

(c) Limitations**(1) Excepted vessel**

Subsection (b) does not apply to fixed or floating platforms, FSUs, or FPSOs that were constructed prior to January 1, 2003, and that have not been in dry dock on or after that date.

(2) Sale, manufacture, etc.

This section does not apply to—

(A) the sale, distribution, or use pursuant to any agreement between the Administrator and any person that results in an earlier prohibition or cancellation date than specified in this chapter; or

(B) the manufacture, processing, formulation, sale, distribution, or use of organotin or antifouling systems containing organotin used or intended for use only for sonar domes or in conductivity sensors in oceanographic instruments.

(Pub. L. 111-281, title X, §1031, Oct. 15, 2010, 124 Stat. 3027.)

REFERENCES IN TEXT

This chapter, referred to in subssecs. (a)(1), (4), (5) and (c)(2)(A), was in the original “this title”, meaning title X of Pub. L. 111-281, Oct. 15, 2010, 124 Stat. 3023, which enacted this chapter and repealed chapter 37 (§2401 et seq.) of this title. For complete classification of title X to the Code, see Tables.

§ 3842. Investigations and inspections by Secretary**(a) In general**

The Secretary may conduct investigations and inspections regarding a vessel’s compliance with this chapter or the Convention.

(b) Violations; subpoenas**(1) In general**

In any investigation under this section, the Secretary may issue a subpoena to require the attendance of a witness or the production of documents or other evidence if—

(A) before the issuance of the subpoena, the Secretary requests a determination by the Attorney General of the United States as to whether the subpoena will interfere with a criminal investigation; and

(B) the Attorney General—

(i) determines that the subpoena will not interfere with a criminal investigation; or

(ii) fails to make a determination under clause (i) before the date that is 30 days after the date on which the Secretary makes a request under subparagraph (A).

(2) Enforcement

In the case of refusal to obey a subpoena issued to any person under this subsection, the Secretary may request the Attorney General to invoke the aid of the appropriate district court of the United States to compel compliance.

(c) Further action

On completion of an investigation, the Secretary may take whatever further action the Secretary considers appropriate under the Convention or this chapter.

(d) Cooperation

The Secretary may cooperate with other parties to the Convention in the detection of violations and in enforcement of the Convention. Nothing in this section affects or alters requirements under any other laws.

(Pub. L. 111-281, title X, §1032, Oct. 15, 2010, 124 Stat. 3028.)

REFERENCES IN TEXT

This chapter, referred to in subssecs. (a) and (c), was in the original “this title”, meaning title X of Pub. L. 111-281, Oct. 15, 2010, 124 Stat. 3023, which enacted this chapter and repealed chapter 37 (§2401 et seq.) of this title. For complete classification of title X to the Code, see Tables.

§ 3843. EPA enforcement**(a) Inspections, subpoenas****(1) In general**

For purposes of enforcing this chapter or any regulation prescribed under this chapter, officers or employees of the Environmental Protection Agency or of any State designated by the Administrator may enter at reasonable times any location where there is being held or may be held organotin or any other substance or antifouling system regulated under the Convention, for the purpose of inspecting and obtaining samples of any containers or labeling for organotin or other substance or system regulated under the Convention.

(2) Subpoenas**(A) In general**

In any investigation under this section, the Administrator may issue a subpoena to require the attendance of a witness or the production of documents or other evidence if—

(i) before the issuance of the subpoena, the Administrator requests a determination by the Attorney General of the United States as to whether the subpoena will interfere with a criminal investigation; and

(ii) the Attorney General—

(I) determines that the subpoena will not interfere with a criminal investigation; or

(II) fails to make a determination under subclause (I) before the date that is 30 days after the date on which the Administrator makes a request under clause (i).

(B) Enforcement

In the case of refusal to obey a subpoena issued to any person under this paragraph, the Administrator may request the Attorney General to invoke the aid of the appropriate district court of the United States to compel compliance.

(b) Stop manufacture, sale, use, or removal orders

Consistent with section 3803 of this title, whenever any organotin or other substance or system regulated under the Convention is found by the Administrator and there is reason to believe that a manufacturer, seller, distributor, or

user has violated or is in violation of any provision of this chapter, or that such organotin or other substance or system regulated under the Convention has been or is intended to be manufactured, distributed, sold, or used in violation of this chapter, the Administrator may issue a stop manufacture, sale, use, or removal order to any person that owns, controls, or has custody of such organotin or other substance or system regulated under the Convention. After receipt of that order the person may not manufacture, sell, distribute, use, or remove the organotin or other substance or system regulated under the Convention described in the order except in accordance with the order.

(Pub. L. 111-281, title X, §1033, Oct. 15, 2010, 124 Stat. 3028.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1) and (b), was in the original “this title”, meaning title X of Pub. L. 111-281, Oct. 15, 2010, 124 Stat. 3023, which enacted this chapter and repealed chapter 37 (§2401 et seq.) of this title. For complete classification of title X to the Code, see Tables.

§ 3844. Additional authority of the Administrator

The Administrator, in consultation with the Secretary, may establish, as necessary, terms and conditions regarding the removal and disposal of antifouling systems prohibited or restricted under this chapter.

(Pub. L. 111-281, title X, §1034, Oct. 15, 2010, 124 Stat. 3029.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this title”, meaning title X of Pub. L. 111-281, Oct. 15, 2010, 124 Stat. 3023, which enacted this chapter and repealed chapter 37 (§2401 et seq.) of this title. For complete classification of title X to the Code, see Tables.

SUBCHAPTER IV—ACTION ON VIOLATION, PENALTIES, AND REFERRALS

§ 3851. Criminal enforcement

Any person who knowingly violates paragraph (2), (3), (4), or (5) of section 3841(a) of this title or section 3841(b) of this title shall be fined under title 18 or imprisoned not more than 6 years, or both.

(Pub. L. 111-281, title X, §1041, Oct. 15, 2010, 124 Stat. 3029.)

§ 3852. Civil enforcement

(a) Civil penalty

(1) In general

Any person who is found by the Secretary or the Administrator, as appropriate, after notice and an opportunity for a hearing, to have—

(A) violated the Convention, this chapter, or any regulation prescribed under this chapter, is liable to the United States Government for a civil penalty of not more than \$37,500 for each violation; or

(B) 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

Convention, this chapter, or any regulations prescribed under this chapter, is liable to the United States for a civil penalty of not more than \$50,000 for each such statement or representation.

(2) Relationship to other law

This subsection shall not limit or affect the authority of the Government under section 1001 of title 18.

(b) Assessment of penalty

The amount of the civil penalty shall be assessed by the Secretary or Administrator, as appropriate, by written notice.

(c) Limitation for recreational vessel

A civil penalty imposed under subsection (a) against the owner or operator of a recreational vessel, as that term is defined in section 2101 of title 46, for a violation of the Convention, this chapter, or any regulation prescribed under this chapter involving that recreational vessel, may not exceed \$5,000 for each violation.

(d) Determination of penalty

For purposes of penalties under this section, each day of a continuing violation constitutes a separate violation. In determining the amount of the penalty, the Secretary or Administrator 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, the economic impact of the penalty on the violator, the economic benefit to the violator and other matters as justice may require.

(e) Reward

An amount equal to not more than one-half of any civil penalty assessed by the Secretary or Administrator under this section may, subject to the availability of appropriations, be paid by the Secretary or Administrator, respectively, to any person who provided information that led to the assessment or imposition of the penalty.

(f) Referral to Attorney General

If any person fails to pay a civil penalty assessed under this section after it has become final, or comply with an order issued under this chapter, the Secretary or Administrator, as appropriate, may refer the matter to the Attorney General of the United States for collection in any appropriate district court of the United States.

(g) Compromise, modification, or remission

Before referring any civil penalty that is subject to assessment or has been assessed under this section to the Attorney General, the Secretary, or Administrator, as appropriate, may compromise, modify, or remit, with or without conditions, the civil penalty.

(h) Nonpayment penalty

Any person who fails to pay on a timely basis a civil penalty assessed under this section shall also be liable to the United States for interest on the penalty at an annual rate equal to 11 percent compounded quarterly, attorney fees and costs for collection proceedings, and a quarterly nonpayment penalty for each quarter during