

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.”

Subsec. (f)(1). Pub. L. 110-280, §7(4), substituted “Secretary and the Administrator are” for “Secretary is”.

Subsec. (f)(2). Pub. L. 110-280, §7(5), struck out subpar. (A) designation before “Not later”.

1996—Subsec. (b). Pub. L. 104-227, §201(d)(1), inserted “or the Antarctic Protocol” after “the MARPOL Protocol”.

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

Pub. L. 104-227, §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, §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, §2103(b), inserted “and in establishing regulations under subsection (a) of this section,” and “ships or”.

Subsec. (c). Pub. L. 100-220, §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, §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.

§ 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, §7, Oct. 21, 1980, 94 Stat. 2300; Pub. L. 102-241, §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.”

§ 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) Inspections; enforcement

(1) The Secretary may inspect a ship to which this chapter applies as provided under section 1902(a)(5) of this title, to verify whether the ship is in compliance with Annex VI to the Convention and this chapter.

(2) If an inspection under this subsection or any other information indicates that a violation has occurred, the Secretary, or the Administrator in a matter referred by the Secretary, may undertake enforcement action under this section.

(3) Notwithstanding subsection (b) and paragraph (2) of this subsection, the Administrator shall have all of the authorities of the Secretary, as specified in subsection (b) of this section, for the purposes of enforcing regulations 17 and 18 of Annex VI to the Convention to the extent that shoreside violations are the subject of the action and in any other matter referred to the Administrator by the Secretary.

(Pub. L. 96-478, §8, Oct. 21, 1980, 94 Stat. 2300; Pub. L. 100-220, title II, §2104, Dec. 29, 1987, 101 Stat. 1462; Pub. L. 101-225, title II, §201(2), (3), Dec. 12, 1989, 103 Stat. 1910; Pub. L. 104-227, title II, §201(e), Oct. 2, 1996, 110 Stat. 3043; Pub. L. 110-280, §8, July 21, 2008, 122 Stat. 2614.)

AMENDMENTS

2008—Subsec. (f). Pub. L. 110-280 amended subsec. (f) generally. Prior to amendment, text read as follows: “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.”

1996—Subsec. (a). Pub. L. 104-227, §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, §201(e)(3), inserted “or the Antarctic Protocol” after “MARPOL Protocol” in two places.

Subsec. (c)(1). Pub. L. 104-227, §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, §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, §201(e)(8), inserted “, Article 5 of Annex IV to the Antarctic Protocol,” after “Convention”.

Subsec. (e)(1). Pub. L. 104-227, § 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, § 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, § 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, § 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.

§ 1908. Penalties for violations

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

A person who knowingly violates the MARPOL Protocol, 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 ½ of such fine may be paid to the person giving information leading to conviction.

(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, or the Administrator as provided for in this chapter, after notice and an opportunity for a hearing, to have—

(1) violated the MARPOL Protocol, 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, or the Administrator as provided for in this chapter, under the MARPOL Protocol, 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 the Administrator as provided for in this chapter or his designee, by written notice. In determining the amount of the penalty, the Secretary, or the Administrator as provided for in this chapter, 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 ½ of such penalties may be paid by the Secretary, or the Administrator as provided for in this chapter, to the person giving information leading to the assessment of such penalties.

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

The Secretary, or the Administrator as provided for in this chapter, 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, or the Administrator as provided for in this chapter, 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, 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 60105 of title 46. 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, or the Administrator as provided for in this chapter 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, § 9, Oct. 21, 1980, 94 Stat. 2301; Pub. L. 100-220, title II, § 2105, Dec. 29, 1987, 101 Stat. 1463; Pub. L. 101-380, title IV, § 4302(n), Aug. 18, 1990, 104 Stat. 539; Pub. L. 103-182, title VI, § 688, Dec. 8, 1993, 107 Stat. 2222; Pub. L. 104-227, title II, § 201(f), Oct. 2, 1996, 110 Stat. 3043; Pub. L. 110-280, § 10, July 21, 2008, 122 Stat. 2615.)