

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 L. 111-281, Oct. 15, 2010, 124 Stat. 3023, which enacted this chapter and repealed chapter 37 (§2401 et seq.)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 L. 111-281, Oct. 15, 2010, 124 Stat. 3023, which enacted this chapter and repealed chapter 37 (§2401 et seq.)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

which such failure to pay persists. That nonpayment penalty shall be in an amount equal to 20 percent of the aggregate amount of that person's penalties and nonpayment penalties that are unpaid as of the beginning of that quarter.

(Pub. L. 111–281, title X, §1042, Oct. 15, 2010, 124 Stat. 3030.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1), (c), and (f), 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.

§ 3853. Liability in rem

A vessel operated in violation of the Convention, this chapter, or any regulation prescribed under this chapter, is liable in rem for any fine imposed under title 18 or civil penalty assessed pursuant to section 3852 of this title, and may be proceeded against in the United States district court of any district in which the vessel may be found.

(Pub. L. 111–281, title X, §1043, Oct. 15, 2010, 124 Stat. 3031; Pub. L. 111–330, §1(20), Dec. 22, 2010, 124 Stat. 3571.)

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.

AMENDMENTS

2010—Pub. L. 111–330 substituted “under title 18” for “under section 18”.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–330, §1, Dec. 22, 2010, 124 Stat. 3569, provided that the amendment made by section 1(20) is effective with the enactment of Pub. L. 111–281.

§ 3854. Vessel clearance or permits; refusal or revocation; bond or other surety

If any vessel that is subject to the Convention or this chapter, or its owner, operator, or person in charge, is liable for a fine or civil penalty under section 3852 or 3853 of this title, or if reasonable cause exists to believe that the vessel, its owner, operator, or person in charge may be subject to a fine or civil penalty under section 3852 or 3853 of this title, the Secretary may refuse or revoke the clearance required by section 60105 of title 46. Clearance may be granted upon the filing of a bond or other surety satisfaction to the Secretary.

(Pub. L. 111–281, title X, §1044, Oct. 15, 2010, 124 Stat. 3031.)

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.

§ 3855. Warnings, detentions, dismissals, exclusion

(a) In general

If a vessel is detected to be in violation of the Convention, this chapter, or any regulation prescribed under this chapter, the Secretary may warn, detain, dismiss, or exclude the vessel from any port or offshore terminal under the jurisdiction of the United States.

(b) Notifications

If action is taken under subsection (a), the Secretary, in consultation with the Secretary of State, shall make the notifications required by the Convention.

(Pub. L. 111–281, title X, §1045, Oct. 15, 2010, 124 Stat. 3031.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (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.

§ 3856. Referrals for appropriate action by foreign country

Notwithstanding sections 3851, 3852, 3853, and 3855 of this title, if a violation of the Convention is committed by a vessel registered in or of the nationality of a country that is a party to the Convention, or by a vessel operated under the authority of a country that is a party to the Convention, the Secretary, acting in coordination with the Secretary of State, may refer the matter to the government of the country of the vessel's registry or nationality, or under whose authority the vessel is operating, for appropriate action, rather than taking the actions otherwise required or authorized by this subchapter.

(Pub. L. 111–281, title X, §1046, Oct. 15, 2010, 124 Stat. 3031.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original “this subtitle”, meaning subtitle D (§§1041–1048) of title X of Pub. L. 111–281, Oct. 15, 2010, 124 Stat. 3029, which enacted this subchapter and repealed chapter 37 (§2401 et seq.) of this title. For complete classification of subtitle D to the Code, see Tables.

§ 3857. Remedies not affected

(a) In general

Nothing in this chapter limits, denies, amends, modifies, or repeals any other remedy available to the United States.

(b) Relationship to State and local law

Nothing in this chapter limits, denies, amends, modifies, or repeals any rights under existing law, of any State, territory, or possession of the United States, or any political subdivision thereof, to regulate any antifouling system. Compliance with the requirements of a State, territory, or possession of the United States, or political subdivision thereof related to antifouling paint or any other antifouling system does not relieve any person of the obligation to comply with this chapter.