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## **CHAPTER 33—PREVENTION OF POLLUTION FROM SHIPS**

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### **§1901. Definitions**

- (a) Unless the context indicates otherwise, as used in this chapter—
  - (1) "Administrator" means the Administrator of the Environmental Protection Agency;
  - (2) "Antarctica" means the area south of 60 degrees south latitude;
  - (3) "Antarctic Protocol" means the Protocol on Environmental Protection to the Antarctic Treaty, signed October 4, 1991, in Madrid, and all annexes thereto, and includes any future amendments thereto which have entered into force;
  - (4) "MARPOL Protocol" means the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973, and includes the Convention;
  - (5) "Convention" means the International Convention for the Prevention of Pollution from Ships, 1973, including Protocols I and II and Annexes I, II, V, and VI thereto, including any modification or amendments to the Convention, Protocols, or Annexes which have entered into force for the United States;
  - (6) "discharge", "emission", "garbage", "harmful substance", and "incident" shall have the meanings provided in the Convention;
  - (7) "navigable waters" includes the territorial sea of the United States (as defined in Presidential Proclamation 5928 of December 27, 1988) and the internal waters of the United States;
  - (8) "owner" means any person holding title to, or in the absence of title, any other indicia of ownership of, a ship or terminal, but does not include a person who, without participating in the management or operation of a ship or terminal, holds indicia of ownership primarily to protect a security interest in the ship or terminal;

(9) "operator" means—

(a) in the case of a ship, a charterer by demise or any other person, except the owner, who is responsible for the operation, manning, victualing, and supplying of the vessel, or

(b) in the case of a terminal, any person, except the owner, responsible for the operation of the terminal by agreement with the owner;

(10) "person" means an individual, firm, public or private corporation, partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body;

(11) "Secretary" means the Secretary of the department in which the Coast Guard is operating;

(12) "ship" means a vessel of any type whatsoever, including hydrofoils, air-cushion vehicles, submersibles, floating craft whether self-propelled or not, and fixed or floating platforms;

(13) "submersible" means a submarine, or any other vessel designed to operate under water; and

(14) "terminal" means an onshore facility or an offshore structure located in the navigable waters of the United States or subject to the jurisdiction of the United States and used, or intended to be used, as a port or facility for the transfer or other handling of a harmful substance.

(b) For purposes of this chapter, the requirements of Annex V shall apply to the navigable waters of the United States, as well as to all other waters and vessels over which the United States has jurisdiction.

(c) For the purposes of this chapter, the requirements of Annex IV to the Antarctic Protocol shall apply in Antarctica to all vessels over which the United States has jurisdiction.

(Pub. L. 96–478, §2, Oct. 21, 1980, 94 Stat. 2297; Pub. L. 100–220, title II, §2101, Dec. 29, 1987, 101 Stat. 1460; Pub. L. 103–160, div. A, title X, §1003(f), Nov. 30, 1993, 107 Stat. 1748; Pub. L. 104–227, title II, §201(a), Oct. 2, 1996, 110 Stat. 3042; Pub. L. 110–280, §3, July 21, 2008, 122 Stat. 2611.)

## §1902. Ships subject to preventive measures

### (a) *Included vessels*

This chapter shall apply—

(1) to a ship of United States registry or nationality, or one operated under the authority of the United States, wherever located;<sup>1</sup>

(2) with respect to Annexes I and II to the Convention, to a ship, other than a ship referred to in paragraph (1), while in the navigable waters of the United States;

(3) with respect to the requirements of Annex V to the Convention, to a ship, other than a ship referred to in paragraph (1), while in the navigable waters or the exclusive economic zone of the United States;

(4) with respect to regulations prescribed under section 1905 of this title, any port or terminal in the United States; ~~and~~

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<sup>1</sup> §1902(a)(1): Since IMO DCS is an Annex VI regulation, APPS is applicable to ships flying U.S. flags under §1902(a)(1). However, IMO DCS does not apply to U.S. flagged ships which operate solely within U.S. waters. See Memorandum Subsection 3.1.3.1 at note 57.

(5) with respect to Annex VI to the Convention, and other than with respect to a ship referred to in paragraph (1)—<sup>2</sup>

(A) to a ship that is in a port, shipyard, offshore terminal, or the internal waters of the United States;

(B) to a ship that is bound for, or departing from, a port, shipyard, offshore terminal, or the internal waters of the United States, and is in—

(i) the navigable waters or the exclusive economic zone of the United States;

(ii) an emission control area designated pursuant to section 1903 of this title; or

(iii) any other area that the Administrator, in consultation with the Secretary and each State in which any part of the area is located, has designated by order as being an area from which emissions from ships are of concern with respect to protection of public health, welfare, or the environment;

(C) to a ship that is entitled to fly the flag of, or operating under the authority of, a party to Annex VI, and is in—

(i) the navigable waters or the exclusive economic zone of the United States;

(ii) an emission control area designated under section 1903 of this title; or

(iii) any other area that the Administrator, in consultation with the Secretary and each State in which any part of the area is located, has designated by order as being an area from which emissions from ships are of concern with respect to protection of public health, welfare, or the environment; and

(D) to any other ship, to the extent that, and in the same manner as, such ship may be boarded by the Secretary to implement or enforce any other law of the United States or Annex I, II, or V of the Convention, and is in—

(i) the exclusive economic zone of the United States;

(ii) the navigable waters of the United States;

(iii) an emission control area designated under section 1903 of this title; or

(iv) any other area that the Administrator, in consultation with the Secretary and each State in which any part of the area is located, has designated by order as being an area from which emissions from ships are of concern with respect to protection of public health, welfare, or the environment; and

(6) with respect to regulations prescribed under section 1903(c)(6) of this title,<sup>3</sup> and including to a ship referred to in paragraph (1) that calls at a United States port—

(A) to a ship that is voluntarily<sup>4</sup> in a United States port;<sup>5</sup>

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<sup>2</sup> §1902(a)(5): Since IMO DCS is an Annex VI regulation, APPS is applicable to foreign ships under §1902(a)(5). See Memorandum Subsection 3.1.3.1.

<sup>3</sup> §1902(a)(6): This provision refers to the regulations which would be required under §1903(c)(6). The regulations would establish a monitoring, reporting, and verification program pertaining to CO<sub>2</sub> emissions from large ships calling at U.S. ports.

<sup>4</sup> 1902(a)(6)(A): The term “voluntarily” reflects exclusion within the regulation of certain ships, such as ships in distress. See 3.1.2 at notes 33 and 34.

<sup>5</sup> 1902(a)(6)(A): For the proposed U.S. MRV, U.S. jurisdiction is limited to port State jurisdiction. The language here is replicated from §1903(c)(4)(C)(ii).

There would be a question regarding whether U.S. port State jurisdiction would apply to an offshore terminal that is a deepwater port, since by definition, a deepwater port is located outside internal waters. 33 USC §1502(9)(A). However, under 33 USC §1518(c), except in limited circumstances, U.S. jurisdiction applies for ships calling at or otherwise utilizing a deepwater port. Section 1518(a)(1) states:

(B) which is engaged in transport of passengers or cargo for commercial purposes;<sup>6</sup> and (C) which—  
(i) is subject to Regulation 22A of Annex VI to the Convention;<sup>7</sup> or  
(ii) notwithstanding subsection (b)(1)(B) of this section,<sup>8</sup> would otherwise be subject to Regulation 22A of Annex VI to the Convention but is solely engaged in voyages within waters subject to jurisdiction of the United States.<sup>9</sup>

*(b) Excluded vessels; discharge requirements*

- (1) Except as provided in paragraph (3), this chapter shall not apply to—  
 (A) a ship of the Armed Forces described in paragraph (2); or  
 (B) any other ship specifically excluded by the MARPOL Protocol or the Antarctic Protocol.
- (2) A ship described in this paragraph is a ship that is owned or operated by the Secretary, with respect to the Coast Guard, or by the Secretary of a military department, and that, as determined by the Secretary concerned—  
 (A) has unique military design, construction, manning, or operating requirements; and  
 (B) cannot fully comply with the discharge requirements of Annex V to the Convention because compliance is not technologically feasible or would impair the operations or operational capability of the ship.
- (3)(A) Notwithstanding any provision of the MARPOL Protocol, the requirements of Annex V to the Convention shall apply to all ships referred to in subsection (a) other than those described in paragraph (2).

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The Constitution, laws, and treaties of the United States shall apply to a deepwater port licensed under this chapter and to activities connected, associated, or potentially interfering with the use or operation of any such port, in the same manner as if such port were an area of exclusive Federal jurisdiction located within a State.

<sup>6</sup> **Section 1902(a)(6)(B):** Under EU MRV, a voyage is limited to one “that serves the purpose of transporting passengers or cargo for commercial purposes.” A similar limitation is included in the model legislation to lessen the administrative burden, consistent with applicability under the EU MRV regulation. See Subsection 3.1.4.1 note 73. However, fish catching and processing ships are not excluded in the model legislation as in EU MRV. See Subsection 3.1.4.1 note 73 and Subsection 4.2 at note 180.

<sup>7</sup> **Section 1902(a)(6)(C)(i):** This provision makes the U.S. MRV applicable to a ship which is subject to IMO DCS, if the ship calls at a U.S. port. The language references “Regulation 22A of Annex VI to the Convention,” which is a reference to IMO DCS. See Memorandum Subsection 3.1.3 at note 47. This is consistent with APPS, which references Annex VI Regulations by number (see, e.g., §1903).

<sup>8</sup> **Section 1902(a)(6)(C)(ii):** The provision begins with the phrase, “notwithstanding subsection (b)(1)(B),” a reference to §1902(b)(1)(B), which excludes from the Chapter (i.e., APPS) “any other ship specifically excluded by the MARPOL Protocol or the Antarctic Protocol.” The Annex VI Regulations are included through application of the definitions of “MARPOL Protocol” and “Convention” under §§ 1901(4) and (5). The “notwithstanding” phrase is added in order to maintain the application of the U.S. MRV to domestic ships. See Memorandum Subsections 3.2.2 and 4.3. The use of “notwithstanding” is also used elsewhere in APPS, such as §§1907(f)(3) and 1908(f). The “notwithstanding” language is limited to §1902(b)(1)(B). Subsection (b)(1)(A) remains unaffected. That provision refers to ships of the Armed Forces.

<sup>9</sup> **Section 1902(a)(6)(C)(ii):** The provision makes the U.S. MRV also applicable to ships which would otherwise meet the applicability of the IMO DCS, but for the exclusion for ships “solely engaged in voyages within waters subject to the sovereignty or jurisdiction of the State the flag of which the ship is entitled to fly,” under MARPOL Annex VI Regulation 19.2.1. The language is slightly altered to reflect U.S. flag state jurisdiction, and to remove “sovereignty or,” consistent with §1904(c).

(B) A ship that is described in paragraph (2) shall limit the discharge into the sea of garbage as follows:

(i) The discharge into the sea of plastics, including synthetic ropes, synthetic fishing nets, plastic garbage bags, and incinerator ashes from plastic products that may contain toxic chemicals or heavy metals, or the residues thereof, is prohibited.

(ii) Garbage consisting of the following material may be discharged into the sea, subject to subparagraph (C):

(I) A non-floating slurry of seawater, paper, cardboard, or food waste that is capable of passing through a screen with openings no larger than 12 millimeters in diameter.

(II) Metal and glass that have been shredded and bagged (in compliance with clause (i)) so as to ensure negative buoyancy.

(III) With regard to a submersible, nonplastic garbage that has been compacted and weighted to ensure negative buoyancy.

(IV) Ash from incinerators or other thermal destruction systems not containing toxic chemicals, heavy metals, or incompletely burned plastics.

(C)(i) Garbage described in subparagraph (B)(ii)(I) may not be discharged within 3 nautical miles of land.

(ii) Garbage described in subclauses (II), (III), and (IV) of subparagraph (B)(ii) may not be discharged within 12 nautical miles of land.

(D) Notwithstanding subparagraph (C), a ship described in paragraph (2) that is not equipped with garbage-processing equipment sufficient to meet the requirements of subparagraph (B)(ii) may discharge garbage that has not been processed in accordance with subparagraph (B)(ii) if such discharge occurs as far as practicable from the nearest land, but in any case not less than—

(i) 12 nautical miles from the nearest land, in the case of food wastes and non-floating garbage, including paper products, cloth, glass, metal, bottles, crockery, and similar refuse; and

(ii) 25 nautical miles from the nearest land, in the case of all other garbage.

(E) This paragraph shall not apply when discharge of any garbage is necessary for the purpose of securing the safety of the ship, the health of the ship's personnel, or saving life at sea. In the event that there is such a discharge, the discharge shall be reported to the Secretary, with respect to the Coast Guard, or the Secretary concerned.

(F) This paragraph shall not apply during time of war or a national emergency declared by the President or Congress.

*(c) Application to other persons*

This chapter shall apply to all persons to the extent necessary to ensure compliance with Annex VI to the Convention and with regulations prescribed under section 1903(c)(6) of this title.<sup>10</sup>

*(d) Discharges in special areas*

(1) Except as provided in paragraphs (2) and (3), not later than December 31, 2000, all surface ships owned or operated by the Department of the Navy, and not later than December 31, 2008, all submersibles owned or operated by the Department of the Navy, shall comply with the special area requirements of Regulation 5 of Annex V to the Convention.

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<sup>10</sup> **Section 1902(c):** “Persons” is defined in §1901(10). Both IMO DCS and EU MRV apply to owners and operators of ships. Both the terms “owner” and “operator” in APPS incorporate the term “person.” §§1901(8) and 1901(9). To avoid operation of the provision to apply to IMO DCS but not to U.S. MRV, reference to the new U.S. MRV regulation provision is added.

(2)(A) Subject to subparagraph (B), any ship described in subparagraph (C) may discharge, without regard to the special area requirements of Regulation 5 of Annex V to the Convention, the following non-plastic, non-floating garbage:

(i) A slurry of seawater, paper, cardboard, or food waste that is capable of passing through a screen with openings no larger than 12 millimeters in diameter.

(ii) Metal and glass that have been shredded and bagged so as to ensure negative buoyancy.

(iii) With regard to a submersible, nonplastic garbage that has been compacted and weighted to ensure negative buoyancy.

(B)(i) Garbage described in subparagraph (A)(i) may not be discharged within 3 nautical miles of land.

(ii) Garbage described in clauses (ii) and (iii) of subparagraph (A) may not be discharged within 12 nautical miles of land.

(C) This paragraph applies to any ship that is owned or operated by the Department of the Navy that, as determined by the Secretary of the Navy—

(i) has unique military design, construction, manning, or operating requirements; and

(ii) cannot fully comply with the special area requirements of Regulation 5 of Annex V to the Convention because compliance is not technologically feasible or would impair the operations or operational capability of the ship.

(3)(A) Not later than December 31, 2000, the Secretary of the Navy shall prescribe and publish in the Federal Register standards to ensure that each ship described in subparagraph (B) is, to the maximum extent practicable without impairing the operations or operational capabilities of the ship, operated in a manner that is consistent with the special area requirements of Regulation 5 of Annex V to the Convention.

(B) Subparagraph (A) applies to surface ships that are owned or operated by the Department of the Navy that the Secretary plans to decommission during the period beginning on January 1, 2001, and ending on December 31, 2005.

(C) At the same time that the Secretary publishes standards under subparagraph (A), the Secretary shall publish in the Federal Register a list of the ships covered by subparagraph (B).

*(e) Regulations*

The Secretary or the Administrator, consistent with section 1903 of this title, shall prescribe regulations applicable to the ships of a country not a party to the MARPOL Protocol (or the applicable Annex), including regulations conforming to and giving effect to the requirements of Annex V and Annex VI as they apply under subsection (a) of this section, to ensure that their treatment is not more favorable than that accorded ships to parties to the MARPOL Protocol.

*(f) Compliance by excluded vessels*

(1) The Secretary of the Navy shall develop and, as appropriate, support the development of technologies and practices for solid waste management aboard ships owned or operated by the Department of the Navy, including technologies and practices for the reduction of the waste stream generated aboard such ships, that are necessary to ensure the compliance of such ships with subsection (b) of this section.

(2) Notwithstanding any effective date of the application of this section to a ship, the provisions of Annex V to the Convention and subsection (b)(3)(B)(i) of this section with respect to the disposal of plastic shall apply to ships equipped with plastic processors required for the long-term collection and storage of plastic aboard ships of the Navy upon the installation of such processors in such ships.

(3) Except when necessary for the purpose of securing the safety of the ship, the health of the ship's personnel, or saving life at sea, it shall be a violation of this chapter for a ship referred to in subsection (b)(1)(A) of this section that is owned or operated by the Department of the Navy:

(A) With regard to a submersible, to discharge buoyant garbage or plastic.

(B) With regard to a surface ship, to discharge plastic contaminated by food during the last 3 days before the ship enters port.

(C) With regard to a surface ship, to discharge plastic, except plastic that is contaminated by food, during the last 20 days before the ship enters port.

(4) The Secretary of Defense shall publish in the Federal Register:

(A) Each year, the amount and nature of the discharges in special areas, not otherwise authorized under this chapter, during the preceding year from ships referred to in subsection (b)(1)(A) of this section owned or operated by the Department of the Navy.

(B) Beginning on October 1, 1996, and each year thereafter until October 1, 1998, a list of the names of such ships equipped with plastic processors pursuant to section 1003(e) of the National Defense Authorization Act for Fiscal Year 1994.

*(g) Waiver authority*

The President may waive the effective dates of the requirements set forth in subsection (c) <sup>1</sup> of this section and in subsection 1003(e) of the National Defense Authorization Act for Fiscal Year 1994 if the President determines it to be in the paramount interest of the United States to do so. Any such waiver shall be for a period not in excess of one year. The President shall submit to the Congress each January a report on all waivers from the requirements of this section granted during the preceding calendar year, together with the reasons for granting such waivers.

*(h) Noncommercial shipping standards*

The heads of Federal departments and agencies shall prescribe standards applicable to ships excluded from this chapter by subsection (b)(1) of this section and for which they are responsible. Standards prescribed under this subsection shall ensure, so far as is reasonable and practicable without impairing the operations or operational capabilities of such ships, that such ships act in a manner consistent with the MARPOL Protocol.

*(i) Savings clause*

Nothing in this section shall be construed to restrict in a manner inconsistent with international law navigational rights and freedoms as defined by United States law, treaty, convention, or customary international law.

(Pub. L. 96-478, §3, Oct. 21, 1980, 94 Stat. 2297; Pub. L. 100-220, title II, §2102, Dec. 29, 1987, 101 Stat. 1461; Pub. L. 103-160, div. A, title X, §1003(a)-(d), Nov. 30, 1993, 107 Stat. 1745-1747; Pub. L. 104-201, div. A, title III, §324(a), (d), Sept. 23, 1996, 110 Stat. 2480, 2481; Pub. L. 104-227, title II, §201(b), Oct. 2, 1996, 110 Stat. 3042; Pub. L. 105-261, div. A, title III, §326, Oct. 17, 1998, 112 Stat. 1965; Pub. L. 110-280, §4, July 21, 2008, 122 Stat. 2611; Pub. L. 112-81, div. A, title III, §313, Dec. 31, 2011, 125 Stat. 1355.)

## **§1902a. Discharge of agricultural cargo residue**

Notwithstanding any other provision of law, the discharge from a vessel of any agricultural cargo residue material in the form of hold washings shall be governed exclusively by the provisions of the Act to Prevent Pollution from Ships (33 U.S.C. 1901 et seq.) that implement Annex V to the International Convention for the Prevention of Pollution from Ships.

(Pub. L. 107-295, title II, §204, Nov. 25, 2002, 116 Stat. 2094.)

## **§1903. Administration and enforcement**

(a) *Duty of Secretary; Annexes of Convention applicable to seagoing vessels*

Unless otherwise specified in this chapter, the Secretary shall administer and enforce the MARPOL Protocol, Annex IV to the Antarctic Protocol, and this chapter. In the administration and enforcement of the MARPOL Protocol and this chapter, Annexes I and II of the Convention apply only to seagoing ships.

(b) *Duty of the Administrator*

In addition to other duties specified in this chapter, the Administrator and the Secretary, respectively, shall have the following duties and authorities:

(1) The Administrator shall, and no other person may, issue Engine International Air Pollution Prevention certificates in accordance with Annex VI and the International Maritime Organization's Technical Code on Control of Emissions of Nitrogen Oxides from Marine Diesel Engines, on behalf of the United States for a vessel of the United States as that term is defined in section 116 of title 46. The issuance of Engine International Air Pollution Prevention certificates shall be consistent with any applicable requirements of the Clean Air Act [42 U.S.C. 7401 et seq.] or regulations prescribed under that Act.

(2) The Administrator shall have authority to administer regulations 12, 13, 14, 15, 16, 17, 18, and ~~19~~ 22A of Annex VI to the Convention and paragraph (6).<sup>11</sup>

(3) The Administrator shall, only as specified in section 1907(f) of this title, have authority to enforce Annex VI of the Convention and paragraph (6).<sup>12</sup>

(c) *Regulations; refuse record books; waste management plans; notification of crew and passengers*

(1) The Secretary shall prescribe any necessary or desired regulations to carry out the provisions of the MARPOL Protocol, Annex IV to the Antarctic Protocol, or this chapter.

(2) In addition to the authority the Secretary has to prescribe regulations under this chapter, the Administrator shall also prescribe any necessary or desired regulations to carry out the provisions of regulations 12, 13, 14, 15, 16, 17, 18, and ~~19~~ 22A of Annex VI to the Convention and paragraph (6).<sup>13</sup>

(3) In prescribing any regulations under this section, the Secretary and the Administrator shall consult with each other, ~~and with respect to regulation 19, with the Secretary of the Interior~~.<sup>14</sup>

(4) The Secretary of the department in which the Coast Guard is operating shall—

(A) prescribe regulations which—

(i) require certain ships described in section 1902(a)(1) of this title to maintain refuse record books and shipboard management plans, and to display placards which notify the

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<sup>11</sup> **Section 1903(b)(2):** EPA is given authority to administer certain Annex VI regulations, i.e., Regulations 12 – 18, which comprise the air emissions regulations (Chapter 3). See Memorandum Subsection 3.1.3 at note 45 and Subsection 3.2.1 at note 128. The proposed language includes the IMO DCS regulation (Regulation 22A) and the new U.S MRV provision, included in new Paragraph (6) in order to allow EPA authority for both programs, with EPA able to provide expertise as it does for air emissions, and in GHG reporting. See Memorandum Subsections 3.2.1, 3.2.3, and 4.3. In addition, reference to Regulation 19 has been removed since it is no longer a correct reference. See Memorandum Subsection 3.2.1 note 128.

<sup>12</sup> **Section 1903(b)(3):** The added language allows EPA enforcement authorities for the U.S. MRV coextensive with EPA's other enforcement authorities, i.e., the Coast Guard may refer a matter to EPA. § 1907(f)(2). See Memorandum Subsection 3.2.1.

<sup>13</sup> **Section 1903(c)(2):** The same changes were made here as in Section 1903(b)(2), based on a similar rationale. See note 11.

<sup>14</sup> **Section 1903(c)(3):** The reference to Regulation 19 was again omitted. See note 11.

crew and passengers of the requirements of Annex V to the Convention and of Annex IV to the Antarctic Protocol; and

(ii) specify the ships described in section 1902(a)(1) of this title to which the regulations apply;

(B) seek an international agreement or international agreements which apply requirements equivalent to those described in subparagraph (A)(i) to all vessels subject to Annex V to the Convention; and

(C) within 2 years after the effective date of this paragraph, report to the Congress—

(i) regarding activities of the Secretary under subparagraph (B); and

(ii) if the Secretary has not obtained agreements pursuant to subparagraph (B) regarding the desirability of applying the requirements described in subparagraph (A)(i) to all vessels described in section 1902(a) of this title which call at United States ports.

(5) No standard issued by any person or Federal authority, with respect to emissions from tank vessels subject to regulation 15 of Annex VI to the Convention, shall be effective until 6 months after the required notification to the International Maritime Organization by the Secretary.

(6) Not later than 18 months after the effective date of this paragraph, <sup>15</sup> the Administrator<sup>16</sup> shall prescribe monitoring, reporting, and verification regulations<sup>17</sup> which require data from ships referred to in section 1902(a)(6) of this title.<sup>18</sup>

(A) The regulations shall, at a minimum, require—<sup>19</sup>

(i) collection on a per voyage basis of data—<sup>20</sup>

(I) specified in Regulation 22A of Annex VI to the Convention, except for net tonnage, deadweight tonnage, and power output;<sup>21</sup>

(II) of carbon dioxide emissions;<sup>22</sup>

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<sup>15</sup> **Section 1903(c)(6):** This provision introduces the components of the U.S. MRV program. The deadline matches a similar timeframe for promulgation of APPS regulations in §1905(f)(2), and is the same timeframe set by Congress for promulgation of the EPA GHG Reporting Rule. See Memorandum Subsection 3.2.3.2 at note 148.

<sup>16</sup> **Section 1903(c)(6):** Due to the expertise of EPA in GHG monitoring and reporting, the authority is placed with the Administrator. See Memorandum Subsections 3.2.1, 3.2.3, and 4.3.

<sup>17</sup> **Section 1903(c)(6):** The additional language makes the provision consistent with §§1903(b)(2) and 1903(c)(2).

<sup>18</sup> **Section 1903(c)(6):** The phrase “ships referred to in section...” replicates the language in §§ 1902(b)(3)(A), 1902(b)(4)(A), and 1913(c).

<sup>19</sup> **Section 1903(c)(6)(A):** Statutory requirements present the minimum. See Memorandum Subsection 4.2.

<sup>20</sup> **Section 1903(c)(6)(A)(i):** Like the EU MRV, this provision references “voyages,” and requires data on a per voyage basis, which links to U.S. ports in §1903(c)(6)(B). See Memorandum Subsection 3.1.4.1 at notes 81 and 82. The word “voyage” does not otherwise appear in APPS.

<sup>21</sup> **Section 1903(c)(6)(A)(i)(I):** The regulations would require monitoring of the IMO DCS information on a per voyage basis. This is consistent with the information required under EU MRV and its likely revisions. See Memorandum Subsections 3.1.4.1 and 3.1.4.3.

<sup>22</sup> **Section 1903(c)(6)(A)(i)(II):** The regulations, like EU MRV, are required to include collection of CO<sub>2</sub> emissions data. The EU MRV has several methods available to measure CO<sub>2</sub> emissions. Given EPA’s expertise in this area, methods are left to the agencies’ discretion. See Memorandum Subsection 4.3.

- (III) of cargo carried.<sup>23</sup>  
(ii) submission on an annual basis of aggregated data collected for each datum under subparagraph (A)(i) together with—<sup>24</sup>  
(I) annual average fuel consumption and carbon dioxide emissions per distance travelled of voyages;<sup>25</sup>  
(II) annual average fuel consumption and carbon dioxide emissions per distance travelled and cargo carried on voyages;<sup>26</sup>  
(iii) verification procedures;<sup>27</sup>  
(iv) statement of compliance procedures;<sup>28</sup> and  
(v) establishment of a publicly accessible<sup>29</sup> database<sup>30</sup> containing data submitted under subparagraph (A)(ii) identified by ship.<sup>31</sup>  
(B) For the purpose of this section, “voyage” includes—<sup>32</sup>

<sup>23</sup> **Section 1903(c)(6)(A)(i)(III):** The EU MRV Regulation uses the term “cargo carried.” The term is replicated here, to be consistent with the EU MRV, and not introduce further ambiguity. It refers to quantity of cargo. The regulations would require this element. The EU MRV requires “transport work” monitoring. Since transport work is effectively a calculation, this is instead addressed in §1903(c)(6)(A)(ii). See Memorandum Subsection 3.1.4.1 at note 75 and Subsection 3.1.4.2 at note 102.

<sup>24</sup> **Section 1903(c)(6)(A)(ii):** Similar to the EU MRV, this provision allows aggregation of data to be submitted. Submission is on an annual basis. See Memorandum Subsection 3.1.4.1 at note 82.

<sup>25</sup> **Section 1903(c)(6)(A)(ii)(I):** This provision includes a necessary energy efficiency datum. It is required to be published by the EU MRV regulation. See Memorandum Subsection 3.1.4.1 at note 86.

<sup>26</sup> **Section 1903(c)(6)(A)(ii)(II):** This provision includes the second necessary energy efficiency datum. It is required to be published by the EU MRV regulation. See Memorandum Subsection 3.1.4.1 at note 86. With the addition of (A)(ii)(I) and (II), each necessary datum element, listed in EU MRV Regulation art 21(2), would be included in the regulations.

<sup>27</sup> **Section 1903(c)(6)(A)(iii):** Under IMO DCS, the flag State sets forth verification procedures, taking into account IMO guidelines. See Subsection 3.1.3.1 at note 61. Under the EPA GHG Reporting Rule, EPA verifies the data. See Subsection 3.2.3.2 at note 157.

<sup>28</sup> **Section 1903(c)(6)(A)(iv):** This provision requires a process for a statement of compliance. IMO DCS has flag States issue a Statement of Compliance. See Subsection 3.2.1 note 136. The term “statement of compliance” was used to better align with the distinction used in the MARPOL Annex VI regulations between (EIAPP, IAPP, and International Energy Efficiency) certificates and (IMO DCS) statements of compliance. See also revisions to §1904. However, it is unclear whether the certificates would be issued by EPA (as for EIAPP certificates) or the Coast Guard (as for IAPP certificates). See Subsection 3.2.1 note 127. Consequently, this model legislation leaves the issue to the prescribing of the regulations.

<sup>29</sup> **Section 1903(c)(6)(A)(vi):** In line with EPA’s treatment of GHG data, the goal of this provision is to make clear that, unlike IMO DCS, the data is not confidential. See Subsection 3.1.3.1 at notes 63 and 64.

<sup>30</sup> **Section 1903(c)(6)(A)(vi):** The term “database” is used over 400 times in the U.S. Code.

<sup>31</sup> **Section 1903(c)(6)(A)(vi):** The language, “identified by ship” is to make clear that data will be set forth for each ship separately (as in EU MRV). See Subsection 3.1.4.1.

<sup>32</sup> **Section 1903(c)(6)(B):** This provision matches the EU MRV regulation, and port State jurisdiction, for covered voyages of ships to U.S. ports. See Subsection 3.1.4.1 at note 81. The phrase uses the term “includes” which can

- (i) from a ship's last port to a port subject to the jurisdiction of the United States,
- (ii) from a port subject to the jurisdiction of the United States to the ship's next port, and
- (iii) within ports subject to the jurisdiction of the United States.

(d) *Utilization of personnel, facilities, or equipment of other Federal departments and agencies*

The Secretary may utilize by agreement, with or without reimbursement, personnel, facilities, or equipment of other Federal departments and agencies in administering the MARPOL Protocol, this chapter, or the regulations thereunder.

(Pub. L. 96-478, §4, Oct. 21, 1980, 94 Stat. 2298; Pub. L. 100-220, title II, §2107, Dec. 29, 1987, 101 Stat. 1464; Pub. L. 104-227, title II, §201(c), Oct. 2, 1996, 110 Stat. 3042; Pub. L. 110-280, §5, July 21, 2008, 122 Stat. 2613.)

## §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 and statements of compliance<sup>33</sup> required by the MARPOL Protocol and this chapter.<sup>34</sup> A certificate or statement of compliance<sup>35</sup> 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 or statement of compliance,<sup>36</sup> or to have a statement of compliance prescribed by regulation under section 1903(c)(6) of this title<sup>37</sup> —

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

(2) shall carry a valid statement of compliance onboard in the manner prescribed by the authority issuing the statement of compliance,<sup>38</sup> and

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allow the regulations to be broader than the explicitly listed items, such as applying to an offshore terminal, if desired.

<sup>33</sup> **Section 1904(a):** The term statement of compliance was added. Designation authority was left with the Coast Guard to maintain consistency with APPS designations (with the exception of the EIAPP certificate). See Subsection 3.2.1 at note 127.

<sup>34</sup> **Section 1904(a):** The U.S. MRV is included with the addition of “and this chapter” and reference to statement of compliance in §1903(c)(6)(A)(iv).

<sup>35</sup> **Section 1904(a):** This addition seemed appropriate due to addition of the term statement of compliance elsewhere in the provision.

<sup>36</sup> **Section 1904(c):** The IMO DCS statement of compliance was added. See Memorandum Subsection 3.2.1 note 136.

<sup>37</sup> **Section 1904(c):** The U.S. MRV statement of compliance was added. See §1903(c)(6)(A)(iv).

<sup>38</sup> **Section 1904(c)(2):** The added provision mirrors the previous provision with respect to certificates.

(23) 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, unless 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, except as specified in Regulation 10 of Annex VI to the Convention with regards to chapter 4 of Annex VI to the Convention.<sup>39</sup> 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; refusal or revocation*

If a ship is under a detention order under this section, the Secretary may refuse or revoke the clearance required by section 60105 of title 46.

*(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; Pub. L. 115–232, div. C, title XXXV, §3548(c), Aug. 13, 2018, 132 Stat. 2328.)

## §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.

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<sup>39</sup> **Section 1904(d):** The added exception reflects the limitation in Annex VI with respect to chapter 4. Inspection is limited to verification. See Memorandum Subsection 3.2.1 at note 136.

(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.

*(d) Publication of list of certificated ports or terminals*

(1) The Secretary shall maintain a list of ports or terminals with respect to which a certificate issued under this section—

- (A) is in effect; or
- (B) has been revoked or suspended.

(2) The Secretary shall make the list referred to in paragraph (1) available to the general public.

*(e) Entry; denial*

(1) Except in the case of force majeure, the Secretary shall deny entry to a seagoing ship required by the Convention or the Antarctic Protocol to retain onboard while at sea, residues and mixtures containing oil or noxious liquid substances, if—

(A) the port or terminal is one required by Annexes I and II of the Convention or Article 9 of Annex IV to the Antarctic Protocol or regulations hereunder to have adequate reception facilities; and

(B) the port or terminal does not hold a valid certificate issued by the Secretary under this section.

(2) The Secretary may deny the entry of a ship to a port or terminal required by the MARPOL Protocol, this chapter, or regulations prescribed under this section relating to the provision of adequate reception facilities for garbage, ozone depleting substances, equipment containing those substances, or exhaust gas cleaning residues, if the port or terminal is not in compliance with the MARPOL Protocol, this chapter, or those regulations.

*(f) Surveys*

(1) The Secretary and the Administrator are authorized to conduct surveys of existing reception facilities in the United States to determine measures needed to comply with the MARPOL Protocol or the Antarctic Protocol.

(2) Not later than 18 months after October 19, 1996, the Secretary shall promulgate regulations that require the operator of each port or terminal that is subject to any requirement of the MARPOL Protocol relating to reception facilities to post a placard in a location that can easily be seen by port and terminal users. The placard shall state, at a minimum, that a user of a reception facility of the port or terminal should report to the Secretary any inadequacy of the reception facility.

(Pub. L. 96–478, §6, Oct. 21, 1980, 94 Stat. 2299; Pub. L. 100–220, title II, §2103, Dec. 29, 1987, 101 Stat. 1461; Pub. L. 101–225, title II, §201(1), Dec. 12, 1989, 103 Stat. 1910; Pub. L. 104–227, title II, §201(d), Oct. 2, 1996, 110 Stat. 3042; Pub. L. 104–324, title VIII, §801, Oct. 19, 1996, 110 Stat. 3943; Pub. L. 110–280, §7, July 21, 2008, 122 Stat. 2614.)

## **§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.)

## §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, or this chapter<sup>40</sup> 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

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<sup>40</sup> **Section 1907(b):** This addition adds “or this chapter” to existing references to the MARPOL Protocol and the Antarctic Protocol. In other provisions needed for implementation of the U.S. MRV in APPS, APPS typically includes reference to “the chapter.”

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) **and section 1902(a)(6)** of this title,<sup>41</sup> 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.)

## §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

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<sup>41</sup> **Section 1907(f)**: This adds the U.S. MRV provision in order to include its related inspection under APPS.

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) or civil penalty assessed pursuant to subsection (b), 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 [MARPOL Protocol or the Antarctic Protocol](#)<sup>42</sup> 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.

*(g) Deposits in Abandoned Seafarers Fund*

Any penalty collected under subsection (a) or (b) that is not paid under that subsection to the person giving information leading to the conviction or assessment of such penalties shall be deposited in the Abandoned Seafarers Fund established under section 11113 of title 46.

(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; Pub. L. 113-281, title III, §320(c), Dec. 18, 2014, 128 Stat. 3054.)

## §1909. MARPOL Protocol; proposed amendments

*(a) Acceptance of certain amendments by the President*

A proposed amendment to the MARPOL Protocol received by the United States from the Secretary-General of the International Maritime Organization pursuant to Article VI of the MARPOL Protocol, may be accepted on behalf of the United States by the President following the advice and consent of the Senate, except as provided for in subsection (b) of this section.

*(b) Action on certain amendments by the Secretary of State*

A proposed amendment to Annex I, II, V, or VI to the Convention, appendices to those Annexes, or Protocol I of the Convention received by the United States from the Secretary-General of the International Maritime Organization pursuant to Article VI of the MARPOL Protocol, may be the subject of appropriate action on behalf of the United States by the Secretary of State following consultation with the Secretary, or the Administrator as provided for in this chapter, who shall inform the Secretary of State as to what action he considers appropriate at least 30 days prior to the expiration of the period specified in Article VI of the MARPOL Protocol during which objection may be made to any amendment received.

*(c) Declaration of nonacceptance by the Secretary of State*

Following consultation with the Secretary, the Secretary of State may make a declaration that the United States does not accept an amendment proposed pursuant to Article VI of the MARPOL Protocol.

(Pub. L. 96-478, §10, Oct. 21, 1980, 94 Stat. 2302; Pub. L. 100-220, title II, §2106, Dec. 29, 1987, 101 Stat. 1463; Pub. L. 110-280, §9, July 21, 2008, 122 Stat. 2615.)

## §1910. Legal actions

*(a) Persons with adversely affected interests as plaintiffs; defendants*

Except as provided in subsection (b) of this section, any person having an interest which is, or can be, adversely affected, may bring an action on his own behalf—

- (1) against any person alleged to be in violation of the provisions of this chapter, or regulations issued hereunder;

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<sup>42</sup> This addition clarifies which matters may be referred.

(2) against the Secretary where there is alleged a failure of the Secretary to perform any act or duty under this chapter which is not discretionary with the Secretary;

(3) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary; or

(4) against the Secretary of the Treasury where there is alleged a failure of the Secretary of the Treasury to take action under section 1908(e) of this title.

*(b) Commencement conditions*

No action may be commenced under subsection (a) of this section—

(1) prior to 60 days after the plaintiff has given notice, in writing and under oath, to the alleged violator, the Secretary concerned or the Administrator, and the Attorney General; or

(2) if the Secretary or the Administrator has commenced enforcement or penalty action with respect to the alleged violation and is conducting such procedures diligently.

*(c) Venue*

Any suit brought under this section shall be brought—

(1) in a case concerning an onshore facility or port, in the United States district court for the judicial district where the onshore facility or port is located;

(2) in a case concerning an offshore facility or offshore structure under the jurisdiction of the United States, in the United States district court for the judicial district nearest the offshore facility or offshore structure;

(3) in a case concerning a ship, in the United States district court for any judicial district wherein the ship or its owner or operator may be found; or

(4) in any case, in the District Court for the District of Columbia.

*(d) Costs; attorney fees; witness fees*

The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party including the Federal Government.

*(e) Federal intervention*

In any action brought under this section, if the Secretary or Attorney General are not parties of record, the United States, through the Attorney General, shall have the right to intervene.

(Pub. L. 96–478, §11, Oct. 21, 1980, 94 Stat. 2302; Pub. L. 110–280, §12, July 21, 2008, 122 Stat. 2615.)

## **§1911. Effect on other laws**

Authorities, requirements, and remedies of this chapter supplement and neither amend nor repeal any other authorities, requirements, or remedies conferred by any other provision of law. Nothing in this chapter shall limit, deny, amend, modify, or repeal any other authority, requirement, or remedy available to the United States or any other person, except as expressly provided in this chapter.

(Pub. L. 96–478, §15, Oct. 21, 1980, 94 Stat. 2303; Pub. L. 110–280, §11, July 21, 2008, 122 Stat. 2615.)

## **§1912. International law**

Any action taken under this chapter shall be taken in accordance with international law.

(Pub. L. 96–478, §17, as added Pub. L. 100–220, title II, §2108, Dec. 29, 1987, 101 Stat. 1464.)

## §1913. Compliance reports

### (a) *In general*

Within 1 year after the effective date of this section, and triennially thereafter, the Secretary of the department in which the Coast Guard is operating, in consultation with the Secretary of Agriculture and the Secretary of Commerce, shall report to the Congress regarding compliance with Annex V to the International Convention for the Prevention of Pollution from Ships, 1973, in United States waters and, not later than 1 year after October 19, 1996, and annually thereafter, shall publish in the Federal Register a list of the enforcement actions taken against any domestic or foreign ship (including any commercial or recreational ship) pursuant to the Act to Prevent Pollution from Ships (33 U.S.C. 1901 et seq.).

### (b) *Report on inability to comply*

Within 3 years after the effective date of this section, the head of each Federal agency that operates or contracts for the operation of any ship referred to in section 3(b)(1)(A) of the Act to Prevent Pollution from Ships [33 U.S.C. 1902(b)(1)(A)] that may not be able to comply with the requirements of that section shall report to the Congress describing—

- (1) the technical and operational impediments to achieving that compliance;
- (2) an alternative schedule for achieving that compliance as rapidly as is technologically feasible;
- (3) the ships operated or contracted for operation by the agency for which full compliance with section 3(b)(2)(A) [33 U.S.C. 1902(b)(2)(A)] is not technologically feasible; and
- (4) any other information which the agency head considers relevant and appropriate.

### (c) *Congressional action*

Upon receipt of the compliance report under subsection (b), the Congress shall modify the applicability of Annex V to ships referred to in section 3(b)(1)(A) of the Act to Prevent Pollution from Ships [33 U.S.C. 1902(b)(1)(A)], as may be appropriate with respect to the requirements of Annex V to the Convention.

(Pub. L. 100–220, title II, §2201, Dec. 29, 1987, 101 Stat. 1464; Pub. L. 104–66, title I, §1121(c), Dec. 21, 1995, 109 Stat. 724; Pub. L. 104–324, title VIII, §802(a), Oct. 19, 1996, 110 Stat. 3944.)

## §1914. Transferred

Section, Pub. L. 100–220, title II, §2203, Dec. 29, 1987, 101 Stat. 1466; Pub. L. 104–324, title VIII, §802(b), Oct. 19, 1996, 110 Stat. 3944; Pub. L. 109–449, §5(a), Dec. 22, 2006, 120 Stat. 3337, was redesignated section 5 of Pub. L. 109–449 and transferred to section 1954 of this title.

## §1915. Repealed. Pub. L. 112–213, title VI, §604(d), Dec. 20, 2012, 126 Stat. 1577

Section, Pub. L. 100–220, title II, §2204, Dec. 29, 1987, 101 Stat. 1466; Pub. L. 104–324, title VIII, §802(c), Oct. 19, 1996, 110 Stat. 3945, related to creation of a plastic pollution public education program.