

(b) Authorization of appropriations

There are authorized to be appropriated to the Under Secretary of Commerce for Oceans and Atmosphere to carry out this section, \$10,000,000 for each of fiscal years 2010 through 2014.

(Pub. L. 111–281, title VII, § 705, Oct. 15, 2010, 124 Stat. 2982.)

REFERENCES IN TEXT

The Federal Water Pollution Control Act, referred to in subsec. (a), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of this title and Tables.

CODIFICATION

Section was enacted as part of the Coast Guard Authorization Act of 2010, and not as part of the Federal Water Pollution Control Act which comprises this chapter.

§ 1321b. Improved coordination with tribal governments**(a) In general**

Within 6 months after October 15, 2010, the Secretary of the Department in which the Coast Guard is operating shall complete the development of a tribal consultation policy, which recognizes and protects to the maximum extent practicable tribal treaty rights and trust assets in order to improve the Coast Guard's consultation and coordination with the tribal governments of federally recognized Indian tribes with respect to oil spill prevention, preparedness, response and natural resource damage assessment.

(b) Inclusion of tribal government

The Secretary of the Department in which the Coast Guard is operating shall ensure that, as soon as practicable after identifying an oil spill that is likely to have a significant impact on natural or cultural resources owned or directly utilized by a federally recognized Indian tribe, the Coast Guard will—

- (1) ensure that representatives of the tribal government of the affected tribes are included as part of the incident command system established by the Coast Guard to respond to the spill;
- (2) share information about the oil spill with the tribal government of the affected tribe; and
- (3) to the extent practicable, involve tribal governments in deciding how to respond to the spill.

(c) Cooperative arrangements

The Coast Guard may enter into memoranda of agreement and associated protocols with Indian tribal governments in order to establish cooperative arrangements for oil pollution prevention, preparedness, and response. Such memoranda may be entered into prior to the development of the tribal consultation and coordination policy to provide Indian tribes grant and contract assistance. Such memoranda of agreement and associated protocols with Indian tribal governments may include—

- (1) arrangements for the assistance of the tribal government to participate in the devel-

opment of the National Contingency Plan and local Area Contingency Plans to the extent they affect tribal lands, cultural and natural resources;

(2) arrangements for the assistance of the tribal government to develop the capacity to implement the National Contingency Plan and local Area Contingency Plans to the extent they affect tribal lands, cultural and natural resources;

(3) provisions on coordination in the event of a spill, including agreements that representatives of the tribal government will be included as part of the regional response team co-chaired by the Coast Guard and the Environmental Protection Agency to establish policies for responding to oil spills;

(4) arrangements for the Coast Guard to provide training of tribal incident commanders and spill responders for oil spill preparedness and response;

(5) demonstration projects to assist tribal governments in building the capacity to protect tribal treaty rights and trust assets from oil spills; and

(6) such additional measures the Coast Guard determines to be necessary for oil pollution prevention, preparedness, and response.

(d) Funding for tribal participation

Subject to the availability of appropriations, the Commandant of the Coast Guard shall provide assistance to participating tribal governments in order to facilitate the implementation of cooperative arrangements under subsection (c) and ensure the participation of tribal governments in such arrangements. There are authorized to be appropriated to the Commandant \$500,000 for each of fiscal years 2010 through 2014 to be used to carry out this section.

(Pub. L. 111–281, title VII, § 706, Oct. 15, 2010, 124 Stat. 2983.)

CODIFICATION

Section was enacted as part of the Coast Guard Authorization Act of 2010, and not as part of the Federal Water Pollution Control Act which comprises this chapter.

§ 1321c. International efforts on enforcement

The Secretary of the department in which the Coast Guard is operating, in consultation with the heads of other appropriate Federal agencies, shall ensure that the Coast Guard pursues stronger enforcement in the International Maritime Organization of agreements related to oil discharges, including joint enforcement operations, training, and stronger compliance mechanisms.

(Pub. L. 111–281, title VII, § 709, Oct. 15, 2010, 124 Stat. 2986.)

CODIFICATION

Section was enacted as part of the Coast Guard Authorization Act of 2010, and not as part of the Federal Water Pollution Control Act which comprises this chapter.

§ 1322. Marine sanitation devices**(a) Definitions**

For the purpose of this section, the term—

(1) “new vessel” includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on the navigable waters, the construction of which is initiated after promulgation of standards and regulations under this section;

(2) “existing vessel” includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on the navigable waters, the construction of which is initiated before promulgation of standards and regulations under this section;

(3) “public vessel” means a vessel owned or bareboat chartered and operated by the United States, by a State or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce;

(4) “United States” includes the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Canal Zone, and the Trust Territory of the Pacific Islands;

(5) “marine sanitation device” includes any equipment for installation on board a vessel which is designed to receive, retain, treat, or discharge sewage, and any process to treat such sewage;

(6) “sewage” means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes except that, with respect to commercial vessels on the Great Lakes, such term shall include graywater;

(7) “manufacturer” means any person engaged in the manufacturing, assembling, or importation of marine sanitation devices or of vessels subject to standards and regulations promulgated under this section;

(8) “person” means an individual, partnership, firm, corporation, association, or agency of the United States, but does not include an individual on board a public vessel;

(9) “discharge” includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping;

(10) “commercial vessels” means those vessels used in the business of transporting property for compensation or hire, or in transporting property in the business of the owner, lessee, or operator of the vessel;

(11) “graywater” means galley, bath, and shower water;

(12) “discharge incidental to the normal operation of a vessel”—

(A) means a discharge, including—

(i) graywater, bilge water, cooling water, weather deck runoff, ballast water, oil water separator effluent, and any other pollutant discharge from the operation of a marine propulsion system, shipboard maneuvering system, crew habitability system, or installed major equipment, such as an aircraft carrier elevator or a catapult, or from a protective, preservative, or absorptive application to the hull of the vessel; and

(ii) a discharge in connection with the testing, maintenance, and repair of a system described in clause (i) whenever the vessel is waterborne; and

(B) does not include—

(i) a discharge of rubbish, trash, garbage, or other such material discharged overboard;

(ii) an air emission resulting from the operation of a vessel propulsion system, motor driven equipment, or incinerator; or

(iii) a discharge that is not covered by part 122.3 of title 40, Code of Federal Regulations (as in effect on February 10, 1996);

(13) “marine pollution control device” means any equipment or management practice, for installation or use on board a vessel of the Armed Forces, that is—

(A) designed to receive, retain, treat, control, or discharge a discharge incidental to the normal operation of a vessel; and

(B) determined by the Administrator and the Secretary of Defense to be the most effective equipment or management practice to reduce the environmental impacts of the discharge consistent with the considerations set forth in subsection (n)(2)(B); and

(14) “vessel of the Armed Forces” means—

(A) any vessel owned or operated by the Department of Defense, other than a time or voyage chartered vessel; and

(B) any vessel owned or operated by the Department of Transportation that is designated by the Secretary of the department in which the Coast Guard is operating as a vessel equivalent to a vessel described in subparagraph (A).

(b) Federal standards of performance

(1) As soon as possible, after October 18, 1972, and subject to the provisions of section 1254(j) of this title, the Administrator, after consultation with the Secretary of the department in which the Coast Guard is operating, after giving appropriate consideration to the economic costs involved, and within the limits of available technology, shall promulgate Federal standards of performance for marine sanitation devices (hereafter in this section referred to as “standards”) which shall be designed to prevent the discharge of untreated or inadequately treated sewage into or upon the navigable waters from new vessels and existing vessels, except vessels not equipped with installed toilet facilities. Such standards and standards established under subsection (c)(1)(B) of this section shall be consistent with maritime safety and the marine and navigation laws and regulations and shall be coordinated with the regulations issued under this subsection by the Secretary of the department in which the Coast Guard is operating. The Secretary of the department in which the Coast Guard is operating shall promulgate regulations, which are consistent with standards promulgated under this subsection and subsection (c) of this section and with maritime safety and the marine and navigation laws and regulations governing the design, construction, installation, and operation of any marine sanitation device on board such vessels.

(2) Any existing vessel equipped with a marine sanitation device on the date of promulgation of initial standards and regulations under this section, which device is in compliance with such

initial standards and regulations, shall be deemed in compliance with this section until such time as the device is replaced or is found not to be in compliance with such initial standards and regulations.

(c) Initial standards; effective dates; revision; waiver

(1)(A) Initial standards and regulations under this section shall become effective for new vessels two years after promulgation; and for existing vessels five years after promulgation. Revisions of standards and regulations shall be effective upon promulgation, unless another effective date is specified, except that no revision shall take effect before the effective date of the standard or regulation being revised.

(B) The Administrator shall, with respect to commercial vessels on the Great Lakes, establish standards which require at a minimum the equivalent of secondary treatment as defined under section 1314(d) of this title. Such standards and regulations shall take effect for existing vessels after such time as the Administrator determines to be reasonable for the upgrading of marine sanitation devices to attain such standard.

(2) The Secretary of the department in which the Coast Guard is operating with regard to his regulatory authority established by this section, after consultation with the Administrator, may distinguish among classes, type, and sizes of vessels as well as between new and existing vessels, and may waive applicability of standards and regulations as necessary or appropriate for such classes, types, and sizes of vessels (including existing vessels equipped with marine sanitation devices on the date of promulgation of the initial standards required by this section), and, upon application, for individual vessels.

(d) Vessels owned and operated by the United States

The provisions of this section and the standards and regulations promulgated hereunder apply to vessels owned and operated by the United States unless the Secretary of Defense finds that compliance would not be in the interest of national security. With respect to vessels owned and operated by the Department of Defense, regulations under the last sentence of subsection (b)(1) of this section and certifications under subsection (g)(2) of this section shall be promulgated and issued by the Secretary of Defense.

(e) Pre-promulgation consultation

Before the standards and regulations under this section are promulgated, the Administrator and the Secretary of the department in which the Coast Guard is operating shall consult with the Secretary of State; the Secretary of Health and Human Services; the Secretary of Defense; the Secretary of the Treasury; the Secretary of Commerce; other interested Federal agencies; and the States and industries interested; and otherwise comply with the requirements of section 553 of title 5.

(f) Regulation by States or political subdivisions thereof; complete prohibition upon discharge of sewage

(1)(A) Except as provided in subparagraph (B), after the effective date of the initial standards

and regulations promulgated under this section, no State or political subdivision thereof shall adopt or enforce any statute or regulation of such State or political subdivision with respect to the design, manufacture, or installation or use of any marine sanitation device on any vessel subject to the provisions of this section.

(B) A State may adopt and enforce a statute or regulation with respect to the design, manufacture, or installation or use of any marine sanitation device on a houseboat, if such statute or regulation is more stringent than the standards and regulations promulgated under this section. For purposes of this paragraph, the term "houseboat" means a vessel which, for a period of time determined by the State in which the vessel is located, is used primarily as a residence and is not used primarily as a means of transportation.

(2) If, after promulgation of the initial standards and regulations and prior to their effective date, a vessel is equipped with a marine sanitation device in compliance with such standards and regulations and the installation and operation of such device is in accordance with such standards and regulations, such standards and regulations shall, for the purposes of paragraph (1) of this subsection, become effective with respect to such vessel on the date of such compliance.

(3) After the effective date of the initial standards and regulations promulgated under this section, if any State determines that the protection and enhancement of the quality of some or all of the waters within such State require greater environmental protection, such State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into such waters, except that no such prohibition shall apply until the Administrator determines that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for such water to which such prohibition would apply. Upon application of the State, the Administrator shall make such determination within 90 days of the date of such application.

(4)(A) If the Administrator determines upon application by a State that the protection and enhancement of the quality of specified waters within such State requires such a prohibition, he shall by regulation completely prohibit the discharge from a vessel of any sewage (whether treated or not) into such waters.

(B) Upon application by a State, the Administrator shall, by regulation, establish a drinking water intake zone in any waters within such State and prohibit the discharge of sewage from vessels within that zone.

(g) Sales limited to certified devices; certification of test device; recordkeeping; reports

(1) No manufacturer of a marine sanitation device shall sell, offer for sale, or introduce or deliver for introduction in interstate commerce, or import into the United States for sale or resale any marine sanitation device manufactured after the effective date of the standards and regulations promulgated under this section unless such device is in all material respects substantially the same as a test device certified under this subsection.

(2) Upon application of the manufacturer, the Secretary of the department in which the Coast Guard is operating shall so certify a marine sanitation device if he determines, in accordance with the provisions of this paragraph, that it meets the appropriate standards and regulations promulgated under this section. The Secretary of the department in which the Coast Guard is operating shall test or require such testing of the device in accordance with procedures set forth by the Administrator as to standards of performance and for such other purposes as may be appropriate. If the Secretary of the department in which the Coast Guard is operating determines that the device is satisfactory from the standpoint of safety and any other requirements of maritime law or regulation, and after consideration of the design, installation, operation, material, or other appropriate factors, he shall certify the device. Any device manufactured by such manufacturer which is in all material respects substantially the same as the certified test device shall be deemed to be in conformity with the appropriate standards and regulations established under this section.

(3) Every manufacturer shall establish and maintain such records, make such reports, and provide such information as the Administrator or the Secretary of the department in which the Coast Guard is operating may reasonably require to enable him to determine whether such manufacturer has acted or is acting in compliance with this section and regulations issued thereunder and shall, upon request of an officer or employee duly designated by the Administrator or the Secretary of the department in which the Coast Guard is operating, permit such officer or employee at reasonable times to have access to and copy such records. All information reported to or otherwise obtained by the Administrator or the Secretary of the Department in which the Coast Guard is operating or their representatives pursuant to this subsection which contains or relates to a trade secret or other matter referred to in section 1905 of title 18 shall be considered confidential for the purpose of that section, except that such information may be disclosed to other officers or employees concerned with carrying out this section. This paragraph shall not apply in the case of the construction of a vessel by an individual for his own use.

(h) Sale and resale of properly equipped vessels; operability of certified marine sanitation devices

After the effective date of standards and regulations promulgated under this section, it shall be unlawful—

(1) for the manufacturer of any vessel subject to such standards and regulations to manufacture for sale, to sell or offer for sale, or to distribute for sale or resale any such vessel unless it is equipped with a marine sanitation device which is in all material respects substantially the same as the appropriate test device certified pursuant to this section;

(2) for any person, prior to the sale or delivery of a vessel subject to such standards and regulations to the ultimate purchaser, wrongfully to remove or render inoperative any cer-

tified marine sanitation device or element of design of such device installed in such vessel;

(3) for any person to fail or refuse to permit access to or copying of records or to fail to make reports or provide information required under this section; and

(4) for a vessel subject to such standards and regulations to operate on the navigable waters of the United States, if such vessel is not equipped with an operable marine sanitation device certified pursuant to this section.

(i) Jurisdiction to restrain violations; contempts

The district courts of the United States shall have jurisdictions to restrain violations of subsection (g)(1) of this section and subsections (h)(1) through (3) of this section. Actions to restrain such violations shall be brought by, and in, the name of the United States. In case of contumacy or refusal to obey a subpoena served upon any person under this subsection, the district court of the United States for any district in which such person is found or 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 or to appear and produce documents, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(j) Penalties

Any person who violates subsection (g)(1), clause (1) or (2) of subsection (h), or subsection (n)(8) shall be liable to a civil penalty of not more than \$5,000 for each violation. Any person who violates clause (4) of subsection (h) of this section or any regulation issued pursuant to this section shall be liable to a civil penalty of not more than \$2,000 for each violation. Each violation shall be a separate offense. The Secretary of the department in which the Coast Guard is operating may assess and compromise any such penalty. No penalty shall be assessed until the person charged shall have been given notice and an opportunity for a hearing on such charge. In determining the amount of the penalty, or the amount agreed upon in compromise, the gravity of the violation, and the demonstrated good faith of the person charged in attempting to achieve rapid compliance, after notification of a violation, shall be considered by said Secretary.

(k) Enforcement authority

The provisions of this section shall be enforced by the Secretary of the department in which the Coast Guard is operating and he may utilize by agreement, with or without reimbursement, law enforcement officers or other personnel and facilities of the Administrator, other Federal agencies, or the States to carry out the provisions of this section. The provisions of this section may also be enforced by a State.

(l) Boarding and inspection of vessels; execution of warrants and other process

Anyone authorized by the Secretary of the department in which the Coast Guard is operating to enforce the provisions of this section may, except as to public vessels, (1) board and inspect any vessel upon the navigable waters of the United States and (2) execute any warrant or

other process issued by an officer or court of competent jurisdiction.

(m) Enforcement in United States possessions

In the case of Guam and the Trust Territory of the Pacific Islands, actions arising under this section may be brought in the district court of Guam, and in the case of the Virgin Islands such actions may be brought in the district court of the Virgin Islands. In the case of American Samoa and the Trust Territory of the Pacific Islands, such actions may be brought in the District Court of the United States for the District of Hawaii and such court shall have jurisdiction of such actions. In the case of the Canal Zone, such actions may be brought in the District Court for the District of the Canal Zone.

(n) Uniform national discharge standards for vessels of Armed Forces

(1) Applicability

This subsection shall apply to vessels of the Armed Forces and discharges, other than sewage, incidental to the normal operation of a vessel of the Armed Forces, unless the Secretary of Defense finds that compliance with this subsection would not be in the national security interests of the United States.

(2) Determination of discharges required to be controlled by marine pollution control devices

(A) In general

The Administrator and the Secretary of Defense, after consultation with the Secretary of the department in which the Coast Guard is operating, the Secretary of Commerce, and interested States, shall jointly determine the discharges incidental to the normal operation of a vessel of the Armed Forces for which it is reasonable and practicable to require use of a marine pollution control device to mitigate adverse impacts on the marine environment. Notwithstanding subsection (a)(1) of section 553 of title 5, the Administrator and the Secretary of Defense shall promulgate the determinations in accordance with such section. The Secretary of Defense shall require the use of a marine pollution control device on board a vessel of the Armed Forces in any case in which it is determined that the use of such a device is reasonable and practicable.

(B) Considerations

In making a determination under subparagraph (A), the Administrator and the Secretary of Defense shall take into consideration—

- (i) the nature of the discharge;
- (ii) the environmental effects of the discharge;
- (iii) the practicability of using the marine pollution control device;
- (iv) the effect that installation or use of the marine pollution control device would have on the operation or operational capability of the vessel;
- (v) applicable United States law;
- (vi) applicable international standards; and
- (vii) the economic costs of the installation and use of the marine pollution control device.

(3) Performance standards for marine pollution control devices

(A) In general

For each discharge for which a marine pollution control device is determined to be required under paragraph (2), the Administrator and the Secretary of Defense, in consultation with the Secretary of the department in which the Coast Guard is operating, the Secretary of State, the Secretary of Commerce, other interested Federal agencies, and interested States, shall jointly promulgate Federal standards of performance for each marine pollution control device required with respect to the discharge. Notwithstanding subsection (a)(1) of section 553 of title 5, the Administrator and the Secretary of Defense shall promulgate the standards in accordance with such section.

(B) Considerations

In promulgating standards under this paragraph, the Administrator and the Secretary of Defense shall take into consideration the matters set forth in paragraph (2)(B).

(C) Classes, types, and sizes of vessels

The standards promulgated under this paragraph may—

- (i) distinguish among classes, types, and sizes of vessels;
- (ii) distinguish between new and existing vessels; and
- (iii) provide for a waiver of the applicability of the standards as necessary or appropriate to a particular class, type, age, or size of vessel.

(4) Regulations for use of marine pollution control devices

The Secretary of Defense, after consultation with the Administrator and the Secretary of the department in which the Coast Guard is operating, shall promulgate such regulations governing the design, construction, installation, and use of marine pollution control devices on board vessels of the Armed Forces as are necessary to achieve the standards promulgated under paragraph (3).

(5) Deadlines; effective date

(A) Determinations

The Administrator and the Secretary of Defense shall—

- (i) make the initial determinations under paragraph (2) not later than 2 years after February 10, 1996; and
- (ii) every 5 years—
 - (I) review the determinations; and
 - (II) if necessary, revise the determinations based on significant new information.

(B) Standards

The Administrator and the Secretary of Defense shall—

- (i) promulgate standards of performance for a marine pollution control device under paragraph (3) not later than 2 years after the date of a determination under paragraph (2) that the marine pollution control device is required; and

(ii) every 5 years—

(I) review the standards; and

(II) if necessary, revise the standards, consistent with paragraph (3)(B) and based on significant new information.

(C) Regulations

The Secretary of Defense shall promulgate regulations with respect to a marine pollution control device under paragraph (4) as soon as practicable after the Administrator and the Secretary of Defense promulgate standards with respect to the device under paragraph (3), but not later than 1 year after the Administrator and the Secretary of Defense promulgate the standards. The regulations promulgated by the Secretary of Defense under paragraph (4) shall become effective upon promulgation unless another effective date is specified in the regulations.

(D) Petition for review

The Governor of any State may submit a petition requesting that the Secretary of Defense and the Administrator review a determination under paragraph (2) or a standard under paragraph (3), if there is significant new information, not considered previously, that could reasonably result in a change to the particular determination or standard after consideration of the matters set forth in paragraph (2)(B). The petition shall be accompanied by the scientific and technical information on which the petition is based. The Administrator and the Secretary of Defense shall grant or deny the petition not later than 2 years after the date of receipt of the petition.

(6) Effect on other laws

(A) Prohibition on regulation by States or political subdivisions of States

Beginning on the effective date of—

(i) a determination under paragraph (2) that it is not reasonable and practicable to require use of a marine pollution control device regarding a particular discharge incidental to the normal operation of a vessel of the Armed Forces; or

(ii) regulations promulgated by the Secretary of Defense under paragraph (4);

except as provided in paragraph (7), neither a State nor a political subdivision of a State may adopt or enforce any statute or regulation of the State or political subdivision with respect to the discharge or the design, construction, installation, or use of any marine pollution control device required to control discharges from a vessel of the Armed Forces.

(B) Federal laws

This subsection shall not affect the application of section 1321 of this title to discharges incidental to the normal operation of a vessel.

(7) Establishment of State no-discharge zones

(A) State prohibition

(i) In general

After the effective date of—

(I) a determination under paragraph (2) that it is not reasonable and practicable to require use of a marine pollution control device regarding a particular discharge incidental to the normal operation of a vessel of the Armed Forces; or

(II) regulations promulgated by the Secretary of Defense under paragraph (4);

if a State determines that the protection and enhancement of the quality of some or all of the waters within the State require greater environmental protection, the State may prohibit 1 or more discharges incidental to the normal operation of a vessel, whether treated or not treated, into the waters. No prohibition shall apply until the Administrator makes the determinations described in subclauses (II) and (III) of subparagraph (B)(i).

(ii) Documentation

To the extent that a prohibition under this paragraph would apply to vessels of the Armed Forces and not to other types of vessels, the State shall document the technical or environmental basis for the distinction.

(B) Prohibition by the Administrator

(i) In general

Upon application of a State, the Administrator shall by regulation prohibit the discharge from a vessel of 1 or more discharges incidental to the normal operation of a vessel, whether treated or not treated, into the waters covered by the application if the Administrator determines that—

(I) the protection and enhancement of the quality of the specified waters within the State require a prohibition of the discharge into the waters;

(II) adequate facilities for the safe and sanitary removal of the discharge incidental to the normal operation of a vessel are reasonably available for the waters to which the prohibition would apply; and

(III) the prohibition will not have the effect of discriminating against a vessel of the Armed Forces by reason of the ownership or operation by the Federal Government, or the military function, of the vessel.

(ii) Approval or disapproval

The Administrator shall approve or disapprove an application submitted under clause (i) not later than 90 days after the date on which the application is submitted to the Administrator. Notwithstanding clause (i)(II), the Administrator shall not disapprove an application for the sole reason that there are not adequate facilities to remove any discharge incidental to the normal operation of a vessel from vessels of the Armed Forces.

(C) Applicability to foreign flagged vessels

A prohibition under this paragraph—

(i) shall not impose any design, construction, manning, or equipment standard on a

foreign flagged vessel engaged in innocent passage unless the prohibition implements a generally accepted international rule or standard; and

(ii) that relates to the prevention, reduction, and control of pollution shall not apply to a foreign flagged vessel engaged in transit passage unless the prohibition implements an applicable international regulation regarding the discharge of oil, oily waste, or any other noxious substance into the waters.

(8) Prohibition relating to vessels of the Armed Forces

After the effective date of the regulations promulgated by the Secretary of Defense under paragraph (4), it shall be unlawful for any vessel of the Armed Forces subject to the regulations to—

(A) operate in the navigable waters of the United States or the waters of the contiguous zone, if the vessel is not equipped with any required marine pollution control device meeting standards established under this subsection; or

(B) discharge overboard any discharge incidental to the normal operation of a vessel in waters with respect to which a prohibition on the discharge has been established under paragraph (7).

(9) Enforcement

This subsection shall be enforceable, as provided in subsections (j) and (k), against any agency of the United States responsible for vessels of the Armed Forces notwithstanding any immunity asserted by the agency.

(o) Management practices for recreational vessels

(1) Applicability

This subsection applies to any discharge, other than a discharge of sewage, from a recreational vessel that is—

(A) incidental to the normal operation of the vessel; and

(B) exempt from permitting requirements under section 1342(r) of this title.

(2) Determination of discharges subject to management practices

(A) Determination

(i) In general

The Administrator, in consultation with the Secretary of the department in which the Coast Guard is operating, the Secretary of Commerce, and interested States, shall determine the discharges incidental to the normal operation of a recreational vessel for which it is reasonable and practicable to develop management practices to mitigate adverse impacts on the waters of the United States.

(ii) Promulgation

The Administrator shall promulgate the determinations under clause (i) in accordance with section 553 of title 5.

(iii) Management practices

The Administrator shall develop management practices for recreational vessels

in any case in which the Administrator determines that the use of those practices is reasonable and practicable.

(B) Considerations

In making a determination under subparagraph (A), the Administrator shall consider—

(i) the nature of the discharge;

(ii) the environmental effects of the discharge;

(iii) the practicability of using a management practice;

(iv) the effect that the use of a management practice would have on the operation, operational capability, or safety of the vessel;

(v) applicable Federal and State law;

(vi) applicable international standards; and

(vii) the economic costs of the use of the management practice.

(C) Timing

The Administrator shall—

(i) make the initial determinations under subparagraph (A) not later than 1 year after July 29, 2008; and

(ii) every 5 years thereafter—

(I) review the determinations; and

(II) if necessary, revise the determinations based on any new information available to the Administrator.

(3) Performance standards for management practices

(A) In general

For each discharge for which a management practice is developed under paragraph (2), the Administrator, in consultation with the Secretary of the department in which the Coast Guard is operating, the Secretary of Commerce, other interested Federal agencies, and interested States, shall promulgate, in accordance with section 553 of title 5, Federal standards of performance for each management practice required with respect to the discharge.

(B) Considerations

In promulgating standards under this paragraph, the Administrator shall take into account the considerations described in paragraph (2)(B).

(C) Classes, types, and sizes of vessels

The standards promulgated under this paragraph may—

(i) distinguish among classes, types, and sizes of vessels;

(ii) distinguish between new and existing vessels; and

(iii) provide for a waiver of the applicability of the standards as necessary or appropriate to a particular class, type, age, or size of vessel.

(D) Timing

The Administrator shall—

(i) promulgate standards of performance for a management practice under subparagraph (A) not later than 1 year after the date of a determination under paragraph

(2) that the management practice is reasonable and practicable; and
 (ii) every 5 years thereafter—
 (I) review the standards; and
 (II) if necessary, revise the standards, in accordance with subparagraph (B) and based on any new information available to the Administrator.

(4) Regulations for the use of management practices

(A) In general

The Secretary of the department in which the Coast Guard is operating shall promulgate such regulations governing the design, construction, installation, and use of management practices for recreational vessels as are necessary to meet the standards of performance promulgated under paragraph (3).

(B) Regulations

(i) In general

The Secretary shall promulgate the regulations under this paragraph as soon as practicable after the Administrator promulgates standards with respect to the practice under paragraph (3), but not later than 1 year after the date on which the Administrator promulgates the standards.

(ii) Effective date

The regulations promulgated by the Secretary under this paragraph shall be effective upon promulgation unless another effective date is specified in the regulations.

(iii) Consideration of time

In determining the effective date of a regulation promulgated under this paragraph, the Secretary shall consider the period of time necessary to communicate the existence of the regulation to persons affected by the regulation.

(5) Effect of other laws

This subsection shall not affect the application of section 1321 of this title to discharges incidental to the normal operation of a recreational vessel.

(6) Prohibition relating to recreational vessels

After the effective date of the regulations promulgated by the Secretary of the department in which the Coast Guard is operating under paragraph (4), the owner or operator of a recreational vessel shall neither operate in nor discharge any discharge incidental to the normal operation of the vessel into, the waters of the United States or the waters of the contiguous zone, if the owner or operator of the vessel is not using any applicable management practice meeting standards established under this subsection.

(June 30, 1948, ch. 758, title III, §312, as added Pub. L. 92-500, §2, Oct. 18, 1972, 86 Stat. 871; amended Pub. L. 95-217, §59, Dec. 27, 1977, 91 Stat. 1596; Pub. L. 96-88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 100-4, title III, §311, Feb. 4, 1987, 101 Stat. 42; Pub. L. 104-106, div. A, title III, §325(b)-(c)(2), Feb. 10, 1996, 110 Stat. 254-259; Pub. L. 110-288, §4, July 29, 2008, 122 Stat. 2650.)

REFERENCES IN TEXT

For definition of Canal Zone, referred to in subsecs. (a)(4) and (m), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

2008—Subsec. (o). Pub. L. 110-288 added subsec. (o).

1996—Subsec. (a)(8). Pub. L. 104-106, §325(c)(1)(A), substituted “corporation, association, or agency of the United States,” for “corporation, or association.”

Subsec. (a)(12) to (14). Pub. L. 104-106, §325(c)(1)(B), (C), added pars. (12) to (14).

Subsec. (j). Pub. L. 104-106, §325(c)(2), substituted “subsection (g)(1), clause (1) or (2) of subsection (h), or subsection (n)(8) shall be liable” for “subsection (g)(1) of this section or clause (1) or (2) of subsection (h) of this section shall be liable”.

Subsec. (n). Pub. L. 104-106, §325(b), added subsec. (n).

1987—Subsec. (f)(1). Pub. L. 100-4, §311(a), designated existing provision as subpar. (A), substituted “Except as provided in subparagraph (B), after” for “After”, and added subpar. (B).

Subsec. (k). Pub. L. 100-4, §311(b), inserted at end “The provisions of this section may also be enforced by a State.”

1977—Subsec. (a)(6). Pub. L. 95-217, §59(a), inserted “except that, with respect to commercial vessels on the Great Lakes, such term shall include graywater” after “receive or retain body wastes”.

Subsec. (a)(10), (11). Pub. L. 95-217, §59(b), added pars. (10) and (11).

Subsec. (b)(1). Pub. L. 95-217, §59(c), inserted references to standards established under subsec. (c)(1)(B) of this section and to standards promulgated under subsec. (c) of this section.

Subsec. (c)(1). Pub. L. 95-217, §59(d), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (f)(4). Pub. L. 95-217, §59(e), designated existing provisions as subpar. (A) and added subpar. (B).

CHANGE OF NAME

“Secretary of Health and Human Services” substituted for “Secretary of Health, Education, and Welfare” in subsec. (e) pursuant to section 509(b) of Pub. L. 96-88 which is classified to section 3508(b) of Title 20, Education.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

TERMINATION OF UNITED STATES DISTRICT COURT FOR THE DISTRICT OF THE CANAL ZONE

For termination of the United States District Court for the District of the Canal Zone at end of the “transition period”, being the 30-month period beginning Oct. 1, 1979, and ending midnight Mar. 31, 1982, see Paragraph 5 of Article XI of the Panama Canal Treaty of 1977 and sections 2101 and 2201 to 2203 of Pub. L. 96-70, title II, Sept. 27, 1979, 93 Stat. 493, formerly classified to sections 3831 and 3841 to 3843, respectively, of Title 22, Foreign Relations and Intercourse.

PURPOSE OF 1996 AMENDMENT

Pub. L. 104-106, div. A, title III, §325(a), Feb. 10, 1996, 110 Stat. 254, provided that: “The purposes of this sec-

tion [amending this section and section 1362 of this title and enacting provisions set out as a note below] are to—

- “(1) enhance the operational flexibility of vessels of the Armed Forces domestically and internationally;
- “(2) stimulate the development of innovative vessel pollution control technology; and
- “(3) advance the development by the United States Navy of environmentally sound ships.”

COOPERATION IN NATIONAL DISCHARGE STANDARDS DEVELOPMENT

Pub. L. 104-106, div. A, title III, §325(d), Feb. 10, 1996, 110 Stat. 259, provided that: “The Administrator of the Environmental Protection Agency and the Secretary of Defense may, by mutual agreement, with or without reimbursement, provide for the use of information, reports, personnel, or other resources of the Environmental Protection Agency or the Department of Defense to carry out section 312(n) of the Federal Water Pollution Control Act [33 U.S.C. 1322(n)] (as added by subsection (b)), including the use of the resources—

- “(1) to determine—
 - “(A) the nature and environmental effect of discharges incidental to the normal operation of a vessel of the Armed Forces;
 - “(B) the practicability of using marine pollution control devices on vessels of the Armed Forces; and
 - “(C) the effect that installation or use of marine pollution control devices on vessels of the Armed Forces would have on the operation or operational capability of the vessels; and
- “(2) to establish performance standards for marine pollution control devices on vessels of the Armed Forces.”

CLEAN VESSELS

Pub. L. 102-587, title V, subtitle F, Nov. 4, 1992, 106 Stat. 5086, as amended by Pub. L. 109-59, title X, §10131, Aug. 10, 2005, 119 Stat. 1931, provided that:

“SEC. 5601. SHORT TITLE.

“This subtitle may be cited as the ‘Clean Vessel Act of 1992’.

“SEC. 5602. FINDINGS; PURPOSE.

“(a) FINDINGS.—The Congress finds the following:

- “(1) The discharge of untreated sewage by vessels is prohibited under Federal law in all areas within the navigable waters of the United States.
- “(2) The discharge of treated sewage by vessels is prohibited under either Federal or State law in many of the United States bodies of water where recreational boaters operate.
- “(3) There is currently an inadequate number of pumpout stations for type III marine sanitation devices where recreational vessels normally operate.
- “(4) Sewage discharged by recreational vessels because of an inadequate number of pumpout stations is a substantial contributor to localized degradation of water quality in the United States.

“(b) PURPOSE.—The purpose of this subtitle is to provide funds to States for the construction, renovation, operation, and maintenance of pumpout stations and waste reception facilities.

“SEC. 5603. DETERMINATION AND PLAN REGARDING STATE MARINE SANITATION DEVICE PUMPOUT STATION NEEDS.

“(a) SURVEY.—Within 3 months after the notification under section 5605(b), each coastal State shall conduct a survey to determine—

- “(1) the number and location of all operational pumpout stations and waste reception facilities at public and private marinas, mooring areas, docks, and other boating access facilities within the coastal zone of the State; and
- “(2) the number of recreational vessels in the coastal waters of the State with type III marine sanitation devices or portable toilets, and the areas of those coastal waters where those vessels congregate.

“(b) PLAN.—Within 6 months after the notification under section 5605(b), and based on the survey conducted under subsection (a), each coastal State shall—

- “(1) develop and submit to the Secretary of the Interior a plan for any construction or renovation of pumpout stations and waste reception facilities that are necessary to ensure that, based on the guidance issued under section 5605(a), there are pumpout stations and waste reception facilities in the State that are adequate and reasonably available to meet the needs of recreational vessels using the coastal waters of the State; and
- “(2) submit to the Secretary of the Interior with that plan a list of all stations and facilities in the coastal zone of the State which are operational on the date of submittal.

“(c) PLAN APPROVAL.—

“(1) IN GENERAL.—Not later than 60 days after a plan is submitted by a State under subsection (b), the Secretary of the Interior shall approve or disapprove the plan, based on—

- “(A) the adequacy of the survey conducted by the State under subsection (a); and
- “(B) the ability of the plan, based on the guidance issued under section 5605(a), to meet the construction and renovation needs of the recreational vessels identified in the survey.

“(2) NOTIFICATION OF STATE; MODIFICATION.—The Secretary of the Interior shall promptly notify the affected Governor of the approval or disapproval of a plan. If a plan is disapproved, the Secretary of the Interior shall recommend necessary modifications and return the plan to the affected Governor.

“(3) RESUBMITTAL.—Not later than 60 days after receiving a plan returned by the Secretary of the Interior, the Governor shall make the appropriate changes and resubmit the plan.

“(d) INDICATION OF STATIONS AND FACILITIES ON NOAA CHARTS.—

“(1) IN GENERAL.—The Under Secretary of Commerce for Oceans and Atmosphere shall indicate, on charts published by the National Oceanic and Atmospheric Administration for the use of operators of recreational vessels, the locations of pumpout stations and waste reception facilities.

“(2) NOTIFICATION OF NOAA.—

“(A) LISTS OF STATIONS AND FACILITIES.—The Secretary of the Interior shall transmit to the Under Secretary of Commerce for Oceans and Atmosphere each list of operational stations and facilities submitted by a State under subsection (b)(2), by not later than 30 days after the date of receipt of that list.

“(B) COMPLETION OF PROJECT.—The Director of the United States Fish and Wildlife Service shall notify the Under Secretary of the location of each station or facility at which a construction or renovation project is completed by a State with amounts made available under the Act of August 9, 1950 (16 U.S.C. 777a et seq. [16 U.S.C. 777 et seq.]), as amended by this subtitle, by not later than 30 days after the date of notification by a State of the completion of the project.

“SEC. 5604. FUNDING.

“(a) TRANSFER.—[Amended section 777c of Title 16, Conservation.]

“(b) ACCESS INCREASE.—[Amended section 777g of Title 16, Conservation.]

“(c) GRANT PROGRAM.—

“(1) MATCHING GRANTS.—The Secretary of the Interior may obligate an amount not to exceed the amount made available under section 4(b)(2) of the Act of August 9, 1950 (16 U.S.C. 777c(b)(2) [now 16 U.S.C. 777c(b)(3)], as amended by this Act), to make grants to—

“(A) coastal States to pay not more than 75 percent of the cost to a coastal State of—

- “(i) conducting a survey under section 5603(a);
- “(ii) developing and submitting a plan and accompanying list under section 5603(b);

“(iii) constructing and renovating pumpout stations and waste reception facilities; and

“(iv) conducting a program to educate recreational boaters about the problem of human body waste discharges from vessels and inform them of the location of pumpout stations and waste reception facilities.

“(B) inland States, which can demonstrate to the Secretary of the Interior that there are an inadequate number of pumpout stations and waste reception facilities to meet the needs of recreational vessels in the waters of that State, to pay 75 percent of the cost to that State of—

“(i) constructing and renovating pumpout stations and waste reception facilities in the inland State; and

“(ii) conducting a program to educate recreational boaters about the problem of human body waste discharges from vessels and inform them of the location of pumpout stations and waste reception facilities.

“(2) PRIORITY.—In awarding grants under this subsection, the Secretary of the Interior shall give priority consideration to grant applications that—

“(A) provide for public/private partnership efforts to develop and operate pumpout stations and waste reception facilities; and

“(B) propose innovative ways to increase the availability and use of pumpout stations and waste reception facilities.

“(d) DISCLAIMER.—Nothing in this subtitle shall be interpreted to preclude a State from carrying out the provisions of this subtitle with funds other than those described in this section.

“SEC. 5605. GUIDANCE AND NOTIFICATION.

“(a) ISSUANCE OF GUIDANCE.—Not later than 3 months after the date of the enactment of this subtitle [Nov. 4, 1992], the Secretary of the Interior shall, after consulting with the Administrator of the Environmental Protection Agency, the Under Secretary of Commerce for Oceans and Atmosphere, and the Commandant of the Coast Guard, issue for public comment pumpout station and waste reception facility guidance. The Secretary of the Interior shall finalize the guidance not later than 6 months after the date of enactment of this subtitle. The guidance shall include—

“(1) guidance regarding the types of pumpout stations and waste reception facilities that may be appropriate for construction, renovation, operation, or maintenance with amounts available under the Act of August 9, 1950 (16 U.S.C. 777a et seq. [16 U.S.C. 777 et seq.]), as amended by this subtitle, and appropriate location of the stations and facilities within a marina or boatyard;

“(2) guidance defining what constitutes adequate and reasonably available pumpout stations and waste reception facilities in boating areas;

“(3) guidance on appropriate methods for disposal of vessel sewage from pumpout stations and waste reception facilities;

“(4) guidance on appropriate connector fittings to facilitate the sanitary and expeditious discharge of sewage from vessels;

“(5) guidance on the waters most likely to be affected by the discharge of sewage from vessels; and

“(6) other information that is considered necessary to promote the establishment of pumpout facilities to reduce sewage discharges from vessels and to protect United States waters.

“(b) NOTIFICATION.—Not later than one month after the guidance issued under subsection (a) is finalized, the Secretary of the Interior shall provide notification in writing to the fish and wildlife, water pollution control, and coastal zone management authorities of each State, of—

“(1) the availability of amounts under the Act of August 9, 1950 (16 U.S.C. 777a et seq. [16 U.S.C. 777 et seq.]) to implement the Clean Vessel Act of 1992; and

“(2) the guidance developed under subsection (a).

“SEC. 5606. EFFECT ON STATE FUNDING ELIGIBILITY.

“This subtitle shall not be construed or applied to jeopardize any funds available to a coastal State under the Act of August 9, 1950 (16 U.S.C. 777a et seq. [16 U.S.C. 777 et seq.]), if the coastal State is, in good faith, pursuing a survey and plan designed to meet the purposes of this subtitle.

“SEC. 5607. APPLICABILITY.

“The requirements of section 5603 shall not apply to a coastal State if within six months after the date of enactment of this subtitle [Nov. 4, 1992] the Secretary of the Interior certifies that—

“(1) the State has developed and is implementing a plan that will ensure that there will be pumpout stations and waste reception facilities adequate to meet the needs of recreational vessels in the coastal waters of the State; or

“(2) existing pumpout stations and waste reception facilities in the coastal waters of the State are adequate to meet those needs.

“SEC. 5608. DEFINITIONS.

“For the purposes of this subtitle the term:

“(1) ‘coastal State’—

“(A) means a State of the United States in, or bordering on the Atlantic, Pacific, or Arctic Ocean; the Gulf of Mexico; Long Island Sound; or one or more of the Great Lakes;

“(B) includes Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa; and

“(C) does not include a State for which the ratio of the number of recreational vessels in the State numbered under chapter 123 of title 46, United States Code, to number of miles of shoreline (as that term is defined in section 926.2(d) of title 15, Code of Federal Regulations, as in effect on January 1, 1991), is less than one.

“(2) ‘coastal waters’ means—

“(A) in the Great Lakes area, the waters within the territorial jurisdiction of the United States consisting of the Great Lakes, their connecting waters, harbors, roadsteads, and estuary-type areas such as bays, shallows, and marshes; and

“(B) in other areas, those waters, adjacent to the shorelines, which contain a measurable percentage of sea water, including sounds, bay, lagoons, bayous, ponds, and estuaries.

“(3) ‘coastal zone’ has the same meaning that term has in section 304(1) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453(1));

“(4) ‘inland State’ means a State which is not a coastal state;

“(5) ‘type III marine sanitation device’ means any equipment for installation on board a vessel which is specifically designed to receive, retain, and discharge human body wastes;

“(6) ‘pumpout station’ means a facility that pumps or receives human body wastes out of type III marine sanitation devices installed on board vessels;

“(7) ‘recreational vessel’ means a vessel—

“(A) manufactured for operation, or operated, primarily for pleasure; or

“(B) leased, rented, or chartered to another for the latter’s pleasure; and

“(8) ‘waste reception facility’ means a facility specifically designed to receive wastes from portable toilets carried on vessels, and does not include lavatories.”

CONTIGUOUS ZONE OF UNITED STATES

For extension of contiguous zone of United States, see Proc. No. 7219, set out as a note under section 1331 of Title 43, Public Lands.

§ 1323. Federal facilities pollution control

(a) Compliance with pollution control requirements by Federal entities

Each department, agency, or instrumentality of the executive, legislative, and judicial