 42 United States gallons at 60 degrees Fahrenheit;

(14) "hazardous substance" means any substance designated pursuant to subsection (b)(2) of this section;

(15) "inland oil barge" means a non-self-propelled vessel carrying oil in bulk as cargo and certificated to operate only in the inland waters of the United States, while operating in such waters;

(16) "inland waters of the United States" means those waters of the United States lying inside the baseline from which the territorial sea is measured and those waters outside such baseline which are a part of the Gulf Intracoastal Waterway.[;]

(17) "Otherwise [otherwise] subject to the jurisdiction of the United States" means subject to the jurisdiction of the United States by virtue of United States citizenship, United States vessel documentation or

numbering, or as provided for by international agreement to which the United States is a party.

(b) Congressional declaration of policy against discharges of oil or hazardous substances; designation of hazardous substances; study of higher standard of care incentives and report to Congress; liability; penalties; civil actions: penalty limitations, separate offenses, jurisdiction, mitigation of damages and costs, recovery of removal costs and alternative remedies. (1) The Congress hereby declares that it is the policy of the United States that there should be no discharges of oil or hazardous substances into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, 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).

(2)(A) The Administrator shall develop, promulgate, and revise as may be appropriate, regulations designating as hazardous substances, other than oil as defined in this section, such elements and compounds which, when discharged in any quantity into or upon the navigable waters of the United States or adjoining shorelines or the waters of the contiguous zone 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), present an imminent and substantial danger to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, shorelines, and beaches.

(B) The Administrator shall within 18 months after the date of enactment of this paragraph, conduct a study and report to the Congress on methods, mechanisms, and procedures to create incentives to achieve a higher standard of care in all aspects of the management and movement of hazardous substances on the part of owners, operators, or persons in charge of onshore facilities, offshore facilities, or vessels. The Administrator shall include in such study (1) limits of liability, (2) liability for third party damages, (3) penalties and fees, (4) spill prevention plans, (5) current practices in the insurance and banking industries, and (6) whether the penalty enacted in subclause (bb) of clause (iii) of subparagraph (B) of subsection (b)(2) of section 311 of Public Law 92-500 should be enacted.

(3) The discharge of oil or hazardous substances (i) into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or (ii) 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), in such quantities as may be harmful as determined by the President under paragraph (4) of this subsection, is prohibited, except (A) in the case of such discharges into the waters of the contiguous zone 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), where permitted under the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973, and (B) where permitted in quantities and at times and locations or under such circumstances or conditions as the President may, by regulation, determine not to be harmful. Any regulations issued under this subsection shall be consistent with maritime safety and with marine and navigation laws and regulations and applicable water quality standards.

(4) The President shall by regulation determine for the purposes of this section those quantities of oil and any hazardous substances the discharge of which may be harmful to the public health or welfare of the United States, including but not limited to fish, shellfish, wildlife, and public and private property, shorelines, and beaches.

(5) Any person in charge of a vessel or of an onshore facility or an offshore facility shall, as soon as he has knowledge of any discharge of oil or a hazardous substance from such vessel or facility in violation of paragraph (3) of this subsection, immediately notify the appropriate agency of the United States Government of such discharge. Any such person (A) in charge of a vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(i) of this subsection, or (B) in charge of a vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(ii) of this subsection and who is otherwise subject to the jurisdiction of the United States at the time of the discharge, or (C) in charge of an onshore facility or an offshore facility, who fails to notify immediately such agency of such discharge shall, upon conviction, be fined not more than $10,000, or imprisoned for not more than one year, or both. Notification received pursuant to this paragraph or information obtained by the exploitation of such notification shall not be used against any such person in any criminal case, except a prosecution for perjury or for giving a false statement.

(6)(A) Any owner, operator, or person in charge of any onshore facility or offshore facility from which oil or a hazardous substance is discharged in violation of paragraph (3) of this subsection shall be assessed a civil penalty by the Secretary of the department in which the Coast Guard is operating of not more than $5,000 for each offense. 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 at the time of the discharge, shall be assessed a civil penalty by the Secretary of the department in which the Coast Guard is operating of not more than $5,000 for each offense. No penalty shall be assessed unless the owner or operator charged shall have been given notice and opportunity for a hearing on such charge. Each violation is a separate offense. Any such civil penalty may be compromised by such Secretary. In determining the amount of the penalty, or the amount agreed upon in compromise, the appropriateness of such penalty to the size of the business of the owner or operator charged, the effect on the owner or operator's ability to continue in business, and the gravity of the violation, shall be considered by such Secretary. The Secretary of the Treasury shall withhold at the request of such Secretary the clearance required by section 4197 of the Revised Statutes of the United States, as amended (46 U.S.C. 91) [46 USCS Appx. § 91], of any vessel the owner or operator of which is subject to the foregoing penalty. Clearance may be granted in such cases upon the filing of a bond or other surety satisfactory to such Secretary.

(B) The Administrator, taking into account the gravity of the offense, and the standard of care manifested by the owner, operator, or person in charge, may commence a civil action against any such person subject to the penalty under subparagraph (A) of this paragraph to impose a penalty based on consideration of the size of the business of the owner or operator, the effect on the ability of the owner or operator to continue in business, the gravity of the violation, and the nature, extent, and degree of success of any efforts made by the owner, operator, or person in charge to minimize or mitigate the effects of such discharge. The amount of such penalty shall not exceed $50,000, except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, operator, or person in charge, such penalty shall not exceed $250,000. Each violation is a separate offense. Any action under this subparagraph may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to assess such penalty. No action may be commenced under this clause where a penalty has been assessed under clause (A) of this paragraph.

(C) In addition to establishing a penalty for the discharge of a hazardous substance, the Administrator may act to mitigate the damage to the public health or welfare caused by such discharge. The cost of such mitigation shall be deemed a cost incurred under subsection (c) of this section for the removal of such substance by the United States Government.

(D) Any costs of removal incurred in connection with a discharge excluded by subsection (a)(2)(C) of this section shall be recoverable from the owner or operator of the source of the discharge in an action brought under section 309(b) of this Act [33 USCS § 1319(b)].

(E) Civil penalties shall not be assessed under both this section and section 309 [33 USCS § 1319] for the same discharge.

(c) Removal of discharged oil or hazardous substances; National Contingency Plan. (1) Whenever any oil or a hazardous substance is discharged, or there is a substantial threat of such discharge, into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, 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) the President is authorized to act to remove or arrange for the removal of such oil or substance at any time, unless he determines such removal will be done properly by the owner or operator of the vessel, onshore facility, or offshore facility from which the discharge occurs.

(2) Within sixty days after the effective date of this section, the President shall prepare and publish a National Contingency Plan for removal of oil and hazardous substances, pursuant to this subsection. Such National Contingency Plan shall provide for efficient, coordinated, and effective action to minimize damage from oil and hazardous substance discharges, including containment, dispersal, and removal of oil and hazardous substances, and shall include, but not be limited to—

(A) assignment of duties and responsibilities among Federal departments and agencies in coordination with State and local agencies, including, but not limited to, water pollution control, conservation, and port authorities;

(B) identification, procurement, maintenance, and storage of equipment and supplies;

(C) establishment or designation of a strike force consisting of personnel who shall be trained, prepared, and available to provide necessary services to carry out the Plan, including the establishment at major ports, to be determined by the President, of emergency task forces of trained personnel, adequate oil and hazardous substance pollution control equipment and material, and a detailed oil and hazardous substance pollution prevention and removal plan;

(D) a system of surveillance and notice designed to insure earliest possible notice of discharges of oil and hazardous substances and imminent threats of such discharges to the appropriate State and Federal agencies;

(E) establishment of a national center to provide coordination and direction for operations in carrying out the Plan;

(F) procedures and techniques to be employed in identifying, containing, dispersing, and removing oil and hazardous substances;

(G) a schedule, prepared in cooperation with the States, identifying (i) dispersants and other chemicals, if any, that may be used in carrying out the Plan, (ii) the waters in which such dispersants and chemicals may be used, and (iii) the quantities of such dispersant or chemical which can be used safely in such waters, which schedule shall provide in the case of any dispersant, chemical, or waters not specifically identified in such schedule that the President, or his delegate, may, on a case-by-case basis, identify the dispersants and other chemicals which may be used, the waters in which they may be used, and the quantities which can be used safely in such waters; and

(H) a system whereby the State or States affected by a discharge of oil or hazardous substance may act where necessary to remove such discharge and such State or States may be reimbursed from the fund established under subsection (k) of this section for the reasonable costs incurred in such removal.

The President may, from time to time, as he deems advisable revise or otherwise amend the National Contingency Plan. After publication of the National Contingency Plan, the removal of oil and hazardous substances and actions to minimize damage from oil and hazardous substance discharges shall, to the greatest extent possible, be in accordance with the National Contingency Plan.

(d) Maritime disaster discharges. 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 [33 USCS §§ 1471 et seq.] (or the convention defined in section 2(3) thereof [33 USCS § 1471(3)]) shall be a cost incurred by the United States Government for the purposes of subsection (f) in the removal of oil or hazardous substance.

(e) Judicial relief. 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.

(f) Liability for actual costs of removal. (1) Except where an owner or operator can prove that a discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether any such act or omission was or was not negligent, or any combination of the foregoing clauses, such owner or operator of any vessel from which oil or a hazardous substance is discharged in violation of subsection (b)(3) of this section shall, not withstanding [notwithstanding] any other provision of law, be liable to the United States Government for the actual costs incurred under subsection (c) for the removal of such oil or substance by the United States Government in an amount not to exceed 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, except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, such owner or operator shall be liable to the United States Government for the full amount of such costs. Such costs shall constitute a maritime lien on such vessel which may be recovered in an action in rem in the district court of the United States for any district within which any vessel may be found. The United States may also bring an action against the owner or operator of such vessel in any court of competent jurisdiction to recover such costs.

(2) Except where an owner or operator of an onshore facility can prove that a discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether any such act or omission was or was not negligent, or any combination of the foregoing clauses, such owner or operator of any such facility from which oil or a hazardous substance is discharged in violation of subsection (b)(3) of this section shall be liable to the United States Government for the actual costs incurred under subsection (c) for the removal of such oil or substance by the United States Government in an amount not to exceed $50,000,000, except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, such owner or operator shall be liable to the United States Government for the full amount of such costs. The United States may bring an action against the owner or operator of such facility in any court of competent jurisdiction to recover such costs. The Administrator is authorized, by regulation,

after consultation with the Secretary of Commerce and the Small Business Administration, to establish reasonable and equitable classifications of those onshore facilities having a total fixed storage capacity of 1,000 barrels or less which he determines because of size, type, and location do not present a substantial risk of the discharge of oil or a hazardous substance in violation of subsection (b)(3) of this section, and apply with respect to such classifications differing limits of liability which may be less than the amount contained in this paragraph.

(3) Except where an owner or operator of an offshore facility can prove that a discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether any such act or omission was or was not negligent, or any combination of the foregoing clauses, such owner or operator of any such facility from which oil or a hazardous substance is discharged in violation of subsection (b)(3) of this section shall, notwithstanding any other provision of law, be liable to the United States Government for the actual costs incurred under subsection (c) for the removal of such oil or substance by the United States Government in an amount not to exceed $50,000,000 except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, such owner or operator shall be liable to the United States Government for the full amount of such costs. The United States may bring an action against the owner or operator of such a facility in any court of competent jurisdiction to recover such costs.

(4) The costs of removal of oil or a hazardous substance for which the owner or operator of a vessel or onshore or offshore facility is liable under subsection (f) of this section shall include any costs or expenses incurred by the Federal Government or any State government in the restoration or replacement of natural resources damaged or destroyed as a result of a discharge of oil or a hazardous substance in violation of subsection (b) of this section.

(5) The President, or the authorized representative of any State, shall act on behalf of the public as trustee of the natural resources to recover for the costs of replacing or restoring such resources. Sums recovered shall be used to restore, rehabilitate, or acquire the equivalent of such natural resources by the appropriate agencies of the Federal Government, or the State government.

(g) Third party liability. 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 subsection (b) of this section, alleges that such discharge was caused solely by an act or omission of a third party, such owner or operator shall pay to the United States Government the actual costs incurred under subsection (c) for removal of such oil or substance and shall be entitled by subrogation to all rights of the United States Government to recover such costs from such third party under this subsection. In any case where an owner or operator of a vessel, of an onshore facility, or of an offshore facility, from which oil or a hazardous substance is discharged in violation of subsection (b)(3) of this section, proves that such discharge of oil or hazardous substance was caused solely by an act or omission of a third party, or was caused solely by such an act or omission in combination with an act of God, an act of war, or negligence on the part of the United States Government, such third party shall, notwithstanding any other provision of law, be liable to the United States Government for the actual costs incurred under subsection (c) for removal of such oil or substance by the United States Government, except where such third party can prove that such discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of another party without regard to whether such act or omission was or was not negligent, or any combination of the foregoing clauses. If such third party was the owner or operator of a vessel which caused the discharge of oil or a hazardous substance in violation of subsection (b)(3) of this section, the liability of such third party under this subsection shall not exceed, 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. In any other case the liability of such third party shall not exceed the limitation which would have been applicable to the owner or operator of the vessel or the onshore or offshore facility from which the discharge actually occurred if such owner or operator were liable. If the United States can show that the discharge of oil or a hazardous substance in violation of subsection (b)(3) of this section was the result of willful negligence or willful misconduct within the privity and knowledge of such third party, such third party shall be liable to the United States Government for the full amount of such removal costs. The United States may bring an action against the third party in any court of competent jurisdiction to recover such removal costs.

(h) Rights against third parties who caused or contributed to discharge. The liabilities established by this section shall in no way affect any rights which (1) the owner or operator of a vessel or of an onshore facility or an offshore facility may have against any third party whose acts may in any way have caused or contributed to such discharge, or (2) The United States Government may have against any third party whose actions may in any way have caused or contributed to the discharge of oil or hazardous substance.

(i) Recovery of removal costs. (1) In any case where an owner or operator of a vessel or an onshore facility or an offshore facility from which oil or a hazardous substance is discharged in violation of subsection (b)(3) of this section acts to remove such oil or substance in accordance with regulations promulgated pursuant to this section, such owner or operator shall be entitled to recover the reasonable costs incurred in such removal upon establishing, in a suit which may be brought against the United States Government in the United States Claims Court, that such discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether such act or omission was or was not negligent, or of any combination of the foregoing causes.

(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).

(j) **Regulations; penalty.** (1) Consistent with the National Contingency Plan required by subsection (c)(2) of this section, as soon as practicable after the effective date of this section, 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) 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) 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.

(k) Authorization of appropriations; supplemental appropriations. (1) There is hereby authorized to be appropriated to a revolving fund to be established in the Treasury such sums as may be necessary to maintain such fund at a level of $35,000,000 to carry out the provisions of subsections (c), (d), (i), and *(l)* of this section. Any other funds received by the United States under this section shall also be deposited in said fund for such purposes. All sums appropriated to, or deposited in, said fund shall remain available until expended.

(2) The Secretary of Transportation shall notify the Congress whenever the unobligated balance of the fund is less than $12,000,000, and shall include in such notification a recommendation for a supplemental appropriation relating to the sums that are needed to maintain the fund at the level provided in paragraph (1).

(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. 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. 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) Boarding and inspection of vessels; arrest; execution of warrants or other process. 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.

(n) Jurisdiction. The several district courts of the United States are invested with jurisdiction for any actions, other than actions pursuant to subsection (i)(l), 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.

(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 Act or any other provision of law, or to affect any State or local law not in conflict with this section.

(p) Financial responsibility. (1) Any vessel over three hundred gross tons, including any barge of equivalent size, but not including any barge that is not self-propelled and that does not carry oil or hazardous substances as cargo or fuel, using any port or place in the United States or the navigable waters of the United States for any purpose shall establish and maintain under regulations to be prescribed from time to time by the President, evidence of financial responsibility of, 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, to meet the liability to the United States which such vessel could be subjected under this section. In cases where an owner or operator owns, operates, or charters more than one such vessel, financial responsibility need only be established to meet the maximum liability to which the largest of such vessels could be subjected. Financial responsibility may be established by any one of, or a combination of, the following methods acceptable to the President: (A) evidence of insurance, (B) surety bonds, (C) qualification as a self-insurer, or (D) other evidence of financial responsibility. Any bond filed shall be issued by a bonding company authorized to do business in the United States.

(2) The provisions of paragraph (1) of this subsection shall be effective April 3, 1971, with respect to oil and one year after the date of enactment of this section [enacted Oct. 18, 1972] with respect to hazardous substances. The President shall delegate the responsibility to carry out the provisions of this subsection to the appropriate agency head within sixty days after the date of enactment of this section [enacted Oct. 18, 1972]. Regulations necessary to implement this subsection shall be issued within six months after the date of enactment of this section [enacted Oct. 18, 1972].

(3) Any claim for costs incurred by such vessel may be brought directly against the insurer or any other person providing evidence of financial responsibility as required under this subsection. In the case of any action

pursuant to this subsection such insurer or other person shall be entitled to invoke all rights and defenses which would have been available to the owner or operator if an action had been brought against him by the claimant, and which would have been available to him if an action had been brought against him by the owner or operator.

(4) Any owner or operator of a vessel subject to this subsection, who fails to comply with the provisions of this subsection or any regulation issued thereunder, shall be subject to a fine of not more than $10,000.

(5) The Secretary of the Treasury may refuse the clearance required by section 4197 of the Revised Statutes of the United States, as amended (4 U.S.C. 91) [46 USCS Appx. § 91] to any vessel subject to this subsection, which does not have evidence furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

(6) The Secretary of the Department in which the Coast Guard is operated may (A) deny entry to any port or place in the United States or the navigable waters of the United States, to, and (B) detain at the port or place in the United States from which it is about to depart for any other port or place in the United States, any vessel subject to this subsection, which upon request, does not produce evidence furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

(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 or the Deepwater Port Act of 1974.

(June 30, 1948, ch 758, Title III, § 311. as added Oct. 18, 1972, P. L. 92-500, § 2, 86 Stat. 862; Dec. 28, 1973, P. L. 93-207, § 1(4), 87 Stat. 906; Dec. 27, 1977, P. L. 95-217, §§ 57, 58(a)–(g), (i), (k)–(m), 91 Stat. 1593-1596; Nov. 2, 1978, P. L. 95-576, § 1(b), 92 Stat. 2467; Oct. 21, 1980, P.L. 96-478, § 13(b), 94 Stat. 2303; Oct. 21, 1980, P. L. 96-483, § 8, 94 Stat. 2362; Apr. 2, 1982, P. L. 97-164, Title I, Part B, § 161(5), 96 Stat. 49.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"The Canal Zone", referred to in this section, is defined at 22 USCS § 3602.

"The Outer Continental Shelf Lands Act", referred to in this section, is Act Aug. 7, 1953, ch 345, 67 Stat. 462, as amended, which appears generally as 43 USCS §§ 1331 et seq. For full classification of such Act, consult USCS Tables volumes.

"The Deepwater Port Act of 1974", referred to in this section, is Act Jan. 3, 1975, P. L. 93-627, 88 Stat. 2126, which appears generally as 33 USCS §§ 1501 et seq. For full classification of such Act, consult USCS Tables volumes.

"The Fishery Conservation and Management Act of 1976", referred to in this section, is Act Apr. 13, 1976, P. L. 94-265, 90 Stat. 331, which was designated as the Magnuson Fishery Conservation and Management Act by Act Dec. 22, 1980, P. L. 96-561, Title II, Part C, Subpart 2, § 238(a), 94 Stat. 3300, and which appears generally as 16 USCS §§ 1801 et seq. For full classification of such Act, consult USCS Tables volumes.

"The date of enactment of this paragraph", referred to in this section, is probably Nov. 2, 1978, the date of enactment of Act Nov. 2, 1978, P. L. 95-276, § 1(b), 92 Stat. 2467, which substituted subsec. (b)(2)(B) for former subsec. (b)(2)(B) of this section.

"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 this section, probably means the penalty provision of subsec. (b)(2)(B)(iii)(bb) of this section as added by Act Oct. 18, 1972, P. L. 92-500, § 2, 86 Stat. 864, prior to amendment by Act Nov. 2, 1978. 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.".

"The effective date of this section", referred to in this section, is October 18, 1972, which is the date of enactment of § 311 of Act June 30, 1948, ch 758 (this section), as added by Act Oct. 18, 1972, P. L. 92-500, § 2, 86 Stat. 862.

"This Act", referred to in this section, is Act June 30, 1948, ch 758, Titles I–V, as added Oct. 18, 1972, P. L. 92-500, § 2, 86 Stat. 816 and Dec. 27, 1977, P. L. 95-217, §§ 39–41, 91 Stat. 1581, popularly known as the Federal Water Pollution Control Act or the Clean Water Act, which is classified to 33 USCS §§ 1251 et seq. For previous versions of this Act, see Explanatory note at 33 USCS § 1251.

Explanatory notes:

The bracketed semicolon is inserted in subsec. (a)(16) as the punctuation probably intended by Congress.

The bracketed word "otherwise" is inserted in subsec. (a)(17) as the uncapitalized word probably intended by Congress.

The bracketed word "notwithstanding" is inserted in subsec. (f)(1) as the word probably intended by Congress.

Amendments:

1973. Act Dec. 28, 1973, in subsec. (f), in paras. (1)–(3), substituted "(b)(3)" for "(b)(2)" wherever appearing and in para. (2), substituted "Administrator" for "Secretary"; and in subsecs. (g) and (i)(1), substituted "(b)(3)" for "(b)(2)" wherever appearing.

1977. Act Dec. 27, 1977, in subsec. (a), in para. (11), 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,", in para. (14), substituted ";" for ".", and added paras. (15) and (16); in subsec. (b), in para. (1), substituted ", 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)." for ".", in para. (2), subpara. (A), inserted "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)", in subpara. (B), added cl. (v), in para. (3), inserted "(i)", inserted ", or (ii) 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),", 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)" and deleted "article IV of" following "where permitted under", in para. (4), substituted "." for "except that in the case of the discharge of oil into or upon the waters of the contiguous zone, only those discharges which threaten the fishery resources of the contiguous zone or threaten to pollute or contribute to the pollution of the territory or the territorial sea of the United States may be determined to be harmful. ", in para. (5), inserted "(A) in charge of a vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(i) of this subsection, or (B) in charge of a vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(ii) of this subsection and who is otherwise subject to the jurisdiction of the United States, or (C) in charge of an onshore facility or an offshore facility,", and in para. (6), substituted "Any owner, operator, or person in charge of any onshore facility" for "Any owner or operator of any vessel, or shore facility," and inserted "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, shall be assessed a civil penalty by the Secretary of the department in which the Coast Guard is operating of not more than $5,000 for each offense."; in subsec. (c), in para. (1), inserted "or there is a substantial threat of such discharge," and inserted "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)", and in para. (2)(D), substituted "and imminent threats of such discharges to the appropriate State and Federal agencies;" for "to the appropriate Federal agency;"; in subsec. (d), inserted "or under the Intervention on the High Seas Act (or the convention defined in section 2(3) thereof)"; in subsec. (f), in para. (1), 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,", in paras. (2) and (3), substituted "$50,000,000" for "$8,000,000", and added paras. (4) and (5); in subsec. (g), inserted "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 subsection (b) of this section, alleges that such discharge was caused solely by an act or omission of a third party, such owner or operator shall pay to the United States Government the actual costs incurred under subsection (c) for removal of such oil or substance and shall be entitled by subrogation to all rights of the United States Government to recover such costs from such third party under this subsection." and 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 subsec. (i)(2), substituted ", or the Deepwater Port Act of 1974." for "."; in subsec. (j)(2), inserted "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) unless such owner, operator, or person in charge is otherwise subject to the jurisdiction of the United States."; in subsec. (k), substituted "such sums as may be necessary to maintain such fund at a level of" for "not to exceed"; in subsec. (p)(1), 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,"; and added subsecs. (q) and (r).

1978. Act Nov. 2, 1978, in subsec. (a), in para. (2), inserted ", but excludes (A) discharges in compliance with a permit under section 402 of this Act, (B) discharges resulting from circumstances identified and reviewed and made a part of the public record with respect to a permit issued or modified under section 402 of this Act, and subject to a condition in such permit, and (C) continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of this Act, which are caused by events occurring within the scope of relevant operating or treatment systems", and added para. (17); in subsec. (b)(2), substituted new subpara. (B) for one which read:

"(B)(i) The Administrator shall include in any designation under subparagraph (A) of this subsection a determination whether any such designated hazardous substance can actually be removed.

"(ii) The owner or operator of any vessel, onshore facility, or offshore facility from which there is discharged during the two-year period beginning on the date of enactment of the Federal Water Pollution Control Act Amendments of 1972, any hazardous substance determined not removable under clause (i) of this subparagraph shall be liable, subject to the defenses to liability provided under subsection (f) of this section, as appropriate, to the United States for a civil penalty per discharge established by the Administrator based on toxicity, degradability, and dispersal characteristics of such substance, in an amount not to exceed $50,000, except that where the United States can show that such discharge was a result of willful negligence or willful misconduct within the privity and knowledge of the owner, such owner or operator shall be liable to the United States for a civil penalty in such amount as the Administrator shall establish, based upon the toxicity, degradability, and dispersal characteristics of such substance.

"(iii) After the expiration of the two-year period referred to in clause (ii) of this subparagraph, the owner or operator of any vessel, onshore facility, or offshore facility, from which there is discharged any hazardous substance determined not removable under clause (i) of this subparagraph shall be liable, subject to the defenses to liability provided in subsection (f) of this section, to the United States for either one or the other of the following penalties, the determination of which shall be in the discretion of the Administrator:

"(aa) a penalty in such amount as the Administrator shall establish, based on the toxicity, degradability, and dispersal characteristics of the substance, but not less than $500 nor more than $5,000; or

"(bb) 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.

"(iv) The Administrator shall establish by regulation, for each hazardous substance designated under subparagraph (A) of this paragraph, and within 180 days of the date of such designation, a unit of measurement based upon the usual trade practice and, for the purpose of determining the penalty under clause (iii)(bb) of this subparagraph, shall establish for each such unit a fixed monetary amount which shall be not less than $100 nor more than $1,000 per unit. He shall establish such fixed amount based on the toxicity, degradability, and dispersal characteristics of the substance.

"(v) In addition to establishing a penalty for the discharge of a hazardous substance determined not to be removable pursuant to clauses (ii) through (iv) of this subparagraph, the Administrator may

act to mitigate the damage to the public health or welfare caused by such discharge. The cost of such mitigation shall be deemed a cost incurred under subsection (c) of this section for the removal of such substance by the United States Government.".

Such Act further, in subsec. (b), in para. (3), substituted "in such quantities as may be harmful" for "in harmful quantities", substituted new para. (4) for one which read: "The President shall by regulation, to be issued as soon as possible after the date of enactment of this paragraph, determine for the purposes of this section, those quantities of oil and any hazardous substance the discharge of which, at such times, locations, circumstances, and conditions, will be harmful to the public health or welfare of the United States, including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines, and beaches.", in para. (5), inserted "at the time of the discharge", and in para. (6), designated existing matter as subpara. (A), in subpara. (A), as so designated, inserted "at the time of the discharge", and added subparas. (B)–(E).

1980. Act Oct. 21, 1980, P. L. 96-478 (effective as provided in § 14(a) of such Act, which appears as 33 USCS § 1901 note), in subsec. (b)(3)(A), deleted "of oil" following "of such discharges" and substituted "the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973" for "the International Convention for the Prevention of Pollution of the Sea by Oil, 1954, as amended".

Act Oct. 21, 1980, P. L. 96-483, in subsec. (k), designated the existing provisions as para. (1), and added para. (2).

1982. Act Apr. 2, 1982 (effective 10/1/82, as provided by § 402 of such Act, which appears as 28 USCS § 171 note), in subsec. (i), in paras. (1) and (3), substituted "Claims Court" for "Court of Claims".

Transfer of functions:

Enforcement functions of the 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 the 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 the initial operation of the Alaska Natural Gas Transportation System by Reorg. Plan No. 1 of 1979, §§ 102(a), 203(a), 44 Fed. Reg. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, which appears as 5 USCS § 903 note.

Other provisions:

Assignment of Presidential Functions. Ex. Or. No. 11735 of Aug. 3, 1973, 38 Fed. Reg. 21243; as amended by Ex. Or. No. 12418 of May 5, 1983, § 1, 48 Fed. Reg. 20891, provided:

By virtue of the authority vested in me by section 311 of the Federal Water Pollution Control Act, as amended by the Federal Water Pollution Control Act Amendments of 1972 (Public Law 92-500; 86 Stat. 816 at 862; 33 U.S.C. 1321 [this section], hereinafter referred to as the act, by section 301 of title 3 of the United States Code [3 USCS § 301], and as President of the United States, it is hereby ordered as follows:

Section 1. Administrator of the Environmental Protection Agency. The Administrator of the Environmental Protection Agency is hereby designated and empowered to exercise, without the approval, ratification, or other action of the President, the following:

(1) the authority of the President under subsections (b)(3) and (b)(4) of section 311 [subsec. (b)(3) and (4) of this section] of the act relating to the determination of those quantities of oil and hazardous substances the discharge of which, at such times, locations, circumstances, and conditions, will be harmful to the public health or welfare of the United States and those which will not be harmful;

(2) the authority of the President under subsection (c)(2)(G) of section 311 of the act [subsec. (c)(2)(G) of this section], relating to identification of dispersants and other chemicals to be used;

(3) the authority of the President under subsection (e) of section 311 [subsec. (e) of this section] of the act, relating to determinations of imminent and substantial threat because of actual or threatened discharges of oil or hazardous substances from non-transportation-related onshore and offshore facilities, and relating to securing relief necessary to abate such actual or threatened discharges through court action; and

(4) the authority of the President under subsection (j)(1)(C) of section 311 of the act [subsec. (j)(1)(C) of this section], relating to the establishment of procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from non-transportation-related onshore and offshore facilities, and to contain such discharges.

Sec. 2. Secretary of Department in which the Coast Guard is Operating. The Secretary of the Department in which the Coast Guard is operating is hereby designated and empowered to exercise, without the approval, ratification, or other action of the President, the following:

(1) the authority of the President under subsection (e) of section 311 of the act [subsec. (e) of this section], relating to determinations of imminent and substantial threat because of actual or threatened discharges of oil or hazardous substances from transportation-related onshore and offshore facilities, and relating to securing relief necessary to abate such actual or threatened discharges through court action;

(2) the authority of the President under subsection (j)(1)(C) of section 311 of the act [subsec. (j)(1)(C) of this section], relating to the establishment of procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from vessels and transportation-related onshore and offshore facilities, and to contain such discharges;

(3) the authority of the President under subsection (j)(1)(D) of section 311 of the act [subsec. (j)(1)(D) of this section], relating to the inspection of vessels carrying cargoes of oil and hazardous substances and the inspection of such cargoes;

(4) the authority to administer the revolving fund established pursuant to subsection (k) of section 311 of the act [subsec. (k) of this section]; and

(5) the authority under subsection (m) of section 311 of the act [subsec. (m) of this section], relating to the boarding and inspection of vessels, the arrest of persons violating section 311 [this section], and the execution of warrants or other process pursuant to that section.

(6) the authority of the President under subsection (p)(1) of section 311 of the act [subsec. (p)(1) of this section], relating to the issuance of regulations governing evidence of financial responsibility for vessels to meet liability to the United States; and

(7) the authority under subsection (p)(2) of section 311 of the act [subsec. (p)(2) of this section], relating to the administration of subsection (p) [subsec. (p) of this section].

Sec. 3. Reserved.

Sec. 4. Council on Environmental Quality. The Council on Environmental Quality is hereby designated and empowered to exercise, without the approval, ratification, or other action of the President, the authority under subsection (c)(2) of section 311 of the act [subsec. (c)(2) of this section], providing for the preparation, publication, revision or amendment of a National Contingency Plan for the removal of oil and hazardous substance discharges (hereinafter referred to as the National Contingency Plan).

Sec. 5. Other Assignments.

(a) The head of each Federal department and agency having responsibilities under the National Contingency Plan (40 C.F.R. Part 300), as now or hereafter amended, is designated and empowered to exercise, without the approval, ratification, or other action of the President, in accordance with that Plan, the authority under Section 311(c)(1) of the Act (33 U.S.C. 1321(c)(1)) [subsec. (c)(1) of this section], relating to the removal of oil and hazardous substances that have been discharged, or for which there is a substantial threat of discharge, into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or in connection with activities under the Outer Continental Shelf Lands Act [43 USCS §§ 1331 et seq.] or the Deepwater Port Act of 1974 [33 USCS §§ 1501 et seq.], 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) [16 USCS §§ 1801 et seq.].

(b) The Administrator of the Environmental Protection Agency and the Secretary of the Department in which the Coast Guard is operating, respectively, in and for the waters and areas for which each has responsibility for providing or furnishing on-scene-coordinators under the National Contingency Plan, are designated and empowered to exercise, without approval, ratification, or other action of the President, the following:

(1) the authority under subsection (c)(2)(C) of section 311 of the act [subsec. (c)(2)(C) of this section], relating to the determination of major ports for establishment of emergency task forces;

(2) the authority under subsection (d) of section 311 of the act [subsec. (d) of this section], relating to the coordination and direction of the removal or elimination of threats of pollution hazards from discharges, or imminent discharges, of oil or hazardous substances, and the removal and destruction of vessels;

(3) the authority of the President under subsection (j)(1)(A) of section 311 of the act [subsec. (j)(1)(A) of this section], relating to the establishment of methods and procedures for the removal of discharged oil and hazardous substances; and

(4) the authority of the President under subsection (j)(1)(B) of section 311 of the act [subsec. (j)(1)(B) of this section], relating to the establishment of criteria for the development and implementation of local and regional oil and hazardous substance removal contingency plans.

(c) The Administrator of the Environmental Protection Agency and the Secretary of the Department in which the Coast Guard is operating are designated and empowered to exercise, without the approval, ratification, or other action of the President, the authority of the President under section 311(j)(2) [subsec. (j)(2) of this section] with respect to assessing and compromising civil penalties in connection with enforcement of the respective regulations issued by each pursuant to this order.

Sec. 6. 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 operating or regulatory responsibilities which may be significantly affected.

Sec. 7. Agency to Receive Notices of Discharges of Oil or Hazardous Substances. The Coast Guard is hereby designated the "appropriate agency" for the purpose of receiving the notice of discharge of oil or hazardous substances required by subsection (b)(5) of section 311 of the act [subsec. (b)(5) of this section]. The Commandant of the Coast Guard shall issue regulations implementing this designation.

Sec. 8. Without derogating from any action heretofore taken thereunder, Executive Order No. 11548 of July 20, 1970 [formerly classified as a note to this section], is hereby superseded.

Effective date of 1977 amendments. Act Dec. 27, 1977, P. L. 95-217, § 58(h), 91 Stat. 1596, provided: "The amendments made by paragraphs (5) and (6) of subsection (d) of this section [amending subsec. (f)(2), (3) of this section] shall take effect 180 days after the date of the enactment of the Clean Water Act of 1977 [enacted Dec. 27, 1977].".

Allowable delay in establishing financial responsibility for increase in amounts under 1977 amendments. Act Dec. 27, 1977, P. L. 95-217, § 58(j), 91 Stat. 1596, provided: "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 subsecs. (f)(1), (g), and (p)(1) of 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.".

Transfer of functions relating to financial responsibility of vessels for pollution liability. Ex. Or. No. 12418 of May 5, 1983, 48 Fed. Reg. 20891, provided:

By the authority vested in me as President by the Constitution and statutes of the United States of America, in order to transfer certain functions relating to the financial responsibility of vessels for water pollution and establish the authority of Federal agencies to respond to discharges or substantial threats of discharges of oil and hazardous substances, it is hereby ordered as follows:

Section 1. Executive Order No. 11735 of August 3, 1973 [note to this section] is amended as follows:

(a) The heading of Section 3 is amended to read "Reserved".

(b) Subsections 3(1) and 3(2) are redesignated subsections 2(6) and 2(7) respectively.

(c) Section 5(a) is amended to provide as follows:

"(a) The head of each Federal department and agency having responsibilities under the National Contingency Plan (40 C.F.R. Part 300), as now or hereafter amended, is designated and empowered to exercise, without the approval, ratification, or other action of the President, in accordance with that Plan, the authority under Section 311(c)(1) of the Act (33 U.S.C. 1321(c)(1)), relating to the removal of oil and hazardous substances that have been discharged, or for which there is a substantial threat of discharge, into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, 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).".

Sec. 2. Section 1-2 of Executive Order No. 12123 of February 26, 1979 [43 USCS § 1811 note], is amended to provide as follows:

"1-2. *Determination of Financial Responsibility and the Assessment and Compromise of Penalties.*

"The Secretary of the Department in which the Coast Guard is operating is hereby delegated the following authorities:

"1-201. The authority vested in the President by Section 305(a)(1) of the Act (92 Stat. 677, 43 U.S.C. 1815(a)(1)), relating to vessels;

"1-202. The authority vested in the President by Section 305(b) of the Act (92 Stat. 678, 43 U.S.C. 1815(b)), relating to offshore facilities; and

"1-203. The authority vested in the President by Section 312(a)(2) of the Act (92 Stat. 684, 43 U.S.C. 1822(a)(2)), relating to the assessment and compromise of penalties concerning vessels.".

Sec. 3. Section 5(b) of Executive Order No. 12316 of August 14, 1981 [42 USCS § 9615 note] is amended to provide as follows:

"(b) The functions vested in the President by Section 108(a) of the Act are delegated to the Secretary of the Department in which the Coast Guard is operating. The Secretary shall be responsible, in accordance with Section 109 of the Act, for the enforcement of civil penalties for violations of the regulations issued under Section 108(a) of the Act.".

Sec. 4. The Secretary of the Department in which the Coast Guard is operating is hereby delegated the authority vested in the President by Sections 311(p)(1)-(2) of the Federal Water Pollution Control Act, as amended (86 Stat. 870, 33 U.S.C. 1321(p)(1)-(2)) [subsec. (p)(1), (2) of this section], as those sections are incorporated by reference in Section 204(c)(3) of the Trans-Alaska Pipeline Authorization Act of 1973 (Public Law 93-153, 87 Stat. 586, 587) [43 USCS § 1653(c)(3)], relating to the demonstration of financial responsibility for vessels carrying oil loaded from the Trans-Alaska pipeline.

Sec. 5. The Director of the Office of Management and Budget shall make such determinations, issue such Orders, and take all steps necessary or appropriate to effectuate the transfer of records, property, personnel, and positions and unexpended balances of appropriations, available or to be made available, which relate to the functions transferred, as provided in this Order [this note], from the Federal Maritime Commission to the Secretary of the Department in which the Coast Guard is operating.

Sec. 6. Any rules, regulations, orders, directives, circulars, or other actions taken pursuant to the functions transferred from the Federal Maritime Commission to the Secretary of the Department in which the Coast Guard is operating by the delegation made in this Order [this note] shall remain in effect until amended, modified, or revoked.

CODE OF FEDERAL REGULATIONS

United States Customs Service, Department of the Treasury; Vessels in foreign and domestic trades, 19 CFR Part 4.
Coast Guard, Department of Transportation; General; Claims, 33 CFR Part 25.
Coast Guard, Department of Transportation; Marine Pollution Financial Responsibility and Compensation; Financial responsibility for water pollution, 33 CFR Part 130.
Coast Guard, Department of Transportation; Marine Pollution Financial Responsibility and Compensation; Financial responsibility for oil pollution—Alask pipeline, 33 CFR Part 131.
Coast Guard, Department of Transportation; Pollution; Oil pollution regulations, 33 CFR Part 151.
Coast Guard, Department of Transportation; Pollution; Control of pollution by oil and hazardous substances, discharge removal, 33 CFR Part 153.
Coast Guard, Department of Transportation; Pollution; Oil pollution prevention regulations for marine oil transfer facilities, 33 CFR Part 154.
Coast Guard, Department of Transportation; Pollution; Oil pollution prevention regulations for vessels, 33 CFR Part 155.
Coast Guard, Department of Transportation; Pollution; Oil and hazardous material transfer operations, 33 CFR Part 156.
Coast Guard, Department of Transportation; Ports and Waterways Safety; Inland waterways navigation regulations, 33 CFR Part 162.
Environmental Protection Agency; Water Programs; Criteria for State, local and regional oil removal contingency plans, 40 CFR Part 109.

Environmental Protection Agency; Water Programs; Oil pollution prevention, 40 CFR Part 112.
Environmental Protection Agency; Water Programs; Civil penalties for violation of oil pollution prevention regulations, 40 CFR Part 114.
Environmental Protection Agency; Superfund Programs; National oil and hazardous substances pollution contingency plans, 40 CFR Part 300.
Environmental Protection Agency; Superfund Programs; Designation, reportable quantities, and notification, 40 CFR Part 302.
Office of the Secretary of the Interior; Trans-Alaska pipeline liability fund, 43 CFR Part 29.
Coast Guard, Department of Transportation; Tank Vessels; Inspection and certification, 46 CFR Part 31.
Coast Guard, Department of Transportation; Passenger Vessels; Inspection and certification, 46 CFR Part 71.
Coast Guard, Department of Transportation; Cargo and Miscellaneous Vessels; Inspection and certification, 46 CFR Part 91.
Coast Guard, Department of Transportation; Small Passenger Vessels (Under 100 gross tons); Inspection and certification, 46 CFR Part 176.
Coast Guard, Department of Transportation; Oceanographic Research Vessels; Inspection and certification, 46 CFR Part 189.

CROSS REFERENCES

Excavations and deposit of debris in navigable waters, 33 USCS §§ 403-407.
Definition of "person", 33 USCS § 1362.
Marine protection and restriction of ocean dumping, 33 USCS § 1401 et seq.
U. S. liability for unreasonable damages under Intervention on the High Seas Act, 33 USCS § 1479.
This section is referred to in 33 USCS §§ 1014, 1266, 1314, 1318, 1376, 1402, 1486, 1517; 42 USCS §§ 9601, 9602, 9605, 9606, 9611, 9631, 9651, 9652, 9654, 10601; 43 USCS §§ 1653, 1811, 1821; 46 USCS §§ 391a, 2101.

RESEARCH GUIDE

Am Jur:

61A Am Jur 2d, Pollution Control §§ 3, 132, 182, 184–192, 194, 211, 212, 233, 247.

Am Jur Trials:

Subterranean Water Pollution, 18 Am Jur Trials 495.

Forms:

9 Federal Procedural Forms L Ed, Environmental Protection, §§ 29:131–29:135, 29:137.

13 Federal Procedural Forms L Ed, Navigable Waters §§ 51:81, 51:102.

15 Am Jur Legal Forms 2d, Pollution Control §§ 205:21 et seq.

Annotations:

Liability, under § 311(i) of Federal Water Pollution Control Act (33 USCS § 1321(i)), of United States to owner or operator of onshore or offshore facility, or vessel, for removal costs of oil or hazardous substance. 59 ALR Fed 282.

Liability, under § 311(f, g) of Federal Water Pollution Control Act (33 USCS § 1321(f, g)), to United States of owner or operator of onshore or offshore facility, or vessel, for discharge of oil or hazardous substance. 56 ALR Fed 343.

Liability, under § 311(b)(6) of Federal Water Pollution Control Act (33 USCS § 1321(b)(6)), of owner, operator, or person in charge of onshore or offshore facility, or vessel, for discharge of oil or hazardous substance. 55 ALR Fed 141.

Damages compensable under Federal maritime Law for injuries caused by discharge of oil into navigable waters. 26 ALR Fed 346.

Construction and application of provision of Federal Water Pollution Control Act (33 USCS § 1321(b)(5) and similar predecessor, formerly designated as 33 USCS § 1161(b)(4)) requiring person in charge of vessel, or onshore or offshore facility, to notify federal agency of prohibited discharge from such vessel or facility. 17 ALR Fed 804.

Liability of vessel to state in admiralty action in rem for damages resulting from oil spill in navigable waters of state. 10 ALR Fed 956.

Liability insurance coverage for violations of antipollution laws. 88 ALR3d 182.

Texts:

1 Norris, The Law of Maritime Personal Injuries (3d ed) § 153.

Law Review Articles:

Mervin, Government Regulation of Oil Polluters: How Much is Enough? 29 Admin L Rev 603, Fall, 1977.

Discharge of Oil into Nonnavigable Tributary of Navigable Water. 27 Ala L Rev 227, Spring, 1975.

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Shipowner's Liability for an Oil Spill Caused Solely by the Negligence of a Compulsory Pilot. 58 Boston U L Rev 316, March, 1978.

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Dubais, Liability of a Salvor Responsible for Oil Pollution Damage. 8 J of Maritime L 375, April, 1977.

Sisson, Oil Pollution Law and the Limitation of Liability Act: A Murky Sea for Claimants Against Vessels. 9 Journal of Maritime L 285, April, 1978.

Oil Pollution Act Amendments of 1973. 6 Law and Policy in International Business 1251, Fall, 1974.

Liability for Maritime Oil Pollution: A Comparison of the Maine Coastal Conveyance [of Oil] Act with Federal Liability Provisions. 29 Me L Rev 47, 1977.

Tarlock, Oil Pollution on Lake Superior: The Uses of State Regulation. 61 Minn L Rev 63, November, 1976.

Snell, Trouble on Oiled Water—Statutory Interpretation. 39 Modern L Rev 402, July, 1976.

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Wood, Requiring Polluters to Pay for Aquatic Natural Resources Destroyed by Oil Pollution. 8 Natural Resources Lawyer 545, 1976.

Hardy, Offshore Development and Marine Pollution. 1 Ocean Development & International L 239, Fall, 1973.

Jackson, Rational Development of Outer Continental Shelf Oil & Gas. 54 Or L Rev 567, 1975.

Compensation for Oil Pollution at Sea: An Insurance Approach. 26 Federation Insurance Counsel Q 3, Fall, 1975; 12 San Diego L Rev 717, April, 1975.

Hunter, Possibilities and Problems of Preventing Oil Pollution of the Oceans. 4 Transportation L J 21, January, 1972.

Studds, Oil and Water. 13 Trial 43, March, 1977.

Environmental Law—The Penalty for Violation of § 1161(b)(5) of the Water Quality Improvement Act. 51 Tulane L Rev 742, April, 1977.

Phosphate Detergent Regulations. 7 Urban L Annual 381, 1974.

State Oil Pollution Regulation of Maritime Activities: Florida Oil Pollution Act. 7 Vanderbilt J of Transnational L 183, Winter, 1973.

INTERPRETIVE NOTES AND DECISIONS

I. IN GENERAL

1. Generally

33 USCS § 1321 is not limited in application only to classical "navigable waters of the United States"; Congress, in adopting Federal Water Pollution Control Act Amendments of 1972, intended to control both discharges of pollutants directly into navigable waters and discharges of pollutants into nonnavigable tributaries which flow into navigable rivers. United States v Ashland Oil & Transp. Co. (1974, CA6 Ky) 504 F2d 1317, 50 OGR 133.

Purpose behind 33 USCS § 1321(b)(6) is remedial and compensatory in nature, as penalty is imposed regardless of fault, with proceeds being used for costs of administration and cleanup. True v United States (1985, DC Wyo) 603 F Supp 1370, 86-1 USTC ¶ 9193, 56 AFTR 2d 85-6208, later proceeding (DC Wyo) 629 F Supp 881, 57 AFTR 2d 86-1417.

2. Constitutionality

Waiver of pre-emption in predecessor to 33 USCS § 1321 providing that nothing in section "shall be construed as pre-empting any state or political subdivision thereof from imposing any requirement or liability with respect to the discharge of oil into any waters within such state" is valid. Askew v American Waterways Operators, Inc. (1973) 411 US 325, 36 L Ed 2d 280, 93 S Ct 1590, 45 OGR 409, reh den 412 US 933, 37 L Ed 2d 162, 93 S Ct 2746.

Use of report of discharge required by 33 USCS § 1321(b)(5) to support and assess penalty under § 1321(b)(6) does not violate Fifth Amendment's prohibition against compelling person to be witness against himself, since provisions of § 1321 are civil in nature and Fifth Amendment applies only to criminal actions. United States v Ward (1980) 448 US 242, 65 L Ed 2d 742, 100 S Ct 2636, 66 OGR 280, reh den 448 US 916, 65 L Ed 2d 1179, 101 S Ct 37.

Predecessor to 33 USCS § 1321 and regulation promulgated thereto, which, read together, prohibit discharge of oil from ship and consider such discharge as harmful if it produces sheen on water's surface and if it does not come from properly functioning vessel engine, did not violate Fifth Amendment due process of law, as statute, when coupled with regulation, was not void for vagueness; "sheen test" in regulation promulgated pursuant to predecessor to 33 USCS § 1321 was valid basis for distinction between those oil discharges which are harmful and those which are not. United States v Boyd (1973, CA9 Wash) 491 F2d 1163.

Hearing provided by administrative civil penalty procedures is not subject to procedural requirements of formal hearing dictated by Administrative Procedure Act and cross-examination is not required; due process requirements are met since party is entitled to present his case or defense by oral or documentary evidence and to submit rebuttal evidence and there is no need for cross-examination to obtain full disclosure of facts. G-LMI ltr 16460/17, 15 July 80, CGLB, Feb 1981.

3. Construction

Since United States Coast Guard is charged with execution of 33 USCS § 1321, great weight must be given to construction it gives to such statute. United States v W. B. Enterprises, Inc. (1974, SD NY) 378 F Supp 420.

33 USCS § 1321(j)(2) is pollution prevention measure but it is not necessary that there be pollution incident for there to be violation; § 1321(j) provides for civil penalty to be assessed against owner or operator of vessel which fails to comply with regulations issued under authority of § 1321 establishing procedures and requirements for equipment to prevent discharges. G-LMI ltr 16460/12, 31 Mar 80 CGLB, Oct 1980.

4. Application

33 USCS § 1321 is not limited in application only to classical "navigable waters of the United States"; Congress, in adopting Federal Water Pollution Control Act Amendments of 1972, intended to control both discharges of pollutants directly into navigable waters and discharges of pollutants into nonnavigable tributaries which flow into navigable rivers. United States v Ashland Oil & Transp. Co. (1974, CA6 Ky) 504 F2d 1317, 50 OGR 133.

3 USCS §§ 1321 and 1322 no longer apply to Panama Canal since Panama resumed plenary jurisdiction under Panama Canal Act (Public Law 96-70, 93 state 452). G-LMI memo 16450, 10 Mar. 80, CGLB, Oct. 1980.

33 USCS §§ 1321, 1322 may be applied to public vessels, depending upon extent to which vessel is used in trade or business involving transportation of goods or persons, but such vessels are not subject to enforcement or penalty provisions although basic prohibitions apply; violations may be referred to agency responsible for vessel and in case of foreign vessel to flag gov-

ernment; non-public vessels operated by states are subject to enforcement and penalty action. G-LMI memo 16450, 26 Nov 80, CGLB, Mar 1982.

5. Relationship with other laws

Action under 33 USCS § 1321 is subject to six-year contract statute of limitations of 28 USCS § 2415. United States v P/B STCO 213 (1985, CA5 Tex) 756 F2d 364.

Predecessor to 33 USCS § 1321 does not supersede or emasculate Refuse Act [33 USCS § 407]. United States v Interlake Steel Corp. (1969, ND Ill) 297 F Supp 912; United States v Armco Steel Corp. (F DC Tex) 3 ERC 1067, mod on other grounds 3 ERC 1263.

Action by United States for recovery of full amount of its oil spill cleanup cost, as opposed to action for damages to property or for injunctive relief, may only be predicated on 33 USCS § 1321 and not on Refuse Act (33 USCS § 407) or upon general maritime law of torts or federal common law of nuisance. United States v Dixie Carriers, Inc. (1978, ED La) 462 F Supp 1126, affd (CA5 La) 627 F2d 736, later proceeding (ED La) 560 F Supp 796, affd (CA5 La) 736 F2d 180.

United States does not retain cause of action to remedy oil spillage under Refuse Act (33 USCS § 407), which is superseded by FWPCA (33 USCS §§ 1251 et seq). (ED La) 480 F Supp 290, later op (ED La) 505 F Supp 1029, affd in part and revd in part on other grounds (CA5 La) 681 F2d 432, reh den (CA5 La) 693 F2d 451, cert den 462 US 1132, 77 L Ed 2d 1367, 103 S Ct 3112.

28 USCS § 2415 is applicable statute of limitations in action brought under 33 USCS § 1321. United States v C & R Trucking Co. (1982, ND W Va) 537 F Supp 1080.

Citizen suit provision of Clean Water Act (33 USCS § 1365) does not confer upon citizens right to intervene in governmental action to abate imminent and substantial endangerment brought pursuant to 33 USCS §§ 1321 and 1364. United State v Stringfellow (1984, CD Cal) 39 FR Serv 2d 439, motion to dismiss app den (CA9 Cal) 40 FR Serv 2d 931, cert dismd (US) 85 L Ed 2d 527, 105 S Ct 2171 and revd, in part on other grounds, vacated, in part on other grounds (CA9 Cal) 753 F2d 821, 4 FR Serv 3d 397.

6. Definitions

Fact that tanks, pumps, lights, and connecting lines owned by defendant were buried on land in possession of third-party lessee is immaterial to determination of whether defendant was owner within meaning of 33 USCS § 1321. G-LMI ltr 16460/5, 13 May 1981, CGLD, April 1984.

Naptha is considered "oil" within meaning of § 1321(j). G-LMI Ltr. 16460/1, 14 Oct. 82, CGLB No. 433.

7. —"Onshore facility"

Oil company cannot recover from United States reasonable cost incurred in cleaning up oil spill which originated from tanker and fuel barge; oil spill does not originate from "on shore facility" because instrumentality that is afloat is not "on shore", and company's land submerged for use as slip cannot be considered on shore, within meaning of 33 USCS § 1321(a)(10). Shell Oil Co. (1976) 209 Ct Cl 699.

Oil terminal and distribution facility, consisting in part of transportation facility that includes loading racks for trucks and railroad tank cars, and dock extending into creek for oil tankers, is "onshore facility"; railroad's 2 tank cars, as "rolling stock", also meet statutory definition of "onshore facility". Union Petroleum Corp. v United States (1980, Ct Cl) 14 ERC 2072.

Claimant's oil terminal is "on shore facility" within meaning of 33 USCS § 1321(a)(10). Union Petroleum Corp. v United States (1981) 228 Ct Cl 54, 651 F2d 734, 59 ALR Fed 262.

Home fuel oil heating tank constitutes "onshore facility" for purposes of 33 USCS § 1321(a)(10). United States v Buntin (1976, DC Tenn) 11 ERC 1061.

8. —"Person"; "person in charge"

Corporation which had capacity to prevent and abate damage through its direction of activities of persons controlling mechanisms causing pollution must be regarded as "person in charge" for purpose of 33 USCS § 1161 (renumbered 33 USCS § 1321) requiring that person in charge notify government of discharge of oil from facility into navigable waterway. United States v Mobil Oil Corp. (1972, CA5 Tex) 464 F2d 1124, 17 ALR Fed 796.

Owner-operator is "in charge" of his facility within meaning of 33 USCS § 1161 (predecessor to 33 USCS § 1321), and it necessarily follows that corporate owner, "person" within statutory definition, is "person in charge" of facilities it owns and operates; there is no inconsistency between such definition of "person in charge" and use in civil penalty provision of § 1321 of words "owner or operator", and regulations of Coast Guard defining "person in charge" as being individual are unpersuasive, since purpose of regulations is to prescribe manner in which reporting duties of statute will be fulfilled in daily practice, and this necessarily requires that regulations speak to individuals who act for corporation. Apex Oil Co. v United States (1976,

CA8 Mo) 530 F2d 1291, cert den 429 US 827, 50 L Ed 2d 90, 97 S Ct 84.

Political subdivision or municipality is "person" within definition of 33 USCS § 1321(a)(7) and is therefore subject to civil penalties pursuant to 33 USCS § 1321 for causing oil spills into navigable waters. United States v Massachusetts Bay Transp. Authority (1980, CA1 Mass) 614 F2d 27; United States v New York (1979, SD NY) 481 F Supp 4, 55 ALR Fed 134, affd without op (CA2 NY) 614 F2d 1292, cert den 466 US 936, 64 L Ed 2d 789, 100 S Ct 2154.

Corporation is "person in charge" within meaning of predecessor to 33 USCS § 1321's notification of discharge provision. United States v United States Steel Corp. (1972, DC Pa) 4 ERC 1641.

Phrase "person in charge" in 33 USCS § 1321(b)(5) includes corporations. United States v Hougland Barge Line, Inc. (1974, WD Pa) 387 F Supp 1110.

Truck driver who delivered oil was not "in charge" of on shore facilities within meaning of 33 USCS § 1321(a)(10). United States v Mackin Constr. Co. (1975, DC Mass) 388 F Supp 478.

University of Minnesota is "person" within meaning of term as defined in 33 USCS § 1321(a)(7), in view of its autonomous corporate nature, and as such, is subject to civil penalty provision of § 1321(b)(6) for violation of statute. G-LMI ltr 16460/2, 6 Dec 79, CGLB, Jul 1980.

Term "person in charge," as used in 33 USCS § 1321(b)(6), is not limited to person in charge of oil transfer operation, but includes one in charge of vessel or facility from which oil is discharged in violation of Federal Water Pollution Control Act (§§ 1251 et seq.). G-LMI ltr 10460/7, 5 Aug 80, CGLB, Dec 1981.

Annotations:

Construction and application of provision of Federal Water Pollution Control Act (33 USCS § 1321(b)(5) and similar predecessor, formerly designated as 33 USCS § 1161(b)(4)) requiring person in charge of vessel, or onshore or offshore facility, to notify federal agency of prohibited discharge from such vessel or facility. 17 ALR Fed 804 (see, especially, § 3 as to "person in charge").

9. —"Public vessel"

Vessel chartered by government but operated by private operator is not "public vessel" within meaning of 33 USCS § 1321(a)(4). G-LMI ltr 14640-8, 17 Jan 78, CGLB, Apr 1979.

Vessels in Ready Reserve Fleet program operated by private persons are not within purview of § 1321(a)(4) definition of "public vessel." Chief Counsel Memo 16712, 29 Sept. 83, CGLB No. 433.

10. Expenditures

33 USCS § 1321(k) permits expenditure of sums in revolving fund established under § 1321(k) which have been recovered under § 1321(f)(4) for purpose of restoring or replacing natural resources damaged or destroyed as a result of discharge of oil or hazardous substance; no appropriations or other sums in revolving fund may be used for such purposes, nor may revolving fund be accessed for resource replacement or restoration until after sums are recovered under § 1321(f)(4). G-LMI memo 16450, 26 Nov 80, CGLB, Mar 1982.

II. PROHIBITED DISCHARGES

A. In General

11. Declaration of policies

In prosecutions under 33 USCS § 1321(b)(5), government is not required to establish effect on interstate commerce of any particular discharge or of any particular stream as legislative history of Act is laden with reports, references, and statements supporting widely accepted conclusion that water pollution is national problem severely affecting health of our people, welfare of nation, and efficient conduct of interstate commerce. United States v Ashland Oil & Transp. Co. (1973, WD Ky) 364 F Supp 349, 46 OGR 11, affd (CA6 Ky) 504 F2d 1317, 50 OGR 133.

Language of 33 USCS § 1321(b)(1) reenforces government's position that once discharge of oil occurs, environmental harm results, and defendant would be subject to civil liability, not abated by subsequent removal of oil from river. United States v W. B. Enterprises, Inc. (1974, SD NY) 378 F Supp 420.

12. Proof of violation

In prosecutions under 33 USCS § 1321(b)(5), government is not required to establish effect on interstate commerce of any particular discharge or of any particular stream as legislative history of Act is laden with reports, references, and statements supporting widely accepted conclusion that water pollution is national problem severely affecting health of our people, welfare of nation, and efficient conduct of interstate commerce. United States v Ashland Oil & Transp. Co. (1973, WD Ky) 364 F Supp 349, 46 OGR 11, affd (CA6 Ky) 504 F2d 1317, 50 OGR 133.

Remedial action taken subsequent to spill is totally irrelevant to determination of harmfulness under 33 USCS § 1321(b)(3). United States v Atlantic Richfield Co. (1977, ED Pa) 429 F Supp 830, affd (CA3 Pa) 573 F2d 1303.

Single sample is insufficient as evidentiary basis upon which civil penalty may be assessed; it is essential that all possible sources be sampled. G-LMI ltr 16460/5, 31 Mar 80, CGLB, Oct 1980.

When oil sample analyses are performed, it is essential that all possible sources be sampled and where, for some reason it is not possible to do so, record must specify reason, which must be considered by Hearing Officer in his determination. G-LMI ltr 16460/17, 7 July 80, CGLB, Feb 1981.

In assessing penalty against defendant for discharge of oil in violation of 33 USCS § 1321, Hearing Officer's consideration of prior assessment of penalty for prior violations is proper notwithstanding fact that denial of liability accompanied payment of penalty. G-LMI ltr 16460/9, 23 June 1981, CGLB, April 1984.

13. —Determination of illegal quantities; "sheen" test

Predecessor to 33 USCS § 1321 and regulation promulgated thereto, which, read together, prohibit discharge of oil from ship and consider such discharge as harmful if it produces sheen on water's surface and if it does not come from properly functioning vessel engine, did not violate Fifth Amendment due process of law, as statute, when coupled with regulation, was not void for vagueness; "sheen test" in regulation promulgated pursuant to predecessor to 33 USCS § 1321 was valid basis for distinction between those oil discharges which are harmful and those which are not. United States v Boyd (1973, CA9 Wash) 491 F2d 1163.

Regulation (40 CFR § 110.3) establishing "sheen test" provides generally valid and useful standard and creates rebuttable presumption that any spill which causes sheen is "harmful" and therefore prohibited by 33 USCS § 1321(b)(3); however, defendant must be allowed to offer proof at statutorily mandated hearing that its spill was not harmful despite presence of sheen; "not harmful" means only that quantity spilled was de minimis and not that harmful quantity was spilled but fortunately did not actually cause harm. United States v Chevron Oil Co. (1978, CA5 La) 583 F2d 1357, 63 OGR 77.

Regulation [40 CFR § 110.3] establishing "sheen test" as determination of harmfulness of oil discharges does not go beyond statutory mandate of 33 USCS § 1321(b)(3) and (4). Ward v Coleman (1976, WD Okla) 423 F Supp 1352, 57 OGR 70, revd on other grounds (CA10 Okla) 598 F2d 1187, 63 OGR 115, revd on other grounds 448 US 242, 65 L Ed 2d 742, 100 S Ct 2636, 66 OGR 280, reh den 448 US 916, 65 L Ed 2d 1179, 101 S Ct 37.

In cases arising under 33 USCS § 1321(b)(6), proof that "harmful quantity" of oil was discharged is required and, although quantitative estimates of size of oil spill may be useful to Hearing Officers' determination of gravity of offense, they do not, standing alone, show that discharge was in harmful quantity, and, depending on duration of discharge, type of oil spilled, size and flow in waterway, and other such factors, even large amount of oil may not cause conditions violative of regulations promulgated pursuant to 33 USCS §§ 1251 et seq. G-LMI memo 16460, 6 June 78, CGLB, Apr 1979.

Coast Guard is not authorized to determine whether given oil discharge is harmful to public health or welfare but must follow standard of 40 CFR § 110.3, establishing "sheen test" to determine harmful quantity, so where rebuttable presumption of harmful quantity is created by sheen test and is not overcome by evidence to contrary, civil penalty will be assessed, notwithstanding amount of oil discharged. G-LMI ltr 16460/8, 7 Nov 79, CGLB, Jul 1980.

14. —Discharge into "navigable waters"

Discharge of oil into unnamed tributary of creek which flowed into second creek which was tributary of Red River constituted discharge into "navigable waters" for purposes of 33 USCS § 1321 regardless of fact that spill was confined to unnamed tributary and whether or not that stream was, at time of spill, discharging water continuously into river navigable in traditional sense. United States v Texas Pipe Line Co. (1979, CA10 Okla) 611 F2d 345, 65 OGR 51, 52 ALR Fed 783.

33 USCS § 1321 is applicable to tributaries of navigable waters if there is continuous flow of water from point of oil spill, through any intermediate tributaries and eventually into navigable waters at specific time of oil spill. United States v Texas Pipe Line Co. (1978, ED Okla) 528 F Supp 728, affd (CA10 Okla) 611 F2d 345, 65 OGR 51, 52 ALR Fed 783.

15. —By particular violator

There is sufficient evidence that oil spill is caused by particular vessel where comparison of oil samples taken from all vessels in area with sample from spill eliminates all but one vessel as source of spill; majority of experts agree that minor differences in chromatograms used to analyse and compare oil samples may be attributed to "weathering." G-LMI ltr 1940/7, 2 June 80, CGLB, Feb 1980.

Civil penalty assessment for violation of 33 USCS § 1321 cannot be upheld where only evidence identifying particular vessel as source of oil discharge is dual test oil sample analysis conducted by field laboratory; in absence of other corroborating evidence, where analysis is only means of identifying source of discharge,

Central Oil Identification Laboratory analysis is necessary. G-LMI ltr 16460/5, 7 Nov 79, CGLB, Jul 1980.

B. Notification of Discharge

1. In General

16. Generally

Statutory terms of 33 USCS § 1321(b)(5) are neither vague, highly technical nor obscure and give adequate notice to persons in charge of onshore oil facilities that failure promptly to notify governmental agency concerned with navigable waters or environmental protection about substantial oil spill will subject them to potential criminal liability. United States v Kennecott Copper Corp. (1975, CA9 Ariz) 523 F2d 821.

17. Who must be notified

Information was defective in alleging failure of defendant to notify Environmental Protection Agency of oil spill at time when notice to Environmental Protection Agency was not required by government rules and regulations pertaining to such matter. United States v Messer Oil Corp. (1975, WD Pa) 391 F Supp 557, 51 OGR 597.

18. Persons responsible for notifying

Truck driver who delivered oil was not "in charge" of on shore facilities within meaning of 33 USCS § 1321(a)(10). United States v Mackin Constr. Co. (1975, DC Mass) 388 F Supp 478.

Annotations:

Construction and application of provision of Federal Water Pollution Control Act (33 USCS § 1321(b)(5) and similar predecessor, formerly designated as 33 USCS § 1161(b)(4)) requiring person in charge of vessel, or onshore or offshore facility, to notify federal agency of prohibited discharge from such vessel or facility. 17 ALR Fed 804 (see, especially, § 3 as to "person in charge").

19. —Corporations

Corporation which had capacity to prevent and abate damage through its direction of activities of persons controlling mechanisms causing pollution must be regarded as "person in charge" for purpose of 33 USCS § 1161 (renumbered 33 USCS § 1321) requiring that person in charge notify government of discharge of oil from facility into navigable waterway. United States v Mobil Oil Corp. (1972, CA5 Tex) 464 F2d 1124, 17 ALR Fed 796.

Corporation is no less "in charge" of oil facility than is its employee and corporation cannot argue that government failed to prove corporation was "in charge" of facility at time of spills, and had knowledge of their occurrence, because employee of corporation, who notified neither Coast Guard nor EPA, was in actual charge and no officer or director of corporation had knowledge of spill prior to determination by Coast Guard of spill's origin. Apex Oil Co. v United States (1976, CA8 Mo) 530 F2d 1291, cert den 429 US 827, 50 L Ed 2d 90, 97 S Ct 84.

Corporation is "person in charge" within meaning of predecessor to 33 USCS § 1321's notification of discharge provision. United States v United States Steel Corp. (1972, DC Pa) 4 ERC 1641.

20. Time of notification

Where oil spill occurred on May 27, 1973, District Court would assume arguendo, under circumstances of case, that failure to notify federal authorities prior to 11 a.m. on May 29 was not immediate notification as required by Act; word "immediate" must be interpreted in light of circumstances of each particular case. United States v Messer Oil Corp. (1975, WD Pa) 391 F Supp 557, 51 OGR 597.

2. Immunity

21. Generally

There was insufficient evidence for defendant to invoke immunity for reporting "oil spill" under predecessor to 33 USCS § 1321 where defendant was indicted for discharging refuse tank containing titanium dioxide and other substances into tributary of Hudson River in violation of 33 USCS § 407 as result of employee's negligence in failing to close water tap of reserve tank prior to weekend. United States v American Cyanamid Co. (1973, SD NY) 354 F Supp 1202, affd (CA2 NY) 480 F2d 1132.

Annotations:

Construction and application of provision of Federal Water Pollution Control Act (33 USCS § 1321(b)(5) and similar predecessor, formerly designated as 33 USCS § 1161(b)(4)) requiring person in charge of vessel, or onshore or offshore facility, to notify federal agency of prohibited discharge from such vessel or facility. 17 ALR Fed 804 (see, especially, § 4 as to notification immunizing party).

22. Persons claiming immunity

Federal regulation and legislative history expressing government concern with possible reports of de minimis pollution are strong enough to require that defendant seeking immunity under 33 USCS § 1161 (superseded by 33 USCS § 1321) show that specific reports were made by, under direction, or with consent in each specific instance of individual who could reasonably be said to be "in charge" though not necessarily in sole charge or highest ranking individual at site. United States v General American Transp. Corp. (1973, DC NJ) 367 F Supp 1284.

Barge owner was not entitled to immunity under 33 USCS § 1321(b)(5) in government prosecution for alcohol spill which barge owner had reported to Coast Guard since alcohol had not been designated hazardous substance and until substance is designated as hazardous by administrator, [illegible] provisions of § 1321 apply. United [illegible] Ohio Barge Lines (1975, WD La) 410 F Supp 625, affd without op (CA5 La) 531 F2d 574.

23. —Corporation

Corporate owner is person in charge of facility it owns and operates, and is thus entitled to statutory immunity under former 33 USCS § 1161 (predecessor to 33 USCS § 1321); accordingly, government may not, in prosecution of offenses defined by Rivers and Harbors Appropriation Act of 1899 [Refuse Act of 1899] (33 USCS §§ 407, 411) rely upon information obtained solely from notice mandated by § 1161 or from exploitation thereof. United States v Mobil Oil Corp. (1972, CA5 Tex) 464 F2d 1124, 17 ALR Fed 796.

Reference in predecessor to 33 USCS § 1321 to any person in charge of on shore facility does not refer only to natural persons and corporation which complies with statute by giving immediate notice of discharge is entitled to rely upon further provision which precludes use of such notification or information flowing therefrom against any "such person" in any criminal case except one involving perjury for giving false statements. United States v Republic Steel Corp. (1974, CA6 Ohio) 491 F2d 315.

The grant of immunity by predecessor to 33 USCS § 1321 to persons notifying the agency of the improper discharge is intended to be immunity to the individual person, not to a corporation. United States v Skil Corp. (1972, ND Ill) 351 F Supp 295.

Corporate owner-operator charged with violation of 33 USCS §§ 407 and 411 was a "person in charge" within meaning of predecessor to 33 USCS § 1321, and was entitled to immunity provided. United States v Reynolds Metals Co. (1973, SD Tex) 359 F Supp 338.

Immunity provided for by 33 USCS § 1161(b)(4) (superseded by identical section 33 USCS § 1321(b)(5)) extends to corporations as well as natural persons, as reading of face language of statute leads to conclusion that corporations were meant to be included in term "person in charge." United States v General American Transp. Corp. (1973, DC NJ) 367 F Supp 1284.

24. Notice sufficient to confer immunity

Court denied corporate defendant's motion to suppress evidence obtained by exploitation of such defendant's notification to proper federal agency with respect to discharged oil into nonnavigable stream where such notification was not immediate and, therefore, not received pursuant to 33 USCS § 1321(b)(5). United States v Ashland Oil & Transp. Co. (1973, WD Ky) 364 F Supp 349, 46 OGR 11, affd (CA6 Ky) 504 F2d 1317, 50 OGR 133.

25. Extent of immunity

Plain meaning of immunity provision of predecessor to 33 USCS § 1321(b)(5) was that neither notification, nor information obtained as outgrowth of notification, may be used against defendant in criminal prosecution; immunity is akin to use immunity rather than to transactional immunity. United States v United States Steel Corp. (1972, DC Pa) 4 ERC 1641.

Immunity afforded under 33 USCS § 1161(b)(4) (superseded by identical section 33 USCS § 1321(b)(5)) is "use" immunity only; to allow such immunity to be "transactional" in scope would dangerously jeopardize objective of Water Pollution Control Act to set up deterrent against prospective polluters. United States v General American Transp. Corp. (1973, DC NJ) 367 F Supp 1284.

26. —Liability for civil penalty

Fifth Amendment's guaranty against person being compelled to be witness against himself, a protection expressly limited to "criminal case," is not implicated when person in charge of facility from which oil is discharged in violation of § 311 (b)(3) of Federal Water Pollution Control Act [33 USCS § 1321(b)(3)] reports discharge as required by § 311(b)(5) of Act [33 USCS § 1321(b)(5)], and such report is then used to support assessment of penalty against that person under § 311(b)(6) of Act [33 USCS § 1321(b)(6)]; proceeding for assessment of civil penalty under § 311(b)(6) is not "criminal case." United States v Ward 448 US 242, 65 L Ed 2d 742, 100 S Ct 2636, 66 OGR 280, reh den 448 US 916, 65 L Ed 2d 1179, 101 S Ct 37.

In action to recover $2,500 penalty assessed by Coast Guard under 33 USCS § 1161(b)(5) [superseded by 33 USCS § 1321(b)(6)] against corporate defendant, no inquiry into civil or criminal nature of penalty was required since no constitutional right was involved and statutory language was not ambiguous; immunity provided in 33 USCS § 1161(b)(4) [superseded by 33 USCS § 1321(b)(5)] was not intended to extend immunity to civil cases regardless of their "nature" and penalty provided for in 33 USCS § 1161(b)(5) [superseded by 33 USCS

§ 1321(b)(6)] is clearly denominated as civil, forfeiture actions brought in rem under Refuse Act [33 USCS §§ 407 et seq.] are civil proceedings and do not trigger immunity provision of 33 USCS § 1321(b)(5). United States v Le Beouf Bros. Towing Co. (1976, CA5 La) 537 F2d 149, 55 OGR 32, reh den (CA5 La) 541 F2d 282 and cert den 430 US 987, 52 L Ed 2d 383, 97 S Ct 1688.

Use immunity provided by 33 USCS § 1321(b)(5) has no application to proceeding to assess civil penalty under 33 USCS § 1321(b)(6); in action to assess civil penalty pursuant to § 1321(b)(6), use of notice given by corporation pursuant to § 1321(b)(5) would not violate Fifth Amendment privilege against self-incrimination since corporation has no such privilege. United States v Allied Towing Corp. (1978, CA4 Va) 578 F2d 978.

Penalty imposed by 33 USCS § (b)(6) is remedial in nature, not subject to use immunity afforded by 33 USCS § 1321(b)(5) and may be imposed in administrative or civil proceedings in harmony with fifth and sixth amendments. United States v General Motors Corp. (1975, DC Conn) 403 F Supp 1151.

27. Use of evidence obtained through notice

Corporation which reports discharge pursuant to predecessor to 33 USCS § 1321 may be prosecuted under 33 USCS §§ 407 and 411, but such prosecution must be based on evidence other than notification or information obtained by exploitation of such notification; prosecution based on any other evidence is unaffected by 33 USCS § 1161(b)(4). United States v Republic Steel Corp. (1974, CA6 Ohio) 491 F2d 315.

Immunity provided by predecessor to 33 USCS § 1321(b)(5) was defense, and government did not have to plead its nonexistence anticipatorily in criminal information by stating that such criminal information was not based upon notification of oil discharge given pursuant to statute. United States v Humble Oil & Refining Co. (1971, DC Tex) 3 ERC 1226.

Burden was on government to show that evidence it proposed to use in prosecution under predecessor to 33 USCS § 1321 was not obtained from defendant's notification of oil spill or from exploitation of that notification. United States v United States Steel Corp. (1972, DC Pa) 4 ERC 1641.

Defendant was not entitled to separate hearing on issue whether government's evidence was sufficiently independent of defendant's reports or notice so as not to run afoul of statutory immunity, as question could be decided during course of trial. United States v General American Transp. Corp. (1973, DC NJ) 367 F Supp 1284.

Annotations:

Construction and application of provision of Federal Water Pollution Control Act (33 USCS § 1321(b)(5) and similar predecessor, formerly designated as 33 USCS § 1161(b)(4)) requiring person in charge of vessel, or onshore or offshore facility, to notify federal agency of prohibited discharge from such vessel or facility. 17 ALR Fed 804 (see, especially, § 5 as to necessity that government prove evidence was not obtained from statutory notification).

C. Civil Penalty

28. Generally

Penalty prescribed in 33 USCS § 1321 is civil rather than penal; fact that behavior to which its penalty applies was made punishable by criminal penalties under 33 USCS § 407 70 years before is irrelevant. Kennedy v Mendoza-Martinez (1963) 372 US 144, 9 L Ed 2d 644, 83 S Ct 554.

33 USCS § 1321(b)(6) is absolute liability provision which contemplates substantial penalty even in absence of fault. United States v Marathon Pipe Line Co. (1978, CA7 Ill) 589 F2d 1305.

Penalty prescribed in 33 USCS § 1321 is civil rather than penal. United States v Eureka Pipeline Co. (1975, ND W Va) 401 F Supp 934.

Principal goal of 33 USCS § 1321(b)(6) is to deter spills; Congressional purpose was to impose standard of conduct higher than that related just to economic efficiency; imposition of penalty under 33 USCS § 1321(b)(6) is civil and not criminal notwithstanding that spill was accidental, was properly reported and was cleaned up without expense to government; economic sanction of § 1321(b)(6) is reasonably calculated to deter spills and to achieve non-economic values selected by Congress. United States v Atlantic Richfield Co. (1977, ED Pa) 429 F Supp 830, affd (CA3 Pa) 573 F2d 1303.

Principal purpose of 33 USCS § 1321(b)(6) is deterrence of harmful oil spills. Puerto Rico v SS Zoe Colocotroni (1978, DC Puerto Rico) 456 F Supp 1327, affd in part and vacated in part on other grounds (CA1 Puerto Rico) 628 F2d 652, 30 FR Serv 2d 244, cert den 450 US 912, 67 L Ed 2d 336, 101 S Ct 1350.

33 USCS § 1321(b)(6) is strict liability statute, remedial as well as deterrent in nature, which contemplates meaningful penalty even in absence of fault, being designed to shift, through civil penalties, costs of oil pollution to private sector. G-LMI ltr 16460/8, 28 Nov 79, CGLB, Jul 1980.

29. Application

Exceptions contained in 33 USCS § 1321(f), placing liability for costs of cleaning up oil spill on owner or operator of discharging vessel or facility, are not applicable to § 1321(b)(6), imposing sanctions for discharge of oil on such owners and operators, since each provision serves separate and readily distinguishable purpose. G-LMI Ltr 16460/11, 26 Jun 79, CGLB, Jun 1980.

30. Who is liable

"Cause" of spill for purpose of civil penalty provisions of 33 USCS § 1321(b)(6) is polluting enterprise rather than conduct of charged party or third party; owner or operator of discharging facility is liable to § 1321(b)(6) civil penalty even where it exercised all due care and third party's act or omission was immediate cause of spill. United States v Tex-Tow, Inc. (1978, CA7 Ill) 589 F2d 1310.

Political subdivision of state is subject to civil penalties pursuant to 33 USCS § 1321(b)(6). United States v Massachusetts Bay Transp. Authority (1980, CA1 Mass) 614 F2d 27.

Civil penalty may be assessed against owner of ship which causes discharge while in dry dock; ship which is temporarily dry docked is "vessel" since it is "watercraft or other artifical contrivance used, or capable of being used as means of transportation on water" (33 USCS § 1321(a)(3)). G-LMI 16450/7, 19 June 1980, CGLB, Feb 1981.

Towboat operator, as one having operational control of towboat, is "person in charge" for purposes of liability under § 1321(b)(6) for civil penalty as result of spill from barge towed by towboat. G-LMI Ltr. 16460/2, 30 Nov. 83, CGLB No. 434.

31. Constitutionality

33 USCS § 1321(b)(6) does not provide for sanctions so punitive as to transform what was clearly intended as civil remedy into criminal penalty; thus remedy can be imposed without regard to procedural protections and restrictions available in criminal prosecutions. United States v Ward (1980) 448 US 916, 65 L Ed 2d 1179, 101 S Ct 37.

Because penalty provisions contained in 33 USCS § 1321 are civil, not criminal in nature, assessment of penalties under subsequent amended version of section would not constitute ex post facto constitutional violation. United States v Healy Tibbitts Constr. Co. (1983, CA9 Cal) 713 F2d 1469, later proceeding (ND Cal) 607 F Supp 540.

Assessment of civil penalty under 33 USCS § 1321(b)(6) is valid; Secretary of Interior has determined that environmental damage results from discharge of oil, penalty is designed to compensate government for damage and it does not matter that quantum of damage is incapable of precise measurement. United States v W. B. Enterprises, Inc. (1974, SD NY) 378 F Supp 420.

33 USCS § 1321(b)(6) provision that size of business and effect on owner or operator's ability to continue in business be taken into consideration in determining amount of penalty is not denial of equal protection of law. United States v Eureka Pipeline Co. (1975, ND W Va) 401 F Supp 934.

Provisions of 33 USCS § 1321(b)(6) are not unconstitutional delegation of legislative powers to Coast Guard in assessment of civil penalty for discharge of oil, as Coast Guard must take into account appropriateness of penalty to size of business of owner or operator of discharging vessel or facility, potential effect of penalty on owner's or operator's ability to continue in business, and gravity of violation in question, and, in addition, section places ceiling on amount of penalty which may be assessed for given discharge, which provisions comprise series of guidelines for Coast Guard to follow in carrying out its enforcement functions. G-LMI ltr 1640/8, 22 Feb 78, CGLB, Apr 1979.

32. —Due process

Purpose of civil penalty under 33 USCS § 1321(b)(6) is not simply to deter spills; therefore assessing substantial civil penalty in absence of fault does not constitute violation of due process. United States v Marathon Pipe Line Co. (1978, CA7 Ill) 589 F2d 1305.

Imposing civil penalty against owner when spill was caused by third party is not irrational and does not violate substantive due process. United States v Tex-Tow, Inc. (1978, CA7 Ill) 589 F2d 1310.

33 USCS § 1321(b)(6), as applied to impose civil penalty upon owner of facility which discharges oil or hazardous substances into navigable waters regardless of fault, is reasonably related to purpose of statutory scheme and is not violative of Fifth Amendment. United States v Coastal States Crude Gathering Co. (1981, CA5 Tex) 643 F2d 1125, 70 OGR 83, reh den (CA5 Tex) 647 F2d 1122 and cert den 454 US 835, 70 L Ed 2d 114, 102 S Ct 136.

Fact that 33 USCS § 1321(b)(6) allows no defense to imposition of penalty does not offend due process since provisions that penalty may be compromised and that gravity of violation are to be taken into account allow flexibility which may take into account any defenses parties may raise on their behalf and parties are entitled to hearing before penalty assessed; 33 USCS § 1321(b)(6) provision that size of business and effect on owner or operator's ability to continue in business be taken into consideration in determining amount of penalty is not denial of due process. United States v Eureka Pipeline Co (1975, ND W Va) 401 F Supp 934.

Imposition of penalty under 33 USCS § 1321(b)(6) after notice and hearing and after due regard is given to ability to pay and gravity of violation does not violate guaranty of due process under Fifth Amendment. Ward v Coleman (1976, WD Okla) 423 F Supp 1352, 57 OGR 70, revd (CA10 Okla) 598 F2d 1187, 63 OGR 115, revd 448 US 242, 65 L Ed 2d 742, 100 S Ct 2636, 66 OGR 280, reh den 448 US 916, 65 L Ed 2d 1179, 101 S Ct 37.

Application of penalty under 33 USCS § 1321(b)(6) to persons who have spilled oil, irrespective of whether spill was accidental or not, whether spill was reported or not, or whether spiller cleaned up or not, is not unfair or "shocking to the conscience" and therefore does not violate violate constitutional guaranty of "due process". United States v Atlantic Richfield Co. (1977, ED Pa) 429 F Supp 830, affd (CA3 Pa) 573 F2d 1303.

Constitutional guarantee of due process is not violated by assessment of civil penalty under 33 USCS § 1321(b)(6) without causal connection between oil discharge and owner or operator of vessel or facility, where discharge occurred when vessel grounded on pile of rocks in harbor while being maneuvered by harbor pilot, since strict liability for civil penalty is rationally related to statutory goal of achieving pollution free waters and serves deterrent purpose by placing costs of water pollution on owners and operators of polluting facilities. G-LMI Ltr 16460/11, 26 Jun 79, CGLB, Jun 1980.

33. —Self-incrimination

Fifth Amendment's guaranty against person being compelled to be witness against himself, a protection expressly limited to "criminal case," is not implicated when person in charge of facility from which oil is discharged in violation of § 311(b)(3) of Federal Water Pollution Control Act [33 USCS § 1321(b)(3)] reports discharge as required by § 311(b)(5) of Act [33 USCS § 1321(b)(5)], and such report is then used to support assessment of penalty against that person under § 311(b)(6) of Act [33 USCS § 1321(b)(6)]; proceeding for assessment of civil penalty under § 311(b)(6) is not "criminal case." United States v Ward 448 US 242, 65 L Ed 2d 742, 100 S Ct 2636, 66 OGR 280, reh den 448 US 916, 65 L Ed 2d 1179, 101 S Ct 37.

Congress, by enactment of 33 USCS § 1321 provisions requiring reporting of oil discharges has created unique situation in which defendant is automatically liable for civil penalty when he follows only route available to avoid criminal prosecution, nevertheless, no Fifth Amendment violation occurs when information furnished pursuant to 33 USCS § 1321 is used to impose fines under civil penalty provision of that section. United States v Eureka Pipeline Co. (1975, ND W Va) 401 F Supp 934.

Penalty provided by 33 USCS § 1321 is civil in nature and self-reporting provision of such section is not violative of protection against self-incrimination afforded by Fifth Amendment. United States v Texas Pipe Line Co. (1978, ED Okla) 528 F Supp 728, affd (CA10 Okla) 611 F2d 345, 65 OGR 51, 52 ALR Fed 783.

34. Right to jury trial

Since penalty imposed by 33 USCS § 1321(b)(6) is civil in nature rather than criminal, oil company charged with the violation of law has no right to jury trial. United States v Atlantic Richfield Co. (1977, ED Pa) 429 F Supp 830, affd (CA3 Pa) 573 F2d 1303.

35. Amount of fine

33 USCS § 1321(b)(6) is absolute liability provision that contemplates substantial penalty even in absence of fault and accordingly Coast Guard did not abuse its discretion in assessing $2,000 civil penalty against pipeline company for discharge of 19,992 gallons of crude oil into navigable river. United States v Marathon Pipe Line Co. (1978, CA7 Ill) 589 F2d 1305.

Coast Guard is not limited to assessing only nominal penalty where no fault is found. United States v Texas Pipe Line Co. (1979, CA10 Okla) 611 F2d 345, 65 OGR 51, 52 ALR Fed 783.

$2000 fine for discharge of 10 or 15 gallons of oil is within limits imposed by law under 33 USCS § 1161(b)(5) [superseded by 33 USCS § 1321(b)(6)] and Court has no authority to reduce or eliminate it. United States v Beatty, Inc. (1975, WD Ky) 401 F Supp 1040.

Penalty assessed by Coast Guard under 33 USCS § 1321(b)(6) must be sustained by District Court if assessment is supported by substantial evidence and decision of Commandant of Coast Guard is neither arbitrary or capricious. Re Vest Transp. Co. (1977, ND Miss) 434 F Supp 748.

Assessment of $2,500 fine is not excessive where hearing officer informs defendant of amount of fine and that it may submit information on size of business and effect such penalty would have on ability to continue business and defendant does not argue amount of fine further but addresses its arguments to gravity of alleged violation. United States v Texas Pipe Line Co. (1978, ED Okla) 528 F Supp 728, affd (CA10 Okla) 611 F2d 345, 65 OGR 51, 52 ALR Fed 783

Hearing officer's finding of no overt negligence or lack of foreseeability of oil spill furnishes no support for pipeline company's argument on appeal that only nominal penalty or no penalty is required, since amount of civil penalty assessed under 33 USCS § 1321(b)(6) is not based on degree of foreseeability of spill. G-LMI Ltr 16460/2, 12 Jun 79, CGLB Jun 1980.

Civil penalty of $1,500 assessed by Hearing Officer under 33 USCS § 1321(b)(6) after initially considering penalty of $5,000, is not excessive or unreasonable when viewed in light of size of offending company, effect of penalty on its ability to remain in business and gravity of violation, taking into consideration size of oil discharge and presence of third party responsibility for discharge, since strict liability of statute contemplates substantial penalty even in absence of fault. G-LMI Ltr 16460/11, 26 Jun 79, CGLB, Jun 1980.

36. —Factors affecting amount

$1,000 penalty assessment rather than maximum $5,000 penalty assessment is appropriate civil penalty for imposition on gasoline pipeline owner for discharge of gasoline, where he built and maintained his pipeline in accordance with all prevailing governmental rules and regulations and industry practices, he bore no fault in rupture and discharge, he immediately corrected leak, and he pursued available measures to clean up affected area. United States v Coastal States Crude Gathering Co. (1981, CA5 Tex) 643 F2d 1125, 70 OGR 83, reh den (CA5 Tex) 647 F2d 1122 and cert den 454 US 835, 70 L Ed 2d 114, 102 S Ct 136.

Status of fine assessed against one who discharged oil into river as civil or remedial penalty designed to compensate government for such harm was not affected by fact that removal of oil from water prevented harm for which compensatory damages may be awarded; it does not matter that quantum of damage is incapable of precise measurement. United States v W. B. Enterprises, Inc. (1974, SD NY) 378 F Supp 420.

Elements of statutory action to enforce penalty under 33 USCS § 1321(b)(6) are only that defendant violated § 1321(b)(3) and that Coast Guard following appropriate procedure assessed (b)(6) penalty; statute does not make "fault" element of cause of action, but rather factor in administrative penalty setting procedure. United States v Atlantic Richfield Co. (1977, ED Pa) 429 F Supp 830, affd (CA3 Pa) 573 F2d 1303.

Absence of culpability should be considered to mitigate amount of fine assessed under 33 USCS § 1321(b)(6). Tug Ocean Prince, Inc. v United States (1977, SD NY) 436 F Supp 907, affd in part and revd in part on other grounds (CA2 NY) 584 F2d 1151, cert den 440 US 959, 59 L Ed 2d 772, 99 S Ct 1499.

Failure to notify is factor to be properly considered in assessing gravity of violation and may ultimately affect penalty assessment. G-LMI ltr 16460/8, 19 Mar 80, CGLB, Oct. 1980.

Refusal of party to take financial responsibility for clean up of oil spill is not to be considered in penalty assessment. G-A Ltr 16460/7, 11 Mar 81, CGLB, June 1982.

37. — —Effect on violator's business

Provision of 33 USCS § 1321 that size of business and effect on owner or operator's ability to continue in business be taken into consideration in determining amount of penalty is not denial of due process or equal protection of law. United States v Eureka Pipeline Co. (1975, ND W Va) 401 F Supp 934.

Hearing Officer did not err in failing to consider aggregate effect that current and past penalties would have on violating company's ability to remain in business, since under 33 USCS § 1321(b)(6), each violation is separate offense and assessment of civil penalty is required for each offense; Congressional intent is that separate penalties for each violation be assessed, based on particular circumstances of that discharge and to allow financial effect of past penalties to require mitigation of future penalties for subsequent violations would benefit most flagrant, repeated violators, thus negating purpose of statute and violating intent of Congress. G-LMI Ltr 16460/2, 12 Jun 79, CGLB, Jun 1980.

Proper factor to be considered by Hearing Officer in determining amount of penalty to be assessed under 33 USCS § 1321 is effect of penalty on ability of owner to continue in business, not on his ability to operate profitable business and penalty will not on appeal be reduced or mitigated based on profitability argument, where owner in response to notice of charge furnished no information bearing on appropriateness of proposed penalty relative to size of business and effect it might have on ability to continue business. G-LMI ltr 16460/3, 28 Nov 79, CGLB, Jul 1980.

38. —Third party responsibility

Fact that discharge of oil was caused solely by act of third party is no defense to imposition of civil penalty on owner or operator of facility pursuant to 33 USCS § 1321; however, imposition of more than nominal penalty is not permissible where stipulated facts show defendant was not negligent or at fault in any way. United States v General Motors Corp. (1975, DC Conn) 403 F Supp 1151.

Absence of third party defense in penalty provision of 33 USCS § 1321(b)(6), language of other subsections, and purposes of various remedies supplied to government, lead to conclusion that no indemnity right was contemplated for penalty imposed by § 1321(b)(6), even though it is civil in nature; this being so, where penalty was assessed against barge owner for oil spill caused by negligence of tug, Coast Guard should have taken into account the culpability of barge owner in determining proper amount of penalty. Tug Ocean Prince, Inc. v United States (1977, SD NY) 436 F Supp 907, affd in part and revd in part on other grounds (CA2 NY) 584 F2d 1151, cert den 440 US 959, 59 L Ed 2d 772, 99 S Ct 1499.

Allegation of third party responsibility for oil discharge from vessel is no defense to imposition of civil penalty under 33 USCS § 1321(b)(6) where discharge occurred when vessel grounded on pile of rocks in harbor while being maneuvered by harbor pilot, since statute requires no causal connection between actions of owner or operator of vessel and discharge from that vessel before civil penalty may be assessed and thus does not provide for assessing penalties against parties other than owner, operator or person in charge of vessel from which discharge occurs; however, third party actions may be considered in determining gravity of violation, thus affecting amount. G-LMI Ltr 16460/11, 26 Jun 79, CGLB, Jun 1980.

39. Assessment procedure

Chief of Marine Environmental Protection Branch and Chief of Marine Safety Division are precluded from acting as hearing officers in civil penalty case arising under programs for which their District is responsible, since Coast Guard Civil Penalty Assessment Regulations require independent hearing officers, having no direct or supervisory responsibility in program area giving rise to case. G-LMI ltr 16460, 9 Sept 80, CGLB, Dec 1981.

40. —Notice and hearing

Provision of 33 USCS § 1321(b)(6) for assessment of civil penalties after "notice and opportunity for hearing" invokes procedural formalities of Administrative Procedure Act; APA requirements are applicable to all adjudicatory proceedings in which there is "opportunity for a hearing" before agency determination. United States v Healy Tibbitts Constr. Co. (CA9 Cal) 713 F2d 1469, later proceeding (ND Cal) 607 F Supp 540).

Requirements of notice and opportunity for hearing in 33 USCS § 1321(b) (6) were not complied with, where matters not disclosed at hearing for determination of liability for civil penalty were admitted into case record and became part of basis of decision, such matters being disclosed to defendant only in course of discovery before trial of action by government to collect civil penalties. United States v Independent Bulk Transport., Inc. (1975, SD NY) 394 F Supp 1319.

Defendant corporation's claim of denial of due process was without merit where Coast Guard complied strictly with 33 USCS § 1321, which provides that no penalty shall be assessed unless owner is given notice and opportunity to be heard, and defendant's vice president admitted not only that he had been furnished with all information Coast Guard had on matter, but also that, having received information, he neither requested nor attended hearing. United States v Slade, Inc. (1978, ED Tex) 447 F Supp 638.

Company charged with violation of 33 USCS § 1321 was properly given notice and opportunity for hearing before civil penalty was assessed, as required by § 1321(b)(6), and fact that hearing was not held was attributable to company's failure to make proper and timely request for hearing, where company waived opportunity for hearing by responding to written notice of charge by letter addressing merits of charge and conditioning request for hearing on amount of penalty intended to be assessed. G-LMI ltr 16460, 7 Nov 79, CGLB, Jul 1980.

41. —Access to evidence or record

If after notice of potential liability under 33 USCS § 1321(b)(6) and response thereto there is receipt of additional rebuttal evidence from investigating unit which is in direct conflict with evidence presented in response on important factual issues, attorneys for persons potentially liable should be given opportunity to see all evidence obtained in case file and additional time should be allowed for new response to be offered which may include additional defenses or mitigations. G-LMI ltr 16460/5, 4 Mar 80, CGLB, Oct. 1980.

Appellant in FWTCA civil penalties proceeding has right to know what is in record before Commandant and true basis for decision to be reviewed and where Hearing Officer inserts into record additional comments expanding upon reasons for his decision such insertion may be in violation of procedural requirements even though no new issues are raised. G-LMI ltr 16460/11, 13 Mar 80, CGLB, Oct. 1980.

Remand is necessary where appellant is not informed of his right to examine all materials in case file, of his right to have hearing, or of general nature of procedure for assessing and collecting penalty, and where appellant was not granted access to material being considered against him until after he had submitted Freedom of Information Act request and paid for material. G-LMI memo 16781/7, 12 June 1980, CGLB, Feb 1981.

42. Limitations

Cause of action brought by United States under (33 USCS § 1321 to recover costs of cleanup operation for oil spill accrues for purposes of statute of limitations at time government completes oil removal. United States v The Barge Shamrock (1980, CA4 Md) 635 F2d 1108, cert den 454 US 830, 70 L Ed 2d 107, 102 S Ct 125.

Action under 33 USCS § 1321 is subject to six-year contract statute of limitations under 28 USCS § 2415. United States v P/B STCO 213 (1985, CA5 Tex) 756 F2d 364.

28 USCS § 2415 is applicable statute of limitations in action brought under 33 USCS § 1321. United States v C & R Trucking Co. (1982, ND W Va) 537 F Supp 1080.

Because penalty prescribed by 33 USCS § 1321 is civil rather than penal, and since section does not contain specific limitation on commencement of action to assess civil penalty, court must resort to 28 USCS § 2462 for limitations. United States v C & R Trucking Co. (1982, ND W Va) 537 F Supp 1080.

Action by United States under § 1321 to recover costs of cleaning up oil spill after polluter had refused or was unable to properly remove oil is for restitution of its expenditures and is thus action founded upon contract implied in law, for which applicable period of limitations is 6-year period set forth in 28 USCS § 2415(a) for actions by United States founded upon contract express or implied in law or fact. United States v Water Quality Ins. Syndicate (1985, SD NY) 613 F Supp 239.

43. Judicial review

Administrative decision assessing amount of fine under 33 USCS § 1321 (b)(6) is not subject to de novo review pursuant to 5 USCS § 706(2)(F). United States v Texas Pipe Line Co. (1979, CA10 Okla) 611 F2d 345, 65 OGR 51, 52 ALR Fed 783.

De novo review is not warranted in event civil penalty assessed under 33 USCS § 1321 is not paid and collection action is brought in District Court. United States v Healy Tibbitts Constr. Co. (1983, CA9 Cal) 713 F2d 1469, later proceeding (ND Cal) 607 F Supp 540.

Penalty assessment proceedings are not subject to de novo review in District Court. United States v Independent Bulk Transport, Inc. (1975, SD NY) 394 F Supp 1319.

In action to enforce 33 USCS § 1321(b)(6) penalty, District Court does not have power to conduct de novo trial to establish correct penalty. United States v Atlantic Richfield Co. (1977, ED Pa) 429 F Supp 830, affd (CA3 Pa) 573 F2d 1303.

Since Coast Guard is charged with execution of statutory scheme, great weight must be accorded to its assessments. Puerto Rico v SS Zoe Colocotroni (1978, DC Puerto Rico) 456 F Supp 1327, affd in part and vacated in part (CA1 Puerto Rico) 628 F2d 652, 30 FR Serv 2d 244, cert den 450 US 912, 67 L Ed 2d 336, 101 S Ct 1350.

33 USCS § 1321(b)(6) does not provide for de novo review by District Court of findings of fact made by Coast Guard following notice and hearing to support penalty assessments. United States v Independent Bulk Transport, Inc. (1979, SD NY) 480 F Supp 474 (disapproved on other grounds United States v Healy Tibbitts Constr. Co. (CA9 Cal) 713 F2d 1469, later proceeding (ND Cal) 607 F Supp 540).

Intent of Congress in 33 USCS § 1321(b)(6) was to provide for expeditious administrative procedures with de novo review available and enforcement proceedings before District Court; in penalty proceedings pursuant to 33 USCS § 1321(b), District Court conducts de novo review and hears evidence anew rather than relying on record of Coast Guard. United States v Delian Cruises, SA (1980, ED La) 505 F Supp 79.

III. LIABILITIES

A. In General

44. Generally

Section 311(f)(2) of Clean Water Act (33 USCS § 1321(f)(2)) allows Government to recover clean-up costs from owner or operator of on-shore facility as result of damage resulting from improper handling, storage and disposal of certain hazardous wastes. United States v Burns (1981, WD Pa) 512 F Supp 916.

45. Standing to sue

Commercial fishermen and clam diggers have special interest apart from that of public to take fish and clams from coastal waters of State of Maine and to extent pecuniary losses can be established as result of defendant's discharge of oil into bay, should be entitled to recover for same; however, unlike commercial fishermen and clam diggers, local businessmen do not assert any intereference with their direct exercise of public right, where they complain only of loss of customers indirectly resulting from alleged pollution of coastal waters and beaches in which they do not have property interest, and their claims

will be dismissed. Burgess v M/V Tamano (1973, DC Me) 370 F Supp 247.

A careful examination of various provisions of Water Quality Improvement Act discloses not a word to indicate any intent by Congress to permit individuals to sue a state in federal courts for activities in clean up of oil spills; only United States is authorized to sue to enforce Act's essentially penal sanctions. Burgess v M/V Tamano (1974, DC Me) 382 F Supp 351.

Clean Water Act of 1977 (33 USCS § 1321) gives United States right, as matter of law, to file claims for recovery of costs of oil pollution cleanup outside of shipowner's action for exoneration from or limitation of liability. Re Complaint of Hokkaido Fisheries Co. (1981, DC Alaska) 506 F Supp 631.

46. Exclusiveness of remedy

Water Pollution Control Act (FWPCA) provides exclusive remedies for recovery of oil spill cleanup costs, limited to actual cleanup costs unless government can show wilfull negligence in causing spills; SWPCA precludes recovery by government under other legal theories, such as recovery under Refuse Act (33 USCS § 407 et seq.) for tort negligence, since such recoveries would provide unlimited recovery under strict liablity theories directly contrary to 33 USCS § 1251. United States v Dixie Carriers, Inc. (1980, CA5) 10 ELR 20935.

Federal Water Pollution Control Act (33 USCS §§ 1251 et seq.) provides government's exclusive remedy against discharging vessel and its owners and operators for recovery of oil spill clean-up costs, and thus action for costs under Rivers and Harbors Act (33 USCS §§ 401 et seq.) is dismissed. Frederick E. Bouchard, Inc. v United States (1984, DC Mass) 583 F Supp 477.

47. Presumptions and burdens

Under Federal Water Pollution Control Act, government is required to bear burden of proof to establish that pollutants were discharged into nonnavigable tributary of navigable river but not that, in fact, those same pollutants reached and polluted navigable river. United States v Ashland Oil & Transp. Co. (1974, CA6 Ky) 504 F2d 1317, 50 OGR 133.

Although there is presumption of negligence against moving vessel when it strikes fixed or non-moving object, that presumption is not irrebutable. United States v T/B Arcadian 95 (1983, CA5 La) 714 F2d 470.

48. Strict liability

Civil penalty provision of 33 USCS § 1321(b)(6) is one of strict liability. United States v New York (1979, SD NY) 481 F Supp 4, 55 ALR Fed 134, affd without op (CA2 NY) 614 F2d 1292, cert den 446 US 936, 64 L Ed 2d 789, 100 S Ct 2154.

33 USCS § 1321 has been construed as imposing strict liability upon certain designated parties, subject only to defenses specifically enumerated in statute. Philadelphia v Stepan Chemical Co. (1982, ED Pa) 544 F Supp 1135. later proceeding 199 NJ Super 558, 489 A2d 1265, revd on other grounds 203 NJ Super 15, 495 A2d 886.

B. Owner or Operator Liability

1. In general

49. Who is liable

As statutorily defined, term "owner or operator" refers both to owner and to bare boat charter, and thus 33 USCS § 1321 affords government remedy against either or both. United States v M/V Big Sam (1982, CA5 La) 681 F2d 432, reh den (CA5 La) 693 F2d 451, cert den 462 US 1132, 77 L Ed 2d 1367, 103 S Ct 3112.

Vessel is liable for oil spill which occurs when vessel strikes unknown underwater object in river while operating during freshet condition where it is normal practice for vessel not to interrupt regular navigation on account of such phenomena. Sabine Towing & Transp. Co. v United States (1981) 229 Ct Cl 265, 666 F2d 561.

Annotations:

Liability, under § 311(f, g) of the Federal Water Pollution Control Act (33 USCS § 1321(f, g)), to United States of owner or operator of onshore or offshore facility, or vessel, for discharge of oil or hazardous substance. 56 ALR Fed 343.

50. Liability to government for cleanup costs and interest

In action by United States to recover cleanup costs for oil spill, District Court did not abuse its discretion in (1) awarding interest from date when bill was first sent to defendants rather than from date costs were incurred, and (2) awarding interest at six percent rather than some higher figure. United States v The M/V Zoe Colocotroni (1979, CA1 Puerto Rico) 602 F2d 12.

33 USCS § 1161(f)(1) [superceded by 33 USCS § 1321(f)(1)] allows government to recover actual clean-up costs whether or not reasonable or excessive. United States v Beatty, Inc. (1975, WD Ky) 401 F Supp 1040.

Since "interest" constitutes damages for delay in payment of money, its award is clearly appropriate under § 1321(f)(1); interest would be awarded from date government's claims were liquidated rather than date costs were incurred.

Puerto Rico v SS Zoe Colocotroni (1978, DC Puerto Rico) 456 F Supp 1327, affd in part and vacated in part on other grounds (CA1 Puerto Rico) 628 F2d 652, 30 FR Serv 2d 244, cert den 450 US 912, 67 L Ed 2d 336, 101 S Ct 1350.

United States would be awarded prejudgment interest on award for cleanup costs from date of its demand where it was clear that spill emanated from defendant's plant and defendant knew or should have known this no later than time it received report from privately retained engineering firm and even by time of trial defendant had no evidence to contest validity or reasonableness of amount expended by government nor did defendant offer any evidence that spill emanated from source other than its plant or seriously contest evidence offered by government to prove that defendant was responsible party. United States v Malitovsky Cooperage Co. (1979, WD Pa) 472 F Supp 454.

Under Federal Water Pollution Control Act (33 USCS §§ 1251 et seq.), vessel discharging hazardous substance, such as oil, into navigable waters is strictly liable to government for actual clean-up expenses that result; liability of discharging vessel's owner or operator is limited to amount based on vessel's gross tonage; however, if government shows that discharge resulted from certain willful conduct, vessel's owner or operator is liable for full actual costs; tug owners and owners of barge which struck bottom of bay, releasing oil into navigable waters, are not entitled to protective order prohibiting government from arresting their vessels to secure claims for clean-up costs, where total amount claimed by government far exceeds amount of financial security which owners of barge and tug allegedly provided to government. Frederick E. Bouchard, Inc. v United States (1984, DC Mass) 583 F Supp 477.

51. Liability to others

Predecessor to 33 USCS § 1321 takes no cognizance of claims for public beaches ruined by oil spills or for ruination of shrimp, clam, oyster, and scallop beds and imperiling of fishermen's livelihoods, but only takes cognizance of cost to federal government if it does the cleaning up, and provides no remedy for state or private property owners damaged by massive oil slick caused by tanker running into reef. Askew v American Waterways Operators, Inc. (1973) 411 US 325, 36 L Ed 2d 280, 93 S Ct 1590, 45 OGR 409, reh den 412 US 933, 37 L Ed 2d 162, 93 S Ct 2746.

52. Willful negligence or misconduct

Criteria for finding of willful misconduct is (1) act, intentionally done, with knowledge that performance will probably result in injury, or done in such way as to allow inference of reckless disregard of probable consequences, (2) if harm results from omission, omission must be intentional, and actor must either know omission will result in damage or circumstances surrounding failure to act must allow implication of reckless disregard of probable consequences, (3) knowledge required for finding of willful misconduct is that there must be either actual knowledge that act, or failure to act, is necessary in order to avoid danger, or if there is no actual knowledge, then probability of harm must be so great that failure to take required action constitutes recklessness; spill resulting from collision of oil barge with charted submerged rock was result of willful misconduct within privity and knowledge of owner within meaning of 33 USCS § 1321(f) where combination of factors including failure to appoint captain for voyage, failure to inform one pilot of other pilot's unfamiliarity with river, and failure to require lookout under circumstances, were done intentionally and with reckless disregard of probable consequences. Tug Ocean Prince, Inc. v United States (1978, CA2 NY) 584 F2d 1151, cert den 440 US 959, 59 L Ed 2d 772, 99 S Ct 1499.

Owner is not guilty of willful negligence where although owner's inspection practices are inadequate, barge is routinely maintained and regularly certified by Coast Guard, she underwent annual repairs and overhauling during 5 years preceding accident, had passed scheduled Coast Guard inspection less than 2 months before oil spill, and there is no evidence that owner recklessly disregarded unseaworthiness, therefore owner of vessel is not guilty of willful negligence. Steuart Transp. Co. v Allied Towing Corp. (1979, CA4 Va) 596 F2d 609.

Annotations:

Liability, under § 311(f, g) of the Federal Water Pollution Control Act (33 USCS § 1321(f, g)), to United States of owner or operator of onshore or offshore facility, or vessel, for discharge of oil or hazardous substance. 56 ALR Fed 343.

2. Defenses

53. Remedial action after spill

Barge owner's subsequent removal of 25-30 gallons of oil which escaped into river from leak in one of barge's tanks does not relieve owner from liability from civil penalty under 33 USCS § 1321(b)(6). United States v W. B. Enterprises, Inc. (1974, SD NY) 378 F Supp 420.

54. Unavoidable accident

Under predecessor to 33 USCS § 1321, where barge had a history of oil leakage and was not

duly inspected, the defense of "unavoidable accident" was not available to owner. United States v Le Beouf Bros. Barge Co. (1966, CA5 La) 368 F2d 221, 2 ALR Fed 789, 1967 AMC 971.

The escape of oil from a leaking ship whose condition was known could not be held an unavoidable accident, but discharge of oil from an oil barge with no record of previous leaks that had been inspected as required by law and found to be tight and seaworthy without any reason to expect oil to leak or be discharged from her into navigable waters arose from an unavoidable accident caused by the striking of submerged object. United States v Barge Boulder (1964, WD La) 238 F Supp 748, affd (CA5 La) 343 F2d 175, 1967 AMC 561.

Remedial action after spill is totally irrelevant to contemplated harmfulness under 33 USCS § 1321(b)(6). United States v Atlantic Richfield Co. (1977, ED Pa) 429 F Supp 830, affd (CA3 Pa) 573 F2d 1303.

Federal Water Pollution Control Act (33 USCS §§ 1251 et seq.) is remedial in nature with its positive provisions subject to liberal interpretation and with its exceptions meriting narrow construction; thus, exception allowing recovery of costs for cleanup of discharged oil caused by "act of God" covers only those narrow instances in which experience, planning, and foresight do not suffice to prevent accident, and thus plaintiff is not entitled to recovery of such costs under 33 USCS § 1321. G-LMI memo 16451, 18 Apr 79, CGLB, Oct 1979.

55. Statute of limitations

Owner of discharging vessel has duty to undertake removal of pollution, and government's action against discharger under § 1321 for recovery of costs expended in cleaning of spill after discharger refused to do so is action for restitution which is quasi-contractual in nature and is governed by 6-year statute of limitations set forth in 28 USCS § 2415(a), not 3-year period set forth in 28 USCS § 2415(b). United States v Healy Tibbitts Constr. Co. (1985, ND Cal) 607 F Supp 540.

Action by government under § 1321 to recover from vessel owner and others amount expended by government in oil clean-up by U.S. Coast Guard allegedly arising from unlawful discharge by vessel is essentially action for restitution, to recover money expended to discharge duty of clean-up imposed by law on alleged polluter which polluter did not perform, and such quasi-contract action invokes 6-year statute of limitations set forth in 28 USCS § 2415(a). United States v Shawnee, Inc. (1985, SD NY) 608 F Supp 649.

56. Third party acts

Third party causation defense contained in 33 USCS § 1321(f) dealing with clean-up liability and 33 USCS § 1321(b)(2)(B)(iii) dealing with liquidated damages liability should not be read into civil penalty provision of 33 USCS § 1321(b)(6). United States v Tex-Tow, Inc. (1978, CA7 Ill) 589 F2d 1310.

Tug will not be considered "third party" in order to allow owner of discharging vessel to avoid liability for oil spill occurring while vessel is in tow of tug. United States v Hollywood Marine, Inc. (1980 CA5 Tex) 625 F2d 524, cert den 451 US 994, 68 L Ed 2d 855, 101 S Ct 2336.

Under § 1321(g) liability of "owner or operator" of non-discharging third party vessel is joint and several. United States v M/V Big Sam (1982 CA5 La) 681 F2d 432, reh den (CA5 La) 693 F2d 451, cert den 462 US 1132, 77 L Ed 2d 1367, 103 S Ct 3112.

In proceeding to recover costs of clean-up under 33 USCS § 1161(i)(1) [superseded by 33 USCS § 1321(i)(1)] plaintiff is estopped to assert that act or omission of third party caused discharge where prior suit established that discharge caused by vessels owned by corporation which was controlled by corporation also controlling plaintiff and that public policy dictated piercing corporate veil. Tanker Hygrade No. 18, Inc. v United States (1975) 208 Ct Cl 488, 526 F2d 805, cert den 426 US 920, 49 L Ed 2d 373, 96 S Ct 2624.

Government was not entitled to recover cleanup costs or statutory penalty for oil discharge following collision of fishing vessel with improperly anchored barge where collision was solely attributable to negligence of United States; For same reason, owner of fishing vessel sunk after collision with barge was not liable for resulting oil spill. Gasper v United States (1978, DC Mass) 460 F Supp 656.

Fact that third party may have been sole cause of oil discharge is no defense to imposition of civil penalty under 33 USCS § 1321. United States v Texas Pipe Line Co. (1978, ED Okla) 528 F Supp 728, affd (CA10 Okla) 611 F2d 345, 65 OGR 51, 52 ALR Fed 783.

Civil penalty action against employee under 33 USCS § 1321(b) does not preclude action against employer for collection of removal expenses under § 1321(f) or give rise to valid third party defense operating in favor of employer. G-LIM ltr 16460, 20 Oct 80, CGLB, Dec 1981.

Fact that captain of vessel is not employee of owner is no defense to violation of regulations under 33 USCS § 1321(j). G-A Ltr 16731/8, 26 Aug 81, June 1982.

57. —Who is third party

In action by United States to recover cleanup costs against owners of supertanker that grazed ledge, holing her hull, and losing 100,000 gallons of heavy oil into bay, compulsory pilot on supertanker is not third party. Burgess v M/V Tamano (1977, CA1 Me) 564 F2d 964, cert den 435 US 941, 55 L Ed 2d 537, 98 S Ct 1520.

Third party defense under 33 USCS § 1321(f)(1) to liability for costs of cleaning up oil spill must be narrowly interpreted; tug was not third party that would shield owner of nonself propelled tanker barge even though tug was independent contractor, where barge owner had ultimate control in hiring tug, itinerary and retained it throughout job. United States v Le Beouf Bros. Towing Co. (1980, CA5 La) 621 F2d 787, 56 ALR Fed 338, reh den (CA5 La) 629 F2d 1350 and cert den 452 US 906, 69 L Ed 2d 406, 101 S Ct 3031.

58. —Effect of owner or operator's conduct

Any conduct, however slight, on part of owner or operator contributing to spill would negate relief, even though such conduct might have operated in concert with greater third party conduct to produce spill; only where owner's or operator's conduct was so indirect and insubstantial as to displace him as causative element of discharge would he be relieved of any responsibility and correspondingly, financial liability. Reliance Ins. Co. v United States (1982) 230 Ct Cl 390, 677 F2d 844.

Court must focus on plaintiff's precautionary measures to prevent vandalism and plaintiff is not entitled to recover costs for removal of oil spill where fencing around plaintiff's facility was not complete, there was no security personnel on duty during non-business hours, permanent ladders on retaining walls provided access over those walls, and where prior to spill, wheel-type handle was left on water drain valve which made such valve easy to open. Travelers Ins. Co. v United States (1983) 2 Cl Ct 758.

Owner of oil storage tank from which oil is discharged into river fails to show he took reasonable precaution to prevent or forestall intervention by third party vandal where owner allows potentially dangerous substance to remain in abandoned storage facility without providing required barrier and drainage to prevent spill from reaching river, owner knew there was large quantity of oil in tank, that numerous acts of vandalism had taken place on sight prior to spill and owner is aware of these incidents; besides windows being broken and cable cut, lock had been broken on shed, and owner failed to take reasonable precautions after these incidents, thus, owner is contributing cause of oil spill and assumed third party vandal cannot be sole cause. United States v Remington (1978, DC Or) 11 ERC 2102.

Legislative history makes it clear that exceptions contained in 33 USCS § 1321(f), allowing discharger to absolve itself of liability for act or omission of third party without regard to whether such act or omission is or is not negligent, is to be strictly construed and third party has to be sole cause of discharge and discharger has to be totally free of fault; any fault on part of discharger vitiates "sole cause" exception. United States v Bear Marine Services (1980, ED La) 509 F Supp 710.

59. —Vandalism

Discharge is caused solely by act of third parties and oil terminal's precautions are totally reasonable under circumstances where during labor strike at oil terminal, unknown vandals opened valves on 2 railroad tank cars resulting in discharge of fuel oil, part of which reached navigable waterway of United States. Union Petroleum Corp. v United States (1980, Ct Cl) 14 ERC 2072.

Plaintiff is liable for oil spill if plaintiff should have foreseen that unattended truck left on premises at night, might, through variety of circumstances, (e.g., vandalism), cause oil spill. Atlantic Richfield Co. v United States (1982) 1 Cl Ct 261.

Court must focus on plaintiff's precautionary measures to prevent vandalism and plaintiff is not entitled to recover costs for removal of oil spill where fencing around plaintiff's facility was not complete, there was no security personnel on duty during non-business hours, permanent ladders on retaining walls provided access over those walls, and where prior to spill, wheel-type handle was left on water drain valve which made such valve easy to open. Travelers Ins. Co. v United States (1983) 2 Cl Ct 758.

Owner of fuel oil storage tanks is not liable for civil penalty where oil was discharged due to acts of vandalism. United States v General Motors Corp. (1975, DC Conn) 403 F Supp 1151.

Owner of oil storage tank from which oil is discharged into river fails to show he took reasonable precaution to prevent or forestall intervention by third party vandal where owner allows potentially dangerous substance to remain in abandoned storage facility without providing required barrier and drainage to prevent spill from reaching river, owner knew there was large quantity of oil in tank, that numerous acts of vandalism had taken place on sight prior to spill and owner is aware of these incidents; besides windows being broken and cable cut, lock had been broken on shed, and owner failed to take reasonable precautions after these incidents, thus, owner is contributing cause of oil spill and assumed third party vandal cannot be sole cause. United States v Remington (1978, DC Or) 11 ERC 2102.

Penalty assessed by hearing examiner under 33 USCS § 1321 was not excessive considering gravity of violation and lack of evidence presented by company on question whether vandalism was reasonably foreseeable or preventable. G-LMI ltr 16460/5, 3 May 79, CGLB, Oct 1979.

C. Third Party Liability

60. Generally

Operation of vessel as dredge in river to specific depths as aid to navigation, under contract to US Army Corps of Engineers, is public vessel engaged in commerce, and consequently owner of dredge is entitled to payment by insurer for resultant oil slick caused by sinking of dredge. Port of Portland v Water Quality Ins. Syndicate (1982, DC Or) 549 F Supp 233.

Waste generators who contracted with another to ship out or dispose of waste cannot be held liable under either 33 USCS § 1321(e) or 42 USCS § 6973. United States v A & F Materials Co. (1984, SD Ill) 578 F Supp 1249, 38 FR Serv 2d 1174, later proceeding (SD Ill) 582 F Supp 842.

33 USCS § 1321(b)(6), as it existed prior to 1978, imposed absolute liability on owner or operator of any vessel from which oil was discharged and did not allow defense of third party responsibility unless owner could prove bareboat charter requiring that there be relinquishment of possession, command, and navigation tantamount to, though just short of, outright transfer of ownership. G-LMI ltr 16460/7, 13 Mar 80, Oct 1980.

Hearing Officer has discretion to proceed against party in charge at time of discharge which includes party in physical or operational control of vessel; when determining whether to proceed against owner or person in charge, Coast Guard must consider which action would best serve purposes of Act. G-LMI ltr 16460/8, 13 Mar 1980, CGLB, Oct 1980.

61. Third party defined

Negligence of compulsory pilot is not "act or omission of a third party" as used in 33 USCS § 1321(f)(1) and does not relieve vessel's owner of liability for cleanup costs; although 33 USCS § 1321, at least arguably, makes no provision for liability of ship's agent who caused oil spill, statute was not intended to revoke principles of maritime torts and thus pilot and his employer would be liable along with vessl and its owners for government's cleanup costs. Burgess v M/V Tamano (1977, CA1 Me) 564 F2d 964, cert den 435 US 941, 55 L Ed 2d 537, 98 S Ct 1520.

Towboat pushtowing barge is not third party to barge owner or operator under 33 USCS § 1321. United States v Hollywood Marine, Inc. (1981, SD Tex) 519 F Supp 688.

As to government, any party other than discharging vessel is potential source of joint and several liability under 33 USCS § 1321; and thus tug which was pushing barge when barge struck bottom of bay and was holed, releasing oil into navigable water, is third party for purposes of § 1321(g) and (h), regardless of whether it occupies status for purposes of § 1321(f). Frederick E. Bouchard, Inc. v United States (1984, DC Mass) 583 F Supp 477.

62. Degree of fault

United States in seeking to recover costs incurred in removing oil discharge from sunken barge under 33 USCS § 1321(g) may recover directly from third party without any requirement that third party was willfully negligent or performed willful misconduct. United States v Redwood City (1981, CA9 Cal) 640 F2d 963.

Government may not recover against vessel owner and bareboat charterer for reimbursement of expenses incurred in cleaning up oil spill following sinking of dredge since vessel owner and bareboat charterer were held only 65 percent at fault and as such cannot be held liable under Federal Water Pollution Control Act (33 USCS § 1321(g)) applicable to sole-cause third parties. Re Complaint of Berkley Curtis Bay Co. (1983, SD NY) 557 F Supp 335, later proceeding (SD NY) 569 F Supp 1491, 37 FR Serv 2d 906, affd without op (CA2 NY) 742 F2d 1431, cert den 466 US 928, 80 L Ed 2d 184, 104 S Ct 1711.

63. In rem remedy against vessel

As to negligent third-party non-discharging vessel, United States may exercise in rem remedy under general maritime law to recover oil-pollution cleanup cost incurred as result of conduct that constitutes maritime tort, even though 33 USCS § 1321 might limit recovery whether or not sole-cause act or omission was tortious. United States v M/V Big Sam (1982, CA5 La) 681 F2d 432, reh den (CA5 La) 693 F2d 451, cert den 462 US 1132, 77 L Ed 2d 1367, 103 S Ct 3112.

Provisions of 33 USCS § 1321(g) permit United States to bring action in rem under general maritime tort law to recover oil-pollution cleanup costs. United States v M/V Big Sam (1982 CA5 La) 681 F2d 432, reh den (CA5 La) 693 F2d 451, cert den 462 US 1132, 77 L Ed 2d 1367, 103 S Ct 3112.

If oil is discharged from one source and flows across facility or vessel of innocent party and enters water, owner or operator of original source may be proceeded against in penalty actions and property from which oil was ultimately discharged is viewed only as conduit against whom no penalty should be assessed; however, if intermediate property owner is not innocent conduit, Hearing Officer must evaluate all evidence before him and, based on considerations of causative factors and capability for utilizing reasonable precautions, determine whether action against "conduit" will better serve purposes of Act and penalty may be assessed against conduit. G-LMI ltr 16460/3, 25 Mar 1980, CGLB, Oct 1980.

64. Statutory lien

Statutory lien which arises pursuant to 33 USCS § 1321(g) as to vessel causing discharge from another vessel is maritime in nature, in light of fact that it arises out of conduct which is peculiarly maritime. United States v M/V Big Sam (1978, ED La) 454 F Supp 1144, different results reached on reh (ED La) 480 F Supp 290, later op (ED La) 505 F Supp 1029, affd in part and revd in part on other grounds (CA5 La) 681 F2d 432, reh den (CA5 La) 693 F2d 451, cert den 462 US 1132, 77 L Ed 2d 1367, 103 S Ct 3112.

65. Damages

Limitation on amount of damages assessable against vessel will be denied where United States can show discharge of oil was result of willful negligence or willful misconduct within privity and knowledge of owner, and tug company will be liable for full amount of pollution cleanup costs where combination of faults, including failure of company to inform tug pilot of new pilot's unfamiliarity with river, failure to appoint captain, and failure to require lookout, together amounted to reckless disregard of consequences, and thus willful misconduct. Tug Ocean Prince, Inc. v United States (1978, CA2 NY) 584 F2d 1151, cert den 440 US 959, 59 L Ed 2d 772, 99 S Ct 1499.

D. Liability of United States

66. Generally

Party may not recover against United States pursuant to 33 USCS § 1321 unless it can meet heavy burden of showing that it is entirely without fault for spill. Atlantic Richfield Co. v United States (1982) 1 Cl Ct 261.

67. Effect of other laws

Trans-Alaska Pipeline Authorization Act (43 USCS §§ 1651 et seq.) bars pipeline service company from recovering from United States for cost of cleaning up oil discharge from pipeline system into navigable waters under Water Pollution Control Act (33 USCS § 1321). Alyeska Pipeline Service Co. v United States (1981) 227 Ct Cl 297, 649 F2d 831, cert den 454 US 964, 70 L Ed 2d 380, 102 S Ct 505.

68. Jurisdiction

Vessel owners' action against United States, under predecessor to 33 USCS § 1321 to recover cleanup cost of oil because of alleged nelgigence of United States, should be brought in Court of Claims as such court has exclusive jurisdiction of any action brought pursuant to such section. Burgess v M/V Tamano (1974, DC Me) 373 F Supp 839, vacated on other grounds (CA1 Me) 564 F2d 964, cert den 435 US 941, 55 L Ed 2d 537, 98 S Ct 1520.

69. Standing to sue

Owner-operator satisfying other requirements of 33 USCS § 1321(i)(1) may maintain suit against United States, for and on behalf of owner-operator's insurance company as subrogee, seeking recovery of reasonable amount owner-operator incurred in oil spill removal operations and such suit will be regarded solely as one maintained by owner-operator for purposes of § 1321(i)(1). Quarles Petroleum Co. v United States (1977) 213 Ct Cl 15, 551 F2d 1201.

Both Rivers and Harbors Act and Water Quality Improvement Act were enacted by Congress as remedial legislation designed to protect public from disastrous consequences of maritime pollution, including oil spills; neither statute, either expressly or constructively, creates cause of action in any one against United States. Burgess v M/V Tamano (1974, DC Me) 373 F Supp 839, vacated on other grounds (CA1 Me) 564 F2d 964, cert den 435 US 941, 55 L Ed 2d 537, 98 S Ct 1520.

70. Basis of suit

33 USCS § 1321 does not obligate United States or any third party to pay cost of cleaning up any and every oil spill, but only those that pollute or threaten to pollute navigable waters, or may affect natural resources controlled by United States. Harleysville Mut. Ins. Co. v United States (1980, Ct Cl) 14 ERC 2057.

Vessel owners could not assert claims against United States based upon national and regional oil contingency plans promulgated pursuant to predecessor to 33 USCS § 1321 where owners' position appeared to be that, by adopting oil contingency plans, United States made certain representations as to availability of clean up facilities upon which owners' reasonably relied, and that hence United States may be liable for any damages incurred by third parties resulting from any inadequacy of plans or from any failure to comply therewith, where owners' did not identify, and could not identify, any representations in plans upon which it might reasonably have relied. Burgess v M/V Tamano (1974, DC Me) 373 F Supp 839, vacated on other grounds (CA1 Me) 564 F2d 964, cert den 435 US 941, 55 L Ed 2d 537, 98 S Ct 1520.

71. Due care requirement

Barge owner does not satisfy requirement of 38 USCS § 1321 for recovery of expenditures for removal of oil spills where its haphazard inspection practices constitutes ordinary negligence resulting in release of oil from barge's cargo when it sank in heavy snowstorm. Steuart Transp. Co. v Allied Towing Corp. (1979, CA4 Va) 596 F2d 609.

City's maintenance of city-owned storage tanks in manner such that there were gaping holes in protective fence, no lighting in tank area, lack of working lock on gate, unprotected oil tank spigots, improper drainage spouts for possible overflow of oil, and variety of "keystone cop" antics of local guards and officials, precludes it from recovering reimbursement under 33 USCS § 1321 for expenses it incurred in combatting oil spill; city was major contributing cause to oil spill and vandal was not sole cause of spill within meaning of statute. Pawtucket (1976) 211 Ct Cl 324.

Claimant cannot recover cleanup costs under 33 USCS § 1321(i)(1), even if vandal or third party immediately caused spillage, if claimant does not prove that reasonable actions had been taken to prevent or forestall such intervention by third party; extent of care required of new owner is measured both by condition in which new owner finds property and by length of time new owner has held it; railroad company which had purchased meatpacking plant with intention of razing same was entitled to recover cost of cleaning up oil spill caused by actions of vandals in dismantling sections of pipe leading from oil storage tanks to oil-fired furnace where (1) company had held property only 10 days, (2) property was fenced and lighted, and (3) feeder pipe valves were closed and handles removed and vent pipe capped. Chicago, M., S. P. & P. R. Co. v United States (1978, 216 Ct Cl) 155, 575 F2d 839.

In order to recover cost of removing oil spill pursuant to 33 USCS § 1321 claimant must establish that he exercised reasonable care to prevent or forestall action of third party who immediately caused spill. Proctor Wholesale Co. (1978) 215 Ct Cl 1049.

Corporate owner of ship is barred from recovering expenses incurred in neutralizing oil spill from its ship which occurred when ship sank at its slip in harbor and oil escaped from ship's fuel tanks because of contributory negligence of owner in failing to take reasonable measures to forestall vandalism. M/V Anna-Maria & Elena, Inc. v United States (1980, Ct Cl) 14 ERC 1314.

Tanker owner is entitled to recover cost of cleaning up oil spill where Coast Guard advised him, in connection with assessment of mandatory "civil penalty" for oil spillage pursuant to 33 USCS § 1321, that discharge could not have been prevented using reasonable care, it was not caused by act or omission of type previously known to tanker owner, cause of discharge was not due to violation of oil spill prevention regulations, special steps were taken to overt specific type of discharge and discharge could not have been foreseen by experienced owner or operator knowing equipment involved. Sabine Towing & Transp. Co. v United States (1980, Ct Cl) 15 ERC 1295.

Oil company was entitled to recover reasonable expenses it incurred in cleanup operations of oil spill, under Federal Water Pollution Control Act (33 USCS § 1321(b)(1)), which occurred during labor strike due solely to acts of unknown third party vandalism, and its occurrence was unforseeable with oil company taking reasonable precuations to prevent such. Union Petroleum Corp. v United States (1981) 228 Ct Cl 54, 651 F2d 734, 59 ALR Fed 262.

Oil spill caused when fishing vessel collided in harbor with unmanned barge was caused solely by negligence of United States where strobe lights placed on barge were placed in such manner as not to be visible except at very close range, Coast Guard was negligent in failing to take all available precautions to check barge's position at time of anchoring, since anchoring vessel so that it extends into fairway, navigable channel, when Coast Guard docks are available but few hundred yards away, is obstruction to navigation that is unnecessary and negligent act that caused collision. Gasper v United States (1978, DC Mass) 460 F Supp 656.

72. Collateral estoppel

Corporate owner of barge seeking to recover clean-up costs resulting from oil spill on navigable United States waterway is collaterally estopped to relitigate cumulative effect of findings, in action by government for injunctive relief, that spill was solely caused by tug wholly owned by corporation that owned corporate owner of barge from which spill occurred. Tanker Hygrade No. 18, Inc. v United States (1975) 208 Ct Cl 488, 526 F2d 805, cert den 426 US 920, 49 L Ed 2d 373, 96 S Ct 2624.

In action by property owner to recover cleanup expenses incurred in combating oil spill, government, because of its admission in prior case that discharge was caused by acts of third party or parties unknown, is collaterally estopped from denying in present action that discharge is caused solely by acts or omission of third parties. General Motors Corp. (1977) 213 Ct Cl 706, later proceeding 215 Ct Cl 1086.

73. Limitations

Suit against United States was properly dismissed where plaintiff, ordered to clean up fuel discharge from barge, failed to bring suit within period specified by 33 USCS § 1321(i)(1). Gulf Refining Co. v United States (1976, ED Tex) 69 FRD 300.

74. Amounts recoverable

33 USCS § 1321 permits Government to seek to recover full cost expended in cleaning up oil spill, so long as cause of spill is not discharging vessel. United States v T/B Arcadian 95 (1983, CA5 La) 714 F2d 470.

Cost in amount of $40,000 paid by common carrier to contractor to remove oil discharge from its tank trailer solely through fault of third party is "reasonable" within meaning of 33 USCS § 1321. Red Wing Carriers v United States (1978, Ct Cl) 11 ERC 1871.

Predecessor to 33 USCS § 1321, although permitting states to impose liabilities for discharge of oil into interstate waters only contemplates compensatory actions against federal government, its agencies or officers; nowhere is there language authorizing imposition of penalties against such potential defendants. California ex rel. California Regional Water Quality Control Board v Department of Navy (1973, ND Cal) 371 F Supp 82.

75. Other

Where Panama Canal company did not present to District Court contention that expenditures it made to clean up oil pollution resulting from leakage of sunken vessel gave rise to claim under relevant portion of predecessor to 33 USCS § 1321 which, it argued, was not subject to limitation, it was not properly before Court of Appeals. Complaint of Chinese Maritime Trust, Ltd. (1973, CA2 NY) 478 F2d 1357, cert den 414 US 1143, 39 L Ed 2d 98, 94 S Ct 894.

Corporate owner of tank truck is allowed to recover cost incurred in cleanup of oil spill for its subrogated insurance carrier; while 33 USCS § 1321 allows recovery of clean up cost to "owner or operator" of certain facilities from which oil is discharged, owner is entitled to sue on behalf of insurance carrier since to incur means to become liable for or subject to and does not mean to actually pay for; while statute is silent on right of subrogation, it is reasonable to conclude that such right exists; further, there is no intimation in statute to outlaw suit for and on behalf of subrogee. Quarles Petroleum Co. v United States (1977) 213 Ct Cl 15, 551 F2d 1201.

State park and recreation board is not entitled to recover, pursuant to 33 USCS § 1321(a)(1)(D), costs incurred in cleaning up oil spill partially caused by vandalism. Minneapolis Park & Recreation Board v United States (1982, Ct Cl) 13 ELR 20029.

Public vessel exception does not automatically apply to Military Sealift Command ships and civil penalty may be assessed if operator in control of vessel is entity other than United States. G-LMI ltr 16781/7, 10 June 80, CGLB, Feb 1981.

IV. REGULATIONS

76. Generally

Coast Guard rules regarding pollution prevention issued by authority of 33 USCS § 1321(j) which would not become effective until July 1, 1974 did not preclude judicial action, with respect to corporate defendants causing oil spills in Lake Champlain, before effective date. United States v Ira S. Bushey & Sons, Inc. (1973, DC Vt) 363 F Supp 110, affd without op (CA2 Vt) 487 F2d 1393, cert den 417 US 976, 41 L Ed 2d 1146, 94 S Ct 3182.

V. JURISDICTION OF COURTS

77. Generally

De novo review is not warranted in event civil penalty assessed under 33 USCS § 1321 is not paid and collection action is brought in District Court. United States v Healy Tibbitts Constr. Co. (1983, CA9 Cal) 713 F2d 1469, later proceeding (ND Cal) 607 F Supp 540.

78. Claims Court

Court of Claims is expressly given jurisdiction over only one facet of FWPCA, which is recovery of owner cleanup cause against United States; Tucker Act [28 USCS § 1491] does not implicitly give Court of Claims jurisdiction over claim for refund of civil penalty. Sea-Land Service, Inc. v United States (1982) 231 Ct Cl 230, 684 F2d 871.

District Court has no jurisdiction to hear claim based on 33 USCS § 1321(i)(1); exclusive jurisdiction to hear such suits was vested in Court of Claims. Gulf Refining Co. v United States (1976, ED Tex) 69 FRD 300.

It would frustrate Congress' intent to allow negligence action for cost of cleanup to be

brought in District Court under Federal Tort Claims Act (28 USCS § 1346), and claim should be brought in Claims Court under 33 USCS § 1321. Platte Pipe Line Co. v United States (1984, DC Wyo) 599 F Supp 45.

79. Transfers

Absent overriding fundamental reason to grant transfer of location, something more than mere expense, Hearing Officer has discretion to reject transfer request. G-LMI ltr 16460/17, 15 July 80, CGLB, Feb 1981.

VI. REMEDIES NOT AFFECTED

80. Generally

Waiver of preemption in predecessor to 33 USCS § 1321, providing that nothing in 33 USCS § 1161 "shall be construed as preempting any State or political subdivision thereof from imposing any requirement or liability with respect to the discharge of oil into any waters within such State" is valid. Askew v American Waterways Operators, Inc. (1973) 411 US 325, 36 L Ed 2d 280, 93 S Ct 1590, 45 OGR 409, reh den 412 US 933, 37 L Ed 2d 162, 93 S Ct 2746.

Precise and comprehensive statutory damage remedy of 33 USCS § 1321 created for United States by Congress is exclusive of non-statutory damage remedies. Re Complaint of Oswego Barge Corp. (1982, CA2 NY) 673 F2d 47.

81. Common law remedies

Although 33 USCS § 1321, at least arguably, makes no provision for liability of ship's agent who caused oil spill, statute was not intended to revoke principles of maritime torts and thus pilot and his employer would be liable along with vessel and its owners for government's clean-up costs. Burgess v M/V Tamano (1977, CA1 Me) 564 F2d 964, cert den 435 US 941, 55 L Ed 2d 537, 98 S Ct 1520.

82. Statutory remedies

33 USCS § 1321(o) preserves maritime negligence action for breach of vessel's duty to use due care with respect to United States in avoiding oil spillage which United States might become liable to clean up. United States v M/V Big Sam (1978, ED La) 454 F Supp 1144, different results reached on reh (ED La) 480 F Supp 290, later op (ED La) 505 F Supp 1029, affd in part and revd in part on other grounds (CA5 La) 681 F2d 432, reh den (CA5 La) 693 F2d 451, cert den 462 US 1132, 77 L Ed 2d 1367, 103 S Ct 3112.

Action by United States under Refuse Act (33 USCS § 407) for recovery of its actual expenses incurred in oil spill cleanup operations is preempted by FWPCA (33 USCS §§ 1251 et seq.). United States v M/V Big Sam (1979, ED La) 480 F Supp 290, later op (ED La) 505 F Supp 1029, affd in part and revd in part on other grounds (CA5 La) 681 F2d 432, reh den (CA5 La) 693 F2d 451, cert den 462 US 1132, 77 L Ed 2d 1367, 103 S Ct 3112.

83. State remedies

Predecessor to 33 USCS § 1321 does not preclude, but in fact, allows state regulation of water pollution by discharge of oil; reason for provision in predecessor to 33 USCS § 1321 that nothing section pre-empts any state "from imposing any requirement or liability with respect to the discharge of oil into any waters within such state" is that statutory scheme allows, though it does not require, co-operation of the regime with state regime; since predecessor to 33 USCS § 1321 deals only with pollution cleanup costs, it leaves state free to impose liability in damages for losses suffered by both state and by private interest. Askew v American Waterways Operators, Inc. (1973) 411 US 325, 36 L Ed 2d 280, 93 S Ct 1590, 45 OGR 409, reh den 412 US 933, 37 L Ed 2d 162, 93 S Ct 2746.

To infer that in enacting Water Quality Improvement Act, Congress deprived states of their constitutional immunity from private suits arising from cleanup activities would frustrate Act's repeatedly articulated objective of encouraging state participation and cooperation in clean up of oil spills. Burgess v M/V Tamano (1974, DC Me) 382 F Supp 351.

Nothing in 1977 amendments to Clean Water Act which added subsections (4) and (5) to 33 USCS § 1321(f) conflicts with or otherwise preempts any state statute imposing liability on owner or operator of any vessel which illegally discharges oil, nor does it limit amount of that liability; new statutory scheme merely provides state with alternative federal remedy which assures that, either through action and expenditure of state or federal governments, natural resources will be preserved. Re Allied Towing Corp. (1979, ED Va) 478 F Supp 398.

Waiver of pre-emption found in 33 USCS § 1321(o) is broad enough to allow state to impose liability in instances where liability is not imposed by federal law; enactment of 33 USCS § 1321 was not intended to restrict states' power to impose constitutional taxes upon interstate and foreign commerce to effectuate their desire to control oil pollution. Portland Pipe Line Corp. v Environmental Improv. Com. (1973, Me) 307 A2d 1, app dismd 414 US 1035, 38 L Ed 2d 326, 94 S Ct 532.

84. Damages recoverable in other actions

No remedy under Water Quality Improvement Act of 1970 (predecessor to 33 USCS § 1321) exists for state or private property owners damaged by massive oil slick caused when tanker runs into reef; predecessor to 33 USCS § 1321 takes no cognizance of claims for public beaches ruined by oil spills or for ruination of shrimp, clam, oyster, and scallop beds and imperilling of fishermen's livelihoods, but only takes cognizance of costs to federal government if it does cleaning up; since precessor to 33 USCS § 1321 deals only with pollution cleanup costs, it leaves states free to impose liability in damages for losses suffered both by state and by private interests. Askew v American Waterways Operators, Inc. (1973) 411 US 325, 36 L Ed 2d 280, 93 S Ct 1590, 45 OGR 409, reh den 412 US 933, 37 L Ed 2d 162, 93 S Ct 2746.

Commercial fishermen and clam diggers had private cause of action against those causing oil spillage into waters of Casco Bay but, businessmen alleging loss of customers indirectly resulting from alleged pollution of coastal waters and beaches in which they do not have property interest do not have private cause of action. Burgess v M/V Tamano (1973, DC Me) 370 F Supp 247.

33 USCS § 1321(f) is limitation only as to recovery of federal cleanup costs and does not preclude state from presenting claim under state statute for entire amount of its cleanup costs without limit; 33 USCS § 1321(f) acts as limit on United States claim for cleanup costs regardless of basis on which claim is made; United States will not be permitted to present claim for such costs under general maritime law, common law, or other statutes. Complaint of Steuart Transp. Co. (1977, ED Va) 435 F Supp 798, affd (CA4 Va) 596 F2d 609.

Although state would be allowed to seek recovery of its own costs incurred as result of oil spill, to allow state to seek recovery of cost of Coast Guard clean-up operations under either its Environmental Conservation Law or its claim for abatement of public nuisance would conflict with FWPCA and particularly 33 USCS § 1321. Re Oswego Barge Corp. (1977, ND NY) 439 F Supp 312.

85. Pre-judgment interest

Prejudgment interest is awarded to United States at highest rate permissible under laws of forum from date United States first notified defendants of amount that was due. United States v The M/V Zoe Colocotroni (1979, CA1 Puerto Rico) 602 F2d 12.

United States is entitled to prejudgment interest from date of government's demand on plant, source of pollution, for payment of bill for clean up cost; interest awarded is compensatory, not punitive, and within discretion of court. United States v Malitovsky Cooperage Co. (1979, WD Pa) 472 F Supp 454.

Award of prejudgment interest would be granted United States for cleanup costs against bareboat charterer in action under 33 USCS § 1321 from time claim was made against charterer by United States. United States v M/V Big Sam (1981, ED La) 505 F Supp 1029, affd in part and revd in part on other grounds (CA5 La) 681 F2d 432, reh den (CA5 La) 693 F2d 451, cert den 462 US 1132, 77 L Ed 2d 1367, 103 S Ct 3112.

86. Attorneys' fees

Government is not entitled to attorney's fees in action to recover costs of cleaning up oil spill. United States v The M/V Zoe Colocotroni (1979, CA1 Puerto Rico) 602 F2d 12.

VII. LIMITATION OF LIABILITY

87. Generally

Limitation on amount of damages assessable against vessel will be denied where United States can show discharge of oil was result of willful negligence or willful misconduct within privity and knowledge of owner, and tug company will be liable for full amount of pollution cleanup costs where combination of faults, including failure of company to inform tug pilot of new pilot's unfamiliarity with river, failure to appoint captain, and failure to require lookout, together amounted to reckless disregard of consequences, and thus willful misconduct. Tug Ocean Prince, Inc. v United States (1978, CA2 NY) 584 F2d 1151, cert den 440 US 959, 59 L Ed 2d 772, 99 S Ct 1499.

If United States does not clean up, discharger has no liability to United States for what cost of cleanup would be, and if United States partially cleans up, discharger's liability is no greater than cost of cleanup actually performed. United States v P/B STCO 213 (1985, CA5 Tex) 756 F2d 364.

33 USCS § 1321(f) acts as limitation to United States claim for cleanup costs regardless of basis on which claim is made, and United States will not be permitted to present claim for such costs under general maritime law, common law, or other statutes. Complaint of Steuart Transp. Co. (1977, ED Va) 435 F Supp 798, affd (CA4 Va) 596 F2d 609.

United States has right, as matter of law, to file claims for recovery of costs of oil pollution clean up outside of shipowner's action for exoneration from or limitation of liability. Re Complaint of Hokkaido Fisheries Co. (1981, DC Alaska) 506 F Supp 631.

Congress did not intend to restrict states to 8 million-dollar limit imposed on reimbursement of federal clean-up costs. Portland Pipe Line Corp. v Environmental Improv. Com. (1973, Me) 307 A2d 1, app dismd 414 US 1035, 38 L Ed 2d 326, 94 S Ct 532.

§ 1322. Marine sanitation devices

(a) Definitions. For the purpose of this section, the term—

(1) "new vessel" includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on the navigable waters, the construction of which is initiated after promulgation of standards and regulations under this section;

(2) "existing vessel" includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on the navigable waters, the construction of which is initiated before promulgation of standards and regulations under this section;

(3) "public vessel" means a vessel owned or bareboat chartered and operated by the United States, by a State or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce;

(4) "United States" includes the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Canal Zone, and the Trust Territory of the Pacific Islands;

(5) "marine sanitation device" includes any equipment for installation on board a vessel which is designed to receive, retain, treat, or discharge sewage, and any process to treat such sewage;

(6) "sewage" means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes except that, with respect to commercial vessels on the Great Lakes, such term shall include graywater;

(7) "manufacturer" means any person engaged in the manufacturing, assembling, or importation of marine sanitation devices or of vessels subject to standards and regulations promulgated under this section;

(8) "person" means an individual, partnership, firm, corporation, or association, but does not include an individual on board a public vessel;

(9) "discharge" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping;

(10) "commercial vessels" means those vessels used in the business of transporting property for compensation or hire, or in transporting property in the business of the owner, lessee, or operator of the vessel;

(11) "graywater" means galley, bath, and shower water.

(b) Federal standards of performance. (1) As soon as possible, after the enactment of this section [enacted Oct 18, 1972] and subject to the provisions of section 104(j) of this Act [33 USCS § 1254(j)], the Administrator, after consultation with the Secretary of the department in which the Coast Guard is operating, after giving appropriate consideration to the economic costs involved, and within the limits of available technology, shall promulgate Federal standards of performance for marine sanitation devices (hereafter in this section referred to as "standards") which shall be designed to prevent the discharge of untreated or

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relief purposes. McClellan Ecological Seepage Situation (MESS) v Weinberger (1986, ED Cal) 655 F Supp 601, 17 ELR 20344.

State's claim against U. S. Department of Energy seeking civil penalties for improper disposal of hazardous waste will not be dismissed, where state argues persuasively that liability and sanction provisions of 42 USCS §§ 6961 and 6972, and 33 USCS §§ 1319, 1323 and 1365 apply to all managers and controllers of pollutants that violate legal requirements, because Congress intended to waive sovereign immunity to civil claims under both Resource Conservation and Recovery Act (42 USCS §§ 6901 et seq.) and Clean Water Act (33 USCS §§ 1251 et seq.). Ohio v United States Dept. of Energy (1988, SD Ohio) 689 F Supp 760, 18 ELR 20586.

6. Effect on pre-existing activities

7. —Activities prior to limitation or standard promulgation

Consumer product manufacturer cannot be liable in 33 USCS § 1365 citizen suit for past violations of expired 1975 pollution discharge permit but is subject to liability for violations of 1985 permit now in effect, where less stringent limitations are imposed on total suspended solids and biological oxygen demands in current permit, because citizen suit may seek 33 USCS § 1319 civil penalties for violations of expired permit only on basis of those conditions of expired permit which have been carried over to or made more stringent in current permit. Public Interest Research Group, Inc. v Carter-Wallace, Inc. (1988, DC NJ) 684 F Supp 115.

10. Acts constituting violation

Discharge of various chemicals that were designated as hazardous substances, under 33 USCS § 1321; toxic pollutants, under 33 USCS § 1317; or hazardous waste, under 42 USCS § 6921, into ditch on site of drum reconditioning business that sold emptied drums, after processing their contents to be transported from site, from which chemicals ultimately flowed into area surface and ground water, was violation of Clean Water Act, 33 USCS §§ 1311(a) and 1319, where NPDES permit was never issued to site owners, business' owner-operators, or any of their predecessors. United States v Ottati & Goss, Inc. (1985, DC NH) 630 F Supp 1361.

Chemical company is strictly liable for violations of its wastewater discharge permit even if reported discharge was higher than actual levels, and evidence of amount of discharge would be considered when determining appropriate remedy for violation. Connecticut Fund for Environment, Inc. v Upjohn Co. (1987, DC Conn) 660 F Supp 1397, 17 ELR 21137.

11. Means of enforcement

12. —Discretion of Administrator

In light of language of 33 USCS § 1319(a)(3), its legislative history, and certain principles governing statutory interpretation and judicial review of agency decisions, the conclusion is inescapable that duties imposed must be viewed as discretionary. Dubois v Thomas (1987, CA8 Mo) 820 F2d 943.

In action by government seeking injunctive relief and civil penalties for violation of Clean Water Act (33 USCS §§ 1251 et seq.) defendant had Seventh Amendment right to jury trial to determine liability but trial court should determine amount of penalty, if any. Tull v United States (1987, US) 95 L Ed 2d 365, 107 S Ct 1831.

15. Jurisdiction

Congress intended to authorize only Administrator to seek civil penalties and there is no independent jurisdictional ground for state to seek such penalties against federal discharges, thus District Court lacked subject matter jurisdiction to hear action by state seeking civil penalties for violations of state water pollution discharge permit. California v United States Dept. of Navy (1988, CA9 Cal) 845 F2d 222.

17. Jury trial

Jury trial is not available to defendant corporation in action pursuant to Clean Water Act (33 USCS §§ 1251-1376), when relief sought is equitable in nature, even though it involves imposition of civil penalities under 33 USCS § 1319(d). United States v Ferro Corp. (1986, MD La) 627 F Supp 508.

18. Defenses

20. —Estoppel

Riparian landowner must pay civil penalty under 33 USCS § 1319(d) for violation of Clean Water Act where landowner's ordeal with Army Corps of Engineers over 20-year period was marked by Corps' giving of misinformation regarding its jurisdiction and landowner's rights and Corps' delay in responding to landowner's permit applications, which resulted in Corps' estoppel to enforce violation with respect to 1 of 3 seawalls built by landowner, because landowner's decision to proceed with construction of third seawall after receiving clarification of his rights was aggressive, although without ill intent, and cannot be condoned. United States v Boccanfuso (1988, DC Conn) 695 F Supp 693.

21. Remedies

Civil penalties assessed against taxpayer company under 33 USCS § 1319 and made pursuant to consent decree with Environmental Protection Agency were neither compensatory nor remedial in nature, and payment of fee by company was not to allow it to continue polluting air and water until modifications required by consent decree were made, but rather was penalty imposed for violations of law, and therefore was not deductible as business expense under § 162 of Internal Revenue Code. Colt Industries, Inc. v United States (1986) 11 Cl Ct 140, 86-2 USTC ¶ 9749, 58 AFTR 2d 86-6057.

22. —Injunction

Authority of Administrator of the Environmental Protection Agency to issue compliance orders and bring civil enforcement actions for injunctive relief under 33 USCS §§ 1319(a), 1319(b), is independent of authority to bring actions to recover civil penalties under 33 USCS § 1319(d). Gwaltney of Smithfield, Ltd. v Chesapeake Bay Foundation, Inc. (1987, US) 98 L Ed 2d 306, 108 S Ct 376.

Since EPA failed to comply with nondiscretionary duties under Resource Conservation and Recovery Act (42 USCS § 6924(w)), which provides that final permitting standards for underground hazardous waste tanks that cannot be entered for inspection must be promulgated before certain date, EPA is ordered to promulgate regulations by one year from their proposal date, which is 16

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months after statutorily specified deadline. Environmental Defense Fund v Thomas (1986, DC Dist Col) 627 F Supp 566.

Restorative injunction under 33 USCS § 1319 should be entered against defendant corporation that farmed in 2,000-acre swamp without permit under Clean Water Act (33 USCS §§ 1251-1376) and partially drained swamp where (1) maximum environmental benefits would be achieved since restoration is in public and national interest and consistent with controlling law, (2) restoration is practicable with some modification, and (3) restoration bears equitable relationship to degree and kind of wrong it is intended to remedy since improperly planted corn fields would be destroyed. United States v Cumberland Farms of Connecticut, Inc. (1986, DC Mass) 647 F Supp 1166, 17 ELR 20301.

24. Civil penalty

Liability under Clean Water Act (33 USCS §§ 1251 et seq.) (Clean Water Act) is form of strict liability, and riparian landowners were entitled to recover civil penalties for governmental entity's creation of foul odors, human sewage, dead fish, algal growth, and other conditions, in violation of its National Pollutant Discharge Elimination System permit to operate sewage treatment plant, granted by state department of health and environmental control, under Clean Water Act and state pollution control act, where excessive pollution and uncertainty as to when its elimination would occur rendered lake and land immediately surrounding it essentially unusable. Stoddard v Western Carolina Regional Sewer Authority (1986, CA4 SC) 784 F2d 1200.

For purposes of potential maximum civil penalty under 33 USCS § 1319(d), each violation of monthly average limits on discharge of pollutants into water was equivalent to daily violation for each day of that month, since § 1319 speaks in terms of penalties per day of violation, rather than penalties per violation. Chesapeake Bay Foundation, Inc. v Gwaltney of Smithfield, Ltd. (1986, CA4 Va) 791 F2d 304.

District court did not abuse discretion in penalizing polluter, under 33 USCS § 1319(d), for unexcused delays in approving its effluent treatment systems, pursuant to EPA's Civil Penalty Policy, whether or not violation actually occurred on each day of unjustified delay, although § 1319(d) speaks in terms of penalties per day of violation, since under 33 USCS § 1365(a), court is permitted to craft "appropriate" penalty. Chesapeake Bay Foundation, Inc. v Gwaltney of Smithfield, Ltd. (1986, CA4 Va) 791 F2d 304.

EPA regulations that do not compel states to provide authority to levy maximum penalties assessable in federal enforcement programs, must be upheld, since Water Quality Act amendment to 33 USCS § 1319, concerning federal civil penalties, states specifically that it does not affect administrator's authority to establish or adjust by regulation minimum acceptable state civil penalty, and this language is indicative of understanding that Congress was not enlarging Administrator's authority for narrowly defined purpose, but was confirming his existing authority. Natural Resources Defense Council, Inc. v U.S. Environmental Protection Agency (1988, App DC) 859 F2d 156, 19 ELR 20016.

State is not authorized, instead of Environmental Protection Agency (EPA), to bring action to enforce civil penalties, under Clean Water Act, 33 USCS § 1319(d), for violations of NPDES permit issued by state water quality control board to waste treatment plant, since § 1319 is wholly concerned with actions brought by EPA Administrator and does not indicate any intent to authorize actions by state. California v Department of Navy (1986, ND Cal) 631 F Supp 584.

Civil penalty under 33 USCS § 1319 should be assessed against corporation that farmed in 2,000-acre swamp without permit under Clean Water Act (33 USCS §§ 1251-1376) for 20 days of activity involving use of heavy equipment on swamp, which is fragile, in intentional violation of order of Army Corps of Engineers to cease disturbance of swamp; penalty is designed to punish corporation and deter others from similar conduct. United States v Cumberland Farms of Connecticut, Inc. (1986, DC Mass) 647 F Supp 1166, 17 ELR 20301.

Civil penalty of $235,000 ($1,000 per day) is imposed against developer, where developer continued to fill federal wetlands illegally under 33 USCS §§ 1311(a) and 1344 despite "cease and desist" letter issued by Corps of Engineers, temporary restraining order, preliminary injunction, and finally permanent injunction issued by this court, because court is authorized under 33 USCS § 1319(d) to impose civil penalty of up to $10,000 for each day of violation of Clean Water Act (33 USCS §§ 1251 et seq.), with aim of punishing violator and deterring others. United States v Ciampitti (1987, DC NJ) 669 F Supp 684.

Public interest group may seek civil penalties for manufacturer's past violations of its pollution discharge permit in 33 USCS § 1365 citizen suit, where limitation of citizen suit remedies to only present and prospective relief is unduly restrictive considering intent for citizenry to play backup role in enforcement of pollution standards, because so long as citizen plaintiff alleges continuing or intermittent permit violation in good faith, District Court has jurisdiction to apply appropriate 33 USCS § 1319(d) civil penalties to wholly past violations. Public Interest Research Group, Inc. v Carter-Wallace, Inc. (1988, DC NJ) 684 F Supp 115.

§ 1320. International pollution abatement

RESEARCH GUIDE

Forms:

13 Fed Procedural Forms L Ed, Navigable Waters § 51:2.

§ 1321. Oil and hazardous substances liability

(a) Definitions. [Introductory matter unchanged]

(1)-(4) [Unchanged]

(5) "United States" means the States, the District of Columbia, the Commonwealth of

Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands;

(6)-(17) [Unchanged]

(b)-(r) [Unchanged]

(As amended Feb. 4, 1987, P. L. 100-4, Title V, § 502(b), 101 Stat. 75.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

1987. Act Feb. 4, 1987, in subsec. (a)(5), inserted "the Commonwealth of the Northern Mariana Islands," and deleted "the Canal Zone,".

CODE OF FEDERAL REGULATIONS

Add:

46 CFR Parts 31, 33, 35, 56, 71, 78, 91, 97, 105, 110, 169, 176, 189, 196.

CROSS REFERENCES

As to sentencing guidelines for this section, see the appendix entitled "Sentencing Guidelines for U.S. Courts" at the end of Title 18.

RESEARCH GUIDE

Am Jur Proof of Facts:

6 Am Jur Proof of Facts 3d, Act of God, p. 319.

Forms:

13 Fed Procedural Forms L Ed, Navigable Waters §§ 51:2, 12, 91, 112.

Law Review Articles:

Strict Liability for Cleanup Costs Under Section 311 of the Clean Water Act: Cleaning Up Respondeat Superior and Negligence. 10 Colum J Envtl L 149, 1985.

INTERPRETIVE NOTES AND DECISIONS

6. Definitions

9. "Public vessel"

Port's dredge was "public vessel engaged in commerce" and thus covered under insurance policy that extended coverage coextensive with liabilities under Clean Water Act (33 USCS §§ 1251 et seq.), where Army Corps of Engineers contracted with port to use dredge, since state authorized port to engage in some commercial activities, and when not in use by Army Corps of Engineers, dredge was on standby available for contract to third parties. Port of Portland v Water Quality Ins. Syndicate (1986, CA9 Or) 796 F2d 1188.

12. Proof of violation

Marine motor manufacturer was in violation of its discharge permit and is liable for 17 discharges of suspended solids in excess of limitation, three discharges in excess of pH range, and will be enjoined from further violations, but court cannot decide issue of alleged PCB discharge violation where manufacturer argued that current monitoring technology could not produce reliable results as to PCB levels of concentration as low as one part per billion. Natural Resources Defense Council, Inc. v Outboard Marine Corp. (1988, ND Ill) 692 F Supp 801.

13. —Determination of illegal quantities; "sheen" test

Small fine for oil spill in navigable waterway was proper under 33 USCS § 1321, notwithstanding that amount spilled was 5 gallons, because even allegedly de minimus spills are prohibited. Orgulf Transport Co. v United States (1989, WD Ky) 711 F Supp 344.

28. Generally

Imposition of civil penalties by Coast Guard against owner of gasoline tanker is supported by substantial evidence where sheens of oil were observed on water surface, since owner of gasoline tanker did not dispute presence of sheens and did not introduce evidence that spills were not harmful. United States v Chotin Transp., Inc. (1986, SD Ohio) 649 F Supp 356, 17 ELR 20636.

42. Limitations

Cost-recovery actions under Federal Water Pollution Control Act (FWPCA), 33 USCS § 1321(f)(1), are quasi-contractual for purposes of 28 USCS § 2415(a), which applies 6-year statute of limitations to contracts "implied in law," since FWPCA imposes quasi-contractual duty on polluter to reimburse government for actual costs of cleanup that polluter fails to perform and that government undertakes with clear intent to charge therefore. United States v Dae Rim Fishery Co. (1986, CA9 Alaska) 794 F2d 1392.

Cause of action for recouping expenses under Federal Water Pollution Control Act, 33 USCS § 1321(f)(1), does not accrue until government completes cleanup operations, since material facts are not known until pollution is actually cleaned up. United States v Dae Rim Fishery Co. (1986, CA9 Alaska) 794 F2d 1392.

49. Who is liable

Owner of sunken vessel involved in collision is not liable to government for discharge of pollution under 33 USCS § 1321(f) where owner bears no fault for oil spill since owner was not at fault for inital breakaway and sinking, and owner had abandoned sunken vessel long before collision which caused discharge. Nunley v M/V Dauntless Colocotronis (1987, ED La) 661 F Supp 1096.

Oil corporation properly filed suit seeking declaratory judgment that it is not "owner or operator," and thus not responsible for $430,000 Coast Guard spent on cleanup of abandoned well site, where Coast Guard has notified corporation that it is unequivocally responsible for cost of cleanup plus interest and penalties accruing after December 1986, because (1) clear and ripe controversy is presented, (2) concerning fundamental issue in Clean Water Act framework, and (3) court determination of this discreet threshold question will not deprive Coast Guard of its jealously guarded enforcement discretion. Quaker State Oil Refining Corp. v United States Coast Guard (1987, WD Pa) 671 F Supp 1042.

50. Liability to government for cleanup costs and interest

Since 33 USCS § 1321(f)(1) is "causation based" rather than "fault based", proof of non-negligence alone does not satisfy statutory liability exception; therefore, oil barge's owner was liable for cleanup cost where tug's nonnegligent choice of navigation was contributing cause of barge's oil discharge. United States v West of England Ship Owner's Mut. Protection & Indem. Asso. (1989, CA5 La) 872 F2d 1192, 1989 AMC 1497, 19 ELR 20922.

56. Third party acts

Owner of oil tanker is entitled to recover cleanup costs of oil spill under 33 USCS § 1321(i)(1)(D), where evidence shows that accident which resulted in discharge of oil was caused solely by act of third party, that driver of tanker could not have avoided accident, and that there was nothing owner could do to prevent or contain spill once accident had occurred. Grundy Oil Co. v United States (1988) 14 Cl Ct 759.

58. —Effect of owner or operator's conduct

Operator of oil tanker truck seeking to recover under 33 USCS § 1321(i)(1)(D) cleanup costs arising from accident caused solely by act or omission of third party must show that spill was caused entirely by act or omission of third party, and that owner could not have prevented spill through exercise of due care. Grundy Oil Co. v United States (1988) 14 Cl Ct 759.

Oil company is liable for drilling contamination in national forest under 33 USCS § 1321(g), notwithstanding that U.S. also is partially responsible, because statute clearly excuses any negligence of U.S. Quaker State Corp. v United States Coast Guard (1989, WD Pa) 716 F Supp 201.

60. Generally

Government may sue oil company for oil spill cleanup costs under 33 USCS § 1321(g) but not under § 1321(f), where Coast Guard commander discovered oil sheen on creek on July 2, 1985, and found old wastewater containment pit near creek on land oil company had abandoned in 1978, because government proof of tax records did not show oil company payment of taxes on land containing pit at pertinent time of discovery of spill so that company was not § 1321(f) "owner or operator"; however, some evidence exists that company may have caused spill, thus creating factual issue of company's third-party liability under § 1321(g), and government need not sue Forest Service as surface owner, but may sue oil company directly. Quaker State Corp. v United State Coast Guard (1988, WD Pa) 681 F Supp 280.

71. Due care requirement

In action by railroad to recover costs of cleaning up vandal caused tank car spill of formaldehyde into navigable waterway, mere act of placing tank car on set-out track does not constitute abnormally dangerous act that precludes recovery but whether railroad took sufficient precautions against vandalism where responsibility of tightening plug was on carrier and not railroad and railroad had complied with duty of visual inspection was question of fact precluding summary judgment where there might be additional backup security measures advisable under circumstances. Southern Pacific Transp. Co. v United States (1987) 13 Cl Ct 402.

Shipowners are entitled to government reimbursement of costs for cleaning up oil spill where affidavits and Coast Guard report showed ship's grounding and subsequent damage was not due to negligence of pilots or master of ship. A/S D/S Svendborg v United States (1986, SD NY) 653 F Supp 283.

Under most circumstances, discharger is strictly liable for clean-up costs with certain monetary limits and exceptional cases under which discharger may recover expenses from government must be narrowly construed, thus, plaintiff bears heavy burden of proving it was totally without fault for spill. Total Petroleum, Inc. v United States (1987) 12 Cl Ct 178.

77. Generally

District Court will assert pendent jurisdiction over shipowner's claim against United States for cost of cleaning oil spill, normally under Court of Claims jurisdiction, because shipowners also seek recovery for negligent damage to ship, under District Court's admiralty jurisdiction, and both claims involve same set of facts. A/S D/S Svendborg v United States (1986, SD NY) 653 F Supp 283.

78. Claims court

Claims Court has exclusive jurisdiction under 33 USCS § 1321(i)(1) over action to recover oil spill cleanup costs from United States. Platte Pipe Line Co. v United States (1988, CA10 Wyo) 846 F2d 610, 18 ELR 21481.

§ 1322. Marine sanitation devices

(a)-(e) [Unchanged]

(f) Regulation by States or political subdivisions thereof; complete prohibition upon discharge of sewage. (1)(A) Except as provided in subparagraph (B), after the effective date of the initial standards and regulations promulgated under this section, no State or political subdivision thereof shall adopt or enforce any statute or regulation of such State or political subdivision with respect to the design, manufacture, or installation or use of any marine sanitation device on any vessel subject to the provisions of this section.

(B) A State may adopt and enforce a statute or regulation with respect to the design, manufacture, or installation or use of any marine sanitation device on a houseboat, if

This is the chapter
outline for the
"Clean Water Act"
in the USCS.
(it's about 265
pages of copies.)

CHAPTER 26. WATER POLLUTION PREVENTION AND CONTROL

RESEARCH AND RELATED PROGRAMS

GRANTS FOR CONSTRUCTION OF TREATMENT WORKS

STANDARDS AND ENFORCEMENT

(d) Cooperation of departments, agencies, and instrumentalities of executive branch
(e) Reports to Congress
(f) Compensation and allowances
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(h) Authorization of appropriation

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(a) Effluent limitations that will assure protection and propagation of balanced, indigenous population of shellfish, fish, and wildlife
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(c) Period of protection from more stringent effluent limitations following discharge point source modification commenced after October 18, 1972

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1328. Aquaculture
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(g) Other regulations for safe transportation, handling, carriage, storage, and stowage of pollutants
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(a) Discharge into navigable waters at specified disposal sites

(b) Specification for disposal sites
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(i) Withdrawal of approval
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(r) Federal projects specifically authorized by Congress
(s) Violation of permits
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1345. Disposal or use of sewage sludge
(a) Permit
(b) Issuance of permit; regulations
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1361. Administration
(a) Authority of Administrator to prescribe regulations
(b) Utilization of other agency officers and employees
(c) Recordkeeping
(d) Audit
(e) Awards for outstanding technological achievement or innovative processes, methods, or devices in waste treatment and pollution abatement programs
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1362. Definitions

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(a) Establishment; composition; terms of office
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(c) Clerical and technical assistance

1364. Emergency powers
(a) Emergency powers
(b) [Repealed]

1365. Citizen suits

CROSS REFERENCES

This Chapter is referred to in 16 USCS §§ 471i, 1456; 26 USCS § 169; 30 USCS §§ 201, 1242, 1251, 1253, 1292, 1303, 1419; 33 USCS §§ 1293a, 1402, 1502, 1503; 40 USCS Appx. §§ 212, 214; 42 USCS §§ 2022, 3102, 4363a, 4365, 4905, 6901, 6905, 6907, 6949, 7877, 8302, 8744, 9603; 43 USCS §§ 421h, 1577, 1595, 1597; 49 USCS Appx. § 1604.

RESEARCH GUIDE

Am Jur:
61A Am Jur 2d, Pollution Control §§ 3, 4, 7, 9, 129, 132, 133, 136, 141, 142, 148, 149, 174, 183, 207. 212, 213, 233, 274, 521.

RESEARCH AND RELATED PROGRAMS

§ 1251. Congressional declaration of goals and policy

(a) Restoration and maintenance of chemical, physical and biological integrity of Nation's waters; national goals for achievement of objective. The objective of this Act is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. In order to achieve this objective it is hereby declared that, consistent with the provisions of this Act—

(1) it is the national goal that the discharge of pollutants into the navigable waters be eliminated by 1985;

(2) it is the national goal that wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved by July 1, 1983;

(3) it is the national policy that the discharge of toxic pollutants in toxic amounts be prohibited;

(4) it is the national policy that Federal financial assistance be provided to construct publicly owned waste treatment works;

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By The Publisher's Editorial Staff

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INTERPRETIVE NOTES AND DECISIONS

Moored vessel is not "floating plant". Self Towing, Inc. v Brown Marine Services, Inc. (1988, CA11 Ala) 837 F2d 1501.

§ 1204. Radiotelephone for exclusive use of master, person in charge, or pilot; frequency listening watch; portable radiotelephone equipment

INTERPRETIVE NOTES AND DECISIONS

Where pilot of vessel maintained listening watch prior to collision, vessel did not breach statutory duty under 33 USCS §§ 1201 et seq. by not contacting bridge of crossing vessel prior to collision; use of radio telephone was discretionary where pilot's primary duties were to make constant observations of crossing vessel, to react to her maneuvers, and to signal continually its course and speed. Makin v Empresa Lineas Maritimas Argentinas (1986, DC Mass) 630 F Supp 1168.

§ 1206. Exemptions; terms and conditions

RESEARCH GUIDE

Am Jur:
70 Am Jur 2d, Shipping § 13.

CHAPTER 25. PORTS AND WATERWAYS SAFETY PROGRAM

§ 1221. Statement of policy

CODE OF FEDERAL REGULATIONS

This section no longer cited as authority for:
33 CFR Part 160.

RESEARCH GUIDE

Am Jur:
70 Am Jur 2d, Shipping § 86.

Forms:
13 Fed Procedural Forms L Ed, Navigable Waters § 51:32.

INTERPRETIVE NOTES AND DECISIONS

Court rejects claim by owner and underwriter of burnt cruise ship that United States should have formulated contingency plan for shipboard firefighting at small Florida port as encouraged by Coast Guard Marine Safety Manual, because (1) Coast Guard decisions as to whether to formulate particular contingency plans are protected discretionary functions exempt from Suits in Admiralty Act's (46 USCS Appx §§ 741 et seq.) waiver of sovereign immunity, and (2) neither Ports and Waterways Safety Act (33 USCS § 1221) nor internal government manuals establish duty of care owed by United States to general public. DFDS Seacruises (Bahamas), Ltd. v United States (1987, SD Fla) 676 F Supp 1193.

§ 1223. Vessel operating requirements

CODE OF FEDERAL REGULATIONS

Add:
33 CFR Part 110.

RESEARCH GUIDE

Am Jur:
70 Am Jur 2d, Shipping § 86.

INTERPRETIVE NOTES AND DECISIONS

Panamanian registered ocean-going oil tanker was governed by Coast Guard regulations prohibiting traffic through pilotage area unless vessel is moving in or out of designated port and prohibiting movement through specified area, because at all relevant times before collision with United States registered ocean-going oil tanker, Panamanian tanker was in territorial waters of United States, and thus under jurisdiction under United States. Trinidad Corp. v S.S. Keiyoh Maru (1988, CA9 Cal) 845 F2d 818.

33 USCS § 1223(b) does not limit Coast Guard

to issuing orders that oblige vessel to operate in particular way, but permits Coast Guard in addition to order vessel "to anchor," and therefore, Coast Guard did not exceed bounds of its statutory authority in detaining vessel. Llamera v United States (1988) 15 Cl Ct 593.

§ 1225. Waterfront safety

RESEARCH GUIDE

Am Jur:
70 Am Jur 2d, Shipping § 87.

§ 1227. Investigatory powers

CROSS REFERENCES

As to sentencing guidelines for this section, see the appendix entitled "Sentencing Guidelines for U.S. Courts" at the end of Title 18.

RESEARCH GUIDE

Am Jur:
70 Am Jur 2d, Shipping § 88.

§ 1231. Regulations

CODE OF FEDERAL REGULATIONS

Add:
33 CFR Parts 126, 127, 155, 160.
46 CFR Part 4.

RESEARCH GUIDE

Am Jur:
70 Am Jur 2d, Shipping § 88.

§ 1231a. Towing Safety Advisory Committee

(a)-(d) [Unchanged]

(e) Termination. Unless extended by subsequent Act of Congress, the Committee shall terminate on September 30, 1995.

(As amended Dec. 12, 1989, P. L. 101-225, Title I, § 105(b), 103 Stat. 1910.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

1989. Act Dec. 12, 1989, in subsec. (e), substituted "1995" for "1990".

§ 1232. Enforcement provisions

CROSS REFERENCES

As to sentencing guidelines for this section, see the appendix entitled "Sentencing Guidelines for U.S. Courts" at the end of Title 18.

RESEARCH GUIDE

Am Jur:
70 Am Jur 2d, Shipping § 88.

Forms:
13 Fed Procedural Forms L Ed, Navigable Waters § 51:91.

§ 1233. Regulations as to regattas or marine parades

CODE OF FEDERAL REGULATIONS

Add:
33 CFR Part 62.

CHAPTER 26. WATER POLLUTION PREVENTION AND CONTROL

Section

STATE WATER POLLUTION CONTROL REVOLVING FUNDS

CODE OF FEDERAL REGULATIONS

Add:
40 CFR Parts 31, 501.
This section no longer cited as authority for:
40 CFR Parts 35.

RESEARCH GUIDE

Forms:
20 Am Jur Pl & Pr Forms (Rev), Pollution Control, Forms 81, 83, 84.

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§ 1251. Congressional declaration of goals and policy

(a)(1)-(4) [Unchanged]

(5) it is the national policy that areawide waste treatment management planning processes be developed and implemented to assure adequate control of sources of pollutants in each State;

(6) it is the national policy that a major research and demonstration effort be made to develop technology necessary to eliminate the discharge of pollutants into the navigable waters, waters of the contiguous zone, and the oceans; and

(7) it is the national policy that programs for the control of nonpoint sources of pollution be developed and implemented in an expeditious manner so as to enable the goals of this Act to be met through the control of both point and nonpoint sources of pollution.

(b)-(g) [Unchanged]

(As amended Feb. 4, 1987, P. L. 100-4, Title III, § 316(b), 101 Stat. 60.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

1987. Act Feb. 4, 1987, in subsec. (a), in para. (5), deleted "and" following "each State;", in para. (6), substituted "; and" for the concluding period, and added para. (7).

Short titles:

Act Feb. 4, 1987, P. L. 100-4, § 1(a), 101 Stat. 7, provides: "This Act may be cited as the 'Water Quality Act of 1987'.".

Act June 30, 1948, ch 758, Title V, § 519[518], as added Oct. 18, 1972, P. L. 92-500, § 2, 86 Stat. 896 and amended Feb. 4, 1987, P. L. 100-4, Title V, § 506, in part, 101 Stat. 76; Dec. 27, 1977, P. L. 95-217, § 2, 91 Stat. 1566 provided: "This Act [33 USCS §§ 1251 et seq.] may be cited as the 'Federal Water Pollution Control Act' (commonly referred to as the Clean Water Act).".

Act Nov. 14, 1988, P. L. 100-653, Title X, § 1001, 102 Stat. 3835, provides: "This title may be cited as the 'Massachusetts Bay Protection Act of 1988'.". Consult USCS Tables volumes for complete classification.

Other provisions:

Definition of Administrator. Act Feb. 4, 1987, P. L. 100-4, § 1(d), 101 Stat. 8, provides: "For purposes of this Act, the term 'Administrator' means the Administrator of the Environmental Protection Agency.".

Limitation on payments. Act Feb. 4, 1987, P. L. 100-4, § 2, 101 Stat. 8, provides: "No payments may be made under this Act except to the extent provided in advance in appropriation Acts.".

CODE OF FEDERAL REGULATIONS

Add:
40 CFR Parts 31, 418, 501.

This section no longer cited as authority for:
40 CFR Parts 35, 414, 416.

RESEARCH GUIDE

Federal Procedure L Ed:
6 Fed Proc L Ed, Civil Rights §§ 11:230, 706.

Am Jur:
6 Am Jur 2d, Atomic Energy § 5.
45A Am Jur 2d, Job Discrimination § 29.

Forms:
13 Fed Procedural Forms L Ed, Navigable Waters §§ 51:1, 2, 3, 12, 14, 72.
20 Am Jur Pl & Pr Forms (Rev), Pollution Control, Forms 81, 83, 84.
24A Am Jur Pl & Pr Forms (Rev), Waters, Forms 155, 176, 177, 194, 208, 246, 247, 256.

RIA Coordinators:
3 Employment Discrimination Coordinator, Types of Discrimination ¶ 20,404.

Annotations:
Supreme Court's views as to construction and application of Federal Water Pollution Control (Clean Water) Act. 84 L Ed 2d 895.

Law Review Articles:
Clean Water Act Compliance. 13 Current Mun Prob 313, 1987.
Blomquist, Rethinking the Citizen as Prosecutor Model of Environmental Enforcement Under The Clean Water Act: Some Overlooked Problems of Outcome-Independent Values. 22 Ga L Rev 337, Winter, 1988.
Lah, Rights to Trial by Jury in an Action for Civil Penalties and Injunctive Relief Under the Clean Water Act. 28 Nat Resources J 607, Summer, 1988.

Law Review Articles:
Hackett, Remining and the Water Quality Act of 1987: Operators Beware! 13 Colum J Envt'l L 99, 1987.
Geltman, Regulation of Non-Adjacent Wetlands Under Section 404 of the Clean Water Act. 23 New Eng L Rev 615.
Wagstaff, Citizen Suits and the Clean Water Act: The Supreme Court Decision in Gwaltney of Smithfield v Chesapeake Bay Foundation. 1988 Utah L Rev 891.

INTERPRETIVE NOTES AND DECISIONS

1. Generally

Seventh Amendment requires jury trial to determine liability, but not amount of fine, in action by Federal Government seeking civil penalties under Clean Water Act, 33 USCS §§ 1251 et seq. United States v M.C.C. of Florida, Inc. (1988, CA11 Fla) 848 F2d 1133, 18 ELR 21080, reh gr (CA11 Fla) 863 F2d 802.

Clean Water Act [33 USCS §§ 1251 et seq.] permits blanket prohibition and other "stringent pollution restrictions" to be imposed even where discharge caused no discernible harm to environment; accordingly, Environmental Protection Agency adequately supported regulation prohibiting discharge of toxic-carrying diesal pills in relatively small volumes, despite claim by oil companies that they pose no environmental threat when discharged in relatively small volumes of mud typical of Alaskan off-shore drilling operations. American Petroleum Institute v United States Environmental Protection Agency (1988, CA5) 858 F2d 261, 19 ELR 20317, reh den, en banc (CA5) 864 F2d 1156.

Court has authority to exercise its discretion to adjudicate pendent state law claims in plaintiff's action alleging violation of state wetlands act, as pendent state claim to suit brought pursuant to Clean Water Act 33 USCS §§ 1251 et seq.). Norfolk v Harold (1987, ED Va) 662 F Supp 959.

3. Purpose

Protection of wetlands, as important wildlife refuge, is legitimate purpose for which Clean Water Act (33 USCS §§ 1251 et seq.) (Act) was intended, and justifies any incidental effect of permit requirement, under 33 USCS § 1344, and of coincident refusal to apply 33 USCS § 1251(g), on farmer's state-allocated water rights, since accommodations between Act's purpose and farmer's efforts to engage wetlands in upland farming on regular basis are best reached in individual permit process. United States v Akers (1986, CA9 Cal) 785 F2d 814.

4. Construction

While Federal Water Pollution Control Act (33 USCS §§ 1251 et seq.) contains no mechanism for direct federal regulation of nonpoint source pollution, legislative history makes clear that omission was due not to Congress' concern for state autonomy, but simply to its recognition that control of nonpoint source pollution was so dependent upon site-specific factors that its uniform federal regulation was virtually impossible but structure and legislative history of act provide no support for contention that Congress intended Environmental Protection Agency to play no role in controlling nonpoint source pollution and nothing in language or legislative history indicates congressional intent specifically to preclude EPA from imposing conditions on construction grants that are designed to reduce amount of nonpoint source pollution generated, either directly or indirectly, by facilities grants fund. Shanty Town Associates Ltd. Partnership v Environmental Protection Agency (1988, CA4 Md) 843 F2d 782.

These are chapter outlines for CFR sections (1990) related to the "Clean Water Act".

Tell me if you want more copies of some of these.

with Section 109 of the Act, for the enforcement of civil penalties for violations of the regulations issued under Section 108(a) of the Act.".

Sec. 4. The Secretary of the Department in which the Coast Guard is operating is hereby delegated the authority vested in the President by Sections 311(p)(1)–(2) of the Federal Water Pollution Control Act, as amended (86 Stat. 870, 33 U.S.C. 1321(p)(1)–(2)) [subsec. (p)(1), (2) of this section], as those sections are incorporated by reference in Section 204(c)(3) of the Trans-Alaska Pipeline Authorization Act of 1973 (Public Law 93-153, 87 Stat. 586, 587) [43 USCS § 1653(c)(3)], relating to the demonstration of financial responsibility for vessels carrying oil loaded from the Trans-Alaska pipeline.

Sec. 5. The Director of the Office of Management and Budget shall make such determinations, issue such Orders, and take all steps necessary or appropriate to effectuate the transfer of records, property, personnel, and positions and unexpended balances of appropriations, available or to be made available, which relate to the functions transferred, as provided in this Order [this note], from the Federal Maritime Commission to the Secretary of the Department in which the Coast Guard is operating.

Sec. 6. Any rules, regulations, orders, directives, circulars, or other actions taken pursuant to the functions transferred from the Federal Maritime Commission to the Secretary of the Department in which the Coast Guard is operating by the delegation made in this Order [this note] shall remain in effect until amended, modified, or revoked.

CODE OF FEDERAL REGULATIONS

United States Customs Service, Department of the Treasury; Vessels in foreign and domestic trades, 19 CFR Part 4.

Coast Guard, Department of Transportation; General; Claims, 33 CFR Part 25.

Coast Guard, Department of Transportation; Marine Pollution Financial Responsibility and Compensation; Financial responsibility for water pollution, 33 CFR Part 130.

Coast Guard, Department of Transportation; Marine Pollution Financial Responsibility and Compensation; Financial responsibility for oil pollution—Alask pipeline, 33 CFR Part 131.

Coast Guard, Department of Transportation; Pollution; Oil pollution regulations, 33 CFR Part 151.

Coast Guard, Department of Transportation; Pollution; Control of pollution by oil and hazardous substances, discharge removal, 33 CFR Part 153.

Coast Guard, Department of Transportation; Pollution; Oil pollution prevention regulations for marine oil transfer facilities, 33 CFR Part 154.

Coast Guard, Department of Transportation; Pollution; Oil pollution prevention regulations for vessels, 33 CFR Part 155.

Coast Guard, Department of Transportation; Pollution; Oil and hazardous material transfer operations, 33 CFR Part 156.

Coast Guard, Department of Transportation; Ports and Waterways Safety; Inland waterways navigation regulations, 33 CFR Part 162.

Environmental Protection Agency; Water Programs; Criteria for State, local and regional oil removal contingency plans, 40 CFR Part 109.

Environmental Protection Agency; Water Programs; Oil pollution prevention, 40 CFR Part 112.

Environmental Protection Agency; Water Programs; Civil penalties for violation of oil pollution prevention regulations, 40 CFR Part 114.

Environmental Protection Agency; Superfund Programs; National oil and hazardous substances pollution contingency plans, 40 CFR Part 300.

Environmental Protection Agency; Superfund Programs; Designation, reportable quantities, and notification, 40 CFR Part 302.

Office of the Secretary of the Interior; Trans-Alaska pipeline liability fund, 43 CFR Part 29.

Coast Guard, Department of Transportation; Tank Vessels; Inspection and certification, 46 CFR Part 31.

Coast Guard, Department of Transportation; Passenger Vessels; Inspection and certification, 46 CFR Part 71.

Coast Guard, Department of Transportation; Cargo and Miscellaneous Vessels; Inspection and certification, 46 CFR Part 91.

Coast Guard, Department of Transportation; Small Passenger Vessels (Under 100 gross tons); Inspection and certification, 46 CFR Part 176.

Coast Guard, Department of Transportation; Oceanographic Research Vessels; Inspection and certification, 46 CFR Part 189.

CROSS REFERENCES

Excavations and deposit of debris in navigable waters, 33 USCS §§ 403-407.
Definition of "person", 33 USCS § 1362.
Marine protection and restriction of ocean dumping, 33 USCS § 1401 et seq.
U. S. liability for unreasonable damages under Intervention on the High Seas Act, 33 USCS § 1479.
This section is referred to in 33 USCS §§ 1014, 1266, 1314, 1318, 1376, 1402, 1486, 1517; 42 USCS §§ 9601, 9602, 9605, 9606, 9611, 9631, 9651, 9652, 9654, 10601; 43 USCS §§ 1653, 1811, 1821; 46 USCS §§ 391a, 2101.

RESEARCH GUIDE

Am Jur:

61A Am Jur 2d, Pollution Control §§ 3, 132, 182, 184–192, 194, 211, 212, 233, 247.

Am Jur Trials:

Subterranean Water Pollution, 18 Am Jur Trials 495.

Forms:

9 Federal Procedural Forms L Ed, Environmental Protection, §§ 29:131–29:135, 29:137.

13 Federal Procedural Forms L Ed, Navigable Waters §§ 51:81, 51:102.

15 Am Jur Legal Forms 2d, Pollution Control §§ 205:21 et seq.

Annotations:

Liability, under § 311(i) of Federal Water Pollution Control Act (33 USCS § 1321(i)), of United States to owner or operator of onshore or offshore facility, or vessel, for removal costs of oil or hazardous substance. 59 ALR Fed 282.

Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands;

(6)-(17) [Unchanged]

(b)-(r) [Unchanged]

(As amended Feb. 4, 1987, P. L. 100-4, Title V, § 502(b), 101 Stat. 75.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

1987. Act Feb. 4, 1987, in subsec. (a)(5), inserted "the Commonwealth of the Northern Mariana Islands," and deleted "the Canal Zone,".

CODE OF FEDERAL REGULATIONS

Add:

46 CFR Parts 31, 33, 35, 56, 71, 78, 91, 97, 105, 110, 169, 176, 189, 196.

CROSS REFERENCES

As to sentencing guidelines for this section, see the appendix entitled "Sentencing Guidelines for U.S. Courts" at the end of Title 18.

RESEARCH GUIDE

Am Jur Proof of Facts:

6 Am Jur Proof of Facts 3d, Act of God, p. 319.

Forms:

13 Fed Procedural Forms L Ed, Navigable Waters §§ 51:2, 12, 91, 112.

Law Review Articles:

Strict Liability for Cleanup Costs Under Section 311 of the Clean Water Act: Cleaning Up Respondeat Superior and Negligence. 10 Colum J Envtl L 149, 1985.

INTERPRETIVE NOTES AND DECISIONS

6. Definitions

9. "Public vessel"

Port's dredge was "public vessel engaged in commerce" and thus covered under insurance policy that extended coverage coextensive with liabilities under Clean Water Act (33 USCS §§ 1251 et seq.), where Army Corps of Engineers contracted with port to use dredge, since state authorized port to engage in some commercial activities, and when not in use by Army Corps of Engineers, dredge was on standby available for contract to third parties. Port of Portland v Water Quality Ins. Syndicate (1986, CA9 Or) 796 F2d 1188.

12. Proof of violation

Marine motor manufacturer was in violation of its discharge permit and is liable for 17 discharges of suspended solids in excess of limitation, three discharges in excess of pH range, and will be enjoined from further violations, but court cannot decide issue of alleged PCB discharge violation where manufacturer argued that current monitoring technology could not produce reliable results as to PCB levels of concentration as low as one part per billion. Natural Resources Defense Council, Inc. v Outboard Marine Corp. (1988, ND Ill) 6[illegible] F Supp 801.

13. —Determination of illegal quantities; "sheen" test

Small fine for oil spill in navigable waterway was proper under 33 USCS § 1321, notwithstanding that amount spilled was 5 gallons, because even allegedly de minimus spills are prohibited. Orgulf Transport Co. v United States (1989, WD Ky) 711 F Supp 344.

28. Generally

Imposition of civil penalties by Coast Guard against owner of gasoline tanker is supported by substantial evidence where sheens of oil were observed on water surface, since owner of gasoline tanker did not dispute presence of sheens and did not introduce evidence that spills were not harmful. United States v Chotin Transp., Inc. (1986, SD Ohio) 649 F Supp 356, 17 ELR 20636.

42. Limitations

Cost-recovery actions under Federal Water Pollution Control Act (FWPCA), 33 USCS § 1321(f)(1), are quasi-contractual for purposes of 28 USCS § 2415(a), which applies 6-year statute of limitations to contracts "implied in law," since FWPCA imposes quasi-contractual duty on polluter to reimburse government for actual costs of cleanup that polluter fails to perform and that government undertakes with clear intent to charge therefore. United States v Dae Rim Fishery Co. (1986, CA9 Alaska) 794 F2d 1392.

Cause of action for recouping expenses under Federal Water Pollution Control Act, 33 USCS § 1321(f)(1), does not accrue until government completes cleanup operations, since material facts are not known until pollution is actually cleaned up. United States v Dae Rim Fishery Co. (1986, CA9 Alaska) 794 F2d 1392.

49. Who is liable

Owner of sunken vessel involved in collision is not liable to government for discharge of pollution under 33 USCS § 1321(f) where owner bears no fault for oil spill since owner was not at fault for inital breakaway and sinking, and owner had abandoned sunken vessel long before collision which caused discharge. Nunley v M/V Dauntless Colocotronis (1987, ED La) 661 F Supp 1096.

Oil corporation properly filed suit seeking declaratory judgment that it is not "owner or operator," and thus not responsible for $430,000 Coast Guard spent on cleanup of abandoned well site, where Coast Guard has notified corporation that it is unequivocally responsible for cost of cleanup plus interest and penalties accruing after December 1986, because (1) clear and ripe controversy is presented, (2) concerning fundamental issue in Clean Water Act framework, and (3) court determination of this discreet threshold question will not deprive Coast Guard of its jealously guarded enforcement discretion. Quaker State Oil Refining Corp. v United States Coast Guard (1987, WD Pa) 671 F Supp 1042.

50. Liability to government for cleanup costs and interest

Since 33 USCS § 1321(f)(1) is "causation based" rather than "fault based", proof of non-negligence alone does not satisfy statutory liability exception; therefore, oil barge's owner was liable for cleanup cost where tug's nonnegligent choice of navigation was contributing cause of barge's oil discharge. United States v West of England Ship Owner's Mut. Protection & Indem. Asso. (1989, CA5 La) 872 F2d 1192, 1989 AMC 1497, 19 ELR 20952.

56. Third party acts

Owner of oil tanker is entitled to recover cleanup costs of oil spill under 33 USCS § 1321(i)(1)(D), where evidence shows that accident which resulted in discharge of oil was caused solely by act of third party, that driver of tanker could not have avoided accident, and that there was nothing owner could do to prevent or contain spill once accident had occurred. Grundy Oil Co. v United States (1988) 14 Cl Ct 759.

58. —Effect of owner or operator's conduct

Operator of oil tanker truck seeking to recover under 33 USCS § 1321(i)(1)(D) cleanup costs arising from accident caused solely by act or omission of third party must show that spill was caused entirely by act or omission of third party, and that owner could not have prevented spill through exercise of due care. Grundy Oil Co. v United States (1988) 14 Cl Ct 759.

Oil company is liable for drilling contamination in national forest under 33 USCS § 1321(g), notwithstanding that U.S. also is partially responsible, because statute clearly excuses any negligence of U.S. Quaker State Corp. v United States Coast Guard (1989, WD Pa) 716 F Supp 201.

60. Generally

Government may sue oil company for oil spill cleanup costs under 33 USCS § 1321(g) but not under § 1321(f), where Coast Guard commander discovered oil sheen on creek on July 2, 1985, and found old wastewater containment pit near creek on land oil company had abandoned in 1978, because government proof of tax records did not show oil company payment of taxes on land containing pit at pertinent time of discovery of spill so that company was not § 1321(f) "owner or operator"; however, some evidence exists that company may have caused spill, thus creating factual issue of company's third-party liability under § 1321(g), and government need not sue Forest Service as surface owner, but may sue oil company directly. Quaker State Corp. v United State Coast Guard (1988, WD Pa) 681 F Supp 280.

71. Due care requirement

In action by railroad to recover costs of cleaning up vandal caused tank car spill of formaldehyde into navigable waterway, mere act of placing tank car on set-out track does not constitute abnormally dangerous act that precludes recovery but whether railroad took sufficient precautions against vandalism where responsibility of tightening plug was on carrier and not railroad and railroad had complied with duty of visual inspection was question of fact precluding summary judgment where there might be additional backup security measures advisable under circumstances. Southern Pacific Transp. Co. v United States (1987) 13 Cl Ct 402.

Shipowners are entitled to government reimbursement of costs for cleaning up oil spill where affidavits and Coast Guard report showed ship's grounding and subsequent damage was not due to negligence of pilots or master of ship. A/S D/S Svendborg v United States (1986, SD NY) 653 F Supp 283.

Under most circumstances, discharger is strictly liable for clean-up costs with certain monetary limits and exceptional cases under which discharger may recover expenses from government must be narrowly construed, thus, plaintiff bears heavy burden of proving it was totally without fault for spill. Total Petroleum, Inc. v United States (1987) 12 Cl Ct 178.

77. Generally

District Court will assert pendent jurisdiction over shipowner's claim against United States for cost of cleaning oil spill, normally under Court of Claims jurisdiction, because shipowners also seek recovery for negligent damage to ship, under District Court's admiralty jurisdiction, and both claims involve same set of facts. A/S D/S Svendborg v United States (1986, SD NY) 653 F Supp 283.

78. Claims court

Claims Court has exclusive jurisdiction under 33 USCS § 1321(i)(1) over action to recover oil spill cleanup costs from United States. Platte Pipe Line Co. v United States (1988, CA10 Wyo) 846 F2d 610, 18 ELR 21481.

§ 1322. Marine sanitation devices

(a)-(e) [Unchanged]

(f) **Regulation by States or political subdivisions thereof; complete prohibition upon discharge of sewage.** (1)(A) Except as provided in subparagraph (B), after the effective date of the initial standards and regulations promulgated under this section, no State or political subdivision thereof shall adopt or enforce any statute or regulation of such State or political subdivision with respect to the design, manufacture, or installation or use of any marine sanitation device on any vessel subject to the provisions of this section.

(B) A State may adopt and enforce a statute or regulation with respect to the design, manufacture, or installation or use of any marine sanitation device on a houseboat, if

§ 24.50 Effect on other regulations; forms and instructions.

(a) *Effect on other regulations.* All regulations, orders, or like directions heretofore issued by any officer of the Coast Guard, or by the Secretary, which impose requirements designed to prohibit any discrimination against individuals on the ground of race, color, or national origin under any program to which this part applies, and which authorizes the suspension or termination of or refusal to grant or to continue Federal financial assistance to any applicant for or recipient of such assistance under such program for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by this part, except that nothing in this part shall be deemed to relieve any person of any obligation assumed or imposed under any such superseded regulation, order, instruction, or like direction prior to the effective date of this part. Nothing in this part, however, shall be deemed to supersede any of the following (including future amendments thereof): (1) Executive Orders 10925 and 11114 and regulations issued thereunder, or (2) any other regulations or instructions insofar as such regulations, or instructions prohibit discrimination on the ground of race, color, or national origin in any program or situation to which this part is inapplicable, or prohibit discrimination on any other ground.

(b) *Forms and instructions.* The Commandant shall issue and promptly make available to interested persons forms and detailed instructions and procedures for effectuating this part as applied to programs to which this part applies and for which he is responsible.

(c) *Supervision and coordination.* The Secretary may from time to time assign to officials of other departments or agencies of the Government with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of Title VI of the Act and this part (other than responsibility for final decision as provided in § 24.40), including the achievement of effective coordination and maximum uniformity within the Executive Branch of the Government in the application of Title VI and this part to similar programs and in similar situations.

§ 24.55 Definitions.

As used in this part:

(a) The term "Secretary" means the Secretary of the department in which the Coast Guard is operating.

(b) The term "Commandant" means the Commandant of the Coast Guard.

(c) The term "United States" means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and the territories and possessions of the United States, and the term "State" means any one of the foregoing.

(d) The term "Federal financial assistance" includes: (1) Grants and loans of Federal funds, (2) the grant or donation of Federal property and interests in property, (3) the detail of Federal personnel, (4) the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(e) The term "program" includes any program, project, or activity for the provision of services, financial aid, or other benefits to individuals (including education or training, health, welfare, rehabilitation, housing, or other services, whether provided through employees of the recipient of Federal financial assistance or provided by others through contracts or other arrangements with the recipient, and including cash or loan or other assistance to individuals), or for the provision of facilities for furnishing services, financial aid or other benefits to individuals. The services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any services, financial aid, or other benefits provided with the aid of Federal financial assistance or with the aid of any non-Federal funds, property, or other resources required to be expended or made available for the program to meet matching requirements or other conditions which must be met in order to receive the Federal financial assistance, and to include any services, financial aid, or other benefits provided in or through a facility provided with the aid of Federal financial assistance or such non-Federal resources.

(f) The term "facility" includes all or any portion of structures, equipment, or other real or personal property or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration or acquisition of facilities.

(g) The term "recipient" means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary under any such program.

(h) The term "primary recipient" means any recipient which is authorized or required to extend Federal financial assistance to another recipient for the purpose of carrying out a program.

(i) The term "applicant" means one who submits an application, request, or plan required to be approved by the Commandant or by a primary recipient, as a condition to eligiblity for Federal financial assistance, and the term "application" means such an application, request, or plan.

§ 24.60 Programs to which this part applies.

(a) Lease of real property and the grant of permits, licenses, easements and rights-of-way covering real property under control of the Coast Guard, 14 U.S.C. 93 (n) and (o).

(b) Utilization of Coast Guard personnel and facilities to assist any State, Territory, Possession, or political subdivision thereof, 14 U.S.C. 141(a).

(c) Detail of Coast Guard personnel for duty in connection with maritime instruction and training by the States, Territories, and Puerto Rico, 14 U.S.C. 148.

(d) Disposal of obsolete and other Coast Guard material to sea scout service of Boy Scouts of America, any incorporated unit of the Coast Guard Auxiliary, and public body or private organization not organized for profit, 14 U.S.C. 641(a).

(e) Grants for the support of basic scientific research to nonprofit institutions of higher education and nonprofit organizations whose primary purpose is conduct of scientific research, 42 U.S.C. 1891.

PART 25—CLAIMS

Subpart A—General

Subpart B—Admiralty Claims

AUTHORITY: 14 U.S.C. 633; 49 CFR 1.45(a); 49 CFR 1.45(b); 49 CFR 1.46(b), unless otherwise noted.

SOURCE: CGD 80-033, 46 FR 27109, May 18, 1981, unless otherwise noted.

Subpart A—General

§ 25.101 Purpose.

This subpart prescribes the requirements for the administrative settlement of claims, other than contract claims, against the United States, including claims arising from acts or omissions of employees of nonappropriated fund activities within the United States, its territories, and possessions.

§ 25.103 Information and assistance.

Any person who desires to file a claim against the United States Coast Guard arising out of the activities of the Coast Guard may obtain information and assistance from the Coast Guard Maintenance and Logistics Command Atlantic, located at Governor's Island, New York, New York, 10004, or from the Coast Guard Maintenance and Logistics Command Pacific, located at Coast Guard Island, Alameda, California, 94501, or from Commandant (G-LCL), U.S. Coast Guard, Washington, DC 20593, or from the Commander of any Coast Guard District listed in 33 CFR Part 3.

[CGD 87-008b, 52 FR 25217, July 6, 1987]

§ 25.105 Definitions.

Accrual date. The day on which the alleged wrongful act or omission results in injury or damage for which a claim is made or when the claimant discovers, or in the exercise of reasonable diligence should have discovered, the alleged wrongful act or omission.

Claim. A written notification of an incident accompanied by demand for the payment of a sum certain of money, other than for ordinary obligations incurred for services, supplies, or equipment.

Settle. To consider, ascertain, adjust, determine, compromise (when specifically authorized by law), and dispose of a claim by disapproval or approval, in whole or in part.

Settlement authority. A person authorized to settle a claim.

[CGD 80-033, 46 FR 27109, May 18, 1981; 46 FR 29933, June 4, 1981]

§ 25.107 Who may present claims.

(a) General rules:

(1) A claim for property loss or damage may be presented by anyone having an interest in the property, including an insurer or other subrogee, unless the interest is barred under § 25.109(a).

(2) A claim for personal injury may be presented by the person injured.

(3) A claim based on death may be presented by the executor or administrator of the decedent's estate, or any other person legally entitled to assert such a claim under local law. The claimant's status must be stated in the claim.

(4) A claim for medical, hospital, or burial expenses may be presented by any person who by reason of family relationship has, in fact, incurred the expenses.

(b) A joint claim must be presented in the names of and signed by, the joint claimants, and the settlement must be made payable to the joint claimants.

(c) A claim may be presented by a duly authorized agent, legal representative or survivor, if it is presented in the name of the claimant. If the claim is not signed by the claimant, the agent, legal representative, or survivor shall indicate their title or legal capacity and provide evidence of their authority to present the claim.

(d) Where the same claimant has a claim for damage to or loss of property and a claim for personal injury or a claim based on death arising out of the same incident, they must be combined in one claim.

§ 25.109 Insurance and other subrogated claims.

(a) The claims of an insured (subrogor) and an insurer (subrogee) for damages arising out of the same incident constitute a single claim. The total award of combined claims may not exceed the monetary jurisdiction of the settlement authority. If the total award of the combined claims exceeds, or is expected to exceed, a settlement authority's limits, the settlement authority is not permitted to consider either, and the claim file will be forwarded to an appropriate settlement authority.

(b) An insured (subrogor) and an insurer (subrogee) may file a claim jointly or separately. If the insurer has fully reimbursed the insured, payment will only be made to the insurer. If separate claims are filed, the settlement will be made payable to each claimant to the extent of that claimant's undisputed interest. If joint claims are filed, the settlement will be sent to the insurer.

(c) Each claimant shall include with a claim, a written disclosure concerning insurance coverage including:

(1) The names and addresses of all insurers;

(2) The kind and amount of insurance;

(3) The policy number;

(4) Whether a claim has been or will be presented to an insurer, and, if so, the amount of that claim; and whether the insurer has paid the claim in whole or in part, or has indicated payment will be made.

(d) Each subrogee shall substantiate an interest or right to file a claim by appropriate documentary evidence and shall support the claim as to liability and measure of damages in the same manner as required of any other claimant. Documentary evidence of payment to a subrogor does not constitute evidence of liability of the United States or conclusive evidence of the amount of damages. The settlement authority makes an independent determination on the issues of fact and law based upon the evidence of record.

(e) An insurance or other subrogated claim is not payable under Subpart E, F, or G of this part.

§ 25.111 Action by claimant.

(a) *Form of claim.* The claim must meet the requirements of § 25.113. Authorized forms are available from the offices indicated in § 25.103.

(b) *Presentation.* Whenever possible the claim must be presented to the geographically appropriate Coast Guard Maintenance and Logistics Command. The Coast Guard Maintenance and Logistics Command Atlantic is located at Governor's Island, New York, New York, 10004; Coast Guard Maintenance and Logistics Command Pacific is located at Coast Guard Island, Alameda, California, 94501. If that is not possible, the claim may also be presented to:

(1) The commanding officer of the Coast Guard unit involved;

(2) A Coast Guard unit convenient to the claimant; or

(3) Chief, Claims and Litigation Division, Office of Chief Counsel, United

(2) Has a nozzle with a valve that starts and stops the flow of dry chemical.

§ 127.611 International shore connection.

The marine transfer area must have an international shore connection meeting the requirements of 46 CFR 162.034, a 2½ inch fire hydrant, and sufficient 2½ inch hose to connect the fire hydrant to the international shore connection on the vessel.

FIRE PROTECTION

§ 127.613 Smoking.

In the marine transfer area, the operator shall ensure that no person smokes when there is LNG present.

§ 127.615 Fires.

In the marine transfer area, the operator shall ensure that there are no fires when there is LNG present.

§ 127.617 Hotwork.

The operator shall ensure that no person conducts welding, torch cutting, or other hotwork unless that person has a permit from the COTP.

Subpart H—Security

§ 127.701 Security on existing facilities.

The operator shall ensure that any security procedure and arrangement on existing facilities, that were in use when LNG transfer operations were last conducted, be continued and maintained, or upgraded, whenever LNG transfer operations are conducted.

§ 127.703 Access to the marine transfer area.

The operator shall ensure that—

(a) Access to the marine transfer area from the shoreside and the waterside is limited to—

(1) Personnel who work at the facility including persons assigned for transfer operations, vessel personnel, and delivery and service personnel in the course of their business;

(2) Coast Guard personnel; and

(3) Other persons authorized by the operator; and

(b) No person is allowed into the marine transfer area unless that person is identified by a facility-issued identification card or other identification card displaying his or her photograph, or is an escorted visitor displaying an identifying badge.

§ 127.705 Security systems.

The operator shall ensure that security patrols of the marine transfer area are conducted once every hour, or that a manned television monitoring system is used, to detect—

(a) Unauthorized personnel;

(b) Fires; and

(c) LNG releases.

§ 127.707 Security personnel.

The operator shall ensure that no person is assigned security patrol duty unless that person has been instructed on security violation procedures.

§ 127.709 Protective enclosures.

The following must be within a fence or wall that prevents trespassing:

(a) Impounding spaces.

(b) Control rooms and stations.

(c) Electrical power sources.

§ 127.711 Communications.

The marine transfer area must have a means of direct communications between the security patrol and other operating or security personnel on duty on the facility.

SUBCHAPTER M—MARINE POLLUTION FINANCIAL RESPONSIBILITY AND COMPENSATION

PART 130—FINANCIAL RESPONSIBILITY FOR WATER POLLUTION

AUTHORITY: 33 U.S.C. 1321(p); E.O. 11735, as amended by sec. 1 of E.O. 12418 (48 FR 20891); 49 CFR 1.46.

SOURCE: CGD 83-039, 48 FR 46179, Oct. 11, 1983, unless otherwise noted.

EDITORIAL NOTE: The information collection requirements contained in this part were approved by the Office of Management and Budget under control number 2115-0528.

§ 130.1 Scope.

(a) This part implements section 311(p)(1) of the Federal Water Pollution Control Act, as amended, and applies to all vessels using any port or place in the United States or the navigable waters of the United States except—

(1) Vessels which are 300 gross tons or less;

(2) Non-self-propelled barges which do not carry oil or hazardous substances as cargo or fuel; and

(3) Public vessels.

(b) This part sets forth the procedures for operators to demonstrate that they are financially able to meet their liability to the United States resulting from the discharge of oil or hazardous substances—

(1) Into or upon the navigable waters of the United States, adjoining shorelines or waters of the contiguous zone; or

(2) In connection with activities under the Outer Continental Shelf Lands Act, or the Deepwater Port Act of 1974; or

(3) 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).

(c) Upon the satisfactory demonstration of financial responsibility, the Commandant, U.S. Coast Guard issues Certificates of Financial Responsibility (Water Pollution) which are to be carried aboard the vessels covered by such Certificates.

§ 130.2 Definitions.

As used in this part—

(a) "Act" means the Federal Water Pollution Control Act, as amended (33 U.S.C. 1321).

(b) "Applicant" means any vessel "operator," as defined in paragraph (q) of this section, who has applied for a Certificate or for the renewal of a Certificate.

(c) "Application" means Application for Certificate of Financial Responsibility (Water Pollution), Form CG-5358-8.

(d) "Cargo" means goods or materials on board a vessel for purposes of transportation, in any quantity, whether in bulk or by lot, and regardless of whether transported under proprietary or nonproprietary shipping documents. Oil carried solely as operating fuel for equipment carrying barges, while on board such barges, is not within this definition.

(e) "Certificant" means any operator, as defined in paragraph (q) of this section, who has been issued a Certificate.

(f) "Certificate" means a Certificate of Financial Responsibility (Water Pollution), Form CG-5358-10 issued by the U.S. Coast Guard under this part.

SUBCHAPTER O—POLLUTION

PART 151—VESSELS CARRYING OIL, NOXIOUS LIQUID SUBSTANCES, GARBAGE AND MUNICIPAL OR COMMERCIAL WASTE

Subpart A—Implementation of MARPOL 73/78

GENERAL

AUTHORITY: 33 U.S.C. 1321(j)(1)(C), 1902(c), and 1903(b); E.O. 11735; 49 CFR 1.46.

SOURCE: CGD 75-124a, 48 FR 45709, Oct. 6, 1983, unless otherwise noted.

§ 151.01 Purpose.

The purpose of this subpart is to implement the Act to Prevent Pollution from Ships, 1980, as amended (33 U.S.C. 901-1911) and Annexes I, II and V of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78), done at London on February 17, 1978.

NOTE: MARPOL 73/78 is available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. Please include reference number "ADA 168 505" in your request.

[CGD 88-002, 54 FR 18403, Apr. 28, 1989, as amended by CGD 88-002A, 55 FR 18582, May 2, 1990]

EFFECTIVE DATE NOTE: At 55 FR 18582, May 2, 1990, § 151.01 was amended by adding the word "subpart" to replace the word "part," effective July 31, 1990.

§ 151.03 Applicability.

This subpart applies to each ship that must comply with Annex I, II or V of MARPOL 73/78.

[CGD 88-002, 54 FR 18403, Apr. 28, 1989, as amended by CGD 88-002A, 55 FR 18582, May 2, 1990]

EFFECTIVE DATE NOTE: By CGD 88-002A, 55 FR 18582, May 2, 1990, § 151.03 was amended by adding the word "subpart" to replace the word "part," effective July 31, 1990.

§ 151.04 Penalties for violation.

(a) A person who violates MARPOL 73/78, the Act, or the regulations of this subpart is liable for a civil penalty not to exceed $25,000 for each violation, as provided by 33 U.S.C. 1908(b)(1). Each day of a continuing violation constitutes a separate violation.

(b) A person who makes a false, fictitious statement or fraudulent representation in any matter in which a statement or representation is required to be made to the Coast Guard under MARPOL 73/78, the Act, or the regulations of this subpart, is liable for a civil penalty not to exceed $5,000 for each statement or representation, as provided by 33 U.S.C. 1908(b)(2).

(c) A person who knowingly violates MARPOL 73/78, the Act, or the regulations of this subpart, is liable for a fine for each violation of not more than $50,000 dollars, or imprisonment for not more than 5 years, or both, as provided by 33 U.S.C. 1908(a).

(d) A ship operated in violation of MARPOL 73/78, the Act, or the regulations of this subpart is liable *in rem* for any civil penalty covered by paragraph (a) of this section, or any fine covered by paragraph (b) of this section, and may be proceeded against in the United States District Court of any district in which the ship may be found.

[CGD 88-002, 54 FR 18403, Apr. 28, 1989, as amended by CGD 88-002A, 55 FR 18582, May 2, 1990]

EFFECTIVE DATE NOTE: By CGD 88-002A, 55 FR 18582, May 2, 1990, in § 151.04, paragraphs (a), (b), (c) and (d) were amended by adding the word "subpart" to replace the word "part," effective July 31, 1990.

§ 151.05 Definitions.

As used in this subpart—

"Act" means the Act to Prevent Pollution from Ships, as amended (33 U.S.C. 1901-1911).

"Cargo associated wastes" means all materials which have become wastes as a result of use on board a ship for cargo stowage and handling. Cargo associated wastes include, but are not limited to dunnage, shoring, pallets, lining and packing materials, plywood, paper, cardboard, wire, and steel strapping.

"Clean ballast" means the ballast in a tank which, since oil was last carried therein, has been so cleaned that effluent therefrom, if it were discharged from a ship that is stationary into clean calm water on a clear day would not produce visible traces of oil on the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines. If the ballast is discharged through an oil discharge monitoring and control system approved by the government of the country under whose authority the ship is operating, evidence based on such a system, to the effect that the oil content of the effluent does not exceed 15 parts per million (ppm) is determinative that the ballast is clean.

"Commandant" means Commandant, U.S. Coast Guard.

Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*), or the Rivers and Harbors Appropriation Act of 1899 (33 U.S.C. 401 *et seq.*).

"Public vessel" means a vessel that—

(1) Is owned, or demise chartered, and operated by the United States Government or a government of a foreign country; and

(2) Is not engaged in commercial service.

"Vessel" means every description of watercraft or other artifical contrivance used, or capable of being used, as a means of transportation on water.

§ 151.1009 Transportation of municipal or commercial waste.

A vessel may not transport municipal or commercial waste in coastal waters without—

(a) A conditional permit to transport municpal or commercial waste issued under this subpart; and

(b) Displaying a number in accordance with § 151.1024.

[CGD 89-014, 54 FR 22548, May 24, 1989; CGD 89-014, 54 FR 24078, June 5, 1989]

§ 151.1012 Applying for a conditional permit.

(a) The owner or operator of each vessel to which this subpart applies shall apply by letter for a conditional permit required by § 151.1009. Applications must be submitted to Commandant (G-MPS-1), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, Attn: Shore Protection Act Desk and include the following:

(1) The name, address, and telephone number of the vessel owner and operator.

(2) The vessel's name and official number, if any.

(3) The vessel's area of operation.

(4) The vessel's transport capacity.

(5) A history of the types of cargo transported by the vessel during the previous year, including identifying the type of municipal or commercial waste transported as—

(i) Municipal waste;

(ii) Commercial waste;

(iii) Medical waste; or

(iv) Waste of another character.

(6) The types of cargo to be transported by the vessel during the effective period of the conditional permit, including identifying the type of municipal or commercial waste as it is identified in paragraphs (a)(5)(i) through (iv) of this section.

(7) A statement of whether the application for a conditional permit is for a single voyage, a short term operation or a continuing operation. If the application is for a single voyage or a short term operation, the statement must include the duration of the voyage or operation.

(8) An acknowledgment that certifies as to the truthfulness and accuracy of the information provided.

(b) The owner or operator under paragraph (a) of this section shall provide any additional information the Coast Guard may require.

§ 151.1015 Issuing or denying the issuance of a conditional permit.

(a) After reviewing the application made under § 151.1012, the Coast Guard either—

(1) Issues the conditional permit for a vessel under this section; or

(2) Denies the issuance of the conditional permit to the vessel in accordance with paragraph (c) of this section. On denying the issuance of the permit, the Coast Guard notifies the applicant of the—

(i) Denial and the reason for the denial; and

(ii) Procedures under § 151.1021 for appealing the denial.

(b) Each conditional permit issued under this section is effective—

(1) On the date it is issued; and

(2) Until the expiration date stated on the conditional permit unless it is—

(i) Withdrawn under § 151.1018;

(ii) Terminated because—

(A) The vessel is sold; or

(B) This subpart no longer applies to the vessel.

(c) The Coast Guard may deny the issuance of a conditional permit if—

(i) The application does not contain the information required under § 151.1012; or

(ii) There is reason to believe that the information contained on the application is not true and correct.

§ 151.1018 Withdrawal of a conditional permit.

(a) The Coast Guard may withdraw a conditional permit if the Administrator of the EPA requests withdrawal because the Administrator has determined that the owner or operator of the vessel has a record or a pattern of serious violations of—

(1) Subtitle A of the Shore Protection Act of 1988 (33 U.S.C. 2601 *et seq.*);

(2) The Solid Waste Disposal Act (42 U.S.C. 6901 *et seq.*);

(3) The Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1401 *et seq.*);

(4) The Rivers and Harbors Appropriations Act of 1899 (33 U.S.C. 1401 *et seq.*); or

(5) The Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*).

(b) Upon reaching a determination to withdraw a conditional permit, the Coast Guard notifies the owner or operator of—

(1) The withdrawal and the reason for the withdrawal;

(2) The procedures for appealing the withdrawal.

(c) After receiving the notice under paragraph (b) of this section, the owner or operator shall ensure that—

(1) The vessel immediately ceases transporting municipal or commercial waste and the marking required by § 151.1024 is removed; and

(2) The conditional permit is returned to the Coast Guard within 5 days after receiving the notice.

§ 151.1021 Appeals.

(a) Any person directly affected by an action taken under this subpart may request reconsideration by the Coast Guard officer responsible for that action.

(b) The person affected who is not satisfied with a ruling after having it reconsidered under paragraph (a) of this section may—

(1) Appeal that ruling in writing within 30 days after the ruling to the Chief, Office of Marine Safety, Security and Environmental Protection, U.S. Coast Guard, Washington, DC 20593-0001; and

(2) Supply supporting documentation and evidence that the appellant wishes to have considered.

(c) After reviewing the appeal submitted under paragraph (b) of this section, the Chief, Office of Marine Safety, Security and Environmental Protection issues a ruling which is final agency action.

(d) If the delay in presenting a written appeal has an adverse impact on the operations of the appellent, the appeal under paragraph (b) of this section—

(1) May be presented orally; and

(2) Must be submitted in writing within five days after the oral presentation—

(i) With the basis for the appeal and a summary of the material presented orally; and

(ii) To the same Coast Guard official who heard the oral presentation.

§ 151.1024 Display of number.

(a) The owner or operator of each vessel under this subpart must ensure that the vessel number stated on the conditional permit issued under § 151.1015 is displayed so that it—

(1) Is clearly legible;

(2) Has a contrasting background;

(3) Is readily visible from either side of the vessel; and

(4) Is in block figures that are at least 18 inches in height.

(b) No person may tamper with or falsify a number required under this section.

PART 153—CONTROL OF POLLUTION BY OIL AND HAZARDOUS SUBSTANCES, DISCHARGE REMOVAL

Subpart A—General

Subpart B—Notice of the Discharge of Oil or a Hazardous Substance

AUTHORITY: 14 U.S.C. 633; 33 U.S.C. 1321(j)(1)(A) and (m); 42 U.S.C. 9615; secs. 2, 5, and 7, E.O. 11735 (38 FR 21243) as amended by E.O. 12418 (48 FR 20891); E.O. 12316 (46 FR 42237); 49 CFR 1.45(b) and 1.46 (l), (m), and (gg).

SOURCE: CGD 73-185, 41 FR 12630, Mar. 25, 1976, unless otherwise noted.

Subpart A—General

§ 153.101 Purpose.

The purpose of this part is to prescribe regulations concerning notification to the Coast Guard of the discharge of oil or hazardous substances as required by the Federal Water Pollution Control Act, as amended (FWPCA); the procedures for the removal of a discharge of oil; and the costs that may be imposed or reimbursed for the removal of a discharge of oil or hazardous substances under the FWPCA.

[CGD 84-067, 51 FR 17965, May 16, 1986]

§ 153.103 Definitions.

As used in this part:

(a) "Act" means the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq.).

(b) "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.).

(c) "Chemical agents" means those elements, compounds, or mixtures that coagulate, disperse, dissolve, emulsify, foam, neutralize, precipitate, reduce, solubilize, oxidize, concentrate, congeal, entrap, fix, make the pollutant mass more rigid or viscous, or otherwise facilitate the mitigation of deleterious effects or removal of the pollutant from the water. The term "chemical agents" as used in this part includes dispersants, surface collecting agents, biological additives, burning agents, and sinking agents as defined in Subpart H of the National Contingency Plan.

(d) "Chief, Office Of Marine Safety, Security and Environmental Protection" means the Coast Guard Officer designated by the Commandant to assist and advise the Commandant on matters related to marine environmental response, port and environmental safety, and waterways management.

(e) "Coastal waters" means all U.S. waters subject to the tide, U.S. waters of the Great Lakes, specified ports and harbors on the inland rivers, waters of the contiguous zone, or other waters of the high seas subject to discharges in connection with activities 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.), or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.)). These waters include those contained within the Exclusive Economic Zone declared by Presidential Proclamation 5030 on March 10, 1983 (43 FR 10605).

NOTE: Coastal waters are those waters where the Coast Guard has the responsibility for providing On-Scene Coordinators under the National Contingency Plan. Specific dividing lines between coastal and inland waters, and the identification of specified ports and harbors on inland rivers, are contained in Regional Contingency Plans prepared pursuant to the National Contingency Plan.

(f) "Contiguous zone" means the entire zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone, as published in the June 1, 1972 issue of the FEDERAL REGISTER (37 FR 11906).

(g) "Discharge" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping, but excludes (A) discharges in compliance with a permit under Section 402 of the Act, (B) discharges resulting from circumstances identified and reviewed and made part of the public record with respect to a permit issued or modified under Section 402 of the Act, and subject to a condition in such permit, and (C) continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of the Act, which are caused by events occurring within the scope of relevant operating or treatment systems.

(h) "Hazardous substance" means any substance designated by the Administrator of the Environmental Protection Agency pursuant to section 311(b)(2) of the Act.

(i) "Inland waters" means all other waters of the U.S. not included in the definition of coastal waters.

NOTE: Inland waters are those waters where the Environmental Protection Agency has the responsibility for providing On-Scene Coordinators under the National Contingency Plan. Specific dividing lines between coastal and inland waters are contained in Regional Contingency Plans prepared pursuant to the National Contingency Plan.

(j) "Mechanical removal" means the use of pumps, skimmers, booms, earthmoving equipment, and other mechanical devices to contain the discharge of oil and to recover the discharge from the water or adjoining shorelines.

(k) "Navigable waters" means the waters of the United States as defined in paragraph 2.05-25(b) of this Chapter.

(l) "'Offshore facility" means any facility of any kind located in, on, or under, any of the navigable waters of the United States, 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, other than a vessel or a public vessel.

(m) "Oil" means oil of any kind or in any form, including but not limited to petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

(n) "On-Scene Coordinator" or "OSC" is the Federal official predesignated by the Environmental Protection Agency (EPA) or Coast Guard to coordinate and direct Federal removal efforts at the scene of an oil or hazardous substance discharge as prescribed in the National Oil and Hazardous Substances Pollution Contingency Plan (National Contingency Plan) as published in 40 CFR Part 300.

(o) "Onshore facility" means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land within the United States other than submerged land.

(p) "Person" includes an individual, firm, corporation, association, and a partnership.

(q) "Pollution Fund" and "Fund" means the revolving fund established in the Treasury under the authority in section 311(k) of the Act to carry out the provisions of section 311 (c), (d), (i), and (l) of the Act.

(r) "Public vessel" means a vessel owned or bare-boat chartered and operated by the United States, or by a State or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce.

(s) "Remove" or "Removal" refers to removal of oil on hazardous substances from the waters and shorelines or the taking of such other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines, and beaches.

(t) "Sorbent" means materials essentially inert and insoluble used to remove oil from water through a variety of sorption mechanisms. Examples include straw, expanded perlite, polyurethane foam, reclaimed paper fibres, and peat moss.

(u) "Such quantities as may be harmful" means those quantities of oil and any hazardous substances determined in accordance with the provisions of section 311(b)(4) of the Act.

that the costs for which reimbursement is being sought were authorized as Phase III removal actions for oil discharges, or removal actions as defined in Subpart F for hazardous substance discharges, and must have one of the following certifications by the OSC, as appropriate:

(1) I certify that the actions for which reimbursement is being requested in the attached statements were authorized by me as [(Phase III oil removal actions) or (hazardous substance removal actions)], and reasonable costs related thereto are proper for payment from the Pollution Fund.

(OSC signature)

(Incident title)

(Pollution incident project number)

(2) I certify that, except as noted below, the actions for which reimbursement is being requested in the attached statements were authorized by me as [(Phase III oil removal actions) or (hazardous substance removal actions)], and reasonable costs related thereto are proper for payment from the Pollution Fund. The following actions were not authorized by me and are not subject to reimbursement from the Pollution Fund:

(OSC Signature)

(Incident title)

(Pollution incident project number)

[CGD 84-067, 51 FR 17967, May 16, 1986]

PART 154—OIL POLLUTION PREVENTION REGULATIONS FOR MARINE OIL TRANSFER FACILITIES

AUTHORITY: 33 U.S.C. 1231, 1321(j)(1)(C); sec. 2, E.O. 11735, 38 FR 21243, 3 CFR, 1971-1975 Comp., p. 793; 49 CFR 1.46.

Subpart A—General

SOURCE: CGD 75-124, 45 FR 7169, Jan. 31, 1980, unless otherwise noted.

§ 154.100 Applicability.

(a) Except as provided in paragraphs (b) and (c) of this section, this part applies to each facility that is capable of transferring oil in bulk to or from any vessel or public vessel with a capacity of 250 or more barrels of that oil.

(b) This part does not apply to a facility in a caretaker status (one that is not operational or not capable of conducting oil transfer operations).

(c) This part does not apply to a marina (a facility that services primarily pleasure craft) unless it engages in the transfer of oil in bulk to or from a vessel or public vessel with a capacity of 250 or more barrels of that oil.

§ 154.105 Definitions.

As used in this part:

"Captain of the Port" (COTP) means the U.S. Coast Guard officer commanding a Captain of the Port Zone described in Part 3 of this chapter, or that person's authorized representative.

"Commandant" means the Commandant of the Coast Guard or an authorized representative.

"Contiguous Zone" means the entire zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone, but not extending beyond 12 miles from the baseline from which the breadth of the territorial sea is measured.

"District Commander" means the officer of the Coast Guard designated by the Commandant to command a Coast Guard District, as described in Part 3 of this chapter or an authorized representative.

"Facility" means either an onshore facility or an offshore facility and includes, but is not limited to structures, equipment, and appurtenances thereto, used or capable of being used to transfer oil to or from a vessel or a public vessel. A facility includes federal, state, municipal, and private facilities.

"Facility operator" means the person who owns, operates, or is responsible for the operation of the facility.

"Mobile facility" means any facility that can readily change location, such as a tank truck or tank car, other than a vessel or public vessel.

"Monitoring device" means any fixed or portable sensing device used to monitor for a discharge of oil onto the water, within or around a facility, and designed to notify operating personnel of a discharge of oil.

"Officer in Charge, Marine Inspection" (OCMI) means the U.S. Coast Guard officer commanding a Marine Inspection Zone described in Part 3 of this chapter, or an authorized representative.

"Offshore facility" means any facility of any kind located in, on, or under any of the navigable waters of the United States other than a vessel or a public vessel.

"Person in charge" means an individual designated as a person in charge of oil transfer operations under § 154.710 (for facilities) or § 155.700 (for vessels) of this chapter.

"Tank barge" means any tank vessel not equipped with a means of self-propulsion.

"Tank vessel" means any vessel that carries oil in bulk as cargo or in residue.

"Transfer" means any movement of oil to, from, or within a vessel by means of pumping, gravitation, or displacement.

"Vessel operator" means a person who owns, operates, or is responsible for the operation of a vessel.

§ 154.106 Incorporation by reference.

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than the one listed in paragraph (b) of this section, notice of change must be published in the Federal Register and the material made available to the public. All approved material is on file at the Office of the FEDERAL REGISTER, 1100 L Street, NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G-MTH), 2100 Second

Inflammable gas or vapor	Experimental maximum safe gap	
	mm	in.
Methane	1.170	0.046
Blast furnace gas	1.193	0.047
Propane	0.965	0.038
Butane	1.066	0.042
Pentane	1.016	0.040
Hexane	0.965	0.038
Heptane	0.965	0.038
Iso-octane	1.040	0.041
Decane	1.016	0.040
Benzene	0.99	0.039
Xylene	1.066	0.042
Cyclohexane	0.94	0.037
Acetone	1.016	0.040
Ethylene	0.71	0.028
Methyl-ethyl-ketone	1.016	0.040
Carbon monoxide	0.915	0.036
Methyl-acetate	0.990	0.039
Ethyl-acetate	1.04	0.041
Propyl-acetate	1.04	0.041
Butyl-acetate	1.016	0.040
Amyl-acetate	0.99	0.039
Methyl alcohol	0.915	0.036
Ethyl alcohol	1.016	0.040
Iso-butyl-alcohol	0.965	0.038
Butyl-alcohol (Normal)	0.94	0.037
Amyl-alcohol	0.99	0.039
Ethyl-ether	0.864	0.034
Coal gas (H_2 57%)	0.482	0.019
Acetylene	<0.025	<0.001
Carbon disulphide	0.203	0.008
Hydrogen	0.102	0.004
Blue water gas (H_2 53% CO 47%)	0.203	0.008
Ethyl nitrate	<0.025	<0.001
Ammonia	[1]3.33	[1]0.133
Ethylene oxide	0.65	0.026
Ethyl nitrite	0.922	0.038

[1] Approximately.

[CGD 88-102, 55 FR 25441, June 21, 1990]

EFFECTIVE DATE NOTE: By CGD 88-102, 55 FR 25441, June 21, 1990, Appendix B to Part 154 was added, effective July 23, 1990.

PART 155—OIL POLLUTION PREVENTION REGULATIONS FOR VESSELS

Subpart A—General

Subpart B—Vessel Equipment

Subpart C—Oil Transfer Personnel, Procedures, Equipment, and Records

AUTHORITY: 33 U.S.C. 1231, 1321(j)(1)(C); sec. 2, E.O. 11735, 38 FR 21243, 3 CFR, 1971-1975 Comp., p. 793; 49 CFR 1.46. Sections 155.100 through 155.130, 155.350 through 155.400, 155.430, 155.440, and 155.470 also issued under 33 U.S.C. 1903(b).

Subpart A—General

SOURCE: CGD 75-124a, 48 FR 45714, Oct. 6, 1983, unless otherwise noted.

§ 155.100 Applicability.

(a) Subject to the exceptions provided for in paragraph (b) of this section, this part applies to each ship that:

(1) Is operated under the authority of the United States, wherever located; or

(2) Is operated under the authority of a country other than the United States while in the navigable waters of the United States, or while at a port or terminal under the jurisdiction of the United States.

(b) This part does not apply to:

(1) A warship, naval auxiliary, or other ship owned or operated by a country when engaged in non-commercial service; or

(2) Any other ship specifically excluded by MARPOL 73/78.

§ 155.110 Definitions.

The definitions in Parts 151 and 154 of this chapter apply to this part.

§ 155.120 Equivalents.

(a) For ships required to be surveyed under § 151.17 of this chapter, the Commandant may, upon receipt of a written request, allow any fitting, material, appliance or apparatus to be fitted in a ship as an alternative to that required by both MARPOL 73/78 and Subpart B of this part if such fitting, material, appliance, or apparatus is at least as effective as that required by Subpart B. Substitution of operational methods to control the discharge of oil in place of those design and construction features prescribed by MARPOL 73/78 that are also prescribed by Subpart B of this part is not allowed.

(b) Any equivalent to a feature prescribed by MARPOL 73/78 that is authorized for a ship having an IOPP Certificate is noted on that Certificate.

§ 155.130 Exemptions.

(a) The Commandant grants an exemption or partial exemption from compliance with any requirement in this part if:

(1) A ship operator submits a written request for an exemption via the COTP or OCMI thirty (30) days before operations under the exemption are proposed unless the COTP or OCMI authorizes a shorter time; and

(2) It is determined from the request that:

(i) Compliance with a specific requirement is economically or physically impractical;

(ii) No alternative procedures, methods, or equipment standards exist that would provide an equivalent level of protection from pollution by oil; and

(iii) The likelihood of oil being discharged as a result of the exemption is minimal.

(b) If requested, the applicant must submit any appropriate information, including an environmental and economic assessment of the effects of and the reasons for the exemption and proposed procedures, methods, or equipment standards.

(c) The exemption may specify the procedures, methods, or equipment standards that will apply.

(d) An oceangoing ship is not given an exemption from the requirements of Subpart B of this part unless the ship is a hydrofoil, air cushion vehicle or other new type of ship (near-surface craft, submarine craft, etc.) whose constructional features are such as to render the application of any of the provisions of Subpart B relating to construction and equipment unreasonable or impractical. The construction and equipment of the ship must provide protection equivalent to that afforded by Subpart B of this part against pollution by oil, having regard to the service for which the ship is intended.

(e) An exemption is granted or denied in writing. The decision of the Commandant is a final agency action.

§ 155.800 Oil transfer hose.

Hose used to transfer oil must meet the requirements of § 154.500 of this chapter.

§ 155.805 Closure devices.

(a) Each end of each oil transfer hose on board which is not connected for the transfer of oil must be blanked off with butterfly valves, wafer-type resilient seated valves, blank flanges, or other means acceptable to the COTP or OCMI.

(b) New, unused hose is exempt from the requirement in paragraph (a) of this section.

§ 155.810 Tank vessel security.

The vessel operator of each tank vessel that contains more oil than the normal clingage and unpumpable bilge or sump residues in any cargo tank shall maintain surveillance of that vessel by using a person who is responsible for the security of the vessel and for keeping unauthorized persons off the vessel.

§ 155.815 Tank vessel integrity.

(a) Except as provided in paragraph (b) of this section, a tank vessel underway or at anchor must have all closure mechanisms on the following openings properly closed:

(1) Expansion trunk hatches;

(2) Ullage openings;

(3) Sounding ports;

(4) Tank cleaning openings; and

(5) Any other tank vessel openings that maintain the seaworthy condition of the tank vessel and prevent the inadvertent release of oil in the event of a tank vessel accident.

(b) No person may open any of the closure mechanisms in paragraph (a) of this section while the tank vessel is underway or at anchor except when authorized and supervised by a licensed officer or the tankerman required by 46 CFR 31.15-5(a).

§ 155.820 Records.

The vessel operator shall keep a written record available for inspection by the COTP or OCMI of:

(a) The name of each person currently designated as a person in charge of oil transfer operations.

(b) The date and result of the most recent test and inspection of each item tested or inspected as required by § 156.170 of this chapter;

(c) The hose information required by § 154.500(e) and (g) of this chapter unless that information is marked on the hose; and

(d) The Declaration of Inspection as required by § 156.150(f) of this chapter.

Appendix A—Specifications for Shore Connection

[See §§ 340, 350, 370 and 380 of this Part]

Item	Description	Dimension
1	Outside diameter.	215 mm. (8 in.).
2	Inside diameter	According to pipe outside diameter.
3	Bolt circle diameter.	183 mm. (7 3/16 in.).
4	Slots in flange	6 holes 22 mm. (7/8 in.) in diameter shall be equidistantly placed on a bolt circle of the above diameter, slotted to the flange periphery. The slot width is to be 22 mm. (7/8 in.).
5	Flange thickness.	20 mm. (3/4 in.).
6	Bolts and nuts	6, each of 20 mm. (3/4 in.) in diameter and of suitable length.

The flange must be of steel having a flat face, with a gasket of oilproof material, and must be suitable for a service pressure of 6 kg./cm.2 (85 p.s.i.).

The steel materials used must meet the material specifications of standard B16.5, Steel Pipe Flanges and Flanged Fittings of the American National Standards Institute. (See § 154.106 of this chapter.)

[CGD 75-124, 45 FR 7176, Jan. 31, 1980]

PART 156—OIL AND HAZARDOUS MATERIAL TRANSFER OPERATIONS

Subpart A—Pollution Prevention Regulations for Oil Transfer Operations

Subpart B—Special Requirements for Lightering of Oil and Hazardous Material Cargoes

AUTHORITY: 33 U.S.C. 1231, 1321(j)(1) (C) and (D); sec. 2, E.O. 11735, 38 FR 21243, 3 CFR, 1971-1975 Comp., p. 793; 49 CFR 1.46. Subpart B is also issued under 46 U.S.C. 3715(b).

Subpart A—Pollution Prevention Regulations for Oil Transfer Operations

SOURCE: CGD 75-124, 45 FR 7177, Jan. 31, 1980, unless otherwise noted.

§ 156.100 Applicability.

This subpart applies to the transfer of oil on the navigable waters or contiguous zone of the U.S. to, from, or within any vessel and to or from a public vessel with a capacity of 250 or more barrels of that oil, except that this subpart does not apply to the transfer operation within or on a public vessel.

[CGD 78-180, 49 FR 11172, Mar. 26, 1984]

§ 156.105 Definitions.

The definitions in § 154.105 of this chapter apply to this subpart.

[CGD 78-180, 49 FR 11172, Mar. 26, 1984]

§ 156.107 Alternatives.

(a) The COTP may consider and approve alternative procedures, methods, or equipment standards to be used by a vessel or facility operator in lieu of any requirements in this part if:

(1) Compliance with the requirement is economically or physically impractical;

(2) The vessel or facility operator submits a written request for the alternative at least 30 days before operations under the alternative are proposed, unless the COTP authorizes a shorter time; and

(3) The alternative provides an equivalent level of safety and protection from pollution by oil, which is documented in the request.

(b) The COTP takes final approval or disapproval action on any alternative requested, in writing, within 30 days of receipt of the request.

§ 156.110 Exemptions.

(a) The Chief, Office of Marine Safety, Security and Environmental Protection, acting for the Commandant, grants an exemption or partial exemption from compliance with any requirement in this part if:

(1) The vessel or facility operator submits an application for exemption via the COTP at least 30 days before operations under the exemption are proposed, unless the COTP authorizes a shorter time; and

(2) It is determined, from the application, that:

(i) Compliance with a specific requirement is economically or physically impractical;

(ii) No alternative procedures, methods, or equipment standards exist that would provide an equivalent level of safety and protection from pollution by oil; and

(iii) The likelihood of oil being discharged as a result of the exemption is minimal.

(b) If requested, the applicant must submit any appropriate information, including an environmental and economic assessment of the effects of and reasons for the exemption and proposed procedures, methods or equipment standards.

(c) The exemption may specify the procedures, methods, or equipment standards that will apply.

(d) An exemption is granted or denied in writing. The decision of the Chief, Office of Marine Safety, Security and Environmental Protection, is a final agency action.

[CGD 75-124, 45 FR 7177, Jan. 31, 1980, as amended by CGD 88-052, 53 FR 25122, July 1, 1988] of Inspection, Certificate of Compliance, or a Tank Vessel Examination Letter, as would have been required under 46 U.S.C. 3710 or 3711, had the transfer taken place in a port or place subject to the jurisdiction of the United States; and

(3) The vessel to be lightered has on board, at the time of transfer, an International Oil Pollution Prevention (IOPP) Certificate or equivalent documentation of compliance with Annex I of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78), as would be required by Part 151 of this chapter for vessels in navigable waters of the United States. The IOPP Certificate or documentation of compliance shall be that prescribed by §§ 151.19 and 151.21 of this chapter, and shall be effective under the same timetable as specified in § 151.19.

(b) Lightering operations involving hazardous materials, other than oil, may be conducted only with the specific approval of the Commandant. A request to lighter hazardous materials, other than oil, must be submitted to Commandant (G-M) prior to the planned beginning of lightering operations. The request must include the information described in § 156.215(a) to the extent known, for the initial transfer, and the estimated frequency of subsequent lightering operations. After the entry into force of Annex II to MARPOL 73/78, vessels lightering hazardous materials shall carry an International Pollution Prevention Certificate for the Carriage of Noxious Liquid Substances in Bulk (1973), if required by Annex II to MARPOL 73/78, or equivalent documentation of compliance with the annex.

[CGD 78-180, 49 FR 11172, Mar. 29, 1984, as amended by CGD 88-052, 53 FR 25122, July 1, 1988]

§ 156.215 Pre-arrival notices.

(a) The master, owner or agent of each vessel to be lightered must give at least 24 hours advance notice to the Captain of the Port nearest the lightering location or zone, prior to arrival in the lightering location or zone. This advance notice must include:

(1) The vessel's name, call sign or official number, and registry:

(2) The cargo type (if oil) or shipping name (if hazardous material) and approximate amount on board;

(3) The number of transfers expected;

(4) The lightering location or zone to be used;

(5) The estimated time of arrival in the lightering location or zone;

(6) The estimated duration of transfer operations; and

(7) The name and destination of service vessel(s).

(b) In the event the estimated time of arrival in the lightering location or zone changes by more than six hours, the Master, owner or agent of each vessel to be lightered must advise the Captain of the Port of this change as soon as possible.

(c) Where lightering is conducted as a result of collision, grounding, tank rupture or any similar emergency, immediate notice must be given to the Captain of the Port.

§ 156.220 Reporting of incidents.

(a) An immediate report must be made to the nearest Captain of the Port, by the service vessel, if fire, explosion, collision, grounding or any similar emergency, which poses a threat to the vessels involved, occurs during lightering.

(b) Any discharge of oil or hazardous material into the water shall be reported, by the service vessel, in accordance with the procedures specified in § 151.15 of this chapter.

§ 156.225 Designation of lightering zones.

The District Commander is delegated the authority to designate lightering zones and their operating requirements, where they are necessary for safety or environmental protection. When a lightering zone has been designated, lightering operations in a given geographic area may only be conducted within the designated lightering zone.

§ 156.230 Factors considered in designating lightering zones.

The following factors are considered in designating a lightering zone:

(a) The findings of the environmental analysis or, if prepared, the Environmental Impact Statement;

(b) The proximity of the zone to:

(1) Shipping lanes;

(2) Vessel traffic schemes or vessel separation systems;

(3) Anchorages;

(4) Fixed structures;

(5) Designated marine sanctuaries;

(6) Commerical and recreational fishing areas;

(7) Environmentally sensitive areas; and

(8) Designated units of the National Park System, National Wild and Scenic Rivers System, National Wilderness Preservation System, properties included on the National Register of Historic Places and National Registry of Natural Landmarks, and National Wildlife Refuge System.

(c) The traditional use of areas for lightering operations;

(d) The normal weather and sea conditions in the areas, and their effect on lightering operations, and the fate of possible cargo discharges;

(e) The depth of water and underwater obstructions that may adversely impact anchorages and clearance of vessels;

(f) Other relevant safety, environmental, or economic data.

PART 157—RULES FOR THE PROTECTION OF THE MARINE ENVIRONMENT RELATING TO TANK VESSELS CARRYING OIL IN BULK

Subpart A—General

Subpart B—Design, Equipment, and Installation

Subpart C—Vessel Operation

Subpart D—Crude Oil Washing (COW) System on Tank Vessels

GENERAL

AUTHORITY: Sec. 4, Pub. L. 96-478, 94 Stat. 2298 (33 U.S.C. 1903); 46 U.S.C. 3703; 49 CFR 1.46(n) and (hh).

SOURCE: CGD 74-32, 40 FR 48283, Oct. 14, 1975, unless otherwise noted.

Subpart A—General

§ 157.01 Applicability.

(a) This part applies to each tank vessel of 150 gross tons or more, unless otherwise indicated, that carries crude oil or products in bulk and that is:

(1) Documented under the laws of the United States (U.S. vessel); or

(2) A foreign vessel that:

(i) Transfers cargo at a port or place subject to the jurisdiction of the United States; or

(ii) Otherwise enters or operates in the navigable waters of the United States.

(b) This part does not apply to the following:

(1) Vessels under Subsections (4) and (5) of Sec. 5, Port and Tanker Safety Act of 1978 (Pub. L. 95-474, 92 Stat. 1480, 46 U.S.C. 391a).

(2) Any foreign vessel not destined for, or departing from, a port or place subject to the jurisdiction of the United States that is in innocent passage through the territorial seas of the United States or in transit through navigable waters of the United States which form a part of an international strait.

[CGD 77-058b, 45 FR 43706, June 30, 1980]

§ 157.03 Definitions.

As used in this part:

(a) "Length" or "L" means the distance in meters from the fore side of the stem to the axis of the rudder stock on a waterline at 85 percent of the least molded depth measured from the molded baseline, or 96 percent of the total length on that waterline, whichever is greater. In vessels designed with drag, the water line is measured parallel to the designed waterline.

(b) "Amidships" means the middle of the length.

(c) "Breadth" or "B" means the maximum molded breadth of a vessel in meters.

(d) "Center tank" means any tank inboard of a longitudinal bulkhead.

(e) "Clean ballast" means ballast which:

(1) If discharged from a vessel that is stationary into clean, calm water on a clear day, would not:

(i) Produce visible traces of oil on the surface of the water or on adjoining shore lines, or

(ii) Cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shore lines; or

(2) If verified by an approved cargo monitor and control system, has an oil content that does not exceed 15 p.p.m.

(f) "Combination carrier" means a vessel designed to carry oil or solid cargoes in bulk.

(g) "Deadweight" or "DWT" means the difference in metric tons between the lightweight displacement and the total displacement of a vessel measured in water of specific gravity 1.025 at the load waterline corresponding to the assigned summer freeboard.

(h) "Lightweight" means the displacement of a vessel in metric tons without cargo, oil fuel, lubricating oil, ballast water, fresh water, and feedwater in tanks, consumable stores, and any persons and their effects.

(i) "New Vessel" means:

(1) A U.S. vessel in domestic trade that:

(i) Is constructed under a contract awarded after December 31, 1974;

(ii) In the absence of a building contract, has the keel laid or is at a simi-

§ 161.870 Order of departure from anchorage.

Vessels collected in any part of the VTS Area by reason of temporary closure of a channel or an impediment to navigation shall get underway and depart in the order in which they arrived, unless otherwise directed by Soo Control. Soo Control may advance any vessel in the order of departure to expedite the movement of mails, passengers, cargo of a perishable nature, to facilitate passage of vessels through any channel by reason of special circumstance, or to facilitate passage through the St. Marys Falls Canal.

SPEED RULES

§ 161.880 Maximum speed limits.

The following speed limits indicate speed over the ground:

The speed limit between	Speed limit	
	Miles/hr	Knots
De Tour Reef Light and Sweets Point Light	14	12.2
Round Island Light and Point Aux Frenes Light 21	14	12.2
Munuscong Lake Lighted Buoy 8 and Everens Point	12	10.4
Everens Point and Reed Point	9	7.8
Reed Point and Lake Nicolet Lighted Buoy 62	10	8.7
Lake Nicolet Lighted Buoy 62 and Lake Nicolet Light 80	12	10.4
Lake Nicolet Light 80 and Winter Point (West Neebish Channel)	10	8.7
Lake Nicolet Light 80 and Six Mile Point Range Rear Light	10	8.7
Six Mile Point Range Rear Light and lower limit of the St. Marys Falls Canal:		
Upbound	8	7
Downbound	10	8.7
Upper limit of the St. Marys Falls Canal and Point Aux Pins Main Light	12	10.4

[CGD 78-079b, 48 FR 41588, Sept. 16, 1983]

§ 161.884 Temporary speed limits.

The Commander, Ninth Coast Guard District, may establish temporary speed limit regulations in the VTS area, including amendments to the speed limits under § 161.880. The temporary speed limits established by the Commander, Ninth Coast Guard District, are published in the FEDERAL REGISTER and in Notices to Mariners.

§ 161.886 Minimum speed limit through dredged channels.

No vessel may make regular passage through any dredged channel at a speed of less than 5 statute miles per hour (4.3 knots) over the ground. Any vessel which cannot maintain this speed shall not enter any of the channels until permission has been granted by Soo Control.

MISCELLANEOUS RULES

§ 161.890 Rules for towing vessels.

(a) Towing vessels shall not drop their tows or otherwise leave them unattended south of Gros Cap Reef Light.

(b) Towing vessels engaged in shortening or lengthening tows, dropping or making up tows, transferring stores or cargo from boats alongside, or waiting shall stand clear and allow unobstructed passage to other vessels.

(c) Vessels of less than 61 meters (200 feet) in length shall not be towed with more than 76 meters (250 feet) of tow line. Vessels of 61 meters (200 feet) or more shall not be towed with a tow line longer than the length of the vessel plus 15 meters (50 feet).

§ 161.894 Channel closure and special rules.

Should channel obstructions or other conditions of unusual hazard so require, the COTP may order the closing of a channel, designate additional no-overtaking zones or areas of one-way traffic, or establish other temporary traffic rules. Should a channel be closed, vessels transiting in the direction of the closed channel shall make preparations to be able to immediately anchor.

PART 162—INLAND WATERWAYS NAVIGATION REGULATIONS

Sec.

AUTHORITY: 33 U.S.C. 1231; 49 CFR 1.46.

SOURCE: CGD 75-082, 42 FR 51759, Sept. 29, 1977, unless otherwise noted.

§ 162.1 General.

Geographic coordinates expressed in terms of latitude or longitude, or both, are not intended for plotting on maps or charts whose referenced horizontal datum is the North American Datum of 1983 (NAD 83), unless such geographic coordinates are expressly labeled NAD 83. Geographic coordinates without the NAD 83 reference may be plotted on maps or charts referenced to NAD 83 only after application of the appropriate corrections that are published on the particular map or chart being used.

[CGD 86-082, 52 FR 33811, Sept. 8, 1987]

§ 162.15 Manhasset Bay, N.Y.; seaplane restricted area.

(a) *The restricted area.* An area in Manhasset Bay between the shore at Manorhaven on the north and the southerly limit line of the special anchorage area in Manhasset Bay, west area at Manorhaven (described in § 202.60 of this chapter), on the south; its axis being a line bearing 166°50′ true from latitude 40°50′17.337″, longitor or a Regional Administrator of the Environmental Protection Agency.

§ 108.3 Request for investigation.

Any employee who is discharged or laid-off, threatened with discharge or lay-off, or otherwise discriminated against by any person because of the alleged results of any effluent limitation or order issued under the Act, or any representative of such employee, may submit a request for an investigation under this part to the Regional Administrator of the region in which such discrimination is alleged to have occurred.

§ 108.4 Investigation by Regional Administrator.

Upon receipt of any request meeting the requirements of § 108.3, the Regional Administrator shall conduct a full investigation of the matter, in order to determine whether the request may be related to an effluent limitation or order under the Act. Following the investigation, the Regional Administrator shall notify the employee requesting the investigation (or the employee's representative) and the employer of such employee, in writing, of his preliminary findings and conclusions. The employee, the representative of such employee, or the employer may within fifteen days following receipt of the preliminary findings and conclusions of the Regional Administrator request a hearing under this part. Upon receipt of such a request, the Regional Administrator, with the concurrence of the Chief Administrative Law Judge, shall publish notice of a hearing to be held not less than 30 days following the date of such publication where he determines that there are factual issues concerning the existence of the alleged discrimination or its relationship to an effluent limitation or order under the Act. The notice shall specify a date before which any party (or representative of such party) may submit a request to appear.

§ 108.5 Procedure.

Any hearing held pursuant to this part shall be of record and shall be conducted according to the requirements of 5 U.S.C. 554. The Administrative Law Judge shall conduct the hearing in an orderly and expeditious manner. By agreement of the parties, he may dismiss the hearing. The Administrative Law Judge, on his own motion, or at the request of any party, shall have the power to hold prehearing conferences, to issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and he may administer oaths. The Regional Administrator, and any party submitting a request pursuant to § 108.3 or § 108.4, or counsel or other representative of such party or the Regional Administrator, may appear and offer evidence at the hearing.

§ 108.6 Recommendations.

At the conclusion of any hearing under this part, the Administrative Law Judge shall, based on the record, issue tentative findings of fact and recommendations concerning the alleged discrimination, and shall submit such tentative findings and recommendations to the Administrator. The Administrator shall adopt or modify the findings and recommendations of the Administrative Law Judge, and shall make copies of such findings and recommendations available to the complaining employee, the employer, and the public.

§ 108.7 Hearing before Administrator.

At his option, the Administrator may exercise any powers of an Administrative Law Judge with respect to hearings under this part.

PART 109—CRITERIA FOR STATE, LOCAL AND REGIONAL OIL REMOVAL CONTINGENCY PLANS

AUTHORITY: Sec. 11(j)(1)(B), 84 Stat. 96, 33 U.S.C. 1161(j)(1)(B).

SOURCE: 36 FR 22485, Nov. 25, 1971, unless otherwise noted.

§ 109.1 Applicability.

The criteria in this part are provided to assist State, local and regional agencies in the development of oil removal contingency plans for the inland navigable waters of the United States and all areas other than the high seas, coastal and contiguous zone waters, coastal and Great Lakes ports and harbors and such other areas as may be agreed upon between the Environmental Protection Agency and the Department of Transportation in accordance with section 11(j)(1)(B) of the Federal Act, Executive Order No. 11548 dated July 20, 1970 (35 FR 11677) and § 306.2 of the National Oil and Hazardous Materials Pollution Contingency Plan (35 FR 8511).

§ 109.2 Definitions.

As used in these guidelines, the following terms shall have the meaning indicated below:

(a) "Oil" means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

(b) "Discharge" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

(c) "Remove" or "removal" refers to the removal of the oil from the water and shorelines or the taking of such other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines, and beaches.

(d) "Major disaster" means any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, earthquake, drought, fire, or other catastrophe in any part of the United States which, in the determination of the President, is or threatens to become of sufficient severity and magnitude to warrant disaster assistance by the Federal Government to supplement the efforts and available resources of States and local governments and relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

(e) "United States" means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(f) "Federal Act" means the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1151, et seq.

§ 109.3 Purpose and scope.

The guidelines in this part establish minimum criteria for the development and implementation of State, local, and regional contingency plans by State and local governments in consultation with private interests to insure timely, efficient, coordinated and effective action to minimize damage resulting from oil discharges. Such plans will be directed toward the protection of the public health or welfare of the United States, including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines, and beaches. The development and implementation of such plans shall be consistent with the National Oil and Hazardous Materials Pollution Contingency Plan. State, local and regional oil removal contingency plans shall provide for the coordination of the total response to an oil discharge so that contingency organizations established thereunder can function independently, in conjunction with each other, or in conjunction with the National and Regional Response Teams established by the National Oil and Hazardous Materials Pollution Contingency Plan.

§ 109.4 Relationship to Federal response actions.

The National Oil and Hazardous Materials Pollution Contingency Plan provides that the Federal on-scene commander shall investigate all reported spills. If such investigation shows that appropriate action is being taken by either the discharger or non-Federal entities, the Federal on-scene commander shall monitor and provide advice or assistance, as required. If appropriate containment or cleanup action is not being taken by the disarea, 426-2675). If direct reporting to the NRC is not practicable, reports may be made to the Coast Guard or EPA predesignated On-Scene Coordinator (OSC) for the geographic area where the discharge occurs. All such reports shall be promptly relayed to the NRC. If it is not possible to notify the NRC or the predesignated OCS immediately, reports may be made immediately to the nearest Coast Guard unit, provided that the person in charge of the vessel or onshore or offshore facility notifies the NRC as soon as possible. The reports shall be made in accordance with such procedures as the Secretary of Transportation may prescribe. The procedures for such notice are set forth in U.S. Coast Guard regulations, 33 CFR Part 153, Subpart B and in the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR Part 300, Subpart E. (Approved by the Office of Management and Budget under the control number 2050-0046)

§ 110.11 Discharge at deepwater ports.

(a) Except as provided in paragraph (b) below, for purposes of section 18(m)(3) of the Deepwater Port Act of 1974, the term "discharge" shall include but not be limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping into the marine environment of quantities of oil that:

(1) Violate applicable water quality standards, or

(2) Cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

(b) For purposes of section 18(m)(3) of the Deepwater Port Act of 1974, the term "discharge" excludes:

(1) Discharges of oil from a properly functioning vessel engine, (including an engine on a public vessel), but not discharges of such oil accumulated in a vessel's bilges (unless in compliance with MARPOL 73/78, Annex I); and

(2) Discharges of oil permitted under MARPOL 73/78, Annex I.

PART 112—OIL POLLUTION PREVENTION

AUTHORITY: Secs. 311(j)(1)(C), 311(j)(2), 501(a), Federal Water Pollution Control Act (sec. 2, Pub. L. 92-500, 86 Stat. 816 et seq. (33 U.S.C. 1251 et seq.)); sec. 4(b), Pub. L. 92-500, 86 Stat. 897; 5 U.S.C. Reorg. Plan of 1970 No. 3 (1970), 35 FR 15623, 3 CFR 1966-1970 Comp.; E.O. 11735, 38 FR 21243, 3 CFR.

SOURCE: 38 FR 34165, Dec. 11, 1973, unless otherwise noted.

§ 112.1 General applicability.

(a) This part establishes procedures, methods and equipment and other requirements for equipment to prevent the discharge of oil from non-transportation-related onshore and offshore facilities into or upon the navigable waters of the United States or adjoining shorelines.

(b) Except as provided in paragraph (d) of this section, this part applies to owners or operators of non-transportation-related onshore and offshore facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing or consuming oil and oil products, and which, due to their location, could reasonably be expected to discharge oil in harmful quantities, as defined in Part 110 of this chapter, into or upon the navigable waters of the United States or adjoining shorelines.

(c) As provided in section 313 (86 Stat. 875) departments, agencies, and instrumentalities of the Federal government are subject to these regulations to the same extent as any person, except for the provisions of § 112.6.

(d) This part does not apply to:

(1) Facilities, equipment or operations which are not subject to the jurisdiction of the Environmental Protection Agency, as follows:

(i) Onshore and offshore facilities, which, due to their location, could not reasonably be expected to discharge oil into or upon the navigable waters of the United States or adjoining shorelines. This determination shall be based solely upon a consideration of the geographical, locational aspects of the facility (such as proximity to navigable waters or adjoining shorelines, land contour, drainage, etc.) and shall exclude consideration of manmade features such as dikes, equipment or other structures which may serve to restrain, hinder, contain, or otherwise prevent a discharge of oil from reaching navigable waters of the United States or adjoining shorelines; and

(ii) Equipment or operations of vessels or transportation-related onshore and offshore facilities which are subject to authority and control of the Department of Transportation, as defined in the Memorandum of Understanding between the Secretary of Transportation and the Administrator of the Environmental Protection Agency, dated November 24, 1971, 36 FR 24000.

(2) Those facilities which, although otherwise subject to the jurisdiction of the Environmental Protection Agency, meet both of the following requirements:

(i) The underground buried storage capacity of the facility is 42,000 gallons or less of oil, and

(ii) The storage capacity, which is not buried, of the facility is 1,320 gallons or less of oil, provided no single container has a capacity in excess of 660 gallons.

(e) This part provides for the preparation and implementation of Spill Prevention Control and Countermeasure Plans prepared in accordance with § 112.7, designed to complement existing laws, regulations, rules, standards, policies and procedures pertaining to safety standards, fire prevention and pollution prevention rules, so as to form a comprehensive balanced Federal/State spill prevention program to minimize the potential for oil discharges. Compliance with this part does not in any way relieve the owner or operator of an onshore or an offshore facility from compliance with other Federal, State or local laws.

[38 FR 34165, Dec. 11, 1973, as amended at 41 FR 12657, Mar. 26, 1976]

§ 112.2 Definitions.

For the purposes of this part:

(a) "Oil" means oil of any kind or in any form, including, but not limited to petroleum, fuel oil, sludge, oil refuse and oil mixed with wastes other than dredged spoil.

(b) "Discharge" includes but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping. For purposes of this part, the term "discharge" shall not include any discharge of oil which is authorized by a permit issued pursuant to section 13 of the River and Harbor Act of 1899 (30 Stat. 1121, 33 U.S.C. 407), or sections 402 or 405 of the FWPCA Amendments of 1972 (86 Stat. 816 et seq., 33 U.S.C. 1251 et seq.).

(c) "Onshore facility" means any facility of any kind located in, on, or under any land within the United States, other than submerged lands, which is not a transportation-related facility.

(d) "Offshore facility" means any facility of any kind located in, on, or under any of the navigable waters of the United States, which is not a transportation-related facility.

(e) "Owner or operator" means any person owning or operating an onshore facility or an offshore facility, and in the case of any abandoned offshore facility, the person who owned or operated such facility immediately prior to such abandonment.

(f) "Person" includes an individual, firm, corporation, association, and a partnership.

(g) "Regional Administrator", means the Regional Administrator of the Environmental Protection Agency, or his designee, in and for the Region in which the facility is located.

311 of the Act, as limited by this subpart.

PART 114—CIVIL PENALTIES FOR VIOLATION OF OIL POLLUTION PREVENTION REGULATIONS

NON-TRANSPORTATION RELATED ONSHORE AND OFFSHORE FACILITIES

AUTHORITY: Secs. 311(j), 501(a), Pub. L. 92-500, 86 Stat. 868, 885 (33 U.S.C. 1321(j), 1361(a)).

SOURCE: 39 FR 31602, Aug. 29, 1974, unless otherwise noted.

NON-TRANSPORTATION RELATED ONSHORE AND OFFSHORE FACILITIES

§ 114.1 General applicability.

Owners or operators of facilities subject to § 112.3 (a), (b) or (c) of this subchapter who violate the requirements of Part 112 of this Subchapter D by failing or refusing to comply with any of the provisions of § 112.3, 112.4, or 112.5 of this subchapter shall be liable for a civil penalty of not more than $5,000 for each day such violation continues. Civil penalties shall be assessed and compromised in accordance with this part. No penalty shall be assessed until the owner or operator shall have been given notice and an opportunity for hearing in accordance with this part.

§ 114.2 Violation.

Owners or operators of facilities shall be liable for a civil penalty for noncompliance with the requirements of Part 112 of this subchapter, including but not limited to failure to:

(a) Prepare a Spill Prevention Control and Countermeasure (SPCC) plan in accordance with § 112.3 of this subchapter;

(b) Have a SPCC plan certified by a Registered Professional Engineer as required by § 112.3 of this subchapter;

(c) Implement the SPCC plan as required by § 112.3 of this subchapter;

(d) Submit information after a spill as required by § 112.4 of this subchapter;

(e) Amend plan as required by § 112.4 of this subchapter;

(f) Implement amendment as required by § 112.4 of this subchapter;

(g) Amend plan after change in facility design as required by § 112.6 of this subchapter;

(h) Review plan every three years as required by § 112.5 of this subchapter;

(i) Amend plan after review as required by § 112.5; or

(j) Have amendment certified as required by § 112.5 of this subchapter and implemented.

§ 114.3 Determination of penalty.

(a) In determining the amount of the penalty to be assessed the following factors shall be considered:

(1) Gravity of the violation; and

(2) Demonstrated good faith efforts to achieve rapid compliance after notification of a violation.

(b) The amount of the civil penalty to be assessed may be settled by compromise at any stage of the proceedings.

(c) Civil penalties may be assessed by the Regional Administrator where there is no request for a hearing pursuant to § 114.5.

§ 114.4 Notice of Violation.

The Notice of Violation shall be sent to the person charged with a violation and shall specify the:

(a) Date of issuance;

(b) Nature of violation, including the law or regulation that he is charged with violating;

(c) Amount of the maximum penalty;

(d) Amount of the proposed civil penalty;

(e) The right to present written explanations, information or any materials in answer to the charges or in mitigation of the penalty, or bearing on the person's efforts to achieve compliance after notification of the violation;

(f) Manner of the payment of any money which may be paid to the United States;

(g) Right to request a hearing; and

(h) The procedures for requesting a hearing including the right to be represented by counsel.

§ 114.5 Request for hearing.

Within thirty (30) days of the date of receipt of a Notice of Violation, the person named in the Notice may request a hearing by submitting a written request signed by or on behalf of such person by a duly authorized officer, director, agent, or attorney-in-fact, to the Regional Administrator.

(a) Requests for hearings shall:

(1) State the name and address of the person requesting the hearing;

(2) Enclose a copy of the Notice of Violation; and

(3) State with particularity the issues to be raised by such person at the hearing.

(b) After a request for hearing which complies with the requirements of paragraph (a) of this section has been filed, a hearing shall be scheduled for the earliest practicable date.

(c) Extensions of the time for the commencement of the hearing may be granted for good cause shown.

§ 114.6 Presiding Officer.

The hearing shall be conducted by the Presiding Officer. The Regional Administrator may designate any attorney in the Environmental Protection Agency to act as the Presiding Officer. No person shall serve as a Presiding Officer where he has any prior connection with the case including without limitation the performance of investigative or prosecuting functions or any other such functions. The Presiding Officer appointed shall have the full authority to conduct the hearing, decide issues and to assess a civil penalty as appropriate.

§ 114.7 Consolidation.

The Presiding Officer may, in his discretion, order consolidation of any hearings held under this part and arising within one Region whenever he determines that consolidation will expedite or simplify the consideration of the issues presented. The Administrator may, in his discretion, order consolidation, and designate one Region to be responsible for the conduct of any hearings held under this part which arise in different Regions whenever he determines that consolidation will expedite or simplify the consideration of the issues presented. Consolidation shall not affect the right of any person to raise issues that could have been raised if consolidation had not occurred. At the conclusion of the hearing the Presiding Officer shall render a separate decision for each separate civil penalty case.

§ 114.8 Prehearing conference.

The Presiding Officer may hold one or more prehearing conferences and may issue a hearing agenda which may include, without limitation, decisions with regard to any or all the following:

(a) Stipulations and admissions;

(b) Disputed issues of fact;

(c) Hearing procedures including submission of oral or written testimony and the time allotted for oral arguments; and

(d) Any other matter which may expedite the hearing or aid in disposition of any issues raised therein.

§ 114.9 Conduct of hearing.

The hearing shall be held in the general location of the facility where the alleged violation occurred or as agreed to by EPA and the person charged. The Presiding Officer shall have the duty to conduct a fair and impartial hearing, to take action to avoid unnecessary delay in the disposition of proceedings, and to maintain order. The person charged with the violation may offer relevant facts, statements, explanations, and other items which such person feels should be considered in defense to the charges, bearing on the person's efforts to achieve compliance after notification of the violation or which may bear upon the penalty to be assessed. The EPA or other appropriate Agency personnel shall have the opportunity to offer facts, statements, explanations and other items including testimony of other appropriate Agencies personnel in order for the Presiding Officer to be fully in-

SUBCHAPTER J—SUPERFUND, EMERGENCY PLANNING, AND COMMUNITY RIGHT-TO-KNOW PROGRAMS

PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN

AUTHORITY: 42 U.S.C. 9601-9657; 33 U.S.C. 1321(c)(2); E.O. 11735, 38 FR 21243; E.O. 12580, 52 FR 2923.

Subpart A—Introduction

SOURCE: 55 FR 8813, Mar. 8, 1990, unless otherwise noted.

§ 300.1 Purpose and objectives.

The purpose of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) is to provide the organizational structure and procedures for preparing for and responding to discharges of oil and releases of hazardous substances, pollutants, and contaminants.

§ 300.2 Authority and applicability.

The NCP is required by section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9605, as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub.L. 99-499, (hereinafter CERCLA), and by section 311(c)(2) of the Clean Water Act (CWA), as amended, 33 U.S.C. 1321(c)(2). In Executive Order (E.O.) 12580 (52 FR 2923, January 29, 1987), the President delegated to the Environmental Protection Agency (EPA) the responsibility for the amendment of the NCP. Amendments to the NCP are coordinated with members of the National Response Team (NRT) prior to publication for notice and comment. This includes coordination with the Federal Emergency Management Agency and the Nuclear Regulatory Commission in order to avoid inconsistent or duplicative requirements in the emergency planning responsibilities of those agencies. The NCP is applicable to response actions taken pursuant to the authorities under CERCLA and section 311 of the CWA.

§ 300.3 Scope.

(a) The NCP applies to and is in effect for:

(1) Discharges of oil into or upon the navigable waters of the United States and adjoining shorelines, the waters of the contiguous zone, and the high seas beyond the contiguous zone 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 Magnuson Fishery Conservation and Management Act). (See sections 311(b)(1) and 502(7) of the CWA.)

(2) Releases into the environment of hazardous substances, and pollutants or contaminants which may present an imminent and substantial danger to public health or welfare.

(b) The NCP provides for efficient, coordinated, and effective response to discharges of oil and releases of hazardous substances, pollutants, and contaminants in accordance with the authorities of CERCLA and the CWA. It provides for:

(1) The national response organization that may be activated in response actions. It specifies responsibilities among the federal, state, and local governments and describes resources that are available for response.

(2) The establishment of requirements for federal regional and on-scene coordinator (OSC) contingency

(1) Techniques for removing contaminated soil, sediment, or waste include the following:
(i) Excavation.
(ii) Hydraulic dredging.
(iii) Mechanical dredging.

(2) Techniques for treating contaminated soil, sediment, or waste include the following:
(i) Biological methods, including the following:
(A) Treatment via modified conventional wastewater treatment techniques.
(B) Anaerobic, aerated, and facultative lagoons.
(C) Supported growth biological reactors.
(D) Microbial biodegradation.
(ii) Chemical methods, including the following:
(A) Chlorination.
(B) Precipitation, flocculation, sedimentation.
(C) Neutralization.
(D) Equalization.
(E) Chemical oxidation.
(iii) Physical methods, including the following:
(A) Air stripping.
(B) Carbon absorption.
(C) Ion exchange.
(D) Reverse osmosis.
(E) Permeable bed treatment.
(F) Wet air oxidation.
(G) Solidification.
(H) Encapsulation.
(I) Soil washing or flushing.
(J) Incineration.

(c) In response to contaminated ground water, the following types of response actions will generally be considered: Elimination or containment of the contamination to prevent further contamination, treatment and/or removal of such ground water to reduce or eliminate the contamination, physical containment of such ground water to reduce or eliminate potential exposure to such contamination, and/or restrictions on use of the ground water to eliminate potential exposure to the contamination.

(1) Techniques that can be used to contain or restore contaminated ground water include the following:
(i) Impermeable barriers, including the following:
(A) Slurry walls.
(B) Grout curtains.
(C) Sheet pilings.
(ii) Permeable treatment beds.
(iii) Ground-water pumping, including the following:
(A) Water table adjustment.
(B) Plume containment.
(iv) Leachate control, including the following:
(A) Subsurface drains.
(B) Drainage ditches.
(C) Liners.

(2) Techniques suitable for the control of contamination of water and sewer lines include the following:
(i) Grouting.
(ii) Pipe relining and sleeving.
(iii) Sewer relocation.

(d)(1) In response to contaminated surface water, the following types of response actions shall generally be considered: Elimination or containment of the contamination to prevent further pollution, and/or treatment of the contaminated water to reduce or eliminate its hazard potential.

(2) Techniques that can be used to control or remediate surface water include the following:
(i) Surface seals.
(ii) Surface water diversions and collection systems, including the following:
(A) Dikes and berms.
(B) Ditches, diversions, waterways.
(C) Chutes and downpipes.
(D) Levees.
(E) Seepage basins and ditches.
(F) Sedimentation basins and ditches.
(G) Terraces and benches.
(iii) Grading.
(iv) Revegetation.

(e) In response to air emissions, the following techniques will be considered:
(1) Pipe vents.
(2) Trench vents.
(3) Gas barriers.
(4) Gas collection.
(5) Overpacking.
(6) Treatment for gaseous emissions, including the following:
(i) Vapor phase adsorption.
(ii) Thermal oxidation.

(f) Alternative water supplies can be provided in several ways, including the following:
(i) Individual treatment units.
(ii) Water distribution system.
(iii) New wells in a new location or deeper wells.
(iv) Cisterns.
(v) Bottled or treated water.
(vi) Upgraded treatment for existing distribution systems.

(g) Temporary or permanent relocation of residents, businesses, and community facilities may be provided where it is determined necessary to protect human health and the environment.

[55 FR 8865, Mar. 8, 1990]

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

AUTHORITY: 42 U.S.C. 9602; 33 U.S.C. 1321 and 1361.

SOURCE: 50 FR 13474, Apr. 4, 1985, unless otherwise noted.

§ 302.1 Applicability.

This regulation designates under section 102(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("the Act") those substances in the statutes referred to in section 101(14) of the Act, identifies reportable quantities for these substances, and sets forth the notification requirements for releases of these substances. This regulation also sets forth reportable quantities for hazardous substances designated under section 311(b)(2)(A) of the Clean Water Act.

§ 302.2 Abbreviations.

CASRN = Chemical Abstracts Service Registry Number
RCRA = Resource Conservation and Recovery Act of 1976, as amended
lb = pound
kg = kilogram
RQ = reportable quantity

§ 302.3 Definitions.

As used in this part, all terms shall have the meaning set forth below:

"*The Act*", "CERCLA", or "Superfund" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Pub. L. 96-510);

"*Administrator*" means the Administrator of the United States Environmental Protection Agency ("EPA");

"Consumer product" shall have the meaning stated in 15 U.S.C. 2052;

"*Environment*" means (1) the navigable waters, the waters of the contiguous zone, and the ocean waters of which the natural resources are under the exclusive management authority of the United States under the Fishery Conservation and Management Act of 1976, and (2) any other surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the United States or under the jurisdiction of the United States;

"*Facility*" means (1) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or (2) any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any vessel;

"*Hazardous substance*" means any substance designated pursuant to 40 CFR Part 302;

"*Hazardous waste*" shall have the meaning provided in 40 CFR 261.3;

"*Navigable waters*" or "navigable waters of the United States means waters of the United States, including the territorial seas;

"*Offshore facility*" means any facility of any kind located in, on, or under, any of the navigable waters of the United States, 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, other than a vessel or a public vessel;

"*Onshore facility*" means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land or non-navigable waters within the United States;

"*Person*" means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States Government, State, municipality, commission, political subdivision of a State, or any interstate body;

"*Release*" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, but excludes (1) any release which results in exposure to persons solely within a workplace, sary to complete the evaluation of its pollution hazards. Until the hazard evaluation is completed, the pollution category assigned is used.

@—The NLS category has been assigned by the U.S. Coast Guard, in absence of one assigned by the IMO. The category is based upon a GESAMP Hazard Profile or by analogy to a closely related product having an NLS assigned.

Words in italics are not part of the the cargo name but may be used in addition to the cargo name.

When one entry references another entry by use of the word " *see*", and both names are in roman type, either name may be used as the cargo name (e.g., Diethyl ether *see* Ethyl ether). However, the referenced entry is preferred.

[CGD 81-101, 53 FR 28972, Aug. 1, 1988, as amended by CGD 88-100, 54 FR 40009, Sept. 29, 1989; CGD 88-100, 55 FR 17276, Apr. 24, 1990]

Subpart 30.30—Interim Procedures for Evaluating Vessel Personnel Licensing and Certification Programs of Foreign Countries

SOURCE: CGD 79-081a, 45 FR 23427, Apr. 7, 1980, unless otherwise noted.

§ 30.30-1 Scope and purpose.

(a) This subpart contains procedures for evaluating vessel personnel licensing and certification programs of foreign countries. Evaluations are done for countries which license or certificate personnel serving on tank vessels that enter or operate in U.S. navigable waters and ports.

(b) The purpose of each evaluation is to determine whether a foreign licensing and certification program has standards that are comparable to or more stringent than U.S. standards.

(c) A determination that licensing and certification standards of a foreign country are not comparable to or more stringent than U.S. standards will subject tank vessels manned with officers licensed by that country to the prohibition in 33 U.S.C. 1228(a)(5) on operation with those officers in U.S. navigable waters and ports.

§ 30.30-3 Evaluation materials.

The materials to be submitted for evaluation must include the English text of the following:

(a) All laws, decrees, orders, and regulations relating to manning, training, qualification, and watchkeeping of personnel on tank vessels engaged in foreign trade.

(b) A copy of each type of license and certificate issued by the country to tank vessel personnel.

§ 30.30-5 Submission of evaluation materials.

(a) The evaluation materials listed in § 30.30-3 should be sent to Commandant (G-MVP/14), U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, DC 20593. The materials should include the name and address of the person to whom correspondence concerning the evaluation can be sent.

(b) Updated materials may be submitted at any time during the evaluation process.

§ 30.30-7 Availability of materials.

Evaluation materials submitted in accordance with this subpart will be available for inspection and copying between 7:30 a.m. and 4:30 p.m., Monday through Thursday, except holidays, at Coast Guard Headquarters, Room 1400, 2100 Second Street, S.W., Washington, DC 20593. Telephone: (202) 426-1500.

§ 30.30-9 Evaluation.

Materials submitted in accordance with this subpart will be evaluated by comparison to the regulations in parts 5, 10, and 12 of this chapter, and by comparison to the U.S. laws referenced in those regulations.

§ 30.30-11 Determinations.

(a) After evaluation of materials submitted in accordance with this subpart, a determination will be made as to whether the licensing and certification program described by the materials has standards that are comparable to or more stringent than standards set by the regulations and laws referenced in § 30.30-9.

(b) Notice of each determination made in accordance with this section and a brief explanation of reasons therefor will be published in the FEDERAL REGISTER. A copy of this notice will also be sent to the person whose name is provided in accordance with § 30.30-5.

(c) Each determination remains in effect for 5 years unless sooner cancelled.

(d) Any request to reconsider a determination must be submitted to the address listed in § 30.30-5 and must include a statement of reasons in support. The person submitting the request will be notified in writing of the action taken.

PART 31—INSPECTION AND CERTIFICATION

AUTHORITY: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 3703, 5115, 8105; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 11735, 38 FR 21243, 3 CFR, 1971-1975 Comp., p. 793; 49 CFR 1.46.

SOURCE: CGFR 65-50, 30 FR 16662, Dec. 30, 1965, unless otherwise noted.

Subpart 31.01—General

§ 31.01-1 Inspections required—TB/ALL.

(a) Every tank vessel subject to the regulations in this subchapter shall be inspected biennially, annually, or oftener, if necessary, by the Coast Guard to see that the hull, boilers, machinery, equipment, apparatus for storage, and appliances of the vessel comply with the marine inspection laws, and the regulations in this subchapter, and when applicable, subchapters E, F, J, O, Q, and S of this chapter and 33 CFR part 155 and 157.

(b) Tank vessels which are laid up, dismantled, and out of commission are exempt from inspections required by law or regulations in this subchapter, provided that such vessels are cleaned of all cargo residue and maintained in a gas free condition.

(c) For inspection and tests of tanks containing certain dangerous cargoes in bulk, see part 98 and subchapter O of this chapter.

[CGFR 65-50, 30 FR 16662, Dec. 30, 1965, as amended by CGFR 70-10, 35 FR 3709, Feb. 25, 1970; CGD 80-009, 48 FR 36458, Aug. 11, 1983; CGD 79-023, 48 FR 51006, Nov. 4, 1983]

§ 31.01-5 Scope of initial inspection—TB/ALL.

(a) The initial inspection, which may consist of a series of inspections during the construction of a vessel, shall include a complete inspection of the structure, including the outside of the vessel's bottom, the machinery, unfired pressure vessels, equipment and the inside and outside of the boilers. The inspection shall be such as to insure that the arrangements, material, and scantlings of the structure, boilers and other pressure vessels and their appurtenances, piping, main and auxiliary machinery, electrical installations, lifesaving appliances, fire-detecting and extinguishing equipment, pilot boarding equipment and other equipment fully comply with the applicable regulations for such vessel and are in accordance with approved plans, and determine that the vessel is in possession of a valid certificate issued by the Federal Communications Commission, if any. The inspection shall be such as to ensure that the workmanship of all parts of the vessel and its equipment is in all respects satisfactory and that the vessel is provided with lights, means of making sound signals, and distress signals as required by applicable statutes and regulations.

(b) For nuclear vessels, the inspections required by this section shall be made except insofar as they may be limited by the presence of radiation. In addition, the inspection shall include any special preoperational tests and inspections prescribed in the Atomic Energy Commission operating license, by the nuclear plant operating procedures, or by the vessel's Safety Assessment.

[CGFR 65-50, 30 FR 16662, Dec. 30, 1965, as amended by CGFR 68-32, 33 FR 5712, Apr. 12, 1968; CGFR 68-82, 33 FR 18804, Dec. 18, 1968; CGD 82-036, 48 FR 654, Jan. 6, 1983; CGD 79-032, 49 FR 25455, June 21, 1984]

§ 31.01-10 Authority of marine inspectors—TB/ALL.

Inspectors may at any time lawfully inspect any tank vessel.

§ 31.01-15 Application for inspection—TB/ALL.

(a) Application in writing for the inspection incident to the issuance or reissuance of a certificate of inspection to every tank vessel required to be inspected by law and the regulations in this subchapter shall be made by the master, owner, or agent to the Officer in Charge, Marine Inspection, at any local marine inspection office, U.S. Coast Guard, where the vessel may be operated.

(b) The application should be on Form CG-3752, Application for Inspection of U.S. Vessel, which requires information on name and type of vessel, nature of employment and route in which to be operated, grade or type of cargo to be carried, place where and date when the vessel may be inspected, and that no other application has been made to any Officer in Charge, Marine Inspection, since the issuance of the last valid certificate of inspection.

§ 31.01-20 Application for inspection of a new tank vessel or conversion of a vessel to a tank vessel—TB/ALL.

Prior to the commencement of the construction of any new tank vessel, or prior to the commencement of the conversion of any vessel to a tank vessel, application for the approval of contract plans and specifications and for a certificate of inspection shall be made in writing to the Coast Guard and no such construction or conversion shall be proceeded with until such approval is granted. (See § 31.10-1.)

Subpart 31.05—Certificates of Inspection

§ 31.05-1 Issuance of certificate of inspection—TB/ALL.

(a) When a tank vessel is found to comply with law and the regulations in this subchapter, and applicable provisions of subchapters E, F, J, O, Q, and S of this chapter and 33 CFR parts 155 and 157, a certificate of inspection will be issued to it, or to its owners, by the Officer in Charge, Marine Inspection.

(b) Certificates of inspection for tank vessels shall be similar in form to certificates issued to other cargo vessels, and in addition to the manning requirements and waters over which they may be operated, they shall be appropriately endorsed *Inspected and approved for the carriage of flammable or combustible liquids of Grade A, B, C, D, or E* (as the case may be), and such endorsement shall serve as a permit for such vessel to operate. The endorsement for the carriage of liquefied flammable gases is set forth in § 38.01-5 of this subchapter.

(c) The certificate of inspection shall be delivered to the master or owner of the tank vessel to which it relates.

[CGFR 65-50, 30 FR 16662, Dec. 30, 1965, as amended by CGD 73-96, 42 FR 49024, Sept. 26, 1977; CGD 79-023, 48 FR 51006, Nov. 4, 1983]

§ 31.05-5 Posting the certificate of inspection—TB/ALL.

The certificate of inspection shall be framed under glass and posted in a conspicuous part of the vessel, except that where it is not practicable to so expose the certificate of inspection it shall be carried in the vessel in such manner as authorized by the Officer in Charge, Marine Inspection.

§ 31.05-10 Period of validity of certificate of inspection—TB/ALL.

(a) Certificates of inspection will be issued for periods of either 1 or 2 years. For nuclear vessels it shall be for a period of 1 year; see also § 37.10-1 of this subchapter.

(b) Application may be made by the master, owner, or agent for inspection and issuance of a new certificate of in-

Subpart 32.75—Hull Requirements for Wood Hull Tank Vessels Constructed Prior to November 10, 1936

§ 32.75-1 Application—TB/ALL.

All wood hull tank vessels, the construction or conversion of which was started prior to November 10, 1936, shall conform to the requirements in this subpart.

§ 32.75-5 Hull requirements; general—TB/ALL.

The scantlings, material, and workmanship, and the fitting and fastening of parts shall be at least equivalent to the requirements of a recognized classification society for the particular service specified in the application for certificate of inspection and permit for the transportation of liquid flammable cargoes in bulk as of the date when the tank vessel was built, or as of the date when the vessel was converted into a tank vessel. In the absence of such classification requirements, the Officer in Charge, Marine Inspection, shall satisfy himself that the vessel's structure as specified in this section is safe for the service to be specified in its certificate of inspection.

§ 32.75-10 Cargo tanks—TB/ALL.

Cargo tanks shall be independent of the wood hull, shall be made of steel or iron, and shall pass the tests required in § 32.65-40(a), (b). Where cargo tanks in wood hulls are not arranged to provide working space around them they shall be so constructed as to allow inspection of the hull, tanks, and bilges, and they shall be so installed that they can be moved to allow repairs to the hull structure and to themselves.

§ 32.75-15 Electric bonding and grounding for tanks—TB/ALL.

All independent cargo tanks in wood hull tank vessels shall be electrically bonded together with stranded copper cable of not less than No. 4B and S gage and one end of this cable shall be grounded to a copper or brass plate of not less than 2 square feet in area and one-sixteenth inch in thickness and this plate shall be securely fastened to the hull, on the outside, at a point where it shall be covered by water when the tank vessel is unloaded.

§ 32.75-20 Hold spaces and bulkheads—TB/ALL.

In wood hull tank vessels containing independent cargo tanks for the transportation of Grade A, B, C, or D liquids, the hold spaces shall be considered as equivalent to a pumproom and shall be safeguarded and ventilated as such as required by § 32.65-20. Where the hold spaces contain equipment or operations which are sources of vapor ignition, such equipment or operations shall be isolated from other spaces by gastight bulkhead or, if it is impracticable to construct a gastight bulkhead, two structurally tight bulkheads without openings, separated by a well-ventilated air space 24 inches wide, where possible may be used.

Subpart 32.80—Tank Barges Constructed of Materials Other Than Steel or Iron

§ 32.80-1 General requirements—B/ALL.

All tank barges with hulls constructed of materials other than iron or steel, the construction or conversion of which was started prior to September 2, 1945, and to which certificates of inspection were issued prior to March 2, 1946, shall be considered the same as tank barges constructed prior to November 10, 1936.

Subpart 32.85—Lamp and Paint Rooms and Similar Compartments on Tankships

§ 32.85-1 Fireproofing of lamp, oil and paint rooms—T/ALL.

Lamp, oil and paint rooms shall be wholly and tightly lined with metal.

Subpart 32.90—Pilot Boarding Equipment

§ 32.90-1 Pilot boarding equipment.

(a) This section applies to each vessel that normally embarks or disembarks a pilot from a pilot boat or other vessel.

(b) Each vessel must have suitable pilot boarding equipment available for use on each side of the vessel. If a vessel has only one set of equipment, the equipment must be capable of being easily transferred to and rigged for use on either side of the vessel.

(c) Pilot boarding equipment must be capable of resting firmly against the vessel's side and be secured so that it is clear from overboard discharges.

(d) Each vessel must have lighting positioned to provide adequate illumination for the pilot boarding equipment and each point of access.

(e) Each vessel must have a point of access that has:

(1) a gateway in the rails or bulwark with adequate handholds; or

(2) Two handhold stanchions and a bulwark ladder that is securely attached to the bulwark rail and deck.

(f) The pilot boarding equipment required by paragraph (b) of this section must include at least one pilot ladder approved under subpart 163.003 of this chapter. Each pilot ladder must be of a single length and capable of extending from the point of access to the water's edge during each condition of loading and trim, with an adverse list of 15°.

(g) Whenever the distance from the water's edge to the point of access is more than 30 feet, access from a pilot ladder to the vessel must be by way of an accommodation ladder or equally safe and convenient means.

(h) Pilot hoists, if used, must be approved under subpart 163.002 of this chapter.

[CGD 79-032, 49 FR 25455, June 21, 1984]

PART 33—LIFESAVING EQUIPMENT

AUTHORITY: 46 U.S.C. 3102, 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

SOURCE: CGFR 65-50, 30 FR 16683, Dec. 30, 1965, unless otherwise noted.

Subpart 33.01—General Lifesaving Requirements

§ 33.01-1 Inspection of lifesaving appliances—TB/ALL.

At each inspection for certification and at any other time as required by the Officer in Charge, Marine Inspection, all lifesaving appliances on a tank vessel shall be inspected.

§ 33.01-3 Incorporation by reference.

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than the one listed in paragraph (b) of this section, notice of the change must be published in the FEDERAL REGISTER and the material made available to the public. All approved material is on file at the Office of the Federal Register, Washington, DC 20408, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division, 2100 Second Street SW., Washington, DC 20593-0001, and is available from the address indicated in paragraph (b).

(b) The material approved for incorporation by reference in this part, and the sections affected is:

AMERICAN SOCIETY FOR TESTING AND MATERIALS

1916 Race St., Philadelphia, PA 19103.
ASTM F1014-1986 Standard Specification for Flashlights on Vessels.
Sections effected—33.15-10(j).

NOTE: All other documents referenced in this part are still in effect.

[CGD 82-042, 53 FR 17703, May 18, 1988]

§ 33.01-5 Construction of lifesaving equipment—TB/ALL.

All tank vessels subject to the regulations in this subchapter shall have lifeboats, disengaging apparatus, liferafts, life preservers, and all other lifesaving apparatus constructed in accordance with the regulations contained in the applicable subparts of subchapter Q (Specifications) of this chapter: *Provided, however,* That all lifesaving apparatus which is of the character that complied with the rules and regulations of the Commandant, on vessels in existence at the time that the regulations in this subchapter are promulgated and have been in use on such vessels, may be continued in use so long as such existing lifesaving equipment and apparatus are found to be in good and workable condition. Where lifesaving equipment and apparatus are not found to be in good and workable condition, they shall be repaired or else replaced by lifesaving equipment and apparatus of the latest approved type, as required by the regulations in this subchapter and subchapter Q (Specifications) of this chapter. Where lifesaving equipment and apparatus are found to be in good and workable condition but deficient as to quantity or numbers, the additional quantity or numbers required by the regulations in this subchapter shall be of the latest approved type.

§ 33.01-15 Responsibility of master regarding lifesaving equipment—TB/ALL.

It shall be the duty of the master or person in charge to see that the lifeboats, liferafts, davits, falls, life preservers, and other lifesaving appliances are at all times ready for use, and that all equipment for his vessel required by the regulations in this subchapter are provided, maintained, and replaced as indicated.

§ 33.01-20 Approval for repairs and alterations—TB/ALL.

No extensive repairs or alterations, except in emergency, shall be made to any lifeboat, lifeboat disengaging apparatus, life preserver, liferaft, or other appliance subject to inspection, without advance notice to the Officer in Charge, Marine Inspection. Such repairs and alterations shall so far as is practicable be made with materials and tested in the manner specified in

§ 34.50-15 Spare charges—TB/ALL.

(a) Spare charges shall be carried on all vessels for at least 50 percent of each size and each variety, i.e. foam, soda-acid, carbon dioxide, etc., of portable extinguisher required by § 34.50-10(a). However, if the unit is of such variety that it cannot be readily recharged by the vessel's personnel, one spare unit of the same classification shall be carried in lieu of spare charges for all such units of the same size and variety. This section does not apply to unmanned barges.

(b) Spare charges shall be so packaged as to minimize the hazards to personnel while recharging the units.

§ 34.50-20 Semiportable fire extinguishers—TB/ALL

(a) The frame or support of each size III, IV, and V fire extinguisher required by Table 34.50-10(a) must be welded or otherwise permanently attached to a bulkhead or deck.

(b) If a size III, IV, or V fire extinguisher has wheels and is not required by Table 34.50-10(a), it must be securely stowed when not in use to prevent it from rolling out of control under heavy sea conditions.

[CGD 77-039, 44 FR 34132, June 14, 1979]

§ 34.50-90 Vessels contracted for prior to January 1, 1962—TB/ALL.

(a) Vessels contracted for prior to January 1, 1962, shall meet the following requirements:

(1) The provisions of §§ 34.50-5 through 34.50-15 shall be met with the exception that existing installations may be maintained if in the opinion of the Officer in Charge, Marine Inspection, they are in general agreement with the degree of safety prescribed by Table 34.50-10(a). In such cases, minor modifications may be made to the same standard as the original installation: *Provided*, That in no case will a greater departure from the standards of Table 34.50-10(a) be permitted than presently exists.

Subpart 34.55—Sand

§ 34.55-1 Application—TB/ALL.

(a) The provisions of this part shall apply to all vessels having oil fired boilers, either main or auxiliary.

§ 34.55-5 Amount required—TB/ALL.

(a) On vessels of over 1,000 gross tons there shall be in each space containing oil fired boilers a metal receptacle containing not less than 10 cubic feet of sand, sawdust impregnated with soda, or other approved dry materials, together with a scoop or shaker for distributing the same. On vessels of 1,000 gross tons or less, at least 5 cubic feet of such materials shall be similarly carried.

§ 34.55-10 Substitute—TB/ALL.

(a) An additional B-II portable extinguisher may be carried in lieu of the sand required by this part.

Subpart 34.60—Fire Axes

§ 34.60-1 Application—T/ALL.

(a) The provisions of this subpart shall apply to all tankships.

§ 34.60-5 Number required—T/ALL.

(a) All tankships shall carry at least the minimum number of fire axes as set forth in Table 34.60-5(a). Nothing in this paragraph shall be construed as limiting the Officer in Charge, Marine Inspection, from requiring such additional fire axes as he deems necessary for the proper protection of the tankship.

TABLE 34.60-5(a)

Gross tons		Number of axes
Over	Not over	
....	50	1
50	200	2
200	500	3
500	1,000	4
1,000	....	5

§ 34.60-10 Location—T/ALL.

(a) Fire axes shall be distributed throughout the spaces so as to be most readily available in the event of emergency.

(b) If fire axes are not located in the open, or behind glass, so that they may readily be seen, they may be placed in enclosures together with the fire hose, provided such enclosures are marked as required by § 35.40-15 of this subchapter.

PART 35—OPERATIONS

AUTHORITY: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 3703, 6101; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971-1975 Comp., p. 793; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

SOURCE: CGFR 65-50, 30 FR 16704, Dec. 30, 1965, unless otherwise noted.

Subpart 35.01—Special Operating Requirements

§ 35.01-1 Inspection and testing required when making alterations, repairs, or other such operations involving riveting, welding, burning, or like fire-producing actions—TB/ALL.

(a) The provisions of "Standard for the Control of Gas Hazards on Vessels to be Repaired," NFPA No. 306, published by Nation Fire Protection Association, 60 Batterymarch Street, Boston, MA 02110, shall be used as a guide in conducting the inspections and issuance of certificates required by this section.

(b) Until an inspection has been made to determine that such operation can be undertaken with safety, no alterations, repairs, or other such operations involving riveting, welding, burning, or like fire-producing actions shall be made:

(1) Within or on the boundaries of cargo tanks which have been used to carry flammable or combustible liquid or chemicals in bulk, or within spaces adjacent to such cargo tanks; or,

(2) Within or on the boundaries of fuel tanks; or,

(3) To pipe lines, heating coils, pumps, fittings, or other appurtenances connected to such cargo or fuel tanks.

(c) Such inspections shall be made and evidenced as follows:

(1) In ports or places in the United States or its territories and possessions, the inspection shall be made by a marine chemist certificated by the National Fire Protection Association; however, if the services of such certified marine chemist are not reasonably available, the Officer in Charge, Marine Inspection, upon the recommendation of the vessel owner and his contractor or their representative, shall select a person who, in the case of an individual vessel, shall be authorized to make such inspection. If the inspection indicates that such operations can be undertaken with safety, a certificate setting forth the fact in writing and qualified as may be required, shall be issued by the certified marine chemist or the authorized person before the work is started. Such qualifications shall include any requirements as may be deemed necessary to maintain, insofar as can reasonably be done, the safe conditions in the spaces certified, throughout the operation and shall include such additional tests and certifications as considered required. Such qualifications and requirements shall include precautions necessary to eliminate or minimize hazards that may be present from protective coatings or residues from cargoes.

(2) When not in such a port or place, and a marine chemist or such person authorized by the Officer in Charge, Marine Inspection, is not reasonably available, the inspection shall be made by the senior officer present and a proper entry shall be made in the vessel's logbook.

(d) It shall be the responsibility of the senior officer present to secure copies of certificates issued by the certified marine chemist or such person authorized by the Officer in Charge, Marine Inspection. It shall be the responsibility of the senior officer present, insofar as the persons under his control are concerned, to maintain a safe condition on the vessel by full observance of all qualifications and requirements listed by the marine chemist in the certificate.

§ 35.01-3 Incorporation by reference.

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than the one listed in paragraph (b) of this section, notice of the change must be published in the FEDERAL REGISTER and the material made available to the public. All approved material is on file at the Office of the Federal Register, Washington, DC 20408, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division, 2100 Second Street SW., Washington, DC 20593-0001, and is available from the address indicated in paragraph (b).

(b) The material approved for incorporation by reference in this part, and the sections affected is:

AMERICAN SOCIETY FOR TESTING AND MATERIALS

1916 Race St., Philadelphia, PA 19103.

[CGD 72-206R, 38 FR 17228, June 29, 1973]

§ 55.15-10 Stamping and reports (modifies NE-8000).

(a) In addition to the requirements of NE-8100, the requirements of §§ 55.10-30 and 55.10-35 shall be followed for marking, stamping, and data reports.

(b) The letters "MC" shall be used for class designation.

(c) For components other than the containment vessel, refer to § 55.10-30 (c).

[CGD 72-206R, 38 FR 17228, June 29, 1973]

§ 55.15-15 Overpressure and vacuum relief protection (modifies NE-7000).

(a) (*Modifies NE-7116.*) In lieu of the vacuum relief device required by NE-7116, consideration shall be given to designing the containment vessel to remain intact without collapse due to external pressure should sinking occur in a harbor or approach where salvage may be possible. Consideration shall be given to the prevention of pressure vessel crushing in the event of sinking in deep water by relieving external pressure by a method such as flooding. Design proposals shall be submitted to the Commandant (G-MTH) for approval.

(b) (*Modifies N-1710.6.*) In lieu of the vacuum relief device required by N-1710.6, consideration shall be given to designing the containment vessel to remain intact without collapse due to external pressure should sinking occur in a harbor or approach where salvage may be possible. Consideration shall be given to the prevention of pressure vessel crushing in the event of sinking in deep water by relieving external pressure by a method such as flooding.

[CGFR 70-143, 35 FR 19906, Dec. 30, 1970, as amended by CGD 72-206R, 38 FR 17228, June 29, 1973; CGD 82-063b, 48 FR 4781, Feb. 3, 1983]

Subpart 55.20—Class 2 Components

§ 55.20-1 General (modifies subsection NC).

(a) Class 2 components shall meet the requirements of subsection NC of section III of the ASME Code except as noted otherwise in this subpart.

(b) (Modifies NC-1000.) Class 2 vessels shall be designed, fabricated, inspected, tested, and marked in accordance with the appropriate standards of Part 54 of this subchapter. The requirements of NC-3352 and NC-5200 for vessels shall apply in lieu of the joint design and nondestructive testing requirements of Table 54.01-5(b) of this subchapter. Design based on standards of Division 2 of section VIII of the ASME Code must receive prior approval by the Commandant.

[CGD 72-206R, 38 FR 17228, June 29, 1973]

§ 55.20-5 Weld production testing.

Weld production testing in accordance with Subpart 57.06 of this chapter is required. Class 2 vessels which would otherwise fit the Class III category shall receive the production testing specified for a Class II vessel.

[CGFR 69-127, 35 FR 9978, June 17, 1970, as amended by CGD 72-206R, 38 FR 17228, June 29, 1973]

§ 55.20-10 Overpressure protection.

The requirements of NC-7000 shall apply in lieu of Subpart 54.15 of this subchapter. The overpressure protection analysis (NC-7300) shall be submitted to the Commandant (G-MTH) for review.

[CGD 72-206R, 38 FR 17228, June 29, 1973, as amended by CGD 82-063b, 48 FR 4781, Feb. 3, 1983]

§ 55.20-20 Stampings (modifies NA-8000).

In lieu of the stamping required by NA-8000 of the ASME Code, vessels constructed in accordance with this subpart shall be stamped as required by § 55.10-20 with the addition of the symbols "N2" after the class. For components other than pressure vessels, refer to § 55.100-30(c).

[CGD 72-206R, 38 FR 17228, June 29, 1973]

Subpart 55.25—Class 3 Components

SOURCE: CGD 72-206R, 38 FR 17228, June 29, 1973, unless otherwise noted.

§ 55.25-1 General (modifies subsection ND).

Class 3 components shall meet the requirements of subsection ND except that pressure vessels shall meet the requirements of Part 54 of this subchapter, in lieu of the requirements of subsection ND. However, the installation testing of piping and complete Class 3 nuclear systems shall meet the requirements of ND-6000.

§ 55.25-10 Stamping (modifies NA-8000).

In lieu of the stamping required by NA-8000, pressure vessels constructed in accordance with this subpart shall be stamped as required by § 54.10-20 of this subchapter with the addition of the symbols "N3" after the class. For components other than pressure vessels, refer to § 55.10-30(c).

PART 56—PIPING SYSTEMS AND APPURTENANCES

AUTHORITY: 33 U.S.C. 1321(j), 1509; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703, 5515; E.O. 11735, 38 FR 21243, 3 CFR, 1971-1975 Comp., p. 793; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

SOURCE: CGFR 68-82, 33 FR 18843, Dec. 18, 1968, unless otherwise noted.

Subpart 56.01—General

NOTE: See § 50.15-10 for general adoption of standards of the ANSI (American National Standards Institute). The printing of portions of the "American National Standard Code for Pressure Piping, Power Piping," ANSI-B31.1, is with the permission of the publisher, The American Society of Mechanical Engineers, United Engineering Center, 345 East 47th Street, New York, N.Y. 10017. The adoption of this standard ANSI-B31.1 for pressure piping and power piping is subject to specific limitations or modifications as described in this part. Those requirements in ANSI-B31.1 which are not referred to in this part are adopted without change. Table 56.01-5(a) sets forth a general reference to various paragraphs in ANSI-B31.1 which are limited, modified, or replaced by regulations in this part.

§ 56.01-1 Scope (replaces 100.1).

(a) This part contains requirements for the various ships' and barges' piping systems and appurtenances.

(b) The respective piping systems installed on ships and barges shall have the necessary pumps, valves, regulation valves, safety valves, relief valves, flanges, fittings, pressure gages, liquid level indicators, thermometers, etc., for safe and efficient operation of the vessel.

(c) Piping for industrial systems on mobile offshore drilling units need not fully comply with the requirements of this part but must meet Subpart 58.60 of this subchapter.

[CGFR 68-82, 33 FR 18843, Dec. 18, 1968, as amended by CGD 73-251, 43 FR 56799, Dec. 4, 1978]

§ 56.01-2 Incorporation by reference.

(a) Certain standards and specifications are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than the one listed in paragraph (b) of this section, notice of the change must be published in the FEDERAL REGISTER and the material made available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street, NW., Washington, DC, and is available from the sources indicated in paragraph (b).

(b) The standards and specifications approved for incorporation by reference in this part, and the sections affected are:

American National Standards Institute (ANSI); 1430 Broadway, New York, NY 10018:	
ANSI B1.1-82 Unified Inch Screw Threads (UN and UNR Thread Form).	56.60-1; 56.25-20
ANSI B1.20.1-83 Pipe Threads, General Purpose (Inch).	56.60-1
ANSI B1.20.3-76 (reaffirmed 1982) Dryseal Pipe Threads (Inch).	56.60-1
ANSI B16.1-75 Cast Iron Flanges and Flanged Fittings, Class 25, 125, 250 and 800.	56.60-1; 56.60-10
ANSI B16.3-85 Malleable Iron Threaded Fittings, Classes 150 and 300.	56.60-1
ANSI B16.4-85 Cast Iron Threaded Fittings, Classes 125 and 250.	56.60-1
ANSI B16.5-81 Pipe Flanges and Flanged Fittings.	56.25-20; 56.30-10; 56.60-1
ANSI B16.9-86 Factory-Made Wrought Steel Buttwelding Fittings.	56.60-1
ANSI B16.10-86 Face-to-Face and End-to-End Dimensions of Ferrous Valves.	56.60-1
ANSI B16.11-80 Forged Steel Fittings, Socket-Welding and Threaded.	56.30-5; 56.60-1
ANSI B16.14-83 Ferrous Pipe Plugs, Bushings, and Locknuts with Pipe Threads.	56.60-1
ANSI B16.15-85 Cast Bronze Threaded Fittings, Classes 125 and 250.	56.60-1
ANSI B16.18-84 Cast Copper Alloy Solder Joint Pressure Fittings.	56.60-1
ANSI B16.20-73 Ring-Joint Gaskets and Grooves for Steel Pipe Flantion VIII, Division 1, Pressure Vessels, 1986 with addenda.	56.15-1; 56.15-5; 56.15-10; 56.25-5; 56.30-10; 56.30-30; 56.60-15; 56.60-1; 56.95-10
Section IX, Welding and Brazing Qualifications, 1986 with addenda.	56.70-5; 56.70-20; 56.75-20; 56.0-1
ANSI B16.24-79 Bronze Pipe Flanges and Flanged Fittings, Class 150 and 300.	56.60-1
ANSI B16.25-86 Buttwelding Ends.	56.60-1; 56.30-5; 56.70-10

chapter F (Marine Engineering) of this chapter.

Subpart 70.25—General Electrical Engineering Requirements

§ 70.25-1 Electrical engineering details.

All electrical engineering details and installations shall be designed and installed in accordance with subchapter J (Electrical Engineering) of this chapter.

Subpart 70.30—Special Provisions

§ 70.30-1 Vessels acquired or documented under the Act of August 9, 1954.

(a) Vessels acquired or documented under the act of August 9, 1954 (sec. 3, 68 Stat. 675; 50 U.S.C. 198), shall be subject to the applicable provisions of title 52 of the Revised Statutes, acts amendatory thereof or supplemental thereto and the rules and regulations thereunder.

(b) Unapproved lifesaving, firefighting, and other equipment may be continued in service as long as, in the opinion of the Officer in Charge, Marine Inspection, such equipment is in good and serviceable condition. All replacements shall be in accordance with Coast Guard requirements.

§ 70.30-5 Installations of equipment made during the unlimited national emergency declared by the President on May 27, 1941.

(a) Boilers, pressure vessels, machinery, piping, electrical, and other installations, including lifesaving, firefighting, and other safety equipment, installed on vessels during the Unlimited National Emergency declared by the President on May 27, 1941, and prior to the determination of title V of the Second War Powers Act, as extended (sec. 501, 56 Stat. 180, 50 U.S.C. App. 635), which do not fully meet the detailed requirements of the regulations in this chapter, may be continued in service if found to be satisfactory by the Commandant for the purpose intended.

Subpart 70.35—American Bureau of Shipping's Standards

§ 70.35-1 Standards to be used.

(a) Where in this subchapter an item, or method of construction, or testing is required to meet the standards established by the American Bureau of Shipping, the current standards in effect at the time of construction of the vessel, or otherwise as applicable, shall be used. The current standards of other recognized classification societies may also be accepted upon approval by the Commandant.

§ 70.35-5 Where obtainable.

(a) The standards established by the American Bureau of Shipping are usually published annually and may be purchased from the American Bureau of Shipping, 45 Eisenhower Drive, Paramus, NJ 07653-0910. These standards may be also examined at the office of the Commandant (M), U.S. Coast Guard, Washington, DC 20593-0001, or at the office of any Coast Guard District Commander or Officer in Charge, Marine Inspection.

[CGFR 65-50, 30 FR 16890, Dec. 30, 1965, as amended by CGFR 68-32, 33 FR 5715, Apr. 12, 1968; CGD 88-070, 53 FR 34534, Sep. 7, 1988; CGD 88-070, 53 FR 37570, Sept. 27, 1988, 53 FR 44011, Nov. 1, 1988]

PART 71—INSPECTION AND CERTIFICATION

AUTHORITY: 33 U.S.C. 1321(j); 46 U.S.C. 2113, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 11735, 38 FR 21243, 3 CFR, 1971-1975 Comp., p. 793; 49 CFR 1.46.

SOURCE: CGFR 65-50, 30 FR 16895, Dec. 30, 1965, unless otherwise noted.

Subpart 71.01—Certificate of Inspection

§ 71.01-1 When required.

(a) Except as noted in this subpart or subpart 71.05, no vessel subject to inspection and certification shall be operated without a valid certificate of inspection.

§ 71.01-5 Posting.

The certificate of inspection shall be displayed under glass in a conspicuous place where observation by the passengers is likely.

[CGD 72-104R, 37 FR 14233, July 18, 1972]

§ 71.01-10 Period of validity.

(a) Certificates of inspection will be issued for a period of 1 year, except for those vessels subject only to the Act of May 10, 1956 (46 U.S.C. 390-390g), when the certificates will be issued for a period of 3 years. Application may be made by the master, owner, or agent for inspection and issuance of a new certificate of inspection at any time within the period of validity of the current certificate. For nuclear vessels see also § 79.10-1 of this subchapter.

(b) Certificates of inspection may be revoked or suspended by the Coast Guard where such process is authorized by law. This may occur if the vessel does not meet the requirements of law or regulations in this chapter or if there is a failure to maintain the safety requirements requisite to the issuance of a certificate of inspection.

[CGFR 68-82, 33 FR 18899, Dec. 18, 1968]

§ 71.01-15 Temporary certificate.

(a) If necessary to prevent delay of the vessel, a temporary certificate of inspection, Form CG-854, shall be issued pending the issuance and delivery of the regular certificate of inspection. Such temporary certificate shall be carried in the same manner as the regular certificate and shall in all ways be considered the same as the regular certificate of inspection which it represents.

§ 71.01-20 Expired certificate.

(a) Nothing in this subpart shall prevent a vessel upon a regularly established line from a port in the United States to a port of a foreign country not contiguous to the United States whose certificate of inspection expires at sea or while said vessel is in a foreign port or a port of Hawaii from lawfully completing her voyage without the valid certificate of inspection or temporary certificate required by this subpart: *Provided*, That the voyage shall be completed within 30 days after the expiration of the certificate of inspection. No such vessel shall depart if its certificate of inspection will expire within 15 days of the date of sailing.

Subpart 71.05—Permit To Proceed to Another Port for Repair

§ 71.05-1 When issued.

(a) The Officer in Charge, Marine Inspection, may issue a permit to proceed to another port for repair, Form CG-948, to a vessel, if in his judgment it can be done with safety, even if the certificate of inspection of the vessel has expired or is about to expire.

§ 71.05-5 To whom issued.

(a) Such permit will only be issued upon the written application of the master, owner, or agent of the vessel.

§ 71.05-10 Conditions of permit.

(a) The permit will state upon its face the conditions under which it is issued and whether or not the vessel is permitted to carry freight or passengers. Passengers may not be carried if the certificate of inspection has expired, except as provided under § 71.01-20.

§ 71.05-15 Posting.

(a) The permit shall be carried in a manner similar to that described in § 71.01-5 for a certificate of inspection.

Subpart 71.10—Permit To Engage in Excursions

§ 71.10-1 When issued.

(a) The Officer in Charge, Marine Inspection, may issue a permit to carry additional passengers on an excursion, Form CG-949, if after personally inspecting the vessel, it can, in his judgment, be done with safety.

§ 71.10-5 To whom issued.

(a) Such permit will only be issued upon the written application of the master, owner, or agent of the vessel.

§ 71.10-10 Conditions of permit.

(a) The permit will state upon its face the conditions under which it is issued, the number of extra passengers the vessel may carry, any additional lifesaving or safety equipment which will be required, the route for which the permit is granted, and the dates on which the permit will be valid.

§ 71.10-15 Posting.

(a) The permit when used, shall be carried in addition to the certificate of inspection and shall be carried in a manner similar to that described in § 71.01-5 for a certificate of inspection.

Subpart 71.15—Inspection of Vessels

§ 71.15-1 Standards in inspection of hulls, boilers, and machinery.

(a) In the inspection of hulls, boilers, and machinery of vessels, the standards established by the American Bureau of Shipping, see subpart 70.35 of this subchapter respecting material and inspection of hulls, boilers, and machinery, and the certificate of classification referring thereto, except where otherwise provided for by the rules and regulations in this subchapter, subchapter E (Load Lines), subchapter F (Marine Engineering), or subchapter J (Electrical Engineering) of this chapter, shall be accepted as standard by the inspectors.

Subpart 71.20—Initial Inspection

§ 71.20-1 Prerequisite of certificate of inspection.

(a) The initial inspection is a prerequisite of the issuance of the original certificate of inspection.

§ 71.20-5 When made.

(a) The original inspection will only be made upon the written application of the owner or builder of the vessel to the Officer in Charge, Marine Inspection, on Form CG-3752, application for inspection of U.S. vessel, at or nearest the port where the vessel is located.

§ 71.20-10 Plans.

(a) Before application for inspection is made and before construction is started, the owner or builder shall have plans indicating the proposed arrangement and construction of the vessel approved by the Commandant. The procedure for submitting plans and the list of plans to be supplied is set forth in subpart 71.65.

§ 71.20-15 Scope of inspections.

(a) The initial inspection, which may consist of a series of inspections during the construction of a vessel, shall include a complete inspection of the structure, including the outside of the vessel's bottom, the machinery, unfired pressure vessels, equipment and the inside and outside of the boilers. The inspection shall be such as to insure that the arrangements, material, and scantlings of the structure, boilers and other pressure vessels and their appurtenances, piping, main and auxiliary machinery, electrical installations, lifesaving appliances, fire-detecting and extinguishing equipment, pilot boarding equipment, pollution prevention equipment and other equipment fully comply with the applicable regulations for such vessel and are in accordance with approved plans, and determine that the vessel is in possession of a valid certificate issued by the Federal Communications Commission, if any. The inspection shall be such as to ensure that the workmanship of all parts of the vessel and its equipment is in all respects satisfactory and that the vessel is providin the same location as the equipment it is to reactivate.

§ 77.35-90 Vessels contracted for prior to May 26, 1965.

(a) Vessels contracted for prior to May 26, 1965, shall meet the following requirements:

(1) The requirements of §§ 77.35-5 through 77.35-20 shall be complied with insofar as the number of items of equipment and the method of stowage of the equipment is concerned. Existing items of equipment previously approved, but not meeting the applicable specifications set forth in § 77.35-5, may be continued in service so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection, but all new installations or replacements shall meet the applicable specifications or requirements.

Subpart 77.40—Pilot Boarding Equipment

§ 77.40-1 Pilot boarding equipment.

(a) This section applies to each vessel that normally embarks or disembarks a pilot from a pilot boat or other vessel.

(b) Each vessel must have suitable pilot boarding equipment available for use on each side of the vessel. If a vessel has only one set of equipment, the equipment must be capable of being easily transferred to and rigged for use on either side of the vessel.

(c) Pilot boarding equipment must be capable of resting firmly against the vessel's side and be secured so that it is clear from overboard discharges.

(d) Each vessel must have lighting positioned to provide adequate illumination for the pilot boarding equipment and each point of access.

(e) Each vessel must have a point of access that has—

(1) A gateway in the rails or bulwark with adequate handholds; or

(2) Two handhold stanchions and a bulwark ladder that is securely attached to the bulwark rail and deck.

(f) The pilot boarding equipment required by paragraph (b) of this section must include at least one pilot ladder approved under subpart 163.003 of this chapter. Each pilot ladder must be of a single length and capable of extending from the point of access to the water's edge during each condition of loading and trim, with an adverse list of 15°.

(g) Whenever the distance from the water's edge to the point of access is more than 30 feet, access from a pilot ladder to the vessel must be by way of an accommodation ladder or equally safe and convenient means.

(h) Pilot hoists, if used, must be approved under subpart 163.002 of this chapter.

[CGD 79-032, 49 FR 25455, June 21, 1984]

PART 78—OPERATIONS

AUTHORITY: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 6101, 8105; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243; 3 CFR, 1971-1975 Comp., p. 793; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

SOURCE: CGFR 65-50, 30 FR 16955, Dec. 30, 1965, unless otherwise noted.

Subpart 78.01—Application

§ 78.01-1 General.

(a) The provisions of this part shall apply to all vessels except as specifically noted.

Subpart 78.03—Penalties

§ 78.03-1 General.

(a) The marine safety and criminal statutes provide penalties for the violation of the applicable provisions of this subchapter, which penalties, depending upon the gravity of the violation, are as follows:

(1) Assessment and collections of civil monetary penalty.

(2) Criminal prosecution where no loss of life results.

(3) Criminal prosecution for manslaughter where loss of life results from violation of statute or regulation or from misconduct, negligence, or inattention to duty.

(4) Libel against vessel.

(b) In addition to the foregoing, any licensed or certificated personnel committing an act of misbehavior, negligence, unskillfulness, endangering life, violation of marine safety statutes or regulations or requirements thereunder, and incompetency shall be subject to proceedings under the provisions of 46 U.S.C. 239 and regulations thereunder (46 CFR part 5) with respect to suspension or revocation of license or certificate.

Subpart 78.05—Notice to Mariners and Aids to Navigation

§ 78.05-1 Duty of officers.

(a) Licensed deck officers are required to acquaint themselves with the latest information published by the Coast Guard and the U.S. Navy regarding aids to navigation. Neglect to do so is evidence of neglect of duty. It is desirable that all vessels have available in the pilothouse for convenient reference at all times a file of the applicable Notice to Mariners.

(b) Weekly Notices to Mariners (Great Lakes Edition), published by the Commander, 9th Coast Guard District, contain announcements and information on changes in aids to navigation and other marine information affecting the safety of navigation on the Great Lakes. These notices may be obtained free of charge, by making application to Commander, 9th Coast Guard District.

(c) Weekly Notices to Mariners (Worldwide coverage) are prepared jointly by the U.S. Naval Oceanographic Office, the U.S. Coast and Geodetic Survey and the U.S. Coast Guard. They include changes in aids to navigation in assembled form for the 1st, 3d, 5th, 7th, Greater Antilles Section, 8th, 11th, 12th, 13th, 14th, and 17th Coast Guard Districts. Foreign marine information is also included in these notices. These notices are available without charge from the U.S. Naval Oceanographic Office, Washington, DC 20390, Branch Oceanographic Offices, U.S. Collector of Customs of the major seaports in the United States and are also on file in the U.S. Consulates where they may be inspected.

[CGFR 66-33, 31 FR 15283, Dec. 6, 1966, as amended by CGFR 68-32, 33 FR 5717, Apr. 12, 1968]

§ 78.05-5 Charts and nautical publications.

As appropriate for the intended voyage, all vessels except barges, ferryboats and vessels operating exclusively on rivers, must carry adequate and up-to-date—

(a) Charts;

(b) Sailing directions;

(c) Coast pilots;

(d) Light lists;

(e) Notices to mariners;

(f) Tide tables;

(g) Current tables; and

(h) All other nautical publications necessary.[1]

[1] For United States vessels in or on the navigable waters of the United States, see 33 CFR 164.33.

1988; CGD 88-070, 53 FR 44011, Nov. 1, 1988]

PART 91—INSPECTION AND CERTIFICATION

AUTHORITY: 33 U.S.C. 1312(j); 46 U.S.C. 2113, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 11735, 38 FR 21243, 3 CFR, 1971-1975 Comp., p. 793; 49 CFR 1.46.

SOURCE: CGFR 65-50, 30 FR 16974, Dec. 30, 1965, unless otherwise noted.

Subpart 91.01—Certificate of Inspection

§ 91.01-1 When required.

(a) Except as noted in this subpart or subpart 91.05, no vessel subject to inspection and certification shall be operated without a valid certificate of inspection.

§ 91.01-5 Posting.

(a) On vessels of over 25 gross tons, the original certificate of inspection shall, in general, be framed under glass and posted in a conspicuous place where it will be most likely to be observed. On vessels not over 25 gross tons, and on other vessels such as barges, where the framing of the certificate under glass would be impracticable, the original certificate of inspection shall be kept on board to be shown on demand.

§ 91.01-10 Period of validity.

(a) Certificates of inspection will be issued for periods of either 1 or 2 years. For nuclear vessels it shall be for a period of 1 year; see also § 99.10-1 of this subchapter. Application may be made by the master, owner, or agent for inspection and issuance of a new certificate of inspection at any time during the period of validity of the current certificate. For nuclear vessels see part 99 of this subchapter.

(b) Certificates of inspection may be revoked or suspended by the Coast Guard where such process is authorized by law. This may occur if the vessel does not meet the requirements of law or regulations in this chapter or if there is a failure to maintain the safety requirements requisite to the issuance of a certificate of inspection.

(c) (1) In the case of the following vessels, modification of the period of validity of the certificate of inspection will be permitted as set forth in this paragraph:

(i) Nonself-propelled vessels of 100 gross tons and over proceeding on the high seas or ocean for the sole purpose of changing place of employment.

(ii) Nonself-propelled vessels of 100 gross tons and over making rare or infrequent voyages on the high seas or ocean and returning to the port of departure.

(2) The certificate of inspection may be issued for a specific period of time to cover a described situation or for one voyage only but in no case to exceed 2 years. The certificate of inspection will include the conditions under which the vessel must operate. Unless the vessel is in compliance with this Subchapter insofar as it applies to

[CGD 75-074, 42 FR 5964, Jan. 31, 1977]

§ 96.35-20 Spare charges.

(a) A complete recharge shall be carried for each self-contained breathing apparatus, and a complete set of spare batteries shall be carried for each flashlight. The spares shall be stowed in the same location as the equipment it is to reactivate.

§ 96.35-90 Vessels contracted for prior to May 26, 1965.

(a) Vessels contracted for prior to May 26, 1965, shall meet the following requirements:

(1) The requirements of §§ 96.35-5 through 96.35-20 shall be complied with insofar as the number of items of equipment and the method of stowage of the equipment is concerned. Existing items of equipment previously approved, but not meeting the applicable specifications set forth in § 96.35-5, may be continued in service so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection, but all new installations or replacements shall meet the applicable specifications or requirements.

Subpart 96.40—Pilot Boarding Equipment

§ 96.40-1 Pilot boarding equipment.

(a) This section applies to each vessel that normally embarks or disembarks a pilot from a pilot boat or other vessel.

(b) Each vessel must have suitable pilot boarding equipment available for use on each side of the vessel. If a vessel has only one set of equipment, the equipment must be capable of being easily transferred to and rigged for use on either side of the vessel.

(c) Pilot boarding equipment must be capable of resting firmly against the vessel's side and be secured so that it is clear from overboard discharges.

(d) Each vessel must have lighting positioned to provide adequate illumination for the pilot boarding equipment and each point of access.

(e) Each vessel must have a point of access that has—

(1) A gateway in the rails or bulwark with adequate handholds; or

(2) Two handhold stanchions and a bulwark ladder that is securely attached to the bulwark rail and deck.

(f) The pilot boarding equipment required by paragraph (b) of this section must include at least one pilot ladder approved under subpart 163.003 of this chapter. Each pilot ladder must be of a single length and capable of extending from the point of access to the water's edge during each condition of loading and trim, with an adverse list of 15°.

(g) Whenever the distance from the water's edge to the point of access is more than 30 feet, access from a pilot ladder to the vessel must be by way of an accommodation ladder or equally safe and convenient means.

(h) Pilot hoists, if used, must be approved under subpart 163.002 of this chapter.

[CGD 79-032, 49 FR 25455, June 21, 1984]

PART 97—OPERATIONS

AUTHORITY: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 6101; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971-1975 Comp., p. 793; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 227; 49 CFR 1.46.

SOURCE: CGFR 65-50, 30 FR 17011, Dec. 30, 1965, unless otherwise noted.

Subpart 97.01—Application

§ 97.01-1 General.

(a) The provisions of this part shall apply to all vessels except as specifically noted in this part.

Subpart 97.03—Statutory Penalties

§ 97.03-1 General.

(a) The marine safety and criminal statutes provide penalties for the violation of the applicable provisions of this subchapter, which penalties depending upon the gravity of the violation, are as follows:

(1) Assessment and collection of civil monetary penalty.

(2) Criminal prosecution where no loss of life results.

(3) Criminal prosecution for manslaughter where loss of life results from violation of statute or regulation or from misconduct, negligence, or inattention to duty.

(4) Libel against vessel.

(b) In addition to the foregoing, any licensed or certificated personnel committing an act of misbehavior, negligence, unskillfulness, endangering life, violation of marine safety statutes or regulations or requirements thereunder, and incompetency shall be subject to proceedings under the provisions of 46 U.S.C. 239 and regulations thereunder (part 5 of this chapter) with respect to suspension or revocation of license or certificate.

Subpart 97.05—Notice to Mariners and Aids to Navigation

§ 97.05-1 Duty of officers.

(a) Licensed deck officers are required to acquaint themselves with the latest information published by the Coast Guard and the U.S. Navy regarding aids to navigation. Neglect to do so is evidence of neglect of duty. It is desirable that vessels other than motorboats shall have available in the pilothouse for convenient reference at all times a file of the applicable Notice to Mariners.

(b) Weekly Notices to Mariners (Great Lakes Edition), published by the Commander, 9th Coast Guard District, contain announcements and information on changes in aids to navigation and other marine information affecting the safety of navigation on the Great Lakes. These notices may be obtained free of charge, by making application to Commander, 9th Coast Guard District.

(c) Weekly Notices to Mariners (world-wide coverage) are prepared jointly by the U.S. Naval Oceanographic Office, the U.S. Coast and Geodetic Survey and the U.S. Coast Guard. They include changes in aids to navigation in assembled form for the 1st, 3d, 5th, 7th, Greater Antilles Section 8th, 11th, 12th, 13th, 14th, and 17th Coast Guard Districts. Foreign marine information is also included in these notices. These notices are available without charge from the U.S. Naval Oceanographic Office, Washington, DC 20390, Branch Oceanographic Offices, U.S. Collector of Customs of the major seaports in the United States and are also on file in the U.S. Consulates where they may be inspected.

[CGFR 66-33, 31 FR 15286, Dec. 6, 1966, as amended by CGFR 68-32, 33 FR 5720, Apr. 12, 1968; CGFR 69-116, 35 FR 6861, Apr. 30, 1970]

§ 97.05-5 Charts and nautical publications.

As appropriate for the intended voyage, all vessels except barges, vessels operating exclusively on rivers, and motorboats other than those certificated for ocean or coastwise route, must carry adequate and up-to-date—

(a) Charts;

(b) Sailing directions;

(c) Coast pilots;

(d) Light lists;

(e) Notices to mariners;

(f) Tide tables;

(g) Current tables; and

(h) All other nautical publications necessary. [1]

[CGD 75-074, 42 FR 5964, Jan. 31, 1977]

Subpart 97.07—Notice and Reporting of Casualty and Voyage Records

§ 97.07-1 Notice and reporting of casualty and voyage records.

The requirements for providing notice and reporting of marine casualties and for retaining voyage records are contained in part 4 of this chapter.

[CGD 84-099, 52 FR 47536, Dec. 14, 1987]

[1] For United States vessels in or on the navigable waters of the United States, see 33 CFR 164.33.

the manner in which they are supported shall be approved by the Commandant. In determining the location and the necessary structural support and protection required, the effects of grounding, collision or other mishap resulting in holing of the vessel shall be considered.

(b) Reactor installations, including all potentially vulnerable primary system components, shall be placed as far inboard from the shell as practicable. Generally, the installation shall be situated inboard of a vertical surface perpendicular to the waterplane. The vertical surface shall be located at a minimum distance (measured at right angles to the centerline at the deepest loadline) inboard of the shell equal to one-fifth of the extreme breadth of the vessel. If the installation extends outboard of this vertical surface, special consideration shall be given to collision protection.

(c) Reactor installations shall be located a reasonable height above the ship's bottom, but in no case shall this height be less than the required double bottom height. Waste storage tanks and engineered safeguard systems may be permitted in the double bottom space if specifically approved by the Commandant. Consideration shall be given to collision-analysis statistics with regard to the longitudinal (fore and aft) location of the reactor installation.

Subpart 99.10—Inspection and Certification

§ 99.10-1 Annual inspection and certification required.

(a) Every nuclear vessel subject to the regulations in this subchapter shall be inspected by the U.S. Coast Guard at least annually to ascertain that the hull, nuclear systems, machinery, equipment, appliances, etc., of the vessel comply with the applicable regulations in this chapter.

(b) Every nuclear vessel found to be in compliance with applicable requirements in this subchapter will be issued a certificate of inspection in accordance with Part 91 of this subchapter.

§ 99.10-5 Additional requirements.

(a) In addition to the requirements for inspection, test, overhaul and repair specified in this subchapter, nuclear vessels may be subject to such additional requirements as may be prescribed by the Commandant for inspection, test, overhaul and repair. For applicable requirements see Subpart 61.25 of Subchapter F (Marine Engineering) of this chapter.

(b) A prerequisite for annual recertification of the vessel will be a valid Atomic Energy Commission's facility operating license, or if nonlicensed a certificate from the Atomic Energy Commission stating that the nuclear installation complies with the requirements of the Commission.

§ 99.10-15 International Convention certification.

(a) For applicable requirements governing Safety of Life at Sea Convention certificates see §§ 91.60-30, 91.60-35, and 91.60-40(e) of this subchapter.

Subpart 99.15—Other Special Provisions

§ 99.15-1 Radiation.

(a) The vessel shall be so designed, constructed, and operated that no unreasonable hazard of radiation at sea or in port for crew, food, water supply, passengers, public, or waterways exists.

(b) The Atomic Energy Commission's Standards for Protection Against Radiation, set forth in 10 CFR Part 20, will be the radiation protection standards followed by the U.S. Coast Guard, except as otherwise provided for by law.

§ 99.15-3 Means for preventing uncontrolled release of radiation.

(a) The vessel's nuclear systems, including all components thereof, shall be provided with means for preventing the uncontrolled release of hazardous amounts of radioactive material to normally accessible spaces on the ship or to the ship's environment in the event of accident or malfunction of any such system.

§ 99.15-5 Atomic Energy Commission safety requirements.

(a) Before a Coast Guard certificate of inspection for a nuclear vessel will be issued, it must be shown that the nuclear system meets the safety requirements of the Atomic Energy Commission. After facility licensing, possession of a valid AEC license will attest to this fact. Prior to this licensing, a letter from the Commission to the Coast Guard with assurance that the system does meet the safety requirements of the Atomic Energy Commission is required.

§ 99.15-10 Safety Assessment.

(a) A Safety Assessment shall be prepared to permit evaluation of the nuclear powerplant and safety of the ship, and to ensure that there are no unreasonable radiation or other hazards, at sea or in port, to the crew, passengers or public, or to the waterways or food or water resources.

(b) The Safety Assessment shall be submitted to the Commandant for approval and shall always be kept up-to-date.

(c) The Safety Assessment will be used as a basis for establishing orderly negotiations between the United States and governments of countries which a nuclear vessel intends to visit to permit entry of nuclear ships into ports of different countries.

Subpart 99.20—Operations

§ 99.20-1 Operating Manual.

(a) A fully detailed Operating Manual shall be prepared for the information and guidance of the operating personnel in their duties on all matters relating to the operation of the nuclear powerplant and having an important bearing on safety.

(b) The Operating Manual shall be submitted to the Commandant for approval and shall always be kept up to date.

(c) A copy of the Operating Manual shall be kept on board the vessel at all times.

§ 99.20-5 Special operating procedures.

(a) In addition to the requirements specified in this chapter, all nuclear vessels may be subject to additional requirements governing fueling, startup, and operation.

PART 105—COMMERCIAL FISHING VESSELS DISPENSING PETROLEUM PRODUCTS

AUTHORITY: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 3703; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971-1975 Comp., p. 793; 49 CFR 1.46.

SOURCE: CGFR 69-53, 34 FR 11265, July 4, 1969, unless otherwise noted.

Subpart 105.01—Administration

§ 105.01-1 Purpose.

The purpose of the regulations in this part is to provide adequate safety in the transporting and handling of inflammable or combustible cargo in bulk on board certain commercial fishing vessels and tenders, as authorized by 46 U.S.C. 391a (Tanker Act; R.S. 4417a), as amended by section 4 of Pub. L. 90-397 (approved July 11, 1968, 82 Stat. 341) and section 6(3) of Pub. L. 93-430 (approved October 1, 1974, 88 Stat. 1183). The regulations in this part set forth minimum requirements for two categories of commercial fishing vessels and tenders which have on board inflammable or combustible cargo in bulk.

[CGD 75-105, 41 FR 17910, Apr. 29, 1976]

§ 105.01-5 Intent of Pub. L. 90-397 (approved July 11, 1968, 82 Stat. 341) and Pub. L. 93-430 (approved October 1, 1974, 88 Stat. 1180).

(a) Pub. L. 90-397 allowed cannery tenders, fishing tenders, and fishing vessels of not more than 500 gross tons used in the salmon or crab fisheries of the States of Oregon, Washington, and Alaska when engaged exclusively in the fishing industry, to have on board inflammable or combustible cargo in bulk to the extent and upon conditions as might be required by regulations promulgated by the Secretary of the department in which the Coast Guard is operating.

(b) Pub. L. 93-430 allowed vessels of not more than 5000 gross tons used in the processing and assembling of fishery products in the fisheries of the States of Oregon, Washington, and Alaska to have on board inflammable or combustible cargo in bulk to the extent and upon conditions as might be required by regulations promulgated by the Secretary of the department in which the Coast Guard is operating.

[CGD 75-105, 41 FR 17910, Apr. 29, 1976]

§ 105.01-10 Effective date of regulations.

(a) Amendments, revisions, or additions to the regulations in this part will become effective 90 days after the date of publication in the FEDERAL REGISTER, unless the Commandant directs otherwise.

(b) The regulations in this subchapter are not retroactive in effect unless specifically made so at the time the regulations are issued. Changes in specification requirements of articles of equipment or materials used in construction shall not apply to such items which have been passed as satisfactory until replacement shall become necessary, unless a specific finding is made that such equipment or material used is unsafe or hazardous and has to be removed from vessels.

[CGFR 69-53, 34 FR 11265, July 4, 1969, as amended by CGD 75-105, 41 FR 17910, Apr. 29, 1976]

Subpart 105.05—Application

§ 105.05-1 Commercial fishing vessels dispensing petroleum products.

(a) The provisions of this part, with the exception of Subpart 105.90, shall apply to all commercial fishing vessels of not more than 500 gross tons used in the salmon or crab fisheries of Oregon, Washington, and Alaska, the construction of which is contracted for on or after December 1, 1969, and all vessels of not more than 5000 gross tons used in the processing and assembling of fishery products in the fisheries of the States of Oregon, Washington, and Alaska, the construction of which is contracted for on or after May 31, 1976 which have or propose to have permanently or temporarily installed tanks or containers for dispensing petroleum products, Grades B and lower flammable or combustible liquids, in bulk in limited quantities.

(b) The provisions of Subpart 105.90 shall apply to all commercial fishing vessels of not more than 500 gross tons, used in the salmon or crab fisheries of Oregon, Washington, and Alaska, the construction of which was contracted for prior to December 1, 1969, and all vessels of not more than 5000 gross tons used in the processing and assembling of fishery products in the fisheries of the States of Oregon, Washington, and Alaska, the construction of which is contracted for prior to May 31, 1976 which have or propose to have permanently or temporarily installed tanks or containers for dispensing petroleum products, Grades B and lower flammable or combustible liquids, in bulk in limited quantities.

[CGFR 69-53, 34 FR 11265, July 4, 1969, as amended by CGD 75-105, 41 FR 17910, Apr. 29, 1976]

§ 105.05-2 Prohibitions regarding petroleum products.

(a) Commercial fishing vessels shall not transport Grade A flammable liquids in bulk. (See § 105.10-15(a) for definition of Grade A flammable liquid.)

(b) On commercial fishing vessels, temporarily installed dispensing tanks or containers shall not be installed or carried below deck or in closed compartments on or above the deck.

§ 105.05-3 New vessels and existing vessels for the purpose of application of regulations in this part.

(a) *New vessels.* In the application of the regulations in this part, the term "new vessels" means any commercial fishing vessel of not more than 500 gross tons used in the salmon or crab fisheries of Oregon, Washington, or Alaska, the construction of which is contracted for on or after December 1, 1969, and vessels of not more than 5000 gross tons used in the processing and assembling of fishery products in the fisheries of the States of Oregon, Washington, and Alaska, the construction of which is contracted for on or after May 31, 1976.

(b) *Existing vessels.* In the application of the regulations in this part, the term "existing vessels" means any commercial fishing vessel of not more than 500 gross tons used in the salmon or crab fisheries of Oregon, Washington, or Alaska, the construction of which is contracted for prior to December 1, 1969, and vessels of not more than 5000 gross tons used in the processing and assembling of fishery products in the fisheries of the States of Oregon, Washington, and Alaska, the construction of which is contracted for prior to May 31, 1976.

[CGD 75-105, 41 FR 17910, Apr. 29, 1976]

§ 105.05-5 Types of vessels.

(a) The only types of commercial fishing vessels to which the provisions of this part apply are self-propelled manned vessels with one of the following:

(1) Permanently installed dispensing tanks or containers on open decks.

SUBCHAPTER J—ELECTRICAL ENGINEERING

PART 110—GENERAL PROVISIONS

AUTHORITY: 33 U.S.C. 1509; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703, 4104; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.45, 1.46; § 110.01-2 also issued under the authority of 44 U.S.C. 3507.

SOURCE: CGD 74-125A, 47 FR 15232, Apr. 8, 1982, unless otherwise noted.

Subpart 110.01—Applicability

§ 110.01-1 General.

(a) This subchapter applies to electric equipment and systems where Subchapters D, H, I, IA, O, T, or U of this chapter require the installations to be in accordance with this subchapter.

(b) This subchapter applies to vessels and installations contracted for after May 31, 1982.

(c) Installations and equipment accepted by the Coast Guard as meeting the applicable requirements in this subchapter in effect on the date the installation was contracted for and which are maintained in good and serviceable condition to the satisfaction of the Officer in Charge, Marine Inspection, may be continued in use until replacement is ordered by the Officer in Charge, Marine Inspection, or as specified in the regulations.

(d) Requirements in this subchapter revised or added subsequent to May 31, 1982 will apply to installations contracted for after the effective date of such requirements or as specified in the regulation.

(e) Electrical systems internal to a pressure vessel for human occupancy (PVHO) need not meet the requirements of this subchapter, but must meet the requirements of Subpart B (Commercial Diving Operations) of Part 197 of this chapter.

§ 110.01-2 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This section collects and displays the control numbers assigned to information collection and recordkeeping requirements in this subchapter by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). The Coast Guard intends that this section comply with the requirements of 44 U.S.C. 3507(f) which requires that agencies display a current control number assigned by the Director of the OMB for each approved agency information collection requirement.

(b) *Display.*

46 CFR part or section where identified or described	Current OMB control No.
Subpart 110.25	2115-0115

[49 FR 38121, Sept. 27, 1984]

§ 110.01-3 Repairs.

(a) Repairs must be done in accordance with the regulations in effect on the date:

(1) The original installation was contracted for; or

(2) The repair was contracted for.

§ 110.01-4 Right of appeal.

Any person directly affected by a decision or action taken under this subchapter, by or on behalf of the Coast Guard, may appeal therefrom in accordance with subpart 1.03 of this chapter.

[54 FR 50380, Dec. 6, 1989]

Subpart 110.10—Reference Specifications, Standards, and Codes

§ 110.10-1 Incorporation by reference.

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the Federal Register. The Office of the Federal Register publishes a table, "Material Approved for Incorporation by Reference," which appears in the Finding Aids section of this volume. In that table is found the date of the edition approved, citations to the particular sections of this part where the material is incorporated, addresses where the material is available, and the date of the approval by the Director of the Federal Register. To enforce any edition other than the one listed in the table, notice of the change must be published in the FEDERAL REGISTER and the material made available. All approved material is on file at the Office of the Federal Register, Washington, DC 20408 and at the Office of Merchant Marine Safety (G-MTH), U.S. Coast Guard Headquarters Building, 2100 Second Street SW., Washington, D.C. 20593.

(b) The materials approved for incorporation by reference in this subchapter are:

(1) Rules for Building and Classing Steel Vessels, issued by the American Bureau of Shipping.

(2) The following publications issued by the National Fire Protection Association:

(i) The National Electrical Code (NFPA 70).

(ii) Standard for the Use of Inhalation Anesthetics (NFPA 56A).

(iii) Standard for Purged and Pressurized Enclosures for Electrical Equipment in Hazardous Locations (NFPA 496).

(iv) Recommended Practice for Static Electricity (NFPA 77).

(3) The following publications issued by the National Electrical Manufacturers Association:

(i) IPCEA-NEMA Standards Publication Rubber-Insulated Wire and Cable for the Transmission and Distribution of Electrical Energy (NEMA WC 3).

(ii) IPCEA-NEMA Standards Publication Ethylene-Propylene-Rubber-Insulated Wire and Cable for the Transmission and Distribution of Electrical Energy (NEMA WC 8).

(4) The following publications issued by the Institute of Electrical and Electronics Engineers, Inc.:

(i) Low-Voltage AC Power Circuit Breakers Used in Enclosures (ANSI/IEEE Standard No. C37.13).

(ii) Switchgear Assemblies Including Metal-Enclosed Bus (IEEE Standard No. 27, ANSI C37.20).

(iii) Recommended Practice for Electric Installations on Shipboard (IEEE Standard No. 45).

(iv) Application Guide for AC High-Voltage Circuit Breakers Rated on a Symmetrical Current Basis (IEEE Standard No. 320, ANSI C37.010).

(v) Low-Voltage AC Non-Integrally Fused Power Circuit Breakers (Using Separately Mounted Current-Limiting Fuses) (IEEE Standard No. 331, ANSI C37.27).

(vi) Low-Voltage AC Integrally Fused Power Circuit Breakers (IEEE Standard No. 538, ANSI C37.13a).

(5) The following standards issued by Underwriters Laboratories Inc.:

(i) Standard for General Use Snap Switches (UL 20).

(ii) Standard for Rubber-Insulated Wires and Cables (UL 44).

(iii) Standard for Electrical Cabinets and Boxes (UL 50).

(iv) Standard for Flexible Cord and Fixture Wire (UL 62).

(v) Standard for Panelboards (UL 67).

(vi) Standard for Motor Operated Appliances (UL 73).

(vii) Standard for Thermoplastic-Insulated Wires (UL 83).

(viii) Standard for Enclosed Switches (UL 98).

inches high and so placed as to be readily accessible. The interior of the locker shall be so arranged as to facilitate the proper stowage of clothes.

§ 168.15-25 Washrooms.

(a) There shall be provided 1 shower for each 10 persons or fraction thereof and 1 wash basin for each 6 persons or fraction thereof to be accommodated. The persons to be accommodated shall include all persons who do not occupy rooms to which private facilities are attached.

(b) All wash basins and showers shall be equipped with proper plumbing including hot and cold running fresh water. Wash basins may be located in the sleeping quarters if properly installed and equipped with proper plumbing.

§ 168.15-30 Toilet rooms.

(a) There shall be provided 1 toilet for each 10 persons or fraction thereof to be accommodated. The persons to be accommodated shall include all persons who do not occupy rooms to which private facilities are attached.

(b) The toilet rooms shall be separate from the washrooms and shall be located convenient to the sleeping quarters of the persons to which they are allotted but shall not open directly into such quarters except when they are provided as private or semiprivate facilities.

(c) Where more than one toilet is located in a space or compartment, each toilet shall be separated by partitions. Such partitions shall be open at the top and bottom for ventilating and cleaning purposes.

(d) Urinals may be fitted if desired, but no reduction in the required number of toilets will be made therefor.

§ 168.15-35 Hospital space.

(a) Each vessel shall be provided with a hospital space. This space shall be situated with due regard to the comfort of the sick so that they may receive proper attention in all weathers.

(b) The hospital shall be suitably separated from other spaces and shall be used for the care of the sick and for no other purpose.

(c) The entrance is to be of such width and in such a position as to admit a stretcher case readily. Berths are to be of metal and may be in double tier, provided the upper berth is hinged and arranged to be secured clear of the lower berth when not in use. At least one berth is to be so arranged that it can be made accessible from both sides when necessary.

(d) The hospital shall be fitted with berths in the ratio of 1 berth to every 12 persons, but the number of berths need not exceed 6. These berths, in their size and arrangement, shall comply with the provisions of § 168.15-20(a).

(e) The hospital shall have a toilet, wash basin, and bath tub or shower conveniently located. Other necessary suitable equipment of a sanitary type such as clothes locker, table, seat, etc., shall be provided.

§ 168.15-40 Lighting.

All quarters shall be adequately lighted. The minimum standard for natural lighting is that it will be possible on a clear day to read print such as that of an ordinary newspaper in any part of the clear working space. When it is not possible to provide adequate natural lighting, artificial lighting may be accepted on the same basis. Washrooms, toilet rooms, and hospital spaces are in particular to be well lighted.

§ 168.15-45 Heating.

All quarters shall be adequately heated in a manner suitable to the purpose of the space. The method of heating may be by steam, hot water apparatus, a continuous supply of warm air, or other method approved by the Commandant, U.S. Coast Guard.

§ 168.15-50 Ventilation.

(a) All quarters shall be adequately ventilated in a manner suitable to the purpose of the space and route of the vessel. The inlets shall be arranged to diffuse the inflow as widely as possible in order that the air shall be distributed without discomfort to the occupants.

(b) Except for such spaces as are located in deck houses where, under all ordinary weather conditions, the windows, ports, skylights, etc., and doors to passageways can be kept open, all spaces shall be ventilated by a mechanical system unless it can be shown that a natural system will meet the requirements outlined in paragraph (a) of this section.

(c) When washrooms are ventilated by a natural system, they may receive their supply of fresh air from well-ventilated passageways, but independent outlet ventilators must be fitted with an area of at least 10 square inches, exclusive of insect screening if fitted, for each 150 cubic feet of volume of the space ventilated.

(d) When toilet rooms are ventilated by a natural system, the fresh air must be supplied through independent inlet ventilators having a minimum area of 10 square inches, exclusive of insect screening if fitted, for each 150 cubic feet of volume of space ventilated. The outlet ventilators also must be independent to the open air and must be at least equal in size to the inlet ventilators.

(e) When mechanical ventilation is provided for sleeping rooms and messrooms, these spaces shall be supplied with fresh air equal to at least 10 times the volume of the room each hour and shall be so ventilated both at sea and in port when such spaces are occupied. The system shall be so designed that the impure air will exhaust in a satisfactory manner.

(f) When mechanical ventilation is provided for washrooms, toilet rooms, and hospital spaces, these spaces shall be fitted with exhaust ventilation to remove a volume of air equal to 10 times the volume of the space each hour and with adequate ventilation inlets so that it is possible to have these spaces properly ventilated when all doors and ports are closed.

§ 168.15-55 Screening.

Provision shall be made to protect the quarters against the admission of insects by the fitting of suitable screens to ventilating skylights, airports, ventilators, and doors to the open deck.

§ 168.15-60 Inspection.

(a) The Officer in Charge, Marine Inspection, shall inspect the quarters of every such vessel at least once in each month or at such time as the vessel shall enter an American port and shall satisfy himself that such vessel is in compliance with the regulations in this part.

(b) Whenever it shall be found that such vessel is not in compliance with the regulations in this part, the Officer in Charge, Marine Inspection, shall proceed as provided in section 4453 of the Revised Statutes of the United States, as amended (46 U.S.C. 435).

PART 169—SAILING SCHOOL VESSELS

Subpart 169.100—General Provisions

Subpart 169.200—Inspection and Certification

CERTIFICATE OF INSPECTION

LETTER OF DESIGNATION

INSPECTION FOR CERTIFICATION

quirements of this subchapter as described in Subpart 175.05 of this part.

§ 175.10-38 Auxiliary sailing vessel.

This term means a vessel capable of being propelled by mechanical means and/or by sails.

[CGFR 68-32, 33 FR 5725, Apr. 12, 1968]

§ 175.10-40 Offshore supply vessel.

(a) An offshore supply vessel is a vessel that is propelled by machinery other than steam, that is of above 15 gross tons and less than 500 gross tons, and that regularly carriers goods, supplies, or equipment in support of exploration, exploitation, or production of offshore mineral or energy resources.

(b) An existing offshore supply vessel is one that was operating as such on or before January 1, 1979, or that, if not in service of any kind on or before that date, was contracted for on or before that date and entered service as such before the effective date of this section.

(c) A new offshore supply vessel is one that is not an existing offshore supply vessel.

[CGD 80-133, 45 FR 69244, Oct. 20, 1980]

Subpart 175.15—Equivalents

§ 175.15-1 Conditions under which equivalents may be used.

(a) Where in this subchapter it is provided that a particular fitting, appliance, apparatus, or equipment, or type thereof, shall be fitted or carried in a vessel, or that any particular arrangement shall be adopted, the Commandant may accept in substitution therefor any other fitting, apparatus, or equipment, or type thereof, or any other arrangement: *Provided*, That he shall have been satisfied by suitable trials that the fitting, appliance, apparatus, or equipment, or type thereof, or the arrangement shall be at least as effective as that specified in this subchapter.

(b) In any case where it is shown to the satisfaction of the Commandant that the use of any particular equipment, apparatus, or arrangement not specifically required by law is unreasonable or impracticable, the Commandant may permit the use of alternate equipment, apparatus, or arrangement to such an extent and upon such conditions as will insure, to his satisfaction, a degree of safety consistent with the minimum standards set forth in this subchapter.

Subpart 175.20—Administrative Procedure

§ 175.20-1 Assignment of marine inspector.

(a) Upon receipt of a written application for inspection, the Officer in Charge, Marine Inspection, will assign a marine inspector to inspect the vessel. This inspection will be made at a mutually agreed to time and place.

(b) The owner or someone representing the owner shall be present during the inspection.

§ 175.20-5 Notice of deficiencies and requirements.

(a) If during the inspection of a vessel, the vessel or its equipment is found not to conform to the requirements of law or the regulations in this subchapter, the marine inspector will point out all deficiencies and will discuss all requirements with the owner or his representative. Normally, the marine inspector will list all such requirements which have not been completed and present the list to the owner or his representative.

(b) In any case where the owner of a vessel or his representative desires further clarification of, or reconsideration of any requirement placed against his vessel, he may discuss the matter with the Officer in Charge, Marine Inspection.

Subpart 175.25—Special Consideration

§ 175.25-1 By Officer in Charge, Marine Inspection.

(a) In applying the provisions of Parts 177, 178, 180, 181, 182, 183, and 184 of this subchapter, the Officer in Charge, Marine Inspection, may give special consideration to departures from the specific requirements when special circumstances or arrangements warrant such departures.

[CGFR 60-54, 25 FR 9315, Sept. 29, 1960, as amended by CGFR 68-32, 33 FR 5725, Apr. 12, 1968]

Subpart 175.27—Adoption of Standards and Specifications

SOURCE: CGFR 68-82, 33 FR 18909, Dec. 18, 1968, unless otherwise noted.

§ 175.27-1 General.

(a) In this subchapter portions or the entire text of certain industrial standards and specifications are referred to as the governing requirements for materials, equipment, tests, or procedures to be followed. These standards and specification requirements specifically referred to in this subchapter shall be the governing requirements for the subject matters covered unless specifically limited, modified, or replaced by other regulations in this subchapter.

(b) As used in this subchapter references to industry standards, such as those established by the American Bureau of Shipping, Lloyd's Register of Shipping or other recognized classification society, and others, mean that the Coast Guard uses such standards as a guide with respect to the subjects covered, and under normal conditions will accept machinery, etc., meeting the requirements of such standards. Such standards are not adopted as the governing requirements and made a part of the regulations in this subchapter by reference.

(c) In this subpart are listed the organizations publishing standards and specifications which are adopted by reference. The standards and specifications may be obtained direct from the organization issuing the standard or specification.

§ 175.27-5 American Boat and Yacht Council, Inc. (ABYC).

(a) The materials as referenced in this subchapter from standards published by the American Boat and Yacht Council, Inc., in effect on the date equipment is manufactured, are adopted and shall form a part of the regulations in this subchapter. Copies of the referenced materials may be obtained from the American Boat and Yacht Council, Inc., 420 Lexington Avenue, New York, NY 10017.

§ 175.27-20 Yacht Safety Bureau (YSB).

(a) The materials as referenced in this subchapter from standards published by the Yacht Safety Bureau, in effect on the date equipment is manufactured, are adopted and shall form a part of the regulations in this subchapter. Copies of the referenced materials may be obtained from the Yacht Safety Bureau, 336 Old Hook Road, Westwood, NJ 07676.

Subpart 175.30—Appeals

§ 175.30-1 Right of appeal.

Any person directly affected by a decision or action taken under this subchapter, by or on behalf of the Coast Guard, may appeal therefrom in accordance with subchapter 1.03 of this chapter.

[CGD 83-033, 54 FR 50382, Dec. 6, 1989]

Subpart 175.35—Special Provisions

§ 175.35-1 Existing offshore supply vessels.

(a) Existing offshore supply vessels of above 15 and less than 100 gross tons that do not possess a valid certificate of inspection must be registered with an officer in charge, marine inspection on or before January 6, 1981. The initial inspection for certification for each registered offshore supply vessel shall be made within two years of the date the vessel is registered.

(b) The registration must be on board the vessel and available for inspection.

[CGD 80-133, 45 FR 69244, Oct. 20, 1980]

PART 176—INSPECTION AND CERTIFICATION

Subpart 176.01—Certificate of Inspection

Sec.

AUTHORITY: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 8105; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971-1975 Comp., p. 793; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

SOURCE: CGFR 60-54, 25 FR 9319, Sept. 29, 1960, unless otherwise noted.

Subpart 176.01—Certificate of Inspection

§ 176.01-1 When required—S.

(a) Except as noted in this subpart, every vessel subject to inspection and certification shall, when carrying more than six passengers, have on board a valid certificate of inspection, Form CG-3753, and shall be operated in compliance therewith.

(b) Every mechanically propelled vessel of above 15 gross tons inspected and certificated under the provisions of this subchapter shall, during the tenure of the certificate, be in full compliance with the terms of the certificate when carrying freight for hire. Any other vessel certificated under the provisions of this subchapter when carrying not more than 6 passengers, and when operating as a yacht, commercial fishing vessel, cargo carrier, etc., will be subject only to the laws, rules and regulations governing the type of operation in which it engages.

(c) If necessary to prevent delay of the vessel, a temporary certificate of inspection, Form CG-854, shall be issued pending the issuance and delivery of the regular certificate of inspection. Such temporary certificate shall be carried in the same manner as the regular certificate and shall in all ways be considered the same as the regular certificate of inspection which it represents.

[CGFR 63-40, 28 FR 9736, Sept. 6, 1963]

§ 176.01-3 When required—L.

(a) Except as noted in this subpart or § 176.01-27, no vessel subject to inspection and certification may be operated without a valid certificate of inspection, Form CG-3753.

(b) If necessary to prevent delay of the vessel, a temporary certificate of inspection, Form CG-854, shall be issued pending the issuance and delivery of the regular certificate of inspection. Such temporary certificate shall be carried in the same manner as the regular certificate and shall in all ways be considered the same as the regular certificate of inspection which it represents.

(c) Nothing in this subpart shall prevent a vessel upon a regularly established line from a port in the United States to a port of a foreign country not contiguous to the United States whose certificate of inspection expires at sea or while said vessel is in a foreign port or a port of Hawaii from lawfully completing her voyage without the valid certificate of inspection or temporary certificate required by this section: *Provided,* That the voyage shall be completed within 30 days after the expiration of the certificate of inspection. No such vessel shall depart if its certificate of inspection will expire within 15 days of the date of sailing unless the voyage will be completed before such expiration.

[CGFR 63-40, 28 FR 9736, Sept. 6, 1963, as amended by CG 72-53R, 37 FR 12492, June 24, 1972]

§ 176.01-5 Description.

(a) The certificate of inspection issued to a vessel will describe the vessel, the route which she may travel, the minimum manning requirements, the major lifesaving equipment carried, the minimum fire extinguishing equipment and life preservers required to be carried, the maximum number of passengers and the maximum number of persons which may be carried, the name of the owner and operator, and such conditions of operations as may be determined by the Officer in Charge, Marine Inspection.

[CGFR 69-116, 35 FR 6863, Apr. 30, 1970]

§ 176.01-10 How to obtain or renew.

(a) *S and L.* The certificate of inspection shall be obtained or renewed by making application for inspection on Form CG-3752, Application for Inspection of U.S. Vessel, to the Coast Guard Marine Inspection Office located in, or nearest the port at which the inspection is to be made. The application forms are available at any local Coast Guard Marine Inspection Office.

(b) *S and L.* The application for initial inspection of a vessel being newly constructed or converted shall be submitted prior to the start of such construction or conversion. Information and requirements or plans are in Subpart 177.05 of this subchapter.

(c) *S and L.* The construction, arrangement and equipment of all vessels shall be acceptable to the cognizant Officer in Charge, Marine Inspection, as a prerequisite of the issuance of the initial certificate of inspection. Such acceptance will be based on the information, specifications, drawings and calculations available to the Officer in Charge, Marine Inspection, and on the successful completion of an initial inspection for certification.

(d) *S.* Certificates of inspection will be renewed by the issuance of new certificates of inspection. Such renewal will normally be made triennially upon expiration of the old certificate of inspection but may be made at any time within the three years upon proper application.

(e) *L.* Certificates of inspection will be renewed by the issuance of new certificates of inspection. Such renewal will normally be made annually upon expiration of the old certificate of inspection but may be made at any time within the year upon proper application.

(f) *S and L.* The condition of the vessel and its equipment shall be acceptable to the cognizant Officer in Charge, Marine Inspection, as a prerequisite of the certificate of inspection renewal. Such acceptance will be based on the condition as found at the periodic inspection for certification.

[CGFR 63-40, 28 FR 9737, Sept. 6, 1963, as amended by CGFR 64-19, 29 FR 7362, June 5, 1964]

§ 176.01-15 Period of validity.

(a) *S.* A certificate of inspection will be issued for a period of three years, and will remain valid for such period unless renewed, revoked, suspended, or surrendered.

listed in Column 7 of Table 188.05-1(a).

[CGFR 67-83, 33 FR 1113, Jan. 27, 1968, as amended by CGD 77-081, 46 FR 56204, Nov. 16, 1981]

Subpart 188.15—Equivalents

§ 188.15-1 Conditions under which equivalents may be used.

(a) Where in this subchapter it is provided that a particular fitting, material, appliance, apparatus, or equipment, or type thereof, shall be fitted or carried in a vessel, or that any particular provision shall be made or arrangement shall be adopted, the Commandant may accept in substitution therefor any other fitting, material, apparatus, or equipment, or type thereof, or any other arrangement: *Provided*, That he shall have been satisfied by suitable trials that the fitting, material, appliance, apparatus, or equipment, or type thereof, or the provision or arrangement is at least as effective as that specified in this subchapter.

(b) In any case where it is shown to the satisfaction of the Commandant that the use of any particular equipment, apparatus, or arrangement not specifically required by law is unreasonable or impracticable, the Commandant may permit the use of alternate equipment, apparatus, or arrangement to such an extent and upon such conditions as will insure, to his satisfaction, a degree of safety consistent with the minimum standards set forth in this subchapter.

§ 188.15-5 Design of vessels.

(a) In order not to inhibit design and application the Commandant may accept vessels of unusual, unique, special, or exotic design, both new and for conversion, after it is shown to his satisfaction that such a vessel is at least as safe as any vessel which meets the standards required by this subchapter.

Subpart 188.20—General Marine Engineering Requirements

§ 188.20-1 Marine engineering details.

(a) The marine engineering details shall be in accordance with Subchapter F (Marine Engineering) of this chapter.

Subpart 188.25—General Electrical Engineering Requirements

§ 188.25-1 Electrical engineering details.

(a) The electrical engineering details shall be in accordance with Subchapter J (Electrical Engineering) of this chapter.

Subpart 188.35—American Bureau of Shipping's Standards

§ 188.35-1 Standards to be used.

(a) Where in this subchapter an item, or method of construction, or testing is required to meet the standards established by the American Bureau of Shipping, the current standards in effect at the time of construction of the vessel, or otherwise as applicable, shall be used.

(b) The current standards of other recognized classification societies may also be accepted upon approval by the Commandant.

§ 188.35-5 Where obtainable.

(a) The standards established by the American Bureau of Shipping are usually published annually and may be purchased from the American Bureau of Shipping, 45 Eisenhower Drive, Paramus, N.J. 07653-0910.

(b) These standards may also be examined at the Office of the Commandant (G-MVI), U.S. Coast Guard, Washington, DC 20593-0001, or at the Office of any Coast Guard District Commander or Officer in Charge, Marine Inspection.

[CGFR 67-83, 33 FR 1113, Jan. 27, 1968 as amended by CGD 88-070, 53 FR 34538, Sept. 7, 1988; 53 FR 37570, Sept. 27, 1988; 53 FR 44011, Nov. 1, 1988]

PART 189—INSPECTION AND CERTIFICATION

AUTHORITY: 33 U.S.C. 1321(j); 46 U.S.C. 2113, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 11735, 38 FR 21243, 3 CFR, 1971-1975 Comp., p. 793; 49 CFR 1.46.

SOURCE: CGFR 67-83, 33 FR 1118, Jan. 27, 1968, unless otherwise noted.

Subpart 189.01—Certificate of Inspection

§ 189.01-1 When required.

(a) Except as noted in this subpart or Subpart 189.05 of this part, no vessel subject to inspection and certification shall be operated without a valid certificate of inspection.

§ 189.01-5 Posting.

(a) The original certificate of inspection shall, in general, be framed under glass or other transparent material and posted in a conspicuous place where it will be most likely to be observed. On other vessels such as barges, where the framing of the certificate under glass would be impracticable, the original certificate of inspection shall be kept on board to be shown on demand.

§ 189.01-10 Period of validity.

(a) Certificates of inspection will be issued for periods of either 1 or 2 years. For nuclear vessels it shall be for a period of 1 year; see also § 99.10-1 of Subchapter I (Cargo and Miscellaneous Vessels) of this chapter. Application may be made by the master, owner, or agent for inspection and issuance of a new certificate of inspection at any time during the period of validity of the current certificate. For nuclear vessels see Part 99 of Subchapter I (Cargo and Miscellaneous Vessels) of this chapter.

(b) Certificates of inspection may be revoked or suspended by the Coast Guard where such process is authorized by law. This may occur if the vessel does not meet the requirements of law or regulations in this chapter or if there is a failure to maintain the safety requirements requisite to the issuance of a certificate of inspection.

(c)(1) In the case of the following vessels, modification of the period of validity of the certificate of inspection will be permitted as set forth in this paragraph.

(i) Non-self-propelled vessels of 100 gross tons and over proceeding on the high seas or ocean for the sole purpose of changing place of employment.

(ii) Non-self-propelled vessels of 100 gross tons and over making rare or infrequent voyages on the high seas or ocean and returning to the port of departure.

(2) The certificate of inspection may be issued for a specific period of time to cover a described situation or for one voyage only but in no case to exceed 2 years. The certificate of inspection will include the conditions under which the vessel must operate. Unless the vessel is in compliance with this subchapter insofar as it applies to seagoing barges of 100 gross tons and over, such vessel shall not carry any person on board while underway, and the certificate of inspection will be endorsed as an unmanned seagoing barge.

[CGFR 67-83, 33 FR 1118, Jan. 27, 1968, as amended by CGFR 68-82, 33 FR 18911, Dec. 18, 1968]

§ 189.01-15 Temporary certificate.

(a) If necessary to prevent delay of the vessel, a temporary certificate of inspection, Form CG-854, shall be issued pending the issuance and delivery of the regular certificate of inspection. Such temporary certificate shall be carried in the same manner as the regular certificate and shall in all ways be considered the same as the regular certificate of inspection which it represents.

Subpart 189.05—Permit To Proceed to Another Port for Repair

§ 189.05-1 When issued.

(a) The Officer in Charge, Marine Inspection, may issue a permit to proceed to another port for repair, Form CG-948, to a vessel, if in his judgment it can be done with safety, even if the certificate of inspection of the vessel has expired or is about to expire.

§ 189.05-5 To whom issued.

(a) Such permit will only be issued upon the written application of the master, owner, or agent of the vessel.

§ 189.05-10 Conditions of permit.

(a) The permit will state upon its face the conditions under which it is issued.

§ 189.05-15 Posting.

(a) The permit shall be carried in a manner similar to that described in § 189.01-5 for a certificate of inspection.

Subpart 189.15—Inspection of Vessels

§ 189.15-1 Standard in inspection of hulls, boilers, and machinery.

(a) In the inspection of hulls, boilers, and machinery of vessels, the standards established by the American Bureau of Shipping, see Subpart 188.35 of Part 188 of this subchapter, respecting material and construction of hulls, boilers, and machinery, and the certificate of classification referring thereto, except where otherwise provided for by the rules and regulations in this subchapter, Subchapter E (Load Lines), Subchapter F (Marine Engineering), or Subchapter J (Electrical Engineering) of this chapter shall be accepted as standard by the inspectors.

Subpart 189.20—Initial Inspection

§ 189.20-1 Prerequisite of certificate of inspection.

(a) The initial inspection is a prerequisite of the issuance of the original certificate of inspection.

§ 189.20-5 When made.

(a) The initial inspection will only be made upon the written application of the owner or builder of the vessel to the Officer in Charge, Marine Inspection, on Form CG-3752, Application for Inspection of U.S. Vessel, at or nearest the port where the vessel is located.

§ 189.20-10 Plans.

(a) Before application for inspection is made, and before construction is started, the owner or builder shall have plans approved by the Commandant indicating the proposed arrangement and construction of the vessel.

(b) The procedure for submitting plans and the list of plans to be supplied is set forth in Subpart 189.55 of this part.

§ 189.20-15 Scope of inspection.

(a) The initial inspection, which may consist of a series of inspections during the construction of a vessel, shall include a complete inspection of the structure, machinery and equipment, except scientific equipment which does not affect the safety of the vessel or personnel, but including the outside of the vessel's bottom, and the inside and outside of the boilers and unfired pressure vessels. The inspection shall be such as to insure that the arrangements, materials, and scantlings of the structure, boilers and other pressure vessels and their appurtenances, piping, main and auxiliary machinery, electrical installations, lifesaving appliances, fire detecting and extinguishing equipment, pilot boarding equipment, pollution prevention equipment, and other equipment fully comply with the applicable regulations for such vessel and are in accordance with approved plans, and determine that the vessel is in possession of a valid certificate issued by the Federal Communications Commission, if any. The inspection shall be such as to ensure that the workmanship of all parts of the vessel and its equipment is in all respects satisfactory and that the vessel is provided with lights, means of making sound signals, and distress signals as required by applicable statutes and regulations.

(b) When equipment other than scientific equipment is installed which is not required by the applicable regulations in this subchapter, that equipment shall be inspected and tested as may be required for such equipment by the Officer in Charge, Marine Inspection, to assure safety.

(1) The electrical or pressure connections to the ship's supply shall be designed to marine standards and shall be free of personnel hazards.

(2) Scientific equipment will not be inspected but will be examined for external hazards associated with connection to the vessel, dangerous moving

Subpart 195.40—Pilot Boarding Equipment

§ 195.40-1 Pilot boarding equipment.

(a) This section applies to each vessel that normally embarks or disembarks a pilot from a pilot boat or other vessel.

(b) Each vessel must have suitable pilot boarding equipment available for use of each side of the vessel. If a vessel has only one set of equipment, the equipment must be capable of being easily transferred to and rigged for use on either side of the vessel.

(c) Pilot boarding equipment must be capable of resting firmly against the vessel's side and be secured so that it is clear from overboard discharges.

(d) Each vessel must have lighting positioned to provide adequate illumination for the pilot boarding equipment and each point of access.

(e) Each vessel must have a point of access that has—

(1) A gateway in the rails or bulwark with adequate handholds; or

(2) Two handhold stanchions and a bulwark ladder that is securely attached to the bulwark rail and deck.

(f) The pilot boarding equipment required by paragraph (b) of this section must include at least one pilot ladder approved under Subpart 163.003 of this chapter. Each pilot ladder must be of a single length and capable of extending from the point of access to the water's edge during each condition of loading and trim, with an adverse list of 15°.

(g) Whenever the distance from the water's edge to the point of access is more than 30 feet, access from a pilot ladder to the vessel must be by way of an accommodation ladder or equally safe and convenient means.

(h) Pilot hoists, if used, must be approved under Subpart 163.002 of this chapter.

[CGD 79-032, 49 FR 25455, June 21, 1984]

PART 196—OPERATIONS

AUTHORITY: 33 U.S.C. 1321(j); 46 U.S.C. 2113, 3306, 5115, 6101; E.O. 11735, 38 FR 21243, 3 CFR, 1971-1975 Comp., p. 793; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

SOURCE: CGFR 67-83, 33 FR 1158, Jan. 27, 1968, unless otherwise noted.

Subpart 196.01—Application

§ 196.01-1 General.

(a) The provisions of this part shall apply to all vessels except as specifically noted in this part.

Subpart 196.03—Statutory Penalties

§ 196.03-1 General.

(a) The marine safety and criminal statutes provide penalties for the violation of the applicable provisions of this subchapter, which penalties, depending upon the gravity of the violation, are as follows:

(1) Assessment and collection of civil monetary penalty.

(2) Criminal prosecution where no loss of life results.

(3) Criminal prosecution for manslaughter where loss of life results from violation of statute or regulation or from misconduct, negligence, or inattention to duty.

(4) Libel against vessel.

(b) In addition to the foregoing, any licensed or certificated personnel committing an act of misbehavior, negligence, unskillfulness, endangering life, violation of marine safety statutes or regulations or requirements thereunder, and incompetency shall be subject to proceedings under the provisions of 46 U.S.C. 239 and regulations thereunder (Part 137 of this chapter) with respect to suspension or revocation of license or certificate.

Subpart 196.05—Notice to Mariners and Aids to Navigation

§ 196.05-1 Duty of officers.

(a) Licensed deck officers are required to acquaint themselves with the latest information published by the Coast Guard and the U.S. Navy regarding aids to navigation. Neglect to do so is evidence of neglect of duty. It is desirable that all vessels have available in the pilothouse for convenient reference at all times a file of the applicable Notice to Mariners.

(b) Weekly Notices to Mariners (Great Lakes Edition) as published by the Commander, 9th Coast Guard District, contains announcements and information on changes in aids to navigation and other marine information affecting the safety of navigation on the Great Lakes. These notices may be obtained free of charge, by making application to Commander, 9th Coast Guard District.

(c) Weekly Notices to Mariners (worldwide coverage) are prepared jointly by the U.S. Naval Oceanographic Office, the U.S. Coast and Geodetic Survey and the U.S. Coast Guard. They include changes in aids to navigation in assembled form for the 1st, 3d, 5th, 7th, Greater Antilles Section, 8th, 11th, 12th, 13th, 14th, and 17th Coast Guard Districts. Foreign marine information is also included in these notices. These notices are available without charge from the U.S. Naval Oceanographic Office, Washington, DC 20390, Branch Oceanographic Offices, U.S. Collector of Customs of the major seaports in the United

States and are also on file in the U.S. Consulates where they may be inspected.

[CGFR 67-83, 33 FR 1158, Jan. 27, 1968, as amended by CGFR 68-32, 33 FR 5729, Apr. 12, 1968]

§ 196.05-5 Charts and nautical publications.

As appropriate for the intended voyage, all vessels except barges, and vessels operating exclusively on rivers, must carry adequate and up-to-date—

(a) Charts;

(b) Sailing directions;

(c) Coast pilots;

(d) Light lists;

(e) Notices to mariners;

(f) Tide tables;

(g) Current tables; and

(h) All other nautical publications necessary.[1]

[CGD 75-074, 42 FR 5965, Jan. 31, 1977]

Subpart 196.07—Notice and Reporting of Casualty and Voyage Records

§ 196.07-1 Notice and reporting of casualty and voyage records.

The requirements for providing notice and reporting of marine casualties and for retaining voyage records are contained in Part 4 of this chapter.

[CGD 84-099, 52 FR 47536, Dec. 14, 1987]

Subpart 196.12—Stability Letter

§ 196.12-1 Posting.

If a stability letter is issued in accordance with the requirements in § 170.120 of this chapter, it must be posted under glass or other suitable transparent material in the pilothouse of the vessel.

[CGD 79-023, 48 FR 51053, Nov. 4, 1983]

Subpart 196.13—Station Bills

§ 196.13-1 Application.

(a) The provisions of this subpart shall apply to all manned vessels.

[1] For United States vessels in or on the navigable waters of the United States, see 33 CFR 164.33.

§ 196.13-5 Master's responsibility.

(a) A station bill (muster list) shall be prepared by the master of the vessel who shall be responsible to sign such station bill and to ascertain that it is duly posted in conspicuous locations in the vessel, particularly in the quarters of crew-members and scientific personnel, before the vessel sails.

§ 196.13-10 Duties of crew and scientific personnel.

(a) The station bill shall set forth the special duties and duty station of each member of the crew and scientific personnel for the various emergencies. The duties shall, as far as possible, be comparable with the regular work of the individual. The duties shall in general include the following, and in addition such other duties shall be assigned as are necessary in the case of the particular vessel for the proper handling of the particular emergency:

(1) The closing of airports, watertight doors, scuppers, sanitary, and other discharges which lead through the vessel's hull below the margin line, etc., the stopping of fans and ventilating systems, and the operation of all safety equipment.

(2) The preparation and launching of lifeboats and liferafts.

(3) The extinction of fire.

(4) The custody of the portable radio apparatus required by Subpart 192.55 of Part 192 of this subchapter.

§ 196.13-15 Emergency signals.

(a) *General.* The station bill shall set forth the various signals to be used for the calling of the crew to their stations and for giving instructions while at their stations. These signals shall be as set forth in this section.

(b) *Fire alarm stations.* (1) The fire alarm signal shall be a continuous blast of the whistle for a period of not less than 10 seconds supplemented by the continuous ringing of the general alarm bells for not less than 10 seconds.

(2) For dismissal from fire alarm stations, the general alarm shall be sounded three times supplemented by three short blasts of the whistle.