

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

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

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

EFFECTIVE DATE OF 1987 AMENDMENT

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

EFFECTIVE DATE

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

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.

§ 1904. Certificates

(a) Issuance by authorized designees; restriction on issuance

Except as provided in section 1903(b)(1) of this title, the Secretary shall designate those persons authorized to issue on behalf of the United States the certificates required by the MARPOL Protocol. A certificate required by the MARPOL Protocol shall not be issued to a ship which is registered in or of the nationality of a country which is not a party to the MARPOL Protocol.

(b) Validity of foreign certificates

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

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

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

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

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

(d) Onboard inspections; other Federal inspection authority unaffected

An inspection conducted under subsection (c)(2) of this section is limited to verifying whether or not a valid certificate is onboard, un-

less clear grounds exist which reasonably indicate that the condition of the ship or its equipment does not substantially agree with the particulars of its certificate. This section shall not limit the authority of any official or employee of the United States under any other treaty, law, or regulation to board and inspect a ship or its equipment.

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

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

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

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

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

(f) Ship clearance or permits; refusal or revocation

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

(1) the clearance required by section 60105 of title 46; or

(2) a permit to proceed under section 4367 of the Revised Statutes of the United States (46 U.S.C. 313)¹ or section 1443² of title 19.

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

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

(h) Compensation for loss or damage

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

(Pub. L. 96-478, §5, Oct. 21, 1980, 94 Stat. 2298; Pub. L. 110-280, §6, July 21, 2008, 122 Stat. 2614.)

REFERENCES IN TEXT

Section 4367 of the Revised Statutes of the United States (46 U.S.C. 313), referred to in subsec. (f)(2), was classified to section 313 of the former Appendix to Title 46, Shipping, prior to repeal by Pub. L. 103-182, title VI, §690(a)(21), Dec. 8, 1993, 107 Stat. 2223.

CODIFICATION

In subsec. (f)(1), “section 60105 of title 46” substituted for “section 4197 of the Revised Statutes of the United

¹ See References in Text note below.

² See Codification note below.

States, as amended (46 U.S.C. 91)” on authority of Pub. L. 109-304, §18(c), Oct. 6, 2006, 120 Stat. 1709, which Act enacted section 60105 of Title 46, Shipping.

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

AMENDMENTS

2008—Subsec. (a). Pub. L. 110-280, §6(1), substituted “Except as provided in section 1903(b)(1) of this title, the Secretary” for “The Secretary”.

Subsec. (b). Pub. L. 110-280, §6(2), substituted “Secretary or the Administrator under the authority of this chapter.” for “Secretary under the authority of the MARPOL Protocol.”

Subsec. (e). Pub. L. 110-280, §6(3), substituted “environment or the public health and welfare.” for “environment.” in concluding provisions.

EFFECTIVE DATE

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

§ 1905. Pollution reception facilities

(a) Adequacy; criteria

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

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

(3) The Secretary and the Administrator, after consulting with appropriate Federal agencies, shall jointly prescribe regulations setting criteria for determining the adequacy of reception facilities for receiving ozone depleting substances, equipment containing such substances, and exhaust gas cleaning residues at a port or terminal, and stating any additional measures and requirements as are appropriate to ensure such adequacy. Persons in charge of ports and terminals shall provide reception facilities, or ensure that reception facilities are available, in accordance with those regulations. The Secretary and the Administrator may jointly prescribe regulations to certify, and may issue certificates to the effect, that a port’s or terminal’s facilities for receiving ozone depleting substances, equipment containing such substances,

and exhaust gas cleaning residues from ships are adequate.

(b) Traffic considerations

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

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

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

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

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

(C) The Secretary may, with respect to certificates issued under this paragraph prior to October 19, 1996, prescribe by regulation differing periods of validity for such certificates.

(3) A certificate issued under this subsection—

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

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

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

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

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

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

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