

(12) Illinois Waterway (Calumet-Sag Channel): From the junction of the Illinois River with the Mississippi River RM 0 to Chicago Harbor at Lake Michigan, approximately RM 350.

(13) Kanawha River: From junction with Ohio River at RM 0 to RM 90.6 at Deepwater, West Virginia.

(14) Kaskaskia River: From junction with the Mississippi River at RM 0 to RM 36.2 at Fayetteville, Illinois.

(15) Kentucky River: From junction with Ohio River at RM 0 to confluence of Middle and North Forks at RM 258.6.

(16) Lower Mississippi River: From Baton Rouge, Louisiana, RM 233.9 to Cairo, Illinois, RM 953.8.

(17) Upper Mississippi River: From Cairo, Illinois, RM 953.8 to Minneapolis, Minnesota, RM 1,811.4.

(18) Missouri River: From junction with Mississippi River at RM 0 to Sioux City, Iowa, at RM 734.8.

(19) Monongahela River: From junction with Allegheny River to form the Ohio River at RM 0 to junction of the Tygart and West Fork Rivers, Fairmont, West Virginia, at RM 128.7.

(20) Ohio River: From junction with the Mississippi River at RM 0 to junction of the Allegheny and Monongahela Rivers at Pittsburgh, Pennsylvania, at RM 981.

(21) Ouachita-Black Rivers: From the mouth of the Black River at its junction with the Red River at RM 0 to RM 351 at Camden, Arkansas.

(22) Pearl River: From junction of West Pearl River with the Rigolets at RM 0 to Bogalusa, Louisiana, RM 58.

(23) Red River: From RM 0 to the mouth of Cypress Bayou at RM 236.

(24) Tennessee River: From junction with Ohio River at RM 0 to confluence with Holstein and French Rivers at RM 652.

(25) White River: From RM 9.8 to RM 255 at Newport, Arkansas.

(26) Willamette River: From RM 21 upstream of Portland, Oregon, to Harrisburg, Oregon, at RM 194.

(27) Tennessee-Tombigbee Waterway: From its confluence with the Tennessee River to the Warrior River at Demopolis, Alabama.

(Pub. L. 95-502, title II, §206, Oct. 21, 1978, 92 Stat. 1700; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 99-662, title XIV, §1404(b), Nov. 17, 1986, 100 Stat. 4270.)

REFERENCES IN TEXT

Section 1802 of this title, referred to in text, was repealed by Pub. L. 99-662, title XIV, §1405(b), Nov. 17, 1986, 100 Stat. 4271.

AMENDMENTS

1986—Pub. L. 99-514, in introductory provisions, substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”, which for purposes of codification was translated as “title 26” thus requiring no change in text.

Par. (27). Pub. L. 99-662 added par. (27).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-662 effective Jan. 1, 1987, see section 1404(c) of Pub. L. 99-662 set out as a note under section 4042 of Title 26, Internal Revenue Code.

CHAPTER 33—PREVENTION OF POLLUTION FROM SHIPS

Sec.	
1901.	Definitions.
1902.	Ships subject to preventive measures.
1902a.	Discharge of agricultural cargo residue.
1903.	Administration and enforcement.
1904.	Certificates.
1905.	Pollution reception facilities.
1906.	Incidents involving ships.
1907.	Violations.
1908.	Penalties for violations.
1909.	MARPOL Protocol; proposed amendments.
1910.	Legal actions.
1911.	Effect on other laws.
1912.	International law.
1913.	Compliance reports.
1914.	Transferred.
1915.	Repealed.

§ 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.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 96-478, Oct. 21, 1980, 94 Stat. 2297, known as the “Act to Prevent Pollution from Ships”, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note below and Tables.

Presidential Proclamation 5928, referred to in subsec. (a)(7), is set out under section 1331 of Title 43, Public Lands.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110-280 added par. (1), redesignated pars. (1) to (5) as (2) to (6), respectively, in par. (5) substituted “V, and VI” for “and V”, in par. (6) substituted “‘discharge’, ‘emission’, ‘garbage’, ‘harmful substance’, and ‘incident’” for “‘discharge’ and ‘garbage’ and ‘harmful substance’ and ‘incident’”, added par. (7), and redesignated pars. (6) to (12) as (8) to (14), respectively.

1996—Subsec. (a). Pub. L. 104-227, §201(a)(1), (2), added pars. (1) and (2) and redesignated former pars. (1) to (10) as (3) to (12), respectively.

Subsec. (c). Pub. L. 104-227, §201(a)(3), added subsec. (c).

1993—Subsec. (a)(9), (10). Pub. L. 103-160 added par. (9) and redesignated former par. (9) as (10).

1987—Subsec. (a). Pub. L. 100-220, §2101(1), designated existing provisions as subsec. (a).

Subsec. (a)(1). Pub. L. 100-220, §2101(2), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “‘MARPOL Protocol’ means the Protocol of 1978 Relating to the International Convention for the Pre-

vention of Pollution from Ships, 1973, done at London on February 17, 1978. This Protocol incorporates and modifies the International Convention for the Prevention of Pollution from Ships, 1973, done at London on November 2, 1973;”.

Subsec. (a)(2). Pub. L. 100-220, §2101(3), substituted “Annexes I, II, and V thereto, including any modification or amendments to the Convention, Protocols, or Annexes which have entered into force for the United States” for “Annexes I and II attached thereto”.

Subsec. (a)(3). Pub. L. 100-220, §2101(4), inserted “and ‘garbage’”.

Subsec. (b). Pub. L. 100-220, §2101(5), added subsec. (b).

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100-220, title II, §2002, Dec. 29, 1987, 101 Stat. 1460, provided that:

“(a) IN GENERAL.—Except as provided in subsections (b) and (c), this title [enacting sections 1912 to 1915 of this title, amending this section and sections 1902, 1903, 1905, and 1907 to 1909 of this title, and enacting provisions set out as notes under this section, section 2267 of this title, and section 6981 of Title 42, The Public Health and Welfare] shall be effective on the date on which Annex V to the International Convention for the Prevention of Pollution from Ships, 1973, enters into force for the United States. [Annex V entered into force for the United States Dec. 31, 1988.]

“(b) EXCEPTIONS.—Sections 2001, 2002, 2003, 2108, 2202, 2203, 2204, and subtitle C of this title [enacting sections 1912, 1914, and 1915 of this title, and provisions set out as notes under this section, section 2267 of this title, and section 6981 of Title 42] shall be effective on the date of the enactment of this title [Dec. 29, 1987].

“(c) ISSUANCE OF REGULATIONS.—

“(1) IN GENERAL.—The authority to prescribe regulations pursuant to this title shall be effective on the date of enactment of this title [Dec. 29, 1987].

“(2) EFFECTIVE DATE OF REGULATIONS.—Any regulation prescribed pursuant to this title shall not be effective before the effective date of the provision of this title under which the regulation is prescribed.”

EFFECTIVE DATE

Pub. L. 96-478, §14(a), (b), Oct. 21, 1980, 94 Stat. 2303, provided:

“(a) Except as provided in subsection (b) of this section, this Act [see Short Title note below] is effective upon the date of enactment [Oct. 21, 1980], or on the date the MARPOL Protocol becomes effective as to the United States, whichever is later. [The MARPOL Protocol became effective as to the United States Oct. 2, 1983.]

“(b) The Secretary and the heads of Federal departments shall have the authority to issue regulations, standards, and certifications under sections 3(c), 3(d), 4(b), 5(a), 6(a), 6(c), and 6(f) [sections 1902(c), (d), 1903(b), 1904(a), and 1905(a), (c), (f) of this title] effective on the date of enactment of this Act [Oct. 21, 1980]. Section 13(a)(2) [amending section 391a(3)(E) of former Title 46, Shipping] is effective upon the date of enactment of this Act [Oct. 21, 1980].”

SHORT TITLE OF 2008 AMENDMENT

Pub. L. 110-280, §1, July 21, 2008, 122 Stat. 2611, provided that: “This Act [amending this section and sections 1902, 1903 to 1905, and 1907 to 1911 of this title] may be cited as the ‘Maritime Pollution Prevention Act of 2008.’”

SHORT TITLE OF 1987 AMENDMENT

Pub. L. 100-220, title II, §2001, Dec. 29, 1987, 101 Stat. 1460, provided that: “This title [see Effective Date of 1987 Amendment note above] may be cited as the ‘Marine Plastic Pollution Research and Control Act of 1987.’”

SHORT TITLE

Pub. L. 96-478, §1, Oct. 21, 1980, 94 Stat. 2297, provided: “That this Act [enacting this chapter, amending sec-

tion 1321 of this title and section 742c(c) of Title 16, Conservation, and section 391a of former Title 46, Shipping, repealing sections 1001 to 1011 and 1013 to 1016 of this title, and enacting provisions set out as notes under section 1001 of this title, and section 742c of Title 16] may be cited as the ‘Act to Prevent Pollution from Ships’.”

SAVINGS PROVISION: REGULATIONS IN EFFECT UNTIL
SUPERSEDED

Pub. L. 96-478, §14(c), Oct. 21, 1980, 94 Stat. 2303, provided that: “Any rights or liabilities existing on the effective date of this Act [see Effective Date note above] shall not be affected by this enactment [see Short Title note above]. Any regulations or procedures promulgated or effected pursuant to the Oil Pollution Act, 1961, as amended [section 1001 et seq. of this title], remain in effect until modified or superseded by regulations promulgated under the authority of the MARPOL Protocol or this Act.”

TRANSFER OF FUNCTIONS

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

INTERIM AUTHORITY FOR DRY BULK CARGO RESIDUE
DISPOSAL

Pub. L. 108-293, title VI, §623, Aug. 9, 2004, 118 Stat. 1063, provided that:

“(a) EXTENSION OF INTERIM AUTHORITY.—The Secretary of the Department in which the Coast Guard is operating shall continue to implement and enforce United States Coast Guard 1997 Enforcement Policy for Cargo Residues on the Great Lakes (hereinafter in this section referred to as the ‘Policy’) or revisions thereto, in accordance with that policy, for the purpose of regulating incidental discharges from vessels of residues of dry bulk cargo into the waters of the Great Lakes under the jurisdiction of the United States, until the earlier of—

“(1) the date regulations are promulgated under subsection (b) for the regulation of incidental discharges from vessels of dry bulk cargo residue into the waters of the Great Lakes under the jurisdiction of the United States; or

“(2) September 30, 2008.

“(b) PERMANENT AUTHORITY.—Notwithstanding any other law, the Commandant of the Coast Guard may promulgate regulations governing the discharge of dry bulk cargo residue on the Great Lakes.

“(c) ENVIRONMENTAL ASSESSMENT.—No later than 90 days after the date of the enactment of this Act [Aug. 9, 2004], the Secretary of the department in which the Coast Guard is operating shall commence the environmental assessment necessary to promulgate the regulations under subsection (b).”

STUDY AND REGULATION OF GREAT LAKES CARGO
RESIDUES

Pub. L. 106-554, §1(a)(4) [div. A, §1117(b), (c)], Dec. 21, 2000, 114 Stat. 2763, 2763A-209, provided that:

“(b) The Secretary shall conduct a study of the effectiveness of the United States 1997 Enforcement Policy for Cargo Residues on the Great Lakes (‘Policy’) by September 30, 2002.

“(c) The Secretary is authorized to promulgate regulations to implement and enforce a program to regulate incidental discharges from vessels of residues of non-hazardous and non-toxic dry bulk cargo into the waters of the Great Lakes, which takes into account the finding in the study required under subsection (b). This program shall be consistent with the Policy.”

CERTAIN ALASKAN CRUISE SHIP OPERATIONS

Pub. L. 106-554, §1(a)(4) [div. B, title XIV], Dec. 21, 2000, 114 Stat. 2763, 2763A-315, provided that:

“SEC. 1401. PURPOSE.

“The purpose of this title is to:

“(1) Ensure that cruise vessels operating in the waters of the Alexander Archipelago and the navigable waters of the United States within the State of Alaska and within the Kachemak Bay National Estuarine Research Reserve comply with all applicable environmental laws, including, but not limited to, the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq.), the Act to Prevent Pollution from Ships, as amended (33 U.S.C. 1901 et seq.), and the protections contained within this title.

“(2) Ensure that cruise vessels do not discharge untreated sewage within the waters of the Alexander Archipelago, the navigable waters of the United States in the State of Alaska, or within the Kachemak Bay National Estuarine Research Reserve.

“(3) Prevent the unregulated discharge of treated sewage and graywater while in ports in the State of Alaska or traveling near the shore in the Alexander Archipelago and the navigable waters of the United States in the State of Alaska or within the Kachemak Bay National Estuarine Research Reserve.

“(4) Ensure that discharges of sewage and graywater from cruise vessels operating in the Alexander Archipelago and the navigable waters of the United States in the State of Alaska or within the Kachemak Bay National Estuarine Research Reserve can be monitored for compliance with the requirements contained in this title.

“SEC. 1402. APPLICABILITY.

“This title applies to all cruise vessels authorized to carry 500 or more passengers for hire.

“SEC. 1403. PROHIBITION ON DISCHARGE OF UNTREATED SEWAGE.

“No person shall discharge any untreated sewage from a cruise vessel into the waters of the Alexander Archipelago or the navigable waters of the United States within the State of Alaska or within the Kachemak Bay National Estuarine Research Reserve.

“SEC. 1404. LIMITATIONS ON DISCHARGE OF TREATED SEWAGE OR GRAYWATER.

“(a) No person shall discharge any treated sewage or graywater from a cruise vessel into the waters of the Alexander Archipelago or the navigable waters of the United States within the State of Alaska or within the Kachemak Bay National Estuarine Research Reserve unless—

“(1) the cruise vessel is underway and proceeding at a speed of not less than six knots;

“(2) the cruise vessel is not less than one nautical mile from the nearest shore, except in areas designated by the Secretary, in consultation with the State of Alaska;

“(3) the discharge complies with all applicable cruise vessel effluent standards established pursuant to this title and any other applicable law; and

“(4) the cruise vessel is not in an area where the discharge of treated sewage or graywater is prohibited.

“(b) The Administrator, in consultation with the Secretary, may promulgate regulations allowing the discharge of treated sewage or graywater, otherwise prohibited under paragraphs (a)(1) and (a)(2) of this section, where the discharge meets effluent standards determined by the Administrator as appropriate for discharges into the marine environment. In promulgating such regulations, the Administrator shall take into account the best available scientific information on the environmental effects of the regulated discharges. The effluent discharge standards promulgated under this section shall, at a minimum, be consistent with all relevant State of Alaska water quality standards in force at the time of the enactment of this title [Dec. 21, 2000].”

“(c) Until such time as the Administrator promulgates regulations under paragraph (b) of this section, treated sewage and graywater may be discharged from vessels subject to this title in circumstances otherwise prohibited under paragraphs (a)(1) and (a)(2) of this section, provided that—

“(1) the discharge satisfies the minimum level of effluent quality specified in 40 CFR 133.102, as in effect on the date of enactment of this section [Dec. 21, 2000];

“(2) the geometric mean of the samples from the discharge during any 30-day period does not exceed 20 fecal coliform/100 ml and not more than 10 percent of the samples exceed 40 fecal coliform/100 ml;

“(3) concentrations of total residual chlorine may not exceed 10.0 µg/l; and

“(4) prior to any such discharge occurring, the owner, operator or master, or other person in charge of a cruise vessel, can demonstrate test results from at least five samples taken from the vessel representative of the effluent to be discharged, on different days over a 30-day period, conducted in accordance with the guidelines promulgated by the Administrator in 40 CFR Part 136, which confirm that the water quality of the effluents proposed for discharge is in compliance with paragraphs (1), (2), and (3) of this subsection. To the extent not otherwise being done by the owner, operator, master or other person in charge of a cruise vessel pursuant to section 1406, the owner, operator, master or other person in charge of a cruise vessel shall demonstrate continued compliance through periodic sampling. Such sampling and test results shall be considered environmental compliance records that must be made available for inspection pursuant to section 1406(d) of this title.

“SEC. 1405. SAFETY EXCEPTION.

“Sections 1403 and 1404 of this title shall not apply to discharges made for the purpose of securing the safety of the cruise vessel or saving life at sea, provided that all reasonable precautions have been taken for the purpose of preventing or minimizing the discharge.

“SEC. 1406. INSPECTION AND SAMPLING REGIME.

“(a) The Secretary shall incorporate into the commercial vessel examination program an inspection regime sufficient to verify that cruise vessels visiting ports in the State of Alaska or operating in the waters of the Alexander Archipelago or the navigable waters of the United States within the State of Alaska or within the Kachemak Bay National Estuarine Research Reserve are in full compliance with this title, the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.], as amended, and any regulations issued thereunder, other applicable Federal laws and regulations, and all applicable international treaty requirements.

“(b) The inspection regime shall, at a minimum, include—

“(1) examination of environmental compliance records and procedures; and

“(2) inspection of the functionality and proper operation of installed equipment for abatement and control of any discharge.

“(c) The inspection regime may—

“(1) include unannounced inspections of any aspect of cruise vessel operations, equipment or discharges pertinent to the verification under subsection (a) of this section; and

“(2) require the owner, operator or master, or other person in charge of a cruise vessel subject to this title to maintain and produce a logbook detailing the times, types, volumes or flow rates and locations of any discharges of sewage or graywater under this title.

“(d) The inspection regime shall incorporate a plan for sampling and testing cruise vessel discharges to ensure that any discharges of sewage or graywater are in compliance with this title, the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.], as amended, and any other applicable laws and regulations, and may require the owner, operator or master, or other person in

charge of a cruise vessel subject to this title to conduct such samples or tests, and to produce any records of such sampling or testing at the request of the Secretary or Administrator.

“SEC. 1407. CRUISE VESSEL EFFLUENT STANDARDS.

“Pursuant to this title and the authority of the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.], as amended, the Administrator may promulgate effluent standards for treated sewage and graywater from cruise vessels operating in the waters of the Alexander Archipelago or the navigable waters of the United States within the State of Alaska or within the Kachemak Bay National Estuarine Research Reserve. Regulations implementing such standards shall take into account the best available scientific information on the environmental effects of the regulated discharges and the availability of new technologies for wastewater treatment. Until such time as the Administrator promulgates such effluent standards, treated sewage effluent discharges shall not have a fecal coliform bacterial count of greater than 200 per 100 milliliters nor suspended solids greater than 150 milligrams per liter.

“SEC. 1408. REPORTS.

“(a) Any owner, operator or master, or other person in charge of a cruise vessel who has knowledge of a discharge from the cruise vessel in violation of section 1403 or 1404 or pursuant to section 1405 of this title, or any regulations promulgated thereunder, shall immediately report that discharge to the Secretary, who shall provide a copy to the Administrator upon request.

“(b) The Secretary may prescribe the form of reports required under this section.

“SEC. 1409. ENFORCEMENT.

“(a) ADMINISTRATIVE PENALTIES.—

“(1) VIOLATIONS.—Any person who violates section 1403, 1404, 1408, or 1413 of this title, or any regulations promulgated pursuant to this title may be assessed a class I or class II civil penalty by the Secretary or Administrator.

“(2) CLASSES OF PENALTIES.—

“(A) CLASS I.—The amount of a class I civil penalty under this section may not exceed \$10,000 per violation, except that the maximum amount of any class I civil penalty under this section shall not exceed \$25,000. Before assessing a civil penalty under this clause, the Secretary or Administrator, as the case may be, shall give to the person to be assessed such penalty written notice of the Secretary’s or Administrator’s proposal to assess the penalty and the opportunity to request, within 30 days of the date the notice is received by such person, a hearing on the proposed penalty. Such hearing shall not be subject to section 554 or 556 of title 5, but shall provide a reasonable opportunity to be heard and to present evidence.

“(B) CLASS II.—The amount of a class II civil penalty under this section may not exceed \$10,000 per day for each day during which the violation continues, except that the maximum amount of any class II civil penalty under this section shall not exceed \$125,000. Except as otherwise provided in this subsection, a class II civil penalty shall be assessed and collected in the same manner, and subject to the same provisions as in the case of civil penalties assessed and collected after notice and an opportunity for a hearing on the record in accordance with section 554 of title 5, United States Code. The Secretary and Administrator may issue rules for discovery procedures for hearings under this paragraph.

“(3) RIGHTS OF INTERESTED PERSONS.—

“(A) PUBLIC NOTICE.—Before issuing an order assessing a class II civil penalty under this section, the Secretary or Administrator, as the case may be, shall provide public notice of and reasonable opportunity to comment on the proposed issuance of each order.

“(B) PRESENTATION OF EVIDENCE.—Any person who comments on a proposed assessment of a class II civil penalty under this section shall be given notice of any hearing held under this paragraph and of the order assessing such penalty. In any hearing held under this paragraph, such person shall have a reasonable opportunity to be heard and present evidence.

“(C) RIGHTS OF INTERESTED PERSONS TO A HEARING.—If no hearing is held under subsection (2) before issuance of an order assessing a class II civil penalty under this section, any person who commented on the proposed assessment may petition, within 30 days after the issuance of such order, the Administrator or Secretary, as the case may be, to set aside such order and to provide a hearing on the penalty. If the evidence presented by the petitioner in support of the petition is material and was not considered in the issuance of the order, the Administrator or Secretary shall immediately set aside such order and provide a hearing in accordance with subsection (2)(B). If the Administrator or Secretary denies a hearing under this clause, the Administrator or Secretary shall provide to the petitioner, and publish in the Federal Register, notice of and the reasons for such denial.

“(4) FINALITY OF ORDER.—An order assessing a class II civil penalty under this paragraph shall become final 30 days after its issuance unless a petition for judicial review is filed under subparagraph (6) or a hearing is requested under subsection (3)(C). If such a hearing is denied, such order shall become final 30 days after such denial.

“(5) EFFECT OF ACTION ON COMPLIANCE.—No action by the Administrator or Secretary under this paragraph shall affect any person’s obligation to comply with any section of this title.

“(6) JUDICIAL REVIEW.—Any person against whom a civil penalty is assessed under this paragraph or who commented on the proposed assessment of such penalty in accordance with subsection (3) may obtain review of such assessment—

“(A) in the case of assessment of a class I civil penalty, in the United States District Court for the District of Columbia or in the District of Alaska; or

“(B) in the case of assessment of a class II civil penalty, in the United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business, by filing a notice of appeal in such court within the 30-day period beginning on the date the civil penalty order is issued and by simultaneously sending a copy of such notice by certified mail to the Administrator or Secretary, as the case may be, and the Attorney General. The Administrator or Secretary shall promptly file in such court a certified copy of the record on which the order was issued. Such court shall not set aside or remand such order unless there is not substantial evidence in the record, taken as a whole, to support the finding of a violation or unless the Administrator’s or Secretary’s assessment of the penalty constitutes an abuse of discretion and shall not impose additional civil penalties for the same violation unless the Administrator’s or Secretary’s assessment of the penalty constitutes an abuse of discretion.

“(7) COLLECTION.—If any person fails to pay an assessment of a civil penalty—

“(A) after the assessment has become final, or

“(B) after a court in an action brought under subsection (6) has entered a final judgment in favor of the Administrator or Secretary, as the case may be, the Administrator or Secretary shall request the Attorney General to bring a civil action in an appropriate district court to recover the amount assessed (plus interest at currently prevailing rates from the date of the final order or the date of the final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review. Any

person who fails to pay on a timely basis the amount of an assessment of a civil penalty as described in the first sentence of this subparagraph shall be required to pay, in addition to such amount and interest, attorneys fees and costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to 20 percent of the aggregate amount of such person’s penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

“(8) SUBPOENAS.—The Administrator or Secretary, as the case may be, may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, or documents in connection with hearings under this section. In case of contumacy or refusal to obey a subpoena issued pursuant to this subsection and served upon any person, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Administrator or Secretary or to appear and produce documents before the Administrator or Secretary, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

“(b) CIVIL PENALTIES.—

“(1) IN GENERAL.—Any person who violates section 1403, 1404, 1408, or 1413 of this title, or any regulations promulgated pursuant to this title shall be subject to a civil penalty not to exceed \$25,000 per day for each violation. Each day a violation continues constitutes a separate violation.

“(2) JURISDICTION.—An action to impose a civil penalty under this section may be brought in the district court of the United States for the district in which the defendant is located, resides, or transacts business, and such court shall have jurisdiction to assess such penalty.

“(3) LIMITATION.—A person is not liable for a civil judicial penalty under this paragraph for a violation if the person has been assessed a civil administrative penalty under paragraph (a) for the violation.

“(c) DETERMINATION OF AMOUNT.—In determining the amount of a civil penalty under paragraphs (a) or (b) of this section, the court, the Secretary or the Administrator, as the case may be, shall consider the seriousness of the violation or violations, the economic benefit (if any) resulting from the violation, any history of such violations, any good-faith efforts to comply with the applicable requirements, the economic impact of the penalty on the violator, and other such matters as justice may require.

“(d) CRIMINAL PENALTIES.—

“(1) NEGLIGENT VIOLATIONS.—Any person who negligently violates section 1403, 1404, 1408, or 1413 of this title, or any regulations promulgated pursuant to this title commits a Class A misdemeanor.

“(2) KNOWING VIOLATIONS.—Any person who knowingly violates section 1403, 1404, 1408, or 1413 of this title, or any regulations promulgated pursuant to this title commits a Class D felony.

“(3) FALSE STATEMENTS.—Any person who knowingly makes any false statement, representation, or certification in any record, report or other document filed or required to be maintained under this title or the regulations issued thereunder, or who falsifies, tampers with, or knowingly renders inaccurate any testing or monitoring device or method required to be maintained under this title, or the regulations issued thereunder, commits a Class D felony.

“(e) AWARDS.—

“(1) The Secretary, the Administrator, or the court, when assessing any fines or civil penalties, as the case may be, may pay from any fines or civil penalties collected under this section an amount not to exceed one-half of the penalty or fine collected, to

any individual who furnishes information which leads to the payment of the penalty or fine. If several individuals provide such information, the amount shall be divided equitably among such individuals. No officer or employee of the United States, the State of Alaska or any federally recognized Tribe who furnishes information or renders service in the performance of his or her official duties shall be eligible for payment under this subsection.

“(2) The Secretary, Administrator or the court, when assessing any fines or civil penalties, as the case may be, may pay, from any fines or civil penalties collected under this section, to the State of Alaska or to any federally recognized Tribe providing information or investigative assistance which leads to payment of the penalty or fine, an amount which reflects the level of information or investigative assistance provided. Should the State of Alaska or a federally recognized Tribe and an individual under paragraph (1) of this section be eligible for an award, the Secretary, the Administrator, or the court, as the case may be, shall divide the amount equitably.

“(f) LIABILITY IN REM.—A cruise vessel operated in violation of this title or the regulations issued thereunder is liable in rem for any fine imposed under subsection (d) of this section or for any civil penalty imposed under subsections (a) or (b) of this section, and may be proceeded against in the United States district court of any district in which the cruise vessel may be found.

“(g) COMPLIANCE ORDERS.—

“(1) IN GENERAL.—Whenever on the basis of any information available to him the Administrator finds that any person is in violation of section 1403, 1404, 1408, or 1413 of this title, or any regulations promulgated pursuant to this title, the Administrator shall issue an order requiring such person to comply with such section or requirement, or shall bring a civil action in accordance with subsection (b).

“(2) COPIES OF ORDERS, SERVICE.—A copy of any order issued under this subsection shall be sent immediately by the Administrator to the State of Alaska. In any case in which an order under this subsection is issued to a corporation, a copy of such order shall be served on any appropriate corporate officer. Any order issued under this subsection shall be by personal service, shall state with reasonable specificity the nature of the violation, and shall specify a time for compliance not to exceed 30 days in the case of a violation of an interim compliance schedule or operation and maintenance requirement and not to exceed a time the Administrator determines to be reasonable in the case of a violation of a final deadline, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

“(h) CIVIL ACTIONS.—The Administrator is authorized to commence a civil action for appropriate relief, including a permanent or temporary injunction, for any violation for which he is authorized to issue a compliance order under this subsection. Any action under subsection (h) may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to restrain such violation and to require compliance. Notice of the commencement of such action shall be given immediately to the State of Alaska.

“SEC. 1410. DESIGNATION OF CRUISE VESSEL NO-DISCHARGE ZONES.

“If the State of Alaska determines that the protection and enhancement of the quality of some or all of the waters of the Alexander Archipelago or the navigable waters of the United States within the State of Alaska or within the Kachemak Bay National Estuarine Research Reserve require greater environmental protection, the State of Alaska may petition the Administrator to prohibit the discharge of graywater and sewage from cruise vessels operating in such waters.

The establishment of such a prohibition shall be achieved in the same manner as the petitioning process and prohibition of the discharge of sewage pursuant to section 312(f) of the Federal Water Pollution Control Act [33 U.S.C. 1322(f)], as amended, and the regulations promulgated thereunder.

“SEC. 1411. SAVINGS CLAUSE.

“(a) Nothing in this title shall be construed as restricting, affecting, or amending any other law or the authority of any department, instrumentality, or agency of the United States.

“(b) Nothing in this title shall in any way affect or restrict, or be construed to affect or restrict, the authority of the State of Alaska or any political subdivision thereof—

“(1) to impose additional liability or additional requirements; or

“(2) to impose, or determine the amount of a fine or penalty (whether criminal or civil in nature) for any violation of law; relating to the discharge of sewage (whether treated or untreated) or graywater in the waters of the Alexander Archipelago and the navigable waters of the United States within the State of Alaska or within the Kachemak Bay National Estuarine Research Reserve.

“SEC. 1412. REGULATIONS.

“The Secretary and the Administrator each may prescribe any regulations necessary to carry out the provisions of this title.

“SEC. 1413. INFORMATION GATHERING AUTHORITY.

“The authority of sections 308(a) and (b) of the Federal Water Pollution Control Act [33 U.S.C. 1318(a), (b)], as amended, shall be available to the Administrator to carry out the provisions of this title. The Administrator and the Secretary shall minimize, to the extent practicable, duplication of or inconsistency with the inspection, sampling, testing, recordkeeping, and reporting requirements established by the Secretary under section 1406 of this title.

“SEC. 1414. DEFINITIONS.

“In this title:

“(1) ADMINISTRATOR.—The term ‘Administrator’ means the Administrator of the United States Environmental Protection Agency.

“(2) CRUISE VESSEL.—The term ‘cruise vessel’ means a passenger vessel as defined in section 2101(22) [now 2101(31)] of title 46, United States Code. The term ‘cruise vessel’ does not include a vessel of the United States operated by the Federal Government or a vessel owned and operated by the government of a State.

“(3) DISCHARGE.—The term ‘discharge’ means any release however caused from a cruise vessel, and includes any escape, disposal, spilling, leaking, pumping, emitting, or emptying.

“(4) GRAYWATER.—The term ‘graywater’ means only galley, dishwasher, bath, and laundry waste water. The term does not include other wastes or waste streams.

“(5) NAVIGABLE WATERS.—The term ‘navigable waters’ has the same meaning as in section 502 of the Federal Water Pollution Control Act [33 U.S.C. 1362], as amended.

“(6) PERSON.—The term ‘person’ means an individual, corporation, partnership, limited liability company, association, State, municipality, commission, or political subdivision of a State, or any federally recognized tribe.

“(7) SECRETARY.—The term ‘Secretary’ means the Secretary of the department in which the United States Coast Guard is operating.

“(8) SEWAGE.—The term ‘sewage’ means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body waste.

“(9) TREATED SEWAGE.—The term ‘treated sewage’ means sewage meeting all applicable effluent limitation standards and processing requirements of the Federal Water Pollution Control Act [33 U.S.C. 1251 et

seq.], as amended[,] and of this title, and regulations promulgated under either.

“(10) UNTREATED SEWAGE.—The term ‘untreated sewage’ means sewage that is not treated sewage.

“(11) WATERS OF THE ALEXANDER ARCHIPELAGO.—The term ‘waters of the Alexander Archipelago’ means all waters under the sovereignty of the United States within or near Southeast Alaska, beginning at a point 58°11’41”N, 136°39’25”W [near Cape Spencer Light], thence southeasterly along a line three nautical miles seaward of the baseline from which the breadth of the territorial sea is measured in the Pacific Ocean and the Dixon Entrance, except where this line intersects geodesics connecting the following five pairs of points:

“(1) 58°05’17”N, 136°33’49”W and 58°11’41”N, 136°39’25”W [Cross Sound].

“(2) 56°09’40”N, 134°40’00”W and 55°49’15”N, 134°17’40”W [Chatham Strait].

“(3) 55°49’15”N, 134°17’40”W and 55°50’30”N, 133°54’15”W [Sumner Strait].

“(4) 54°41’30”N, 132°01’00”W and 54°51’30”N, 131°20’45”W [Clarence Strait].

“(5) 54°51’30”N, 131°20’45”W and 54°46’15”N, 130°52’00”W [Revillagigedo Channel].

“The portion of each such geodesic situated beyond three nautical miles from the baseline from which the breadth of the territorial sea is measured forms the outer limit of the waters of the Alexander Archipelago in those five locations.”

PREEMPTION; ADDITIONAL STATE REQUIREMENTS

Pub. L. 100-220, title II, §2003, Dec. 29, 1987, 101 Stat. 1460, provided that:

“(a) PREEMPTION.—Except as specifically provided in this title [see Effective Date of 1987 Amendment note above], nothing in this title shall be interpreted or construed to supersede or preempt any other provision of Federal or State law, either statutory or common.

“(b) ADDITIONAL STATE REQUIREMENTS.—Nothing in this title shall be construed or interpreted as preempting any State from imposing any additional requirements.”

§ 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;

(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

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

(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.

(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).