

REFERENCES IN TEXT

Section 12(d), referred to in subsec. (a), is section 12(d) of Pub. L. 100-333, which is set out as a note under section 2401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2409 of this title.

§ 2404. Prohibition of certain organotin antifouling paints and organotin additives used to make such paints

(a) Interim prohibition of certain organotin antifouling paints

Subject to section 12(d), no person in any State may—

(1) sell or deliver to, or purchase or receive from, another person an antifouling paint containing organotin; or

(2) apply to a vessel an antifouling paint containing organotin;

unless the antifouling paint is certified by the Administrator as being a qualified antifouling paint containing organotin.

(b) Prohibition of certain organotin additives

Subject to section 12(d), no person in any State may sell or deliver to, or purchase or receive from, another person at retail any substance containing organotin for the purpose of adding such substance to paint to create an antifouling paint.

(Pub. L. 100-333, § 5, June 16, 1988, 102 Stat. 606.)

REFERENCES IN TEXT

Section 12(d), referred to in text, is section 12(d) of Pub. L. 100-333, which is set out as a note under section 2401 of this title.

EFFECTIVE DATE

Section effective June 16, 1988, with subsec. (a) to remain in effect until a final decision, as defined in section 12(c) of Pub. L. 100-333, regarding release of organotin into the aquatic environment by antifouling paints, is issued and takes effect, see section 12(a) to (c) of Pub. L. 100-333, set out as an Effective Date; Use of Existing Stocks note under section 2401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2409 of this title.

§ 2405. Certification

(a) Initial certification

Not later than 90 days after June 16, 1988, the Administrator shall certify each antifouling paint containing organotin that the Administrator determines has a release rate of not more than 4.0 micrograms per square centimeter per day on the basis of the information submitted to the Environmental Protection Agency before June 16, 1988, in response to its July 29, 1986, data call-in notice on tributyltin or any other data call-in notice.

(b) Subsequent certification

After the initial period of certification required by subsection (a) of this section, and not later than 90 days after the receipt of information with regard to an antifouling paint containing organotin submitted—

(1) in response to a data call-in referred to in subsection (a) of this section; or

(2) under any provision of law;

the Administrator shall certify such paint if, on the basis of such information, the Administrator determines that such paint has a release rate of not more than 4.0 micrograms per square centimeter per day.

(Pub. L. 100-333, § 6, June 16, 1988, 102 Stat. 607.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2402 of this title.

§ 2406. Monitoring and research of ecological effects

(a) Estuarine monitoring

The Administrator, in consultation with the Under Secretary of Commerce for Oceans and Atmosphere, shall monitor the concentrations of organotin in the water column, sediments, and aquatic organisms of representative estuaries and near-coastal waters in the United States. This monitoring program shall remain in effect until 10 years after June 16, 1988. The Administrator shall submit a report annually to the Speaker of the House of Representatives and to the President pro tempore of the Senate detailing the results of such monitoring program for the preceding year.

(b) Navy home port monitoring

The Secretary shall provide for periodic monitoring, not less than quarterly, of waters serving as the home port for any Navy vessel coated with an antifouling paint containing organotin to determine the concentration of organotin in the water column, sediments, and aquatic organisms of such waters.

(c) Navy research of ecological effects

The Secretary shall continue existing Navy programs evaluating the laboratory toxicity and environmental risks associated with the use of antifouling paints containing organotin.

(d) Assistance to States

To the extent practicable, the Administrator shall assist States in monitoring waters in such States for the presence of organotin and in analyzing samples taken during such monitoring.

(e) Five-year report

At the end of the 5-year period beginning on June 16, 1988, the Administrator shall submit a report to the Speaker of the House of Representatives and to the President pro tempore of the Senate providing an assessment of—

(1) the effectiveness of existing laws and rules concerning organotin compounds in ensuring protection of human health and the environment;

(2) compliance with water quality criteria established pursuant to section 2408 of this title and any applicable water quality standards; and

(3) recommendations for additional measures to protect human health and the environment.

(Pub. L. 100-333, § 7, June 16, 1988, 102 Stat. 607; Pub. L. 104-106, div. A, title X, § 1064(f), Feb. 10, 1996, 110 Stat. 445.)

AMENDMENTS

1996—Subsecs. (d) to (f). Pub. L. 104-106 redesignated subsecs. (e) and (f) as (d) and (e), respectively, and

struck out heading and text of former subsec. (d). Text read as follows: “The Secretary shall submit a report annually to the Administrator and to the Governor of each State in which a home port for the Navy is monitored under subsection (b) of this section detailing the results of such monitoring in the State. Such reports shall be included in the annual report required to be submitted under subsection (a) of this section.”

NAVY PROGRAM TO MONITOR ECOLOGICAL EFFECTS OF ORGANOTIN

Pub. L. 104-201, div. A, title III, § 333, Sept. 23, 1996, 110 Stat. 2485, as amended by Pub. L. 106-65, div. A, title X, § 1067(5), Oct. 5, 1999, 113 Stat. 774, provided that:

“(a) MONITORING REQUIREMENT.—The Secretary of the Navy shall, in consultation with the Administrator of the Environmental Protection Agency, develop and implement a program to monitor the concentrations of organotin in the water column, sediments, and aquatic organisms of representative estuaries and near-coastal waters in the United States, as described in section 7(a) of the Organotin Antifouling Paint Control Act of 1988 (33 U.S.C. 2406(a)). The program shall be designed to produce high-quality data to enable the Environmental Protection Agency to develop water quality criteria concerning organotin compounds.

“(b) FUNDING.—The Administrator of the Environmental Protection Agency shall provide, in advance, such sums as are necessary to the Secretary of the Navy for the costs of developing and implementing the program under subsection (a).

“(c) WRITTEN AGREEMENT.—The Secretary of the Navy and the Administrator of the Environmental Protection Agency shall enter into a written agreement setting forth the actions that the Secretary plans to take under subsection (a) and the funding that the Administrator agrees to provide under subsection (b). If the Secretary determines that the Administrator will not enter into such an agreement, the Secretary shall notify the Committee on Armed Services of the House of Representatives and the Committee on Armed Services of the Senate not later than 30 days after such determination.

“(d) NONIMPAIRMENT OF MISSION.—Compliance with subsection (a) shall be conducted in such a manner so as not to impair the ability of the Department of the Navy to meet its operational requirements.

“(e) REPORT.—Not later than June 1, 1997, the Secretary of the Navy shall submit to Congress a report containing the following:

“(1) A description of the monitoring program developed pursuant to subsection (a).

“(2) An analysis of the results of the monitoring program as of the date of the submission of the report.

“(3) Information about the progress of Navy programs, referred to in section 7(c) of the Organotin Antifouling Paint Control Act of 1988 (33 U.S.C. 2406(c)), for evaluating the laboratory toxicity and environmental risks associated with the use of antifouling paints containing organotin.

“(4) An assessment, developed in consultation with the Administrator of the Environmental Protection Agency, of the effectiveness of existing laws and rules concerning organotin compounds in ensuring protection of human health and the environment.

“(f) SENSE OF CONGRESS.—(1) It is the sense of Congress that the Administrator of the Environmental Protection Agency, in consultation with the Secretary of the Navy, should develop, for purposes of the national pollutant discharge elimination system, a model permit for the discharge of organotin compounds at shipbuilding and ship repair facilities.

“(2) For purposes of this subsection, the term ‘organotin’ has the meaning provided in section 3 of the Organotin Antifouling Paint Control Act of 1988 (33 U.S.C. 2402).

“(g) TERMINATION.—The program required by subsection (a) shall terminate five years after the date of the enactment of this Act [Sept. 23, 1996].”

§ 2407. Alternative antifouling research

(a) Research

The Secretary and the Administrator shall conduct research into chemical and nonchemical alternatives to antifouling paints containing organotin.

(b) Report

At the end of the 4-year period beginning on June 16, 1988, the Administrator, in consultation with the Secretary, shall submit a report to the Speaker of the House of Representatives and to the President pro tempore of the Senate detailing the results of the research conducted pursuant to subsection (a) of this section.

(Pub. L. 100-333, § 8, June 16, 1988, 102 Stat. 608.)

§ 2408. Water quality criteria document

Not later than March 30, 1989, the Administrator shall issue a final water quality criteria document concerning organotin compounds pursuant to section 1314(a) of this title.

(Pub. L. 100-333, § 9, June 16, 1988, 102 Stat. 608.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2406 of this title.

§ 2409. Penalties

(a) Civil penalties

(1) Any person violating section 2403 or 2404 of this title shall be assessed a civil penalty of not more than \$5,000 for each offense.

(2) After notice and an opportunity for a hearing, a person found by the Administrator to have violated section 2403 or 2404 of this title is liable to the United States Government for the civil penalty assessed under subsection (a) of this section. The amount of the civil penalty shall be assessed by the Administrator by written notice. In determining the amount of the penalty, the Administrator shall consider 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 that justice requires.

(3) The Administrator may compromise, modify, or remit, with or without consideration, a civil penalty assessed under this section until the assessment is referred to the Attorney General.

(4) If a person fails to pay an assessment of a civil penalty after it has become final, the Administrator may refer the matter to the Attorney General for collection in the appropriate United States district court.

(b) Criminal penalties

Any person knowingly violating section 2403 or 2404 of this title shall be fined not more than \$25,000, or imprisoned for not more than one year, or both.

(Pub. L. 100-333, § 10, June 16, 1988, 102 Stat. 608.)

§ 2410. Other authorities; State laws

(a) Other authorities of Administrator

Nothing in this chapter shall limit or prevent the Administrator from establishing a lower