

Legislative Request

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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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R-146333
CED7-265
CED7-311

MAR 9 1977

The Honorable John M. Murphy
Chairman, Committee on Merchant
Marine and Fisheries
House of Representatives

Dear Mr. Chairman:

This is in response to your requests for our views on H.R. 47 and H.R. 3711, 95th Congress. The purpose of these bills, which are identical in many respects, is to establish a comprehensive system of liability and compensation for oilspill damage and removal costs.

On May 12, 1976, pursuant to the request of the Honorable Leonor K. Sullivan, then Chairman of your Committee, we furnished our comments on H.R. 12347, 94th Congress, which contained provisions similar to those contained in H.R. 47 and H.R. 3711. The pertinent portions of these prior comments are repeated in this report.

H.R. 47 and H.R. 3711 incorporate some of the changes suggested in our previous comments. We believe, however, that certain additional changes to these bills are needed.

Creation of a single compensation fund

One purpose of the proposed legislation is to create a single and all-inclusive compensation fund to pay for all removal costs and other damages resulting from oil discharges.

We note that the establishment of a single compensation fund would not be accomplished if H.R. 1614, another bill introduced in the 95th Congress, were enacted in its present form because it would, among other things, create a separate Offshore Oil Production Compensation Fund that would duplicate or contradict provisions of H.R. 47 or H.R. 3711. This problem could be remedied by deleting the provisions of H.R. 1614 relating to the establishment of a separate fund and, if appropriate, making special provision in H.R. 47 or H.R. 3711 to cover the liability for oil spill damage caused by Outer Continental Shelf operations.

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Administrative costs of the fund

Neither bill contains provision for the payment of administrative costs from moneys in the fund, including costs incurred by the Secretaries of Transportation and Treasury. The Committee should consider adding such a provision in section 103(c) of H.R. 47 or section 102(c) of H.R. 3711.

Collection of fees

Section 103(d) of H.R. 47, and section 102(d) of H.R. 3711, would provide for the collection of fees at such rates (not in excess of three cents per barrel of oil received) as will maintain the fund at a level not in excess of \$200 million. While the authority of the Secretary of the Treasury to modify the fees from time to time provides for desirable flexibility, we believe that consideration should be given to requiring that fees be levied without regard to a fixed maximum balance in the fund, thus permitting the accumulation of a reserve for future liability payments. This could be done by managing the fund similar to an insurance trust fund, based on estimates of risk, and thus reduce or eliminate the need for borrowing from the Treasury to meet future obligations. If the change is made, provision should be made for annual reappraisals of the fee levels based on the balances in the fund and estimates of future risk.

Access to records and audit authority

H.R. 47 contains in section 103(d)(3) a provision for access to books, documents, papers and records of persons liable to contribute to the fund for the purpose of audit and examination by the Secretary of the Treasury and the Comptroller General of the United States. H.R. 3711 does not contain a similar provision. We suggest that, if the latter bill is considered for enactment, an authority similar to the cited provision of H.R. 47 be inserted as an additional subsection of section 102 of H.R. 3711.

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Penalty for nonpayment of fees

Section 103(d)(4)(A) of H.R. 47, and section 102(d)(4)(A) of H.R. 3711 would provide for the assessment of a civil penalty against a person who fails to collect or pay fees required to be paid into the fund, together with interest on such fees. Since the bills do not specify how such interest would be assessed, we suggest that the following language be added in the respective subparagraphs following the word "fees", at the end of the first sentence:

"at the rate the fees would have earned if collected or paid when due and invested in special obligations of the United States in accordance with subsection (e)(2)."

Borrowing from the Treasury

Section 103(f) of H.R. 47 and section 102(f) of H.R. 3711 would provide that notes or other obligations issued by the Secretary of Transportation for moneys borrowed from the Treasury for the fund shall bear interest "at a rate determined by the Secretary of the Treasury, taking into consideration the average market yield on outstanding marketable obligations". We suggest that the words "of comparable maturity" be added after the word "obligations" at the end of the third sentence. This clarification is desirable because the present wording could be interpreted to mean interest equivalent to the average yield on all outstanding U.S. marketable obligations, not just those of comparable maturity.

Limitations of owner's or operator's liability

Under section 105(c)(1) of H.R. 47 and section 104(c)(1) of H.R. 3711 the owner or operator of a vessel or facility would not be liable if the incident were caused by an act of war, hostilities, civil war, or insurrection. Section 104(c)(1) of H.R. 3711 would also exclude liability

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in the event of a natural phenomenon of an exceptional, inevitable, and irresistible character. H.R. 47 does not provide for a similar "Act of God" exemption. Nor does either bill preclude liability in the event of negligence on the part of the United States Government, such as failure to provide required aids of navigation, as provided in Public Laws 92-500, 93-153, and 93-627. The Committee may wish to expand the exemptions from strict liability by including the cited additional provisions in the proposed legislation.

Maximum liability of fund

While both bills specify the maximum liability of an owner or operator, they do not specify a maximum liability for the fund itself. In fact, section 105(f)(1) of H.R. 47 and section 104(f)(1) of H.R. 3711 state that the fund shall be liable for all damages for which a claim may be asserted under the preceding section of each bill to the extent that the loss is not otherwise compensated. A question arises as to whether the maximum liability of the fund should not be equal to the \$200,000,000 ceiling established for the fund under section 103 of H.R. 47 and section 102 of H.R. 3711. We suggest that the bill specifically state the extent of the fund's liability.

Owner's or operator's financial responsibility

Section 106(b) of H.R. 47 provides that the owner or operator of an onshore facility which does not have the capacity to handle more than 750 barrels of oil in one day is relieved of the requirement to maintain evidence of financial responsibility. H.R. 3711 does not include a similar exemption for small operators. Some owners or operators may be responsible for a number of smaller facilities with an aggregate capacity of over 750 barrels, which could contribute to the hazards of oil discharges similar to that of a single larger facility. We, therefore, suggest that the requirement in H.R. 47 be modified to limit the exemption to owners or operators with facilities having a daily capacity of not more than 750 barrels of oil "in the aggregate."

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Annual report to the Congress

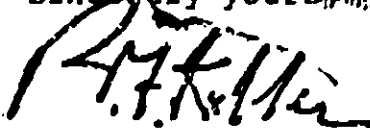
Section 113 of H.R. 47 would require the Secretary to submit within 6 months after the end of each fiscal year a report to the President of the Senate and the Speaker of the House of Representatives on the administration of the compensation fund during such fiscal year and his recommendations for any additional legislative authority that may be needed. H.R. 3711 does not contain a similar reporting requirement. We believe that periodic reporting to the Congress is desirable and important in view of the concern of the Congress and the public over the increasing incidence of oil spills and the resulting damages and that the legislation under consideration by the Committee should contain such requirement.

Appropriation authorization

Section 114 of H.R. 47 states that such sums as may be necessary to carry out the purposes of the bill are authorized to be appropriated out of general revenues or moneys in the fund. Section 112 of H.R. 3711 would authorize similar appropriations but does not specify the source of the money. We see no reason for appropriating general funds for this program. We suggest that the appropriation be limited to moneys in the fund, except possibly for an initial amount to get the program under way. Any such amount should be subject to repayment from the fund.

Some suggested technical changes to H.R. 47 are enclosed.

Sincerely yours,



Acting Comptroller General
of the United States

Enclosure