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TITLE 33--NAVIGATION AND NAVIGABLE WATERS

CHAPTER 33--PREVENTION OF POLLUTION FROM SHIPS

Sec. 1901. Definitions

(a) Unless the context indicates otherwise, as used in this chapter--

(1) ``Antarctica'' means the area south of 60 degrees south latitude;

(2) ``Antarctic Protocol'' means the Protocol on Environmental Protection to the Antarctic Treaty, signed October 4, 1991, in Madrid, and all annexes thereto, and includes any future amendments thereto which have entered into force;

(3) ``MARPOL Protocol'' means the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973, and includes the Convention;

(4) ``Convention'' means the International Convention for the Prevention of Pollution from Ships, 1973, including Protocols I and II and Annexes I, II, and V thereto, including any modification or amendments to the Convention, Protocols, or Annexes which have entered into force for the United States;

(5) ``discharge'' and ``garbage'' and ``harmful substance'' and ``incident'' shall have the meanings provided in the Convention;

(6) ``owner'' means any person holding title to, or in the absence of title, any other indicia of ownership of, a ship or terminal, but does not include a person who, without participating in the management or operation of a ship or terminal, holds indicia of ownership primarily to protect a security interest in the ship or terminal;

(7) ``operator'' means--

(a) in the case of a ship, a charterer by demise or any other person, except the owner, who is responsible for the operation, manning, victualing, and supplying of the vessel, or

(b) in the case of a terminal, any person, except the owner, responsible for the operation of the terminal by agreement with the owner;

(8) ``person'' means an individual, firm, public or private corporation, partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body;

(9) ``Secretary'' means the Secretary of the department in which the Coast Guard is operating;

(10) ``ship'' means a vessel of any type whatsoever, including hydrofoils, air-cushion vehicles, submersibles, floating craft whether self-propelled or not, and fixed or floating platforms;

(11) ``submersible'' means a submarine, or any other vessel designed to operate under water; and

(12) ``terminal'' means an onshore facility or an offshore

structure located in the navigable waters of the United States or subject to the jurisdiction of the United States and used, or intended to be used, as a port or facility for the transfer or other handling of a harmful substance.

(b) For purposes of this chapter, the requirements of Annex V shall apply to the navigable waters of the United States, as well as to all other waters and vessels over which the United States has jurisdiction.

(c) For the purposes of this chapter, the requirements of Annex IV to the Antarctic Protocol shall apply in Antarctica to all vessels over which the United States has jurisdiction.

(Pub. L. 96-478, Sec. 2, Oct. 21, 1980, 94 Stat. 2297; Pub. L. 100-220, title II, Sec. 2101, Dec. 29, 1987, 101 Stat. 1460; Pub. L. 103-160, div. A, title X, Sec. 1003(f), Nov. 30, 1993, 107 Stat. 1748; Pub. L. 104-227, title II, Sec. 201(a), Oct. 2, 1996, 110 Stat. 3042.)

References in Text

This chapter, referred to in text, was in the original ``this Act'', meaning Pub. L. 96-478, Oct. 21, 1980, 94 Stat. 2297, known as the ``Act to Prevent Pollution from Ships''. For complete classification of this Act to the Code, see Short Title note below and Tables.

Amendments

1996--Subsec. (a). Pub. L. 104-227, Sec. 201(a)(1), (2), added pars. (1) and (2) and redesignated former pars. (1) to (10) as (3) to (12), respectively.

Subsec. (c). Pub. L. 104-227, Sec. 201(a)(3), added subsec. (c).

1993--Subsec. (a)(9), (10). Pub. L. 103-160 added par. (9) and redesignated former par. (9) as (10).

1987--Subsec. (a). Pub. L. 100-220, Sec. 2101(1), designated existing provisions as subsec. (a).

Subsec. (a)(1). Pub. L. 100-220, Sec. 2101(2), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ``MARPOL Protocol' means the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973, done at London on February 17, 1978. This Protocol incorporates and modifies the International Convention for the Prevention of Pollution from Ships, 1973, done at London on November 2, 1973;''.

Subsec. (a)(2). Pub. L. 100-220, Sec. 2101(3), substituted ``Annexes I, II, and V thereto, including any modification or amendments to the Convention, Protocols, or Annexes which have entered into force for the United States'' for ``Annexes I and II attached thereto''.

Subsec. (a)(3). Pub. L. 100-220, Sec. 2101(4), inserted ``and `garbage' ''.

Subsec. (b). Pub. L. 100-220, Sec. 2101(5), added subsec. (b).

Effective Date of 1987 Amendment

Section 2002 of title II of Pub. L. 100-220 provided that:

``(a) In General.--Except as provided in subsections (b) and (c), this title [enacting sections 1912 to 1915 of this title, amending this section and sections 1902, 1903, 1905, and 1907 to 1909 of this title, and enacting provisions set out as notes under this section, section 2267 of this title, and section 6981 of Title 42, The Public Health and Welfare] shall be effective on the date on which Annex V to the International Convention for the Prevention of Pollution from Ships, 1973, enters into force for the United States. [Annex V entered into force for the United States Dec. 31, 1988.]

``(b) Exceptions.--Sections 2001, 2002, 2003, 2108, 2202, 2203, 2204, and subtitle C of this title [enacting sections 1912, 1914, and

1915 of this title, and provisions set out as notes under this section, section 2267 of this title, and section 6981 of Title 42] shall be effective on the date of the enactment of this title [Dec. 29, 1987].

``(c) Issuance of Regulations.--

``(1) In general.--The authority to prescribe regulations pursuant to this title shall be effective on the date of enactment of this title [Dec. 29, 1987].

``(2) Effective date of regulations.--Any regulation prescribed pursuant to this title shall not be effective before the effective date of the provision of this title under which the regulation is prescribed.''

Effective Date

Section 14(a), (b) of Pub. L. 96-478 provided:

``(a) Except as provided in subsection (b) of this section, this Act [see Short Title note below] is effective upon the date of enactment [Oct. 21, 1980], or on the date the MARPOL Protocol becomes effective as to the United States, whichever is later. [The MARPOL Protocol became effective as to the United States Oct. 2, 1983.]

``(b) The Secretary and the heads of Federal departments shall have the authority to issue regulations, standards, and certifications under sections 3(c), 3(d), 4(b), 5(a), 6(a), 6(c), and 6(f) [sections 1902(c), (d), 1903(b), 1904(a), and 1905(a), (c), (f) of this title] effective on the date of enactment of this Act [Oct. 21, 1980]. Section 13(a)(2) [amending section 391a(3)(E) of former Title 46, Shipping] is effective upon the date of enactment of this Act [Oct. 21, 1980].''

Short Title of 1987 Amendment

Section 2001 of title II of Pub. L. 100-220 provided that: ``This title [see Effective Date of 1987 Amendment note above] may be cited as the `Marine Plastic Pollution Research and Control Act of 1987'.''

Short Title

Section 1 of Pub. L. 96-478 provided: ``That this Act [enacting this chapter, amending section 1321 of this title and section 742c(c) of Title 16, Conservation, and section 391a of former Title 46, Shipping, repealing sections 1001 to 1011 and 1013 to 1016 of this title, and enacting provisions set out as notes under section 1001 of this title, and section 742c of Title 16] may be cited as the `Act to Prevent Pollution from Ships'.''

Savings Provision: Regulations in Effect Until Superseded

Section 14(c) of Pub. L. 96-478 provided that: ``Any rights or liabilities existing on the effective date of this Act [see Effective Date note above] shall not be affected by this enactment [see Short Title note above]. Any regulations or procedures promulgated or effected pursuant to the Oil Pollution Act, 1961, as amended [section 1001 et seq. of this title], remain in effect until modified or superseded by regulations promulgated under the authority of the MARPOL Protocol or this Act.''

Study and Regulation of Great Lakes Cargo Residues

Pub. L. 106-554, Sec. 1(a)(4) [div. A, Sec. 1117(b), (c)], Dec. 21, 2000, 114 Stat. 2763, 2763A-209, provided that:

``(b) The Secretary shall conduct a study of the effectiveness of

the United States 1997 Enforcement Policy for Cargo Residues on the Great Lakes ('Policy') by September 30, 2002.

((c) The Secretary is authorized to promulgate regulations to implement and enforce a program to regulate incidental discharges from vessels of residues of non-hazardous and non-toxic dry bulk cargo into the waters of the Great Lakes, which takes into account the finding in the study required under subsection (b). This program shall be consistent with the Policy.'

Certain Alaskan Cruise Ship Operations

Pub. L. 106-554, Sec. 1(a)(4) [div. B, title XIV], Dec. 21, 2000, 114 Stat. 2763, 2763A-315, provided that:

SEC. 1401. PURPOSE.

The purpose of this title is to:

(1) Ensure that cruise vessels operating in the waters of the Alexander Archipelago and the navigable waters of the United States within the State of Alaska and within the Kachemak Bay National Estuarine Research Reserve comply with all applicable environmental laws, including, but not limited to, the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq.), the Act to Prevent Pollution from Ships, as amended (33 U.S.C. 1901 et seq.), and the protections contained within this title.

(2) Ensure that cruise vessels do not discharge untreated sewage within the waters of the Alexander Archipelago, the navigable waters of the United States in the State of Alaska, or within the Kachemak Bay National Estuarine Research Reserve.

(3) Prevent the unregulated discharge of treated sewage and graywater while in ports in the State of Alaska or traveling near the shore in the Alexander Archipelago and the navigable waters of the United States in the State of Alaska or within the Kachemak Bay National Estuarine Research Reserve.

(4) Ensure that discharges of sewage and graywater from cruise vessels operating in the Alexander Archipelago and the navigable waters of the United States in the State of Alaska or within the Kachemak Bay National Estuarine Research Reserve can be monitored for compliance with the requirements contained in this title.

SEC. 1402. APPLICABILITY.

This title applies to all cruise vessels authorized to carry 500 or more passengers for hire.

SEC. 1403. PROHIBITION ON DISCHARGE OF UNTREATED SEWAGE.

No person shall discharge any untreated sewage from a cruise vessel into the waters of the Alexander Archipelago or the navigable waters of the United States within the State of Alaska or within the Kachemak Bay National Estuarine Research Reserve.

SEC. 1404. LIMITATIONS ON DISCHARGE OF TREATED SEWAGE OR GRAYWATER.

(a) No person shall discharge any treated sewage or graywater from a cruise vessel into the waters of the Alexander Archipelago or the navigable waters of the United States within the State of Alaska or within the Kachemak Bay National Estuarine Research Reserve unless--

(1) the cruise vessel is underway and proceeding at a speed of not less than six knots;

(2) the cruise vessel is not less than one nautical mile from the nearest shore, except in areas designated by the Secretary, in consultation with the State of Alaska;

(3) the discharge complies with all applicable cruise vessel effluent standards established pursuant to this title and any other applicable law; and

(4) the cruise vessel is not in an area where the discharge of treated sewage or graywater is prohibited.

(b) The Administrator, in consultation with the Secretary, may promulgate regulations allowing the discharge of treated sewage or graywater, otherwise prohibited under paragraphs (a)(1) and (a)(2) of this section, where the discharge meets effluent standards determined by

the Administrator as appropriate for discharges into the marine environment. In promulgating such regulations, the Administrator shall take into account the best available scientific information on the environmental effects of the regulated discharges. The effluent discharge standards promulgated under this section shall, at a minimum, be consistent with all relevant State of Alaska water quality standards in force at the time of the enactment of this title [Dec. 21, 2000].

((c) Until such time as the Administrator promulgates regulations under paragraph (b) of this section, treated sewage and graywater may be discharged from vessels subject to this title in circumstances otherwise prohibited under paragraphs (a) (1) and (a) (2) of this section, provided that--

((1) the discharge satisfies the minimum level of effluent quality specified in 40 CFR 133.102, as in effect on the date of enactment of this section [Dec. 21, 2000];

((2) the geometric mean of the samples from the discharge during any 30-day period does not exceed 20 fecal coliform/100 ml and not more than 10 percent of the samples exceed 40 fecal coliform/100 ml;

((3) concentrations of total residual chlorine may not exceed 10.0 <greek-m>g/l; and

((4) prior to any such discharge occurring, the owner, operator or master, or other person in charge of a cruise vessel, can demonstrate test results from at least five samples taken from the vessel representative of the effluent to be discharged, on different days over a 30-day period, conducted in accordance with the guidelines promulgated by the Administrator in 40 CFR Part 136, which confirm that the water quality of the effluents proposed for discharge is in compliance with paragraphs (1), (2), and (3) of this subsection. To the extent not otherwise being done by the owner, operator, master or other person in charge of a cruise vessel pursuant to section 1406, the owner, operator, master or other person in charge of a cruise vessel shall demonstrate continued compliance through periodic sampling. Such sampling and test results shall be considered environmental compliance records that must be made available for inspection pursuant to section 1406(d) of this title.

SEC. 1405. SAFETY EXCEPTION.

Sections 1403 and 1404 of this title shall not apply to discharges made for the purpose of securing the safety of the cruise vessel or saving life at sea, provided that all reasonable precautions have been taken for the purpose of preventing or minimizing the discharge.

SEC. 1406. INSPECTION AND SAMPLING REGIME.

((a) The Secretary shall incorporate into the commercial vessel examination program an inspection regime sufficient to verify that cruise vessels visiting ports in the State of Alaska or operating in the waters of the Alexander Archipelago or the navigable waters of the United States within the State of Alaska or within the Kachemak Bay National Estuarine Research Reserve are in full compliance with this title, the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.], as amended, and any regulations issued thereunder, other applicable Federal laws and regulations, and all applicable international treaty requirements.

((b) The inspection regime shall, at a minimum, include--

((1) examination of environmental compliance records and procedures; and

((2) inspection of the functionality and proper operation of installed equipment for abatement and control of any discharge.

((c) The inspection regime may--

((1) include unannounced inspections of any aspect of cruise vessel operations, equipment or discharges pertinent to the verification under subsection (a) of this section; and

((2) require the owner, operator or master, or other person in charge of a cruise vessel subject to this title to maintain and produce a logbook detailing the times, types, volumes or flow rates

and locations of any discharges of sewage or graywater under this title.

((d) The inspection regime shall incorporate a plan for sampling and testing cruise vessel discharges to ensure that any discharges of sewage or graywater are in compliance with this title, the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.], as amended, and any other applicable laws and regulations, and may require the owner, operator or master, or other person in charge of a cruise vessel subject to this title to conduct such samples or tests, and to produce any records of such sampling or testing at the request of the Secretary or Administrator.

SEC. 1407. CRUISE VESSEL EFFLUENT STANDARDS.

Pursuant to this title and the authority of the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.], as amended, the Administrator may promulgate effluent standards for treated sewage and graywater from cruise vessels operating in the waters of the Alexander Archipelago or the navigable waters of the United States within the State of Alaska or within the Kachemak Bay National Estuarine Research Reserve. Regulations implementing such standards shall take into account the best available scientific information on the environmental effects of the regulated discharges and the availability of new technologies for wastewater treatment. Until such time as the Administrator promulgates such effluent standards, treated sewage effluent discharges shall not have a fecal coliform bacterial count of greater than 200 per 100 milliliters nor suspended solids greater than 150 milligrams per liter.

SEC. 1408. REPORTS.

(a) Any owner, operator or master, or other person in charge of a cruise vessel who has knowledge of a discharge from the cruise vessel in violation of section 1403 or 1404 or pursuant to section 1405 of this title, or any regulations promulgated thereunder, shall immediately report that discharge to the Secretary, who shall provide a copy to the Administrator upon request.

(b) The Secretary may prescribe the form of reports required under this section.

SEC. 1409. ENFORCEMENT.

(a) Administrative Penalties.--

(1) Violations.--Any person who violates section 1403, 1404, 1408, or 1413 of this title, or any regulations promulgated pursuant to this title may be assessed a class I or class II civil penalty by the Secretary or Administrator.

(2) Classes of penalties.--

(A) Class i.--The amount of a class I civil penalty under this section may not exceed \$10,000 per violation, except that the maximum amount of any class I civil penalty under this section shall not exceed \$25,000. Before assessing a civil penalty under this clause, the Secretary or Administrator, as the case may be, shall give to the person to be assessed such penalty written notice of the Secretary's or Administrator's proposal to assess the penalty and the opportunity to request, within 30 days of the date the notice is received by such person, a hearing on the proposed penalty. Such hearing shall not be subject to section 554 or 556 of title 5, but shall provide a reasonable opportunity to be heard and to present evidence.

(B) Class ii.--The amount of a class II civil penalty under this section may not exceed \$10,000 per day for each day during which the violation continues, except that the maximum amount of any class II civil penalty under this section shall not exceed \$125,000. Except as otherwise provided in this subsection, a class II civil penalty shall be assessed and collected in the same manner, and subject to the same provisions as in the case of civil penalties assessed and collected after notice and an opportunity for a hearing on the record in accordance with section 554 of title 5, United States Code. The Secretary and Administrator may issue rules for discovery

procedures for hearings under this paragraph.

((3) Rights of interested persons.--

((A) Public notice.--Before issuing an order assessing a class II civil penalty under this section, the Secretary or Administrator, as the case may be, shall provide public notice of and reasonable opportunity to comment on the proposed issuance of each order.

((B) Presentation of evidence.--Any person who comments on a proposed assessment of a class II civil penalty under this section shall be given notice of any hearing held under this paragraph and of the order assessing such penalty. In any hearing held under this paragraph, such person shall have a reasonable opportunity to be heard and present evidence.

((C) Rights of interested persons to a hearing.--If no hearing is held under subsection (2) before issuance of an order assessing a class II civil penalty under this section, any person who commented on the proposed assessment may petition, within 30 days after the issuance of such order, the Administrator or Secretary, as the case may be, to set aside such order and to provide a hearing on the penalty. If the evidence presented by the petitioner in support of the petition is material and was not considered in the issuance of the order, the Administrator or Secretary shall immediately set aside such order and provide a hearing in accordance with subsection (2)(B). If the Administrator or Secretary denies a hearing under this clause, the Administrator or Secretary shall provide to the petitioner, and publish in the Federal Register, notice of and the reasons for such denial.

((4) Finality of order.--An order assessing a class II civil penalty under this paragraph shall become final 30 days after its issuance unless a petition for judicial review is filed under subparagraph (6) or a hearing is requested under subsection (3)(C). If such a hearing is denied, such order shall become final 30 days after such denial.

((5) Effect of action on compliance.--No action by the Administrator or Secretary under this paragraph shall affect any person's obligation to comply with any section of this title.

((6) Judicial review.--Any person against whom a civil penalty is assessed under this paragraph or who commented on the proposed assessment of such penalty in accordance with subsection (3) may obtain review of such assessment--

((A) in the case of assessment of a class I civil penalty, in the United States District Court for the District of Columbia or in the District of Alaska; or

((B) in the case of assessment of a class II civil penalty, in the United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business, by filing a notice of appeal in such court within the 30-day period beginning on the date the civil penalty order is issued and by simultaneously sending a copy of such notice by certified mail to the Administrator or Secretary, as the case may be, and the Attorney General. The Administrator or Secretary shall promptly file in such court a certified copy of the record on which the order was issued. Such court shall not set aside or remand such order unless there is not substantial evidence in the record, taken as a whole, to support the finding of a violation or unless the Administrator's or Secretary's assessment of the penalty constitutes an abuse of discretion and shall not impose additional civil penalties for the same violation unless the Administrator's or Secretary's assessment of the penalty constitutes an abuse of discretion.

((7) Collection.--If any person fails to pay an assessment of a civil penalty--

((A) after the assessment has become final, or

((B) after a court in an action brought under subsection

(6) has entered a final judgment in favor of the Administrator or Secretary, as the case may be, the Administrator or Secretary shall request the Attorney General to bring a civil action in an appropriate district court to recover the amount assessed (plus interest at currently prevailing rates from the date of the final order or the date of the final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review. Any person who fails to pay on a timely basis the amount of an assessment of a civil penalty as described in the first sentence of this subparagraph shall be required to pay, in addition to such amount and interest, attorneys fees and costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to 20 percent of the aggregate amount of such person's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

((8) Subpoenas.--The Administrator or Secretary, as the case may be, may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, or documents in connection with hearings under this section. In case of contumacy or refusal to obey a subpoena issued pursuant to this subsection and served upon any person, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Administrator or Secretary or to appear and produce documents before the Administrator or Secretary, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

((b) Civil Penalties.--

((1) In general.--Any person who violates section 1403, 1404, 1408, or 1413 of this title, or any regulations promulgated pursuant to this title shall be subject to a civil penalty not to exceed \$25,000 per day for each violation. Each day a violation continues constitutes a separate violation.

((2) Jurisdiction.--An action to impose a civil penalty under this section may be brought in the district court of the United States for the district in which the defendant is located, resides, or transacts business, and such court shall have jurisdiction to assess such penalty.

((3) Limitation.--A person is not liable for a civil judicial penalty under this paragraph for a violation if the person has been assessed a civil administrative penalty under paragraph (a) for the violation.

((c) Determination of Amount.--In determining the amount of a civil penalty under paragraphs (a) or (b) of this section, the court, the Secretary or the Administrator, as the case may be, shall consider the seriousness of the violation or violations, the economic benefit (if any) resulting from the violation, any history of such violations, any good-faith efforts to comply with the applicable requirements, the economic impact of the penalty on the violator, and other such matters as justice may require.

((d) Criminal Penalties.--

((1) Negligent violations.--Any person who negligently violates section 1403, 1404, 1408, or 1413 of this title, or any regulations promulgated pursuant to this title commits a Class A misdemeanor.

((2) Knowing violations.--Any person who knowingly violates section 1403, 1404, 1408, or 1413 of this title, or any regulations promulgated pursuant to this title commits a Class D felony.

((3) False statements.--Any person who knowingly makes any false statement, representation, or certification in any record, report or other document filed or required to be maintained under this title or the regulations issued thereunder, or who falsifies,

tampers with, or knowingly renders inaccurate any testing or monitoring device or method required to be maintained under this title, or the regulations issued thereunder, commits a Class D felony.

((e) Awards.--

((1) The Secretary, the Administrator, or the court, when assessing any fines or civil penalties, as the case may be, may pay from any fines or civil penalties collected under this section an amount not to exceed one-half of the penalty or fine collected, to any individual who furnishes information which leads to the payment of the penalty or fine. If several individuals provide such information, the amount shall be divided equitably among such individuals. No officer or employee of the United States, the State of Alaska or any federally recognized Tribe who furnishes information or renders service in the performance of his or her official duties shall be eligible for payment under this subsection.

((2) The Secretary, Administrator or the court, when assessing any fines or civil penalties, as the case may be, may pay, from any fines or civil penalties collected under this section, to the State of Alaska or to any federally recognized Tribe providing information or investigative assistance which leads to payment of the penalty or fine, an amount which reflects the level of information or investigative assistance provided. Should the State of Alaska or a federally recognized Tribe and an individual under paragraph (1) of this section be eligible for an award, the Secretary, the Administrator, or the court, as the case may be, shall divide the amount equitably.

((f) Liability in Rem.--A cruise vessel operated in violation of this title or the regulations issued thereunder is liable in rem for any fine imposed under subsection (d) of this section or for any civil penalty imposed under subsections (a) or (b) of this section, and may be proceeded against in the United States district court of any district in which the cruise vessel may be found.

((g) Compliance Orders.--

((1) In general.--Whenever on the basis of any information available to him the Administrator finds that any person is in violation of section 1403, 1404, 1408, or 1413 of this title, or any regulations promulgated pursuant to this title, the Administrator shall issue an order requiring such person to comply with such section or requirement, or shall bring a civil action in accordance with subsection (b).

((2) Copies of orders, service.--A copy of any order issued under this subsection shall be sent immediately by the Administrator to the State of Alaska. In any case in which an order under this subsection is issued to a corporation, a copy of such order shall be served on any appropriate corporate officer. Any order issued under this subsection shall be by personal service, shall state with reasonable specificity the nature of the violation, and shall specify a time for compliance not to exceed 30 days in the case of a violation of an interim compliance schedule or operation and maintenance requirement and not to exceed a time the Administrator determines to be reasonable in the case of a violation of a final deadline, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

((h) Civil Actions.--The Administrator is authorized to commence a civil action for appropriate relief, including a permanent or temporary injunction, for any violation for which he is authorized to issue a compliance order under this subsection. Any action under subsection (h) 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 restrain such violation and to require compliance. Notice of the commencement of such action shall be given immediately to the State of Alaska.

SEC. 1410. DESIGNATION OF CRUISE VESSEL NO-DISCHARGE ZONES.

If the State of Alaska determines that the protection and

enhancement of the quality of some or all of the waters of the Alexander Archipelago or the navigable waters of the United States within the State of Alaska or within the Kachemak Bay National Estuarine Research Reserve require greater environmental protection, the State of Alaska may petition the Administrator to prohibit the discharge of graywater and sewage from cruise vessels operating in such waters. The establishment of such a prohibition shall be achieved in the same manner as the petitioning process and prohibition of the discharge of sewage pursuant to section 312(f) of the Federal Water Pollution Control Act [33 U.S.C. 1322(f)], as amended, and the regulations promulgated thereunder.

``SEC. 1411. SAVINGS CLAUSE.

``(a) Nothing in this title shall be construed as restricting, affecting, or amending any other law or the authority of any department, instrumentality, or agency of the United States.

``(b) Nothing in this title shall in any way affect or restrict, or be construed to affect or restrict, the authority of the State of Alaska or any political subdivision thereof--

``(1) to impose additional liability or additional requirements;
or

``(2) to impose, or determine the amount of a fine or penalty (whether criminal or civil in nature) for any violation of law; relating to the discharge of sewage (whether treated or untreated) or graywater in the waters of the Alexander Archipelago and the navigable waters of the United States within the State of Alaska or within the Kachemak Bay National Estuarine Research Reserve.

``SEC. 1412. REGULATIONS.

``The Secretary and the Administrator each may prescribe any regulations necessary to carry out the provisions of this title.

``SEC. 1413. INFORMATION GATHERING AUTHORITY.

``The authority of sections 308(a) and (b) of the Federal Water Pollution Control Act [33 U.S.C. 1318(a), (b)], as amended, shall be available to the Administrator to carry out the provisions of this title. The Administrator and the Secretary shall minimize, to the extent practicable, duplication of or inconsistency with the inspection, sampling, testing, recordkeeping, and reporting requirements established by the Secretary under section 1406 of this title.

``SEC. 1414. DEFINITIONS.

``In this title:

``(1) Administrator.--The term 'Administrator' means the Administrator of the United States Environmental Protection Agency.

``(2) Cruise vessel.--The term 'cruise vessel' means a passenger vessel as defined in section 2101(22) of title 46, United States Code. The term 'cruise vessel' does not include a vessel of the United States operated by the Federal Government or a vessel owned and operated by the government of a State.

``(3) Discharge.--The term 'discharge' means any release however caused from a cruise vessel, and includes any escape, disposal, spilling, leaking, pumping, emitting, or emptying.

``(4) Graywater.--The term 'graywater' means only galley, dishwasher, bath, and laundry waste water. The term does not include other wastes or waste streams.

``(5) Navigable waters.--The term 'navigable waters' has the same meaning as in section 502 of the Federal Water Pollution Control Act [33 U.S.C. 1362], as amended.

``(6) Person.--The term 'person' means an individual, corporation, partnership, limited liability company, association, State, municipality, commission, or political subdivision of a State, or any federally recognized tribe.

``(7) Secretary.--The term 'Secretary' means the Secretary of the department in which the United States Coast Guard is operating.

``(8) Sewage.--The term 'sewage' means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body waste.

``(9) Treated sewage.--The term 'treated sewage' means sewage

meeting all applicable effluent limitation standards and processing requirements of the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.], as amended[,] and of this title, and regulations promulgated under either.

((10) Untreated sewage.--The term `untreated sewage' means sewage that is not treated sewage.

((11) Waters of the Alexander Archipelago.--The term `waters of the Alexander Archipelago' means all waters under the sovereignty of the United States within or near Southeast Alaska, beginning at a point 58 deg.11'41''N, 136 deg.39'25''W [near Cape Spencer Light], thence southeasterly along a line three nautical miles seaward of the baseline from which the breadth of the territorial sea is measured in the Pacific Ocean and the Dixon Entrance, except where this line intersects geodesics connecting the following five pairs of points:

((1) 58 deg.05'17''N, 136 deg.33'49''W and 58 deg.11'41''N, 136 deg.39'25''W [Cross Sound].

((2) 56 deg.09'40''N, 134 deg.40'00''W and 55 deg.49'15''N, 134 deg.17'40''W [Chatham Strait].

((3) 55 deg.49'15''N, 134 deg.17'40''W and 55 deg.50'30''N, 133 deg.54'15''W [Sumner Strait].

((4) 54 deg.41'30''N, 132 deg.01'00''W and 54 deg.51'30''N, 131 deg.20'45''W [Clarence Strait].

((5) 54 deg.51'30''N, 131 deg.20'45''W and 54 deg.46'15''N, 130 deg.52'00''W [Revillagigedo Channel].

((The portion of each such geodesic situated beyond three nautical miles from the baseline from which the breadth of the territorial sea is measured forms the outer limit of the waters of the Alexander Archipelago in those five locations.))

Preemption; Additional State Requirements

Section 2003 of title II of Pub. L. 100-220 provided that:

((a) Preemption.--Except as specifically provided in this title [see Effective Date of 1987 Amendment note above], nothing in this title shall be interpreted or construed to supersede or preempt any other provision of Federal or State law, either statutory or common.

((b) Additional State Requirements.--Nothing in this title shall be construed or interpreted as preempting any State from imposing any additional requirements.))

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[CITE: **33USC1902**]

TITLE 33--NAVIGATION AND NAVIGABLE WATERS

CHAPTER 33--PREVENTION OF POLLUTION FROM SHIPS

Sec. 1902. Ships subject to preventive measures

(a) Included vessels

This chapter shall apply--

(1) to a ship of United States registry or nationality, or one operated under the authority of the United States, wherever located;

(2) with respect to Annexes I and II to the Convention, to a ship, other than a ship referred to in paragraph (1), while in the navigable waters of the United States;

(3) with respect to the requirements of Annex V to the Convention, to a ship, other than a ship referred to in paragraph (1), while in the navigable waters or the exclusive economic zone of the United States; and

(4) with respect to regulations prescribed under section 1905 of this title, any port or terminal in the United States.

(b) Excluded vessels

(1) Except as provided in paragraph (2), this chapter shall not apply to--

(A) a warship, naval auxiliary, or other ship owned or operated by the United States when engaged in noncommercial service; or

(B) any other ship specifically excluded by the MARPOL Protocol or the Antarctic Protocol.

(2) (A) Notwithstanding any provision of the MARPOL Protocol, and subject to subparagraph (B) of this paragraph, the requirements of Annex V to the Convention shall apply as follows:

(i) After December 31, 1993, to all ships referred to in paragraph (1)(A) of this subsection other than those owned or operated by the Department of the Navy.

(ii) Except as provided in subsection (c) of this section, after December 31, 1998, to all ships referred to in paragraph (1)(A) of this subsection other than submersibles owned or operated by the Department of the Navy.

(iii) Except as provided in subsection (c) of this section, after December 31, 2008, to all ships referred to in paragraph (1)(A) of this subsection.

(B) This paragraph shall not apply during time of war or a declared national emergency.

(c) Discharges in special areas

(1) Except as provided in paragraphs (2) and (3), not later than December 31, 2000, all surface ships owned or operated by the Department of the Navy, and not later than December 31, 2008, all submersibles owned or operated by the Department of the Navy, shall comply with the special area requirements of Regulation 5 of Annex V to the Convention.

(2) (A) Subject to subparagraph (B), any ship described in subparagraph (C) may discharge, without regard to the special area

requirements of Regulation 5 of Annex V to the Convention, the following non-plastic, non-floating garbage:

(i) A slurry of seawater, paper, cardboard, or food waste that is capable of passing through a screen with openings no larger than 12 millimeters in diameter.

(ii) Metal and glass that have been shredded and bagged so as to ensure negative buoyancy.

(iii) With regard to a submersible, nonplastic garbage that has been compacted and weighted to ensure negative buoyancy.

(B) (i) Garbage described in subparagraph (A) (i) may not be discharged within 3 nautical miles of land.

(ii) Garbage described in clauses (ii) and (iii) of subparagraph (A) may not be discharged within 12 nautical miles of land.

(C) This paragraph applies to any ship that is owned or operated by the Department of the Navy that, as determined by the Secretary of the Navy--

(i) has unique military design, construction, manning, or operating requirements; and

(ii) cannot fully comply with the special area requirements of Regulation 5 of Annex V to the Convention because compliance is not technologically feasible or would impair the operations or operational capability of the ship.

(3) (A) Not later than December 31, 2000, the Secretary of the Navy shall prescribe and publish in the Federal Register standards to ensure that each ship described in subparagraph (B) is, to the maximum extent practicable without impairing the operations or operational capabilities of the ship, operated in a manner that is consistent with the special area requirements of Regulation 5 of Annex V to the Convention.

(B) Subparagraph (A) applies to surface ships that are owned or operated by the Department of the Navy that the Secretary plans to decommission during the period beginning on January 1, 2001, and ending on December 31, 2005.

(C) At the same time that the Secretary publishes standards under subparagraph (A), the Secretary shall publish in the Federal Register a list of the ships covered by subparagraph (B).

(d) Regulations

The Secretary shall prescribe regulations applicable to the ships of a country not a party to the MARPOL Protocol, including regulations conforming to and giving effect to the requirements of Annex V as they apply under subsection (a) of this section, to ensure that their treatment is not more favorable than that accorded ships to parties to the MARPOL Protocol.

(e) Compliance by excluded vessels

(1) The Secretary of the Navy shall develop and, as appropriate, support the development of technologies and practices for solid waste management aboard ships owned or operated by the Department of the Navy, including technologies and practices for the reduction of the waste stream generated aboard such ships, that are necessary to ensure the compliance of such ships with Annex V to the Convention on or before the dates referred to in subsections (b) (2) (A) and (c) (1) of this section.

(2) Notwithstanding any effective date of the application of this section to a ship, the provisions of Annex V to the Convention with respect to the disposal of plastic shall apply to ships equipped with plastic processors required for the long-term collection and storage of plastic aboard ships of the Navy upon the installation of such processors in such ships.

(3) Except when necessary for the purpose of securing the safety of the ship, the health of the ship's personnel, or saving life at sea, it shall be a violation of this chapter for a ship referred to in

subsection (b) (1) (A) of this section that is owned or operated by the Department of the Navy:

(A) With regard to a submersible, to discharge buoyant garbage or plastic.

(B) With regard to a surface ship, to discharge plastic contaminated by food during the last 3 days before the ship enters port.

(C) With regard to a surface ship, to discharge plastic, except plastic that is contaminated by food, during the last 20 days before the ship enters port.

(4) The Secretary of Defense shall publish in the Federal Register:

(A) Each year, the amount and nature of the discharges in special areas, not otherwise authorized under this chapter, during the preceding year from ships referred to in subsection (b) (1) (A) of this section owned or operated by the Department of the Navy.

(B) Beginning on October 1, 1996, and each year thereafter until October 1, 1998, a list of the names of such ships equipped with plastic processors pursuant to section 1003(e) of the National Defense Authorization Act for Fiscal Year 1994.

(f) Waiver authority

The President may waive the effective dates of the requirements set forth in subsection (c) of this section and in subsection 1003(e) of the National Defense Authorization Act for Fiscal Year 1994 if the President determines it to be in the paramount interest of the United States to do so. Any such waiver shall be for a period not in excess of one year. The President shall submit to the Congress each January a report on all waivers from the requirements of this section granted during the preceding calendar year, together with the reasons for granting such waivers.

(g) Noncommercial shipping standards

The heads of Federal departments and agencies shall prescribe standards applicable to ships excluded from this chapter by subsection (b) (1) of this section and for which they are responsible. Standards prescribed under this subsection shall ensure, so far as is reasonable and practicable without impairing the operations or operational capabilities of such ships, that such ships act in a manner consistent with the MARPOL Protocol.

(Pub. L. 96-478, Sec. 3, Oct. 21, 1980, 94 Stat. 2297; Pub. L. 100-220, title II, Sec. 2102, Dec. 29, 1987, 101 Stat. 1461; Pub. L. 103-160, div. A, title X, Sec. 1003(a)-(d), Nov. 30, 1993, 107 Stat. 1745-1747; Pub. L. 104-201, div. A, title III, Sec. 324(a), (d), Sept. 23, 1996, 110 Stat. 2480, 2481; Pub. L. 104-227, title II, Sec. 201(b), Oct. 2, 1996, 110 Stat. 3042; Pub. L. 105-261, div. A, title III, Sec. 326, Oct. 17, 1998, 112 Stat. 1965.)

References in Text

Section 1003(e) of the National Defense Authorization Act for Fiscal Year 1994, referred to in subsecs. (e) (4) (B) and (f), is section 1003(e) of Pub. L. 103-160, which is set out below.

Amendments

1998--Subsec. (c) (2) (A) (iii). Pub. L. 105-261, Sec. 326(a) (1), added cl. (iii).

Subsec. (c) (2) (B) (ii). Pub. L. 105-261, Sec. 326(a) (2), substituted ``clauses (ii) and (iii) of subparagraph (A)'' for ``subparagraph (A) (ii)''.

Subsec. (e)(3)(A). Pub. L. 105-261, Sec. 326(b), struck out ``garbage that contains more than the minimum amount practicable of'' after ``buoyant garbage or''.

1996--Subsec. (b)(1)(B). Pub. L. 104-227 inserted ``or the Antarctic Protocol'' after ``MARPOL Protocol''.

Subsec. (c)(1). Pub. L. 104-201, Sec. 324(a)(1), substituted ``Except as provided in paragraphs (2) and (3), not later than'' for ``Not later than''.

Subsec. (c)(2) to (4). Pub. L. 104-201, Sec. 324(a)(2), added pars. (2) and (3) and struck out former pars. (2) to (4) which required the Secretary of the Navy to submit to Congress a plan for compliance of Navy ships with the requirements set forth in par. (1) of this subsec. and provided for modification of the applicability of par. (1) as appropriate.

Subsec. (e)(4)(A). Pub. L. 104-201, Sec. 324(d), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ``Beginning on October 1, 1994, and each year thereafter until October 1, 2000, the amount and nature of the discharges in special areas, not otherwise authorized under Annex V to the Convention, during the preceding year from ships referred to in subsection (b)(1)(A) of this section owned or operated by the Department of the Navy.''

1993--Subsec. (b)(2)(A). Pub. L. 103-160, Sec. 1003(a), substituted ``as follows:'' and cls. (i) to (iii) for ``after 5 years after the effective date of this paragraph to a ship referred to in paragraph (1)(A).''

Subsecs. (c), (d). Pub. L. 103-160, Sec. 1003(b), added subsec. (c) and redesignated former subsec. (c) as (d). Former subsec. (d) redesignated (g).

Subsecs. (e), (f). Pub. L. 103-160, Sec. 1003(c), (d), added subsecs. (e) and (f).

Subsec. (g). Pub. L. 103-160, Sec. 1003(b)(1), redesignated subsec. (d) as (g).

1987--Subsec. (a). Pub. L. 100-220, Sec. 2102(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ``This chapter applies to--

``(1) a ship of United States registry or nationality, or one operated under the authority of the United States, wherever located;

``(2) a ship registered in or of the nationality of a country party to the MARPOL Protocol, or one operated under the authority of a country party to the MARPOL Protocol, while in the navigable waters of the United States; and

``(3) a ship registered in or of the nationality of a country not a party to the MARPOL Protocol, under subsection (c) of this section, while in the navigable waters of the United States.''

Subsec. (b). Pub. L. 100-220, Sec. 2102(b), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ``This chapter does not apply to--

``(1) a warship, naval auxiliary, or other ship owned or operated by the United States when engaged in noncommercial service; or

``(2) any other ship specifically excluded by the MARPOL Protocol.''

Subsec. (c). Pub. L. 100-220, Sec. 2102(c), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ``The Secretary shall prescribe regulations applicable to the ships of a country not a party to the MARPOL Protocol to ensure that their treatment is not more favorable than that accorded ships of parties to the MARPOL Protocol.''

Effective Date of 1987 Amendment

Amendment by Pub. L. 100-220 effective Dec. 31, 1988, the date on which Annex V to the International Convention for the Prevention of Pollution from Ships, 1973, entered into force for the United States,

see section 2002(a) of Pub. L. 100-220, set out as a note under section 1901 of this title.

Effective Date

Subsecs. (c) and (d) of this section effective Oct. 21, 1980, see section 14(b) of Pub. L. 96-478, set out as a note under section 1901 of this title.

Installation Schedule for Plastics Processor Equipment Aboard Ships; Request for Proposals for Equipment

Section 1003(e) of Pub. L. 103-160 provided that:

“(1) Not later than October 1, 1994, the Secretary of the Navy shall release a request for proposals for equipment (hereinafter in this subsection referred to as ‘plastics processor’) required for the long-term collection and storage of plastic aboard ships owned or operated by the Navy.

“(2) Not later than July 1, 1996, the Secretary shall install the first production unit of the plastics processor on board a ship owned or operated by the Navy.

“(3) Not later than March 1, 1997, the Secretary shall complete the installation of plastics processors on board not less than 25 percent of the ships owned or operated by the Navy that require plastics processors to comply with section 3 of the Act to Prevent Pollution from Ships [33 U.S.C. 1902], as amended by subsections (a), (b), and (c) of this section.

“(4) Not later than July 1, 1997, the Secretary shall complete the installation of plastics processors on board not less than 50 percent of the ships owned or operated by the Navy that require processors to comply with section 3 of such Act, as amended by subsections (a), (b), and (c) of this section.

“(5) Not later than July 1, 1998, the Secretary shall complete the installation of plastics processors on board not less than 75 percent of the ships owned or operated by the Navy that require processors to comply with section 3 of such Act, as amended by subsections (a), (b), and (c) of this section.

“(6) Not later than December 31, 1998, the Secretary shall complete the installation of plastics processors on board all ships owned or operated by the Navy that require processors to comply with section 3 of such Act, as amended by subsections (a), (b), and (c) of this section.”

Section Referred to in Other Sections

This section is referred to in sections 1903, 1907, 1913 of this title.

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TITLE 33--NAVIGATION AND NAVIGABLE WATERS

CHAPTER 33--PREVENTION OF POLLUTION FROM SHIPS

Sec. 1903. Administration and enforcement

- (a) Duty of Secretary; Annexes of Convention applicable to seagoing vessels

Unless otherwise specified in this chapter, the Secretary shall administer and enforce the MARPOL Protocol, Annex IV to the Antarctic Protocol, and this chapter. In the administration and enforcement of the MARPOL Protocol and this chapter, Annexes I and II of the Convention apply only to seagoing ships.

- (b) Regulations; refuse record books; waste management plans; notification of crew and passengers

(1) The Secretary shall prescribe any necessary or desired regulations to carry out the provisions of the MARPOL Protocol, Annex IV to the Antarctic Protocol, or this chapter.

(2) The Secretary of the department in which the Coast Guard is operating shall--

(A) prescribe regulations which--

(i) require certain ships described in section 1902(a)(1) of this title to maintain refuse record books and shipboard management plans, and to display placards which notify the crew and passengers of the requirements of Annex V to the Convention and of Annex IV to the Antarctic Protocol; and

(ii) specify the ships described in section 1902(a)(1) of this title to which the regulations apply;

(B) seek an international agreement or international agreements which apply requirements equivalent to those described in subparagraph (A)(i) to all vessels subject to Annex V to the Convention; and

(C) within 2 years after the effective date of this paragraph, report to the Congress--

(i) regarding activities of the Secretary under subparagraph (B); and

(ii) if the Secretary has not obtained agreements pursuant to subparagraph (B) regarding the desirability of applying the requirements described in subparagraph (A)(i) to all vessels described in section 1902(a) of this title which call at United States ports.

- (c) Utilization of personnel, facilities, or equipment of other Federal departments and agencies

The Secretary may utilize by agreement, with or without reimbursement, personnel, facilities, or equipment of other Federal departments and agencies in administering the MARPOL Protocol, this chapter, or the regulations thereunder.

(Pub. L. 96-478, Sec. 4, Oct. 21, 1980, 94 Stat. 2298; Pub. L. 100-220, title II, Sec. 2107, Dec. 29, 1987, 101 Stat. 1464; Pub. L. 104-227,

title II, Sec. 201(c), Oct. 2, 1996, 110 Stat. 3042.)

References in Text

The effective date of this paragraph, referred to in subsec. (b)(2)(C), is Dec. 31, 1988, the effective date of section 2107(b) of Pub. L. 100-220 which added par. (2) to subsec. (b). See Effective Date of 1987 Amendment note below.

Amendments

1996--Subsec. (a). Pub. L. 104-227, Sec. 201(c)(1), inserted ``Annex IV to the Antarctic Protocol,'' after ``the MARPOL Protocol'' in first sentence.

Subsec. (b)(1). Pub. L. 104-227, Sec. 201(c)(2), inserted ``Annex IV to the Antarctic Protocol,'' after ``the MARPOL Protocol''.

Subsec. (b)(2)(A). Pub. L. 104-227, Sec. 201(c)(3), (4), struck out ``within 1 year after the effective date of this paragraph,'' before ``prescribe'' in introductory provisions and inserted ``and of Annex IV to the Antarctic Protocol'' after ``the Convention'' in cl. (i).

1987--Subsec. (a). Pub. L. 100-220, Sec. 2107(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ``Unless otherwise specified herein, the Secretary shall administer and enforce the MARPOL Protocol and this chapter. In the administration and enforcement of the MARPOL Protocol and this chapter, Annexes I and II of the MARPOL Protocol shall be applicable only to seagoing ships.''

Subsec. (b). Pub. L. 100-220, Sec. 2107(b), designated existing provisions as par. (1) and added par. (2).

Effective Date of 1987 Amendment

Amendment by Pub. L. 100-220 effective Dec. 31, 1988, the date on which Annex V to the International Convention for the Prevention of Pollution from Ships, 1973, entered into force for the United States, see section 2002(a) of Pub. L. 100-220, set out as a note under section 1901 of this title.

Effective Date

Subsec. (b) of this section effective Oct. 21, 1980, see section 14(b) of Pub. L. 96-478, set out as a note under section 1901 of this title.

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TITLE 33--NAVIGATION AND NAVIGABLE WATERS

CHAPTER 33--PREVENTION OF POLLUTION FROM SHIPS

Sec. 1904. Certificates

(a) Issuance by authorized designees; restriction on issuance

The Secretary shall designate those persons authorized to issue on behalf of the United States the certificates required by the MARPOL Protocol. A certificate required by the MARPOL Protocol shall not be issued to a ship which is registered in or of the nationality of a country which is not a party to the MARPOL Protocol.

(b) Validity of foreign certificates

A certificate issued by a country which is a party to the MARPOL Protocol has the same validity as a certificate issued by the Secretary under the authority of the MARPOL Protocol.

(c) Location onboard vessel; inspection of vessels subject to
jurisdiction of the United States

A ship required by the MARPOL Protocol to have a certificate--

(1) shall carry a valid certificate onboard in the manner prescribed by the authority issuing the certificate; and

(2) is subject to inspection while in a port or terminal under the jurisdiction of the United States.

(d) Onboard inspections; other Federal inspection authority unaffected

An inspection conducted under subsection (c) (2) of this section is limited to verifying whether or not a valid certificate is onboard, unless clear grounds exist which reasonably indicate that the condition of the ship or its equipment does not substantially agree with the particulars of its certificate. This section shall not limit the authority of any official or employee of the United States under any other treaty, law, or regulation to board and inspect a ship or its equipment.

(e) Detention orders; duration of detention; shipyard option

In addition to the penalties prescribed in section 1908 of this title, a ship required by the MARPOL Protocol to have a certificate--

(1) which does not have a valid certificate onboard; or

(2) whose condition or whose equipment's condition does not substantially agree with the particulars of the certificate onboard;

shall be detained by order of the Secretary at the port or terminal where the violation is discovered until, in the opinion of the Secretary, the ship can proceed to sea without presenting an unreasonable threat of harm to the marine environment. The detention order may authorize the ship to proceed to the nearest appropriate available shipyard rather than remaining at the place where the violation was discovered.

(f) Ship clearance or permits; refusal or revocation

If a ship is under a detention order under this section, the Secretary of the Treasury, upon the request of the Secretary, may refuse or revoke--

- (1) the clearance required by section 91 of title 46, Appendix;
- or
- (2) a permit to proceed under section 313 \1\ of title 46, Appendix, or section 1443 \2\ of title 19.

\1\ See References in Text note below.
\2\ See Codification note below.

(g) Review of detention orders; petition; determination by Secretary

A person whose ship is subject to a detention order under this section may petition the Secretary, in the manner prescribed by regulation, to review the detention order. Upon receipt of a petition under this subsection, the Secretary shall affirm, modify, or withdraw the detention order within the time prescribed by regulation.

(h) Compensation for loss or damage

A ship unreasonably detained or delayed by the Secretary acting under the authority of this chapter is entitled to compensation for any loss or damage suffered thereby.

(Pub. L. 96-478, Sec. 5, Oct. 21, 1980, 94 Stat. 2298.)

References in Text

Section 313 of title 46, Appendix, referred to in subsec. (f)(2), was repealed by Pub. L. 103-182, title VI, Sec. 690(a)(21), Dec. 8, 1993, 107 Stat. 2223.

Codification

Section 1443 of title 19, referred to in subsec. (f)(2), was in the original section 442 of the Tariff Act of 1930, as amended (19 U.S.C. 1443). Although section 442 of the Tariff Act of 1930, June 17, 1930, ch. 497, title IV, 46 Stat. 713, is classified to section 1442 of Title 19, Customs Duties, the reference was translated as meaning section 443 of the Tariff Act of 1930, which was classified to section 1443 of title 19 prior to repeal by Pub. L. 103-182, title VI, Sec. 690(b)(6), Dec. 8, 1993, 107 Stat. 2223.

Effective Date

Subsec. (a) of this section effective Oct. 21, 1980, see section 14(b) of Pub. L. 96-478, set out as a note under section 1901 of this title.

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TITLE 33--NAVIGATION AND NAVIGABLE WATERS

CHAPTER 33--PREVENTION OF POLLUTION FROM SHIPS

Sec. 1905. Pollution reception facilities

(a) Adequacy; criteria

(1) The Secretary, after consultation with the Administrator of the Environmental Protection Agency, shall establish regulations setting criteria for determining the adequacy of a port's or terminal's reception facilities for mixtures containing oil or noxious liquid substances and shall establish procedures whereby a person in charge of a port or terminal may request the Secretary to certify that the port's or terminal's facilities for receiving the residues and mixtures containing oil or noxious liquid substance from seagoing ships are adequate.

(2) The Secretary, after consulting with appropriate Federal agencies, shall establish regulations setting criteria for determining the adequacy of reception facilities for garbage at a port or terminal, and stating such additional measures and requirements as are appropriate to ensure such adequacy. Persons in charge of ports and terminals shall provide reception facilities, or ensure that such facilities are available, for receiving garbage in accordance with those regulations.

(b) Traffic considerations

In determining the adequacy of reception facilities required by the MARPOL Protocol or the Antarctic Protocol at a port or terminal, and in establishing regulations under subsection (a) of this section, the Secretary may consider, among other things, the number and types of ships or seagoing ships using the port or terminal, including their principal trades.

(c) Certificate; issuance; validity; inspection; review of suspension or revocation by Secretary

(1) If reception facilities of a port or terminal meet the requirements of Annex I and Annex II to the Convention and the regulations prescribed under subsection (a)(1) of this section, the Secretary shall, after consultation with the Administrator of the Environmental Protection Agency, issue a certificate to that effect to the applicant.

(2)(A) Subject to subparagraph (B), if reception facilities of a port or terminal meet the requirements of Annex V to the Convention and the regulations prescribed under subsection (a)(2) of this section, the Secretary may, after consultation with appropriate Federal agencies, issue a certificate to that effect to the person in charge of the port or terminal.

(B) The Secretary may not issue a certificate attesting to the adequacy of reception facilities under this paragraph unless, prior to the issuance of the certificate, the Secretary conducts an inspection of the reception facilities of the port or terminal that is the subject of the certificate.

(C) The Secretary may, with respect to certificates issued under this paragraph prior to October 19, 1996, prescribe by regulation

differing periods of validity for such certificates.

(3) A certificate issued under this subsection--

(A) is valid for the 5-year period beginning on the date of issuance of the certificate, except that if--

(i) the charge for operation of the port or terminal is transferred to a person or entity other than the person or entity that is the operator on the date of issuance of the certificate--

(I) the certificate shall expire on the date that is 30 days after the date of the transfer; and

(II) the new operator shall be required to submit an application for a certificate before a certificate may be issued for the port or terminal; or

(ii) the certificate is suspended or revoked by the Secretary, the certificate shall cease to be valid; and

(B) shall be available for inspection upon the request of the master, other person in charge, or agent of a ship using or intending to use the port or terminal.

(4) The suspension or revocation of a certificate issued under this subsection may be appealed to the Secretary and acted on by the Secretary in the manner prescribed by regulation.

(d) Publication of list of certificated ports or terminals

(1) The Secretary shall maintain a list of ports or terminals with respect to which a certificate issued under this section--

(A) is in effect; or

(B) has been revoked or suspended.

(2) The Secretary shall make the list referred to in paragraph (1) available to the general public.

(e) Entry; denial

(1) Except in the case of force majeure, the Secretary shall deny entry to a seagoing ship required by the Convention or the Antarctic Protocol to retain onboard while at sea, residues and mixtures containing oil or noxious liquid substances, if--

(A) the port or terminal is one required by Annexes I and II of the Convention or Article 9 of Annex IV to the Antarctic Protocol or regulations hereunder to have adequate reception facilities; and

(B) the port or terminal does not hold a valid certificate issued by the Secretary under this section.

(2) The Secretary may deny the entry of a ship to a port or terminal required by regulations issued under this section to provide adequate reception facilities for garbage if the port or terminal is not in compliance with those regulations.

(f) Surveys

(1) The Secretary is authorized to conduct surveys of existing reception facilities in the United States to determine measures needed to comply with the MARPOL Protocol or the Antarctic Protocol.

(2) (A) \1\ Not later than 18 months after October 19, 1996, the Secretary shall promulgate regulations that require the operator of each port or terminal that is subject to any requirement of the MARPOL Protocol relating to reception facilities to post a placard in a location that can easily be seen by port and terminal users. The placard shall state, at a minimum, that a user of a reception facility of the port or terminal should report to the Secretary any inadequacy of the reception facility.

 \1\ So in original. No subpar. (B) has been enacted.

(Pub. L. 96-478, Sec. 6, Oct. 21, 1980, 94 Stat. 2299; Pub. L. 100-220, title II, Sec. 2103, Dec. 29, 1987, 101 Stat. 1461; Pub. L. 101-225, title II, Sec. 201(1), Dec. 12, 1989, 103 Stat. 1910; Pub. L. 104-227, title II, Sec. 201(d), Oct. 2, 1996, 110 Stat. 3042; Pub. L. 104-324, title VIII, Sec. 801, Oct. 19, 1996, 110 Stat. 3943.)

Amendments

1996--Subsec. (b). Pub. L. 104-227, Sec. 201(d)(1), inserted ``or the Antarctic Protocol'' after ``the MARPOL Protocol''.

Subsec. (c)(2). Pub. L. 104-324, Sec. 801(a)(1), (2), designated existing provisions as subpar. (A), substituted ``Subject to subparagraph (B), if'' for ``If'', and added subpars. (B) and (C).

Subsec. (c)(3)(A). Pub. L. 104-324, Sec. 801(a)(3), added subpar. (A) and struck out former subpar. (A) which read as follows: ``is valid until suspended or revoked by the Secretary for cause or because of changed conditions; and''.

Subsec. (d). Pub. L. 104-324, Sec. 801(a)(4), added subsec. (d) and struck out former subsec. (d) which read as follows: ``The Secretary shall periodically cause to be published in the Federal Register a list of the ports or terminals holding a valid certificate issued under this section.''

Subsec. (e)(1). Pub. L. 104-227, Sec. 201(d)(2), (3), inserted ``or the Antarctic Protocol'' after ``the Convention'' in introductory provisions and inserted ``or Article 9 of Annex IV to the Antarctic Protocol'' after ``the Convention'' in subpar. (A).

Subsec. (f). Pub. L. 104-324, Sec. 801(b), designated existing provisions as par. (1) and added par. (2)(A).

Pub. L. 104-227, Sec. 201(d)(4), inserted ``or the Antarctic Protocol'' after ``the MARPOL Protocol''.

1989--Subsec. (c)(1). Pub. L. 101-225 substituted ``Annex I and Annex II'' for ``Annex V''.

1987--Subsec. (a). Pub. L. 100-220, Sec. 2103(a), designated existing provisions as par. (1), substituted ``a port's or terminal's reception facilities for mixtures containing oil or noxious liquid substances'' for ``reception facilities of a port or terminal'', and added par. (2).

Subsec. (b). Pub. L. 100-220, Sec. 2103(b), inserted ``and in establishing regulations under subsection (a) of this section,'' and ``ships or''.

Subsec. (c). Pub. L. 100-220, Sec. 2103(c), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ``If, upon inspection, reception facilities of a port or terminal are adequate to meet the requirements of the MARPOL Protocol and the regulations established hereunder, the Secretary shall, after consultation with the Administrator of the Environmental Protection Agency, issue a certificate to that effect to the applicant. A certificate issued under this subsection--

``(1) is valid until suspended or revoked by the Secretary for cause or because of changed conditions; and

``(2) shall be available for inspection upon the request of the master, other person in charge, or agent of a seagoing ship using or intending to use the port or terminal.

The suspension or revocation of a certificate issued under this subsection may be appealed to the Secretary and acted on by him in the manner prescribed by regulation.''

Subsec. (e). Pub. L. 100-220, Sec. 2103(d), designated existing provisions as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, in subpar. (A), substituted ``Annexes I and II of the Convention'' for ``the MARPOL Protocol'', and

added par. (2).

Effective Date of 1987 Amendment

Amendment by Pub. L. 100-220 effective Dec. 31, 1988, the date on which Annex V to the International Convention for the Prevention of Pollution from Ships, 1973, entered into force for the United States, see section 2002(a) of Pub. L. 100-220, set out as a note under section 1901 of this title.

Effective Date

Subsecs. (a), (c), and (f) of this section effective Oct. 21, 1980, see section 14(b) of Pub. L. 96-478, set out as a note under section 1901 of this title.

Section Referred to in Other Sections

This section is referred to in section 1902 of this title.

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[CITE: **33USC1906**]

TITLE 33--NAVIGATION AND NAVIGABLE WATERS

CHAPTER 33--PREVENTION OF POLLUTION FROM SHIPS

Sec. 1906. Incidents involving ships

(a) Requirement to report incident

The master, person in charge, owner, charterer, manager, or operator of a ship involved in an incident shall report the incident in the manner prescribed by Article 8 of the Convention in accordance with regulations promulgated by the Secretary for that purpose.

(b) Requirement to report discharge, probable discharge, or presence of oil

The master or person in charge of--

(1) a ship of United States registry or nationality, or operated under the authority of the United States, wherever located;

(2) another ship while in the navigable waters of the United States; or

(3) a sea port or oil handling facility subject to the jurisdiction of the United States,

shall report a discharge, probable discharge, or presence of oil in the manner prescribed by Article 4 of the International Convention on Oil Pollution Preparedness, Response and Cooperation, 1990 (adopted at London, November 30, 1990), in accordance with regulations promulgated by the Secretary for that purpose.

(Pub. L. 96-478, Sec. 7, Oct. 21, 1980, 94 Stat. 2300; Pub. L. 102-241, Sec. 39, Dec. 19, 1991, 105 Stat. 2225.)

Amendments

1991--Pub. L. 102-241 amended section generally. Prior to amendment, section read as follows:

``(a) As soon as he has knowledge of an incident, the master or other person in charge of a ship shall report it to the Secretary in the manner prescribed by Article 8 of the Convention.

``(b) Upon receipt of the report of an incident involving a ship, other than one of United States registry or nationality or one operated under the authority of the United States, the Secretary shall take the action required by Article 8 of the Convention.''

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[CITE: **33USC1907**]

TITLE 33--NAVIGATION AND NAVIGABLE WATERS

CHAPTER 33--PREVENTION OF POLLUTION FROM SHIPS

Sec. 1907. Violations

- (a) General prohibition; cooperation and enforcement; detection and monitoring measures; reports; evidence

It is unlawful to act in violation of the MARPOL Protocol, Annex IV to the Antarctic Protocol, this chapter, or the regulations issued thereunder. The Secretary shall cooperate with other parties to the MARPOL Protocol or to the Antarctic Protocol in the detection of violations and in enforcement of the MARPOL Protocol and Annex IV to the Antarctic Protocol. The Secretary shall use all appropriate and practical measures of detection and environmental monitoring, and shall establish adequate procedures for reporting violations and accumulating evidence.

- (b) Investigations; subpoenas: issuance by Secretary, enforcement; action by Secretary; information to party

Upon receipt of evidence that a violation has occurred, the Secretary shall cause the matter to be investigated. In any investigation under this section the Secretary may issue subpoenas to require the attendance of any witness and the production of documents and other evidence. In case of refusal to obey a subpoena issued to any person, the Secretary may request the Attorney General to invoke the aid of the appropriate district court of the United States to compel compliance. Upon completion of the investigation, the Secretary shall take the action required by the MARPOL Protocol or the Antarctic Protocol and whatever further action he considers appropriate under the circumstances. If the initial evidence was provided by a party to the MARPOL Protocol or the Antarctic Protocol, the Secretary, acting through the Secretary of State, shall inform that party of the action taken or proposed.

- (c) Ship inspections; reports to Secretary; additional action

(1) This subsection applies to inspections relating to possible violations of Annex I or Annex II to the Convention, of Article 3 or Article 4 of Annex IV to the Antarctic Protocol, or of this chapter by any seagoing ship referred to in section 1902(a)(2) of this title.

(2) While at a port or terminal subject to the jurisdiction of the United States, a ship to which the MARPOL Protocol or the Antarctic Protocol applies may be inspected by the Secretary--

(A) to verify whether or not the ship has discharged a harmful substance in violation of the MARPOL Protocol, Annex IV to the Antarctic Protocol, or this chapter; or

(B) to comply with a request from a party to the MARPOL Protocol or the Antarctic Protocol for an investigation as to whether the ship may have discharged a harmful substance anywhere in violation of the MARPOL Protocol or Annex IV to the Antarctic Protocol. An investigation may be undertaken under this clause only when the requesting party has furnished sufficient evidence to allow the Secretary reasonably to believe that a discharge has occurred.

If an inspection under this subsection indicates that a violation has occurred, the investigating officer shall forward a report to the Secretary for appropriate action. The Secretary shall undertake to notify the master of the ship concerned and, acting in coordination with the Secretary of State, shall take any additional action required by Article 6 of the Convention.

(d) Garbage disposal inspections; covered ships; enforcement actions

(1) The Secretary may inspect a ship referred to in section 1902(a)(3) of this title to verify whether the ship has disposed of garbage in violation of Annex V to the Convention, Article 5 of Annex IV to the Antarctic Protocol, or this chapter.

(2) If an inspection under this subsection indicates that a violation has occurred, the Secretary may undertake enforcement action under section 1908 of this title.

(e) Harmful substance or garbage disposal inspections; covered ships; enforcement actions

(1) The Secretary may inspect at any time a ship of United States registry or nationality or operating under the authority of the United States to which the MARPOL Protocol or the Antarctic Protocol applies to verify whether the ship has discharged a harmful substance or disposed of garbage in violation of those Protocols or this chapter.

(2) If an inspection under this subsection indicates that a violation of the MARPOL Protocol, of Annex IV to the Antarctic Protocol, or of this chapter has occurred the Secretary may undertake enforcement action under section 1908 of this title.

(f) Supplemental remedies and requirements; other provisions and available remedies unaffected

Remedies and requirements of this chapter supplement and neither amend nor repeal any other provisions of law, except as expressly provided in this chapter. Nothing in this chapter shall limit, deny, amend, modify, or repeal any other remedy available to the United States or any other person, except as expressly provided in this chapter.

(Pub. L. 96-478, Sec. 8, Oct. 21, 1980, 94 Stat. 2300; Pub. L. 100-220, title II, Sec. 2104, Dec. 29, 1987, 101 Stat. 1462; Pub. L. 101-225, title II, Sec. 201(2), (3), Dec. 12, 1989, 103 Stat. 1910; Pub. L. 104-227, title II, Sec. 201(e), Oct. 2, 1996, 110 Stat. 3043.)

Amendments

1996--Subsec. (a). Pub. L. 104-227, Sec. 201(e)(1), (2), inserted ``Annex IV to the Antarctic Protocol,' after ``violation of the MARPOL Protocol,'', ``or to the Antarctic Protocol' after ``to the MARPOL Protocol'', and ``and Annex IV to the Antarctic Protocol' after ``enforcement of the MARPOL Protocol''.

Subsec. (b). Pub. L. 104-227, Sec. 201(e)(3), inserted ``or the Antarctic Protocol' after ``MARPOL Protocol' in two places.

Subsec. (c)(1). Pub. L. 104-227, Sec. 201(e)(4), inserted `` , of Article 3 or Article 4 of Annex IV to the Antarctic Protocol,' after ``to the Convention''.

Subsec. (c)(2). Pub. L. 104-227, Sec. 201(e)(5), (6), inserted ``or the Antarctic Protocol' after ``which the MARPOL Protocol' in introductory provisions, `` , Annex IV to the Antarctic Protocol,' after ``MARPOL Protocol' in subpar. (A), and ``or the Antarctic Protocol' after ``to the MARPOL Protocol' and ``or Annex IV to the Antarctic Protocol' after ``of the MARPOL Protocol' in subpar. (B).

Subsec. (d)(1). Pub. L. 104-227, Sec. 201(e)(8), inserted `` ,

Article 5 of Annex IV to the Antarctic Protocol,' after ``Convention''.

Subsec. (e)(1). Pub. L. 104-227, Sec. 201(e)(9), inserted ``or the Antarctic Protocol'' after ``MARPOL Protocol'' and substituted ``those Protocols'' for ``that Protocol''.

Subsec. (e)(2). Pub. L. 104-227, Sec. 201(e)(10), inserted `` , of Annex IV to the Antarctic Protocol,' after ``MARPOL Protocol''.

1989--Subsecs. (c)(1), (e)(2). Pub. L. 101-225 inserted ``or of this chapter''.

1987--Subsec. (c). Pub. L. 100-220, Sec. 2104(a), added par. (1), designated existing provisions as par. (2), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, and in closing provisions of par. (2) substituted ``The'' for ``If a report made under this subsection involves a ship, other than one of United States registry or nationality or one operated under the authority of the United States, the''.

Subsecs. (d) to (f). Pub. L. 100-220, Sec. 2104(b), added subsecs. (d) and (e) and redesignated former subsec. (d) as (f).

Effective Date of 1987 Amendment

Amendment by Pub. L. 100-220 effective Dec. 31, 1988, the date on which Annex V to the International Convention for the Prevention of Pollution from Ships, 1973, entered into force for the United States, see section 2002(a) of Pub. L. 100-220, set out as a note under section 1901 of this title.

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TITLE 33--NAVIGATION AND NAVIGABLE WATERS

CHAPTER 33--PREVENTION OF POLLUTION FROM SHIPS

Sec. 1908. Penalties for violations

(a) Criminal penalties; payment for information leading to conviction

A person who knowingly violates the MARPOL Protocol,,\1\ Annex IV to the Antarctic Protocol, this chapter, or the regulations issued thereunder commits a class D felony. In the discretion of the Court, an amount equal to not more than \1/2\ of such fine may be paid to the person giving information leading to conviction.

\1\ So in original.

(b) Civil penalties; separate violations; assessment notice; considerations affecting amount; payment for information leading to assessment of penalty

A person who is found by the Secretary, after notice and an opportunity for a hearing, to have--

(1) violated the MARPOL Protocol,,\1\ Annex IV to the Antarctic Protocol, this chapter, or the regulations issued thereunder shall be liable to the United States for a civil penalty, not to exceed \$25,000 for each violation; or

(2) made a false, fictitious, or fraudulent statement or representation in any matter in which a statement or representation is required to be made to the Secretary under the MARPOL Protocol,,\1\ Annex IV to the Antarctic Protocol, this chapter, or the regulations thereunder, shall be liable to the United States for a civil penalty, not to exceed \$5,000 for each statement or representation.

Each day of a continuing violation shall constitute a separate violation. The amount of the civil penalty shall be assessed by the Secretary, or his designee, by written notice. In determining the amount of the penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other matters as justice may require. An amount equal to not more than \1/2\ of such penalties may be paid by the Secretary to the person giving information leading to the assessment of such penalties.

(c) Abatement of civil penalties; collection by Attorney General

The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to assessment or which has been assessed under this section. If any person fails to pay an assessment of a civil penalty after it has become final, the Secretary may refer the matter to the Attorney General of the United States for collection in any appropriate district court of the United States.

(d) Liability in rem; district court jurisdiction

A ship operated in violation of the MARPOL Protocol, \1\ Annex IV to the Antarctic Protocol, this chapter, or the regulations thereunder is liable in rem for any fine imposed under subsection (a) of this section or civil penalty assessed pursuant to subsection (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.

(e) Ship clearance or permits; refusal or revocation; bond or other surety

If any ship subject to the MARPOL Protocol, Annex IV to the Antarctic Protocol, or this chapter, its owner, operator, or person in charge is liable for a fine or civil penalty under this section, or if reasonable cause exists to believe that the ship, its owner, operator, or person in charge may be subject to a fine or civil penalty under this section, the Secretary of the Treasury, upon the request of the Secretary, shall refuse or revoke the clearance required by section 91 of title 46, Appendix. Clearance may be granted upon the filing of a bond or other surety satisfactory to the Secretary.

(f) Referrals for appropriate action by foreign country

Notwithstanding subsection (a), (b), or (d) of this section, if the violation is by a ship registered in or of the nationality of a country party to the MARPOL Protocol or the Antarctic Protocol, or one operated under the authority of a country party to the MARPOL Protocol or the Antarctic Protocol, the Secretary, acting in coordination with the Secretary of State, may refer the matter to the government of the country of the ship's registry or nationality, or under whose authority the ship is operating for appropriate action, rather than taking the actions required or authorized by this section.

(Pub. L. 96-478, Sec. 9, Oct. 21, 1980, 94 Stat. 2301; Pub. L. 100-220, title II, Sec. 2105, Dec. 29, 1987, 101 Stat. 1463; Pub. L. 101-380, title IV, Sec. 4302(n), Aug. 18, 1990, 104 Stat. 539; Pub. L. 103-182, title VI, Sec. 688, Dec. 8, 1993, 107 Stat. 2222; Pub. L. 104-227, title II, Sec. 201(f), Oct. 2, 1996, 110 Stat. 3043.)

Amendments

1996--Subsec. (a). Pub. L. 104-227, Sec. 201(f)(1), inserted `` Annex IV to the Antarctic Protocol,' ' after ``MARPOL Protocol,' '.

Subsec. (b). Pub. L. 104-227, Sec. 201(f)(2), (3), inserted `` Annex IV to the Antarctic Protocol,' ' after ``MARPOL Protocol,' ' in pars. (1) and (2).

Subsec. (d). Pub. L. 104-227, Sec. 201(f)(4), inserted `` Annex IV to the Antarctic Protocol,' ' after ``MARPOL Protocol,' '.

Subsec. (e). Pub. L. 104-227, Sec. 201(f)(5), inserted `` Annex IV to the Antarctic Protocol,' ' after ``MARPOL Protocol,' '.

Subsec. (f). Pub. L. 104-227, Sec. 201(f)(6), inserted ``or the Antarctic Protocol,' ' after ``MARPOL Protocol,' ' in two places.

1993--Subsec. (e). Pub. L. 103-182 substituted ``shall refuse or revoke the clearance required by section 91 of title 46, Appendix. Clearance may be granted upon the filing of a bond or other surety satisfactory to the Secretary.' ' for ``shall refuse or revoke--

``(1) the clearance required by section 91 of title 46, Appendix; or

``(2) a permit to proceed under section 313 of title 46, Appendix, or section 1443 of title 19.

Clearance or a permit to proceed may be granted upon the filing of a bond or other surety satisfactory to the Secretary.' '

1990--Subsec. (a). Pub. L. 101-380 substituted ``commits a class D felony,' ' for ``shall, for each violation, be fined not more than \$50,000

or be imprisoned for not more than 5 years, or both''.

1987--Subsec. (a). Pub. L. 100-220, Sec. 2105(a)(1), inserted at end ``In the discretion of the Court, an amount equal to not more than $\frac{1}{2}$ of such fine may be paid to the person giving information leading to conviction.''

Subsec. (b). Pub. L. 100-220, Sec. 2105(a)(2), inserted at end ``An amount equal to not more than $\frac{1}{2}$ of such penalties may be paid by the Secretary to the person giving information leading to the assessment of such penalties.''

Subsec. (f). Pub. L. 100-220, Sec. 2105(b), substituted ``to the government of the country of the ship's registry or nationality, or under whose authority the ship is operating'' for ``to that country''.

Effective Date of 1990 Amendment

Amendment by Pub. L. 101-380 applicable to incidents occurring after Aug. 18, 1990, see section 1020 of Pub. L. 101-380, set out as an Effective Date note under section 2701 of this title.

Effective Date of 1987 Amendment

Amendment by Pub. L. 100-220 effective Dec. 31, 1988, the date on which Annex V to the International Convention for the Prevention of Pollution from Ships, 1973, entered into force for the United States, see section 2002(a) of Pub. L. 100-220, set out as a note under section 1901 of this title.

Section Referred to in Other Sections

This section is referred to in sections 1904, 1907, 1910 of this title.

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[CITE: **33USC1909**]

TITLE 33--NAVIGATION AND NAVIGABLE WATERS

CHAPTER 33--PREVENTION OF POLLUTION FROM SHIPS

Sec. 1909. MARPOL Protocol; proposed amendments

(a) Acceptance of certain amendments by the President

A proposed amendment to the MARPOL Protocol received by the United States from the Secretary-General of the International Maritime Organization pursuant to Article VI of the MARPOL Protocol, may be accepted on behalf of the United States by the President following the advice and consent of the Senate, except as provided for in subsection (b) of this section.

(b) Action on certain amendments by the Secretary of State

A proposed amendment to Annex I, II, or V to the Convention, appendices to those Annexes, or Protocol I of the Convention received by the United States from the Secretary-General of the International Maritime Organization pursuant to Article VI of the MARPOL Protocol, may be the subject of appropriate action on behalf of the United States by the Secretary of State following consultation with the Secretary, who shall inform the Secretary of State as to what action he considers appropriate at least 30 days prior to the expiration of the period specified in Article VI of the MARPOL Protocol during which objection may be made to any amendment received.

(c) Declaration of nonacceptance by the Secretary of State

Following consultation with the Secretary, the Secretary of State may make a declaration that the United States does not accept an amendment proposed pursuant to Article VI of the MARPOL Protocol.

(Pub. L. 96-478, Sec. 10, Oct. 21, 1980, 94 Stat. 2302; Pub. L. 100-220, title II, Sec. 2106, Dec. 29, 1987, 101 Stat. 1463.)

Amendments

1987--Subsec. (a). Pub. L. 100-220, Sec. 2106(1), substituted ``International Maritime Organization'' for ``Inter-Governmental Maritime Consultative Organization''.

Subsec. (b). Pub. L. 100-220, Sec. 2106(2), substituted ``Annex I, II, or V to the Convention, appendices to those Annexes, or Protocol I of the Convention'' for ``Annex I or II, appendices to the Annexes, or Protocol I of the MARPOL Protocol,''' and ``International Maritime Organization'' for ``Inter-Governmental Maritime Consultative Organization''.

Effective Date of 1987 Amendment

Amendment by Pub. L. 100-220 effective Dec. 31, 1988, the date on which Annex V to the International Convention for the Prevention of Pollution from Ships, 1973, entered into force for the United States,

see section 2002(a) of Pub. L. 100-220, set out as a note under section 1901 of this title.

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[CITE: **33USC1910**]

TITLE 33--NAVIGATION AND NAVIGABLE WATERS

CHAPTER 33--PREVENTION OF POLLUTION FROM SHIPS

Sec. 1910. Legal actions

(a) Persons with adversely affected interests as plaintiffs; defendants

Except as provided in subsection (b) of this section, any person having an interest which is, or can be, adversely affected, may bring an action on his own behalf--

(1) against any person alleged to be in violation of the provisions of this chapter, or regulations issued hereunder;

(2) against the Secretary where there is alleged a failure of the Secretary to perform any act or duty under this chapter which is not discretionary with the Secretary;

(3) against the Secretary of the Treasury where there is alleged a failure of the Secretary of the Treasury to take action under section 1908(e) of this title.

(b) Commencement conditions

No action may be commenced under subsection (a) of this section--

(1) prior to 60 days after the plaintiff has given notice, in writing and under oath, to the alleged violator, the Secretary concerned, and the Attorney General; or

(2) if the Secretary has commenced enforcement or penalty action with respect to the alleged violation and is conducting such procedures diligently.

(c) Venue

Any suit brought under this section shall be brought--

(1) in a case concerning an onshore facility or port, in the United States district court for the judicial district where the onshore facility or port is located;

(2) in a case concerning an offshore facility or offshore structure under the jurisdiction of the United States, in the United States district court for the judicial district nearest the offshore facility or offshore structure;

(3) in a case concerning a ship, in the United States district court for any judicial district wherein the ship or its owner or operator may be found; or

(4) in any case, in the District Court for the District of Columbia.

(d) Costs; attorney fees; witness fees

The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party including the Federal Government.

(e) Federal intervention

In any action brought under this section, if the Secretary or

Attorney General are not parties of record, the United States, through the Attorney General, shall have the right to intervene.

(Pub. L. 96-478, Sec. 11, Oct. 21, 1980, 94 Stat. 2302.)

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[CITE: **33USC1911**]

TITLE 33--NAVIGATION AND NAVIGABLE WATERS

CHAPTER 33--PREVENTION OF POLLUTION FROM SHIPS

Sec. 1911. Authority of Secretary under port and tanker safety
program unaffected

Nothing in this chapter shall be construed as limiting, diminishing,
or otherwise restricting any of the authority of the Secretary under the
Port and Tanker Safety Act of 1978.

(Pub. L. 96-478, Sec. 15, Oct. 21, 1980, 94 Stat. 2303.)

References in Text

The Port and Tanker Safety Act of 1978, referred to in text, is Pub.
L. 95-474, Oct. 17, 1978, 92 Stat. 1471, which enacted sections 1225,
1228 to 1231, and 1232 of this title, amended sections 1221 to 1224,
1226, and 1227 of this title, and sections 214 and 391a of former Title
46, Shipping, and enacted provisions set out as notes under sections
1221 and 1224 of this title and section 391a of Title 46. For complete
classification of this Act to the Code, see Short Title note set out
under section 1221 of this title and Tables.