

the MARPOL Protocol or the Antarctic Protocol and whatever further action he considers appropriate under the circumstances. If the initial evidence was provided by a party to the MARPOL Protocol or the Antarctic Protocol, the Secretary, acting through the Secretary of State, shall inform that party of the action taken or proposed.

(c) Ship inspections; reports to Secretary; additional action

(1) This subsection applies to inspections relating to possible violations of Annex I or Annex II to the Convention, of Article 3 or Article 4 of Annex IV to the Antarctic Protocol, or of this chapter by any seagoing ship referred to in section 1902(a)(2) of this title.

(2) While at a port or terminal subject to the jurisdiction of the United States, a ship to which the MARPOL Protocol or the Antarctic Protocol applies may be inspected by the Secretary—

(A) to verify whether or not the ship has discharged a harmful substance in violation of the MARPOL Protocol, Annex IV to the Antarctic Protocol, or this chapter; or

(B) to comply with a request from a party to the MARPOL Protocol or the Antarctic Protocol for an investigation as to whether the ship may have discharged a harmful substance anywhere in violation of the MARPOL Protocol or Annex IV to the Antarctic Protocol. An investigation may be undertaken under this clause only when the requesting party has furnished sufficient evidence to allow the Secretary reasonably to believe that a discharge has occurred.

If an inspection under this subsection indicates that a violation has occurred, the investigating officer shall forward a report to the Secretary for appropriate action. The Secretary shall undertake to notify the master of the ship concerned and, acting in coordination with the Secretary of State, shall take any additional action required by Article 6 of the Convention.

(d) Garbage disposal inspections; covered ships; enforcement actions

(1) The Secretary may inspect a ship referred to in section 1902(a)(3) of this title to verify whether the ship has disposed of garbage in violation of Annex V to the Convention, Article 5 of Annex IV to the Antarctic Protocol, or this chapter.

(2) If an inspection under this subsection indicates that a violation has occurred, the Secretary may undertake enforcement action under section 1908 of this title.

(e) Harmful substance or garbage disposal inspections; covered ships; enforcement actions

(1) The Secretary may inspect at any time a ship of United States registry or nationality or operating under the authority of the United States to which the MARPOL Protocol or the Antarctic Protocol applies to verify whether the ship has discharged a harmful substance or disposed of garbage in violation of those Protocols or this chapter.

(2) If an inspection under this subsection indicates that a violation of the MARPOL Protocol,

of Annex IV to the Antarctic Protocol, or of this chapter has occurred the Secretary may undertake enforcement action under section 1908 of this title.

(f) Supplemental remedies and requirements; other provisions and available remedies unaffected

Remedies and requirements of this chapter supplement and neither amend nor repeal any other provisions of law, except as expressly provided in this chapter. Nothing in this chapter shall limit, deny, amend, modify, or repeal any other remedy available to the United States or any other person, except as expressly provided in this chapter.

(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.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104-227, §201(e)(1), (2), inserted “Annex IV to the Antarctic Protocol,” after “violation of the MARPOL Protocol,” “or to the Antarctic Protocol” after “to the MARPOL Protocol”, and “and Annex IV to the Antarctic Protocol” after “enforcement of the MARPOL Protocol”.

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

Subsec. (c)(1). Pub. L. 104-227, §201(e)(4), inserted “, of Article 3 or Article 4 of Annex IV to the Antarctic Protocol,” after “to the Convention”.

Subsec. (c)(2). Pub. L. 104-227, §201(e)(5), (6), inserted “or the Antarctic Protocol” after “which the MARPOL Protocol” in introductory provisions, “, Annex IV to the Antarctic Protocol,” after “MARPOL Protocol” in subpar. (A), and “or the Antarctic Protocol” after “to the MARPOL Protocol” and “or Annex IV to the Antarctic Protocol” after “of the MARPOL Protocol” in subpar. (B).

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

Subsec. (e)(1). Pub. L. 104-227, §201(e)(9), inserted “or the Antarctic Protocol” after “MARPOL Protocol” and substituted “those Protocols” for “that Protocol”.

Subsec. (e)(2). Pub. L. 104-227, §201(e)(10), inserted “, of Annex IV to the Antarctic Protocol,” after “MARPOL Protocol”.

1989—Subsecs. (c)(1), (e)(2). Pub. L. 101-225 inserted “or of this chapter”.

1987—Subsec. (c). Pub. L. 100-220, §2104(a), added par. (1), designated existing provisions as par. (2), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, and in closing provisions of par. (2) substituted “The” for “If a report made under this subsection involves a ship, other than one of United States registry or nationality or one operated under the authority of the United States, the”.

Subsecs. (d) to (f). Pub. L. 100-220, §2104(b), added subsecs. (d) and (e) and redesignated former subsec. (d) as (f).

EFFECTIVE DATE OF 1987 AMENDMENT

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

§ 1908. Penalties for violations

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

A person who knowingly violates the MARPOL Protocol,¹ Annex IV to the Antarctic Protocol, this chapter, or the regulations issued thereunder commits a class D felony. In the discretion of the Court, an amount equal to not more than ½ of such fine may be paid to the person giving information leading to conviction.

(b) Civil penalties; separate violations; assessment notice; considerations affecting amount; payment for information leading to assessment of penalty

A person who is found by the Secretary, after notice and an opportunity for a hearing, to have—

(1) violated the MARPOL Protocol,¹ 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 under the MARPOL Protocol,¹ 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 his designee, by written notice. In determining the amount of the penalty, the Secretary 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 to the person giving information leading to the assessment of such penalties.

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

The Secretary 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 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,¹ Annex IV to the Antarctic Protocol, this chapter, or the regulations thereunder is liable in rem for any fine imposed under subsection (a) of this section or civil penalty assessed pursuant to subsection (b) of this section, and may be proceeded against in the United States district court of any district in which the ship may be found.

¹ So in original.

(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 91 of title 46, Appendix. 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, acting in coordination with the Secretary of State, may refer the matter to the government of the country of the ship's registry or nationality, or under whose authority the ship is operating for appropriate action, rather than taking the actions required or authorized by this section.

(Pub. L. 96-478, §9, Oct. 21, 1980, 94 Stat. 2301; Pub. L. 100-220, title II, §2105, Dec. 29, 1987, 101 Stat. 1463; Pub. L. 101-380, title IV, §4302(n), Aug. 18, 1990, 104 Stat. 539; Pub. L. 103-182, title VI, §688, Dec. 8, 1993, 107 Stat. 2222; Pub. L. 104-227, title II, §201(f), Oct. 2, 1996, 110 Stat. 3043.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104-227, §201(f)(1), inserted “, Annex IV to the Antarctic Protocol,” after “MARPOL Protocol.”

Subsec. (b). Pub. L. 104-227, §201(f)(2), (3), inserted “, Annex IV to the Antarctic Protocol,” after “MARPOL Protocol,” in pars. (1) and (2).

Subsec. (d). Pub. L. 104-227, §201(f)(4), inserted “, Annex IV to the Antarctic Protocol,” after “MARPOL Protocol.”

Subsec. (e). Pub. L. 104-227, §201(f)(5), inserted “, Annex IV to the Antarctic Protocol,” after “MARPOL Protocol.”

Subsec. (f). Pub. L. 104-227, §201(f)(6), inserted “or the Antarctic Protocol” after “MARPOL Protocol” in two places.

1993—Subsec. (e). Pub. L. 103-182 substituted “shall refuse or revoke the clearance required by section 91 of title 46, Appendix. Clearance may be granted upon the filing of a bond or other surety satisfactory to the Secretary.” for “shall refuse or revoke—

“(1) the clearance required by section 91 of title 46, Appendix; or

“(2) a permit to proceed under section 313 of title 46, Appendix, or section 1443 of title 19.

Clearance or a permit to proceed may be granted upon the filing of a bond or other surety satisfactory to the Secretary.”

1990—Subsec. (a). Pub. L. 101-380 substituted “commits a class D felony” for “shall, for each violation, be fined not more than \$50,000 or be imprisoned for not more than 5 years, or both”.

1987—Subsec. (a). Pub. L. 100-220, §2105(a)(1), inserted at end “In the discretion of the Court, an amount equal to not more than ½ of such fine may be paid to the person giving information leading to conviction.”

Subsec. (b). Pub. L. 100-220, §2105(a)(2), inserted at end “An amount equal to not more than ½ of such penalties may be paid by the Secretary to the person giving information leading to the assessment of such penalties.”

Subsec. (f). Pub. L. 100-220, §2105(b), substituted “to the government of the country of the ship’s registry or nationality, or under whose authority the ship is operating” for “to that country”.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-380 applicable to incidents occurring after Aug. 18, 1990, see section 1020 of Pub. L. 101-380, set out as an Effective Date note under section 2701 of this title.

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1904, 1907, 1910 of this title.

§ 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, or V 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, 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.)

AMENDMENTS

1987—Subsec. (a). Pub. L. 100-220, §2106(1), substituted “International Maritime Organization” for “Inter-Governmental Maritime Consultative Organization”.

Subsec. (b). Pub. L. 100-220, §2106(2), substituted “Annex I, II, or V to the Convention, appendices to those Annexes, or Protocol I of the Convention” for “Annex I or II, appendices to the Annexes, or Protocol I of the MARPOL Protocol,” and “International Maritime Organization” for “Inter-Governmental Maritime Consultative Organization”.

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.

§ 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;

(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 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, and the Attorney General; or

(2) if the Secretary 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 par-