

upon the navigable waters of the United States, which includes all waters of the territorial sea of the United States as described in Presidential Proclamation 5928 of December 27, 1988.

(Pub. L. 92-63, § 4, Aug. 4, 1971, 85 Stat. 164; Pub. L. 102-241, § 16, Dec. 19, 1991, 105 Stat. 2213; Pub. L. 104-324, title VII, § 704, Oct. 19, 1996, 110 Stat. 3933; Pub. L. 107-295, title III, § 321, Nov. 25, 2002, 116 Stat. 2103.)

REFERENCES IN TEXT

Presidential Proclamation 5928 of December 27, 1988, referred to in subsec. (b), is set out as a note under section 1331 of Title 43, Public Lands.

AMENDMENTS

2002—Subsec. (b). Pub. L. 107-295 substituted “United States, which includes all waters of the territorial sea of the United States as described in Presidential Proclamation 5928 of December 27, 1988” for “United States inside the lines established pursuant to section 151 of this title”.

1996—Subsec. (a)(2). Pub. L. 104-324 inserted “as measured under section 14502 of title 46, or an alternate tonnage measured under section 14302 of that title as prescribed by the Secretary under section 14104 of that title,” after “one hundred gross tons”.

1991—Subsec. (a)(1). Pub. L. 102-241 amended par. (1) generally, substituting “twenty meters or over in length” for “three hundred gross tons and upward”.

VESSEL COMMUNICATION EQUIPMENT REGULATIONS

Pub. L. 101-380, title IV, § 4118, Aug. 18, 1990, 104 Stat. 523, provided that: “The Secretary shall, not later than one year after the date of the enactment of this Act [Aug. 18, 1990], issue regulations necessary to ensure that vessels subject to the Vessel Bridge-to-Bridge Radiotelephone Act of 1971 (33 U.S.C. 1203) are also equipped as necessary to—

“(1) receive radio marine navigation safety warnings; and

“(2) engage in radio communications on designated frequencies with the Coast Guard, and such other vessels and stations as may be specified by the Secretary.”

§ 1204. Radiotelephone for exclusive use of master, person in charge, or pilot; frequency listening watch; portable radiotelephone equipment

The radiotelephone required by this chapter is for the exclusive use of the master or person in charge of the vessel, or the person designated by the master or person in charge to pilot or direct the movement of the vessel, who shall maintain a listening watch on the designated frequency. Nothing contained herein shall be interpreted as precluding the use of portable radiotelephone equipment to satisfy the requirements of this chapter.

(Pub. L. 92-63, § 5, Aug. 4, 1971, 85 Stat. 165.)

§ 1205. Radiotelephone capability; maintenance; restoration; consequences of loss: navigation of vessel

Whenever radiotelephone capability is required by this chapter, a vessel's radiotelephone equipment shall be maintained in effective operating condition. If the radiotelephone equipment carried aboard a vessel ceases to operate, the master shall exercise due diligence to restore it or cause it to be restored to effective operating condition at the earliest practicable time. The

failure of a vessel's radiotelephone equipment shall not, in itself, constitute a violation of this chapter, nor shall it obligate the master of any vessel to moor or anchor his vessel; however, the loss of radiotelephone capability shall be given consideration in the navigation of the vessel.

(Pub. L. 92-63, § 6, Aug. 4, 1971, 85 Stat. 165.)

§ 1206. Exemptions; terms and conditions

The Secretary may, if he considers that marine navigational safety will not be adversely affected or where a local communication system fully complies with the intent of this concept but does not conform in detail, issue exemptions from any provisions of this chapter, on such terms and conditions as he considers appropriate.

(Pub. L. 92-63, § 7, Aug. 4, 1971, 85 Stat. 165.)

§ 1207. Regulations

(a) Operating and technical conditions and characteristics; frequencies, emission, and power of radiotelephone equipment

The Federal Communications Commission shall, after consultation with other cognizant agencies, prescribe regulations necessary to specify operating and technical conditions and characteristics including frequencies, emission, and power of radiotelephone equipment required under this chapter.

(b) Enforcement

The Secretary shall, subject to the concurrence of the Federal Communications Commission, prescribe regulations for the enforcement of this chapter.

(Pub. L. 92-63, § 8, Aug. 4, 1971, 85 Stat. 165.)

§ 1208. Penalties

(a) Master, person in charge, or pilot subject to penalty

Whoever, being the master or person in charge of a vessel subject to this chapter, fails to enforce or comply with this chapter or the regulation, hereunder; or

Whoever, being designated by the master or person in charge of a vessel subject to this chapter to pilot or direct the movement of the vessel, fails to enforce or comply with this chapter or the regulations hereunder—

Is liable to a civil penalty of not more than \$500 to be assessed by the Secretary.

(b) Vessels subject to penalty; jurisdiction

Every vessel navigating in violation of this chapter or the regulations hereunder is liable to a civil penalty of not more than \$500 to be assessed by the Secretary for which the vessel may be proceeded against in any district court of the United States having jurisdiction.

(c) Remission or mitigation

Any penalty assessed under this section may be remitted or mitigated by the Secretary upon such terms as he may deem proper.

(Pub. L. 92-63, § 9, Aug. 4, 1971, 85 Stat. 165.)

CHAPTER 25—PORTS AND WATERWAYS SAFETY PROGRAM

Sec.

1221. Statement of policy.

Sec.	
1222.	Definitions.
1223.	Vessel operating requirements.
1223a.	Electronic charts.
1224.	Considerations by Secretary.
1225.	Waterfront safety.
1226.	Port, harbor, and coastal facility security.
1227.	Investigatory powers.
1228.	Conditions for entry to ports in the United States.
1229.	Applicability.
1230.	International agreements.
1231.	Regulations.
1231a.	Towing Safety Advisory Committee.
1232.	Enforcement provisions.
1232a.	Navigational hazards.
1232b.	Requirement to notify Coast Guard of release of objects into the navigable waters of the United States.
1233.	Regulations as to regattas or marine parades.
1234.	Enforcement of regulations; use of public or private vessels.
1235.	Transfer of authority to regulate to head of other department.
1236.	Penalties for violations of regulations.

§ 1221. Statement of policy

The Congress finds and declares—

(a) that navigation and vessel safety, protection of the marine environment, and safety and security of United States ports and waterways are matters of major national importance;

(b) that increased vessel traffic in the Nation's ports and waterways creates substantial hazard to life, property, and the marine environment;

(c) that increased supervision of vessel and port operations is necessary in order to—

(1) reduce the possibility of vessel or cargo loss, or damage to life, property, or the marine environment;

(2) prevent damage to structures in, on, or immediately adjacent to the navigable waters of the United States or the resources within such waters;

(3) insure that vessels operating in the navigable waters of the United States shall comply with all applicable standards and requirements for vessel construction, equipment, manning, and operational procedures; and

(4) insure that the handling of dangerous articles and substances on the structures in, on, or immediately adjacent to the navigable waters of the United States is conducted in accordance with established standards and requirements; and

(d) that advance planning is critical in determining proper and adequate protective measures for the Nation's ports and waterways and the marine environment, with continuing consultation with other Federal agencies, State representatives, affected users, and the general public, in the development and implementation of such measures.

(Pub. L. 92-340, §2, formerly title I, §101, July 10, 1972, 86 Stat. 424; renumbered and amended Pub. L. 95-474, §2, Oct. 17, 1978, 92 Stat. 1471; Pub. L. 107-295, title IV, §443(1), Nov. 25, 2002, 116 Stat. 2132.)

AMENDMENTS

2002—Subsec. (a). Pub. L. 107-295 substituted “safety, protection of the marine environment, and safety and

security of United States ports and waterways” for “safety and protection of the marine environment”.

1978—Pub. L. 95-474 substituted provision relating to Congressional declaration of findings for provision relating to the authority of the Secretary of the department in which the Coast Guard is operating to prevent damage to vessels, bridges, and other structures and to protect navigable waters from environmental harm.

SHORT TITLE OF 1986 AMENDMENT

Pub. L. 99-399, title IX, §901, Aug. 27, 1986, 100 Stat. 889, provided that: “This title [enacting section 1226 of this title and sections 1801 to 1809 of the former Appendix to Title 46, Shipping] may be cited as the ‘International Maritime and Port Security Act.’”

SHORT TITLE OF 1978 AMENDMENT

Section 1 of Pub. L. 95-474 provided: “That this Act [enacting sections 1225, 1228 to 1231, and 1232 of this title, amending this section, sections 1222 to 1224, 1226, and 1227 of this title, and sections 214 and 391a of Title 46, Shipping, and enacting provisions set out as notes under this section and section 1224 of this title and section 391a of former Title 46] may be cited as the ‘Port and Tanker Safety Act of 1978.’”

SHORT TITLE

Section 1 of Pub. L. 92-340, as amended by Pub. L. 95-474, §2, Oct. 17, 1978, 92 Stat. 1471, provided that: “This Act [this chapter] may be cited as the ‘Ports and Waterways Safety Act.’”

SAVINGS PROVISION

Section 6(a) of Pub. L. 95-474 provided that: “Regulations previously issued under statutory provisions which are amended by section 2 of this Act [amending this section and sections 1222 to 1227, of this title] shall continue in effect as though issued under the authority of the Ports and Waterways Safety Act of 1972, as amended by this Act [this chapter], until expressly abrogated, modified, or amended by the Secretary. Any proceeding under title I of Public Law 92-340 [which enacted this section and sections 1222 to 1227 of this title] for a violation which occurred before the effective date of this Act [Oct. 17, 1978] may be initiated or continued to conclusion as though such public law had not been amended by this Act [amendment by section 2 of Pub. L. 95-474].”

SEPARABILITY

Section 6(c) of Pub. L. 95-474 provided that: “If a provision of this Act [see Short Title of 1978 Amendment note above] or the application of such provision to any person or circumstances shall be held invalid, the remainder of the Act and the application of such provision to persons or circumstances other than those to which it is held invalid shall not be affected thereby.”

ESTABLISHMENT OF VESSEL TRAFFIC CONTROL SYSTEM FOR PRINCE WILLIAM SOUND AND VALDEZ, ALASKA

Pub. L. 93-153, title IV, §402, Nov. 16, 1973, 87 Stat. 589, provided that: “The Secretary of the Department in which the Coast Guard is operating is hereby directed to establish a vessel traffic control system for Prince William Sound and Valdez, Alaska, pursuant to authority contained in title I of the Ports and Waterways Safety Act of 1972 (86 Stat. 424, Public Law 92-340) [this chapter, prior to the amendment by Pub. L. 95-474, Oct. 17, 1978, 92 Stat. 1471].”

§ 1222. Definitions

As used in this chapter, unless the context otherwise requires—

(1) “Marine environment” means the navigable waters of the United States and the land and resources therein and thereunder; the waters and fishery resources of any area over

which the United States asserts exclusive fishery management authority; the seabed and subsoil of the Outer Continental Shelf of the United States, the resources thereof and the waters superjacent thereto; and the recreational, economic, and scenic values of such waters and resources.

(2) “Secretary” means the Secretary of the department in which the Coast Guard is operating, except that “Secretary” means the Secretary of Transportation with respect to the application of this chapter to the Saint Lawrence Seaway.

(3) “State” includes each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, the United States Virgin Islands, the Trust Territories of the Pacific Islands, the Commonwealth of the Northern Marianas, and any other commonwealth, territory, or possession of the United States.

(4) “United States”, when used in geographical context, means all the States thereof.

(5) “Navigable waters of the United States” includes all waters of the territorial sea of the United States as described in Presidential Proclamation No. 5928 of December 27, 1988.

(Pub. L. 92-340, § 3, formerly title I, § 102, July 10, 1972, 86 Stat. 425; renumbered and amended Pub. L. 95-474, § 2, Oct. 17, 1978, 92 Stat. 1471; Pub. L. 105-383, title III, § 301(a), Nov. 13, 1998, 112 Stat. 3417; Pub. L. 108-293, title III, § 304, Aug. 9, 2004, 118 Stat. 1042.)

REFERENCES IN TEXT

For definition of Canal Zone, referred to in par. (3), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

Presidential Proclamation No. 5928, referred to in par. (5), is set out under section 1331 of Title 43, Public Lands.

AMENDMENTS

2004—Par. (2). Pub. L. 108-293 inserted “, except that ‘Secretary’ means the Secretary of Transportation with respect to the application of this chapter to the Saint Lawrence Seaway” after “in which the Coast Guard is operating”.

1998—Par. (5). Pub. L. 105-383, which directed the amendment of section 102 of the Ports and Waterways Safety Act by adding par. (5), was executed to this section, which is section 3 of that act, to reflect the probable intent of Congress and the renumbering of section 102 as section 3 by Pub. L. 95-474.

1978—Pub. L. 95-474 substituted provision relating to definitions for provision defining “United States”, permitting higher State or local safety standards, and providing for consultation with appropriate agencies, the inapplicability of this chapter to the Panama Canal, delegation of powers with respect to the Saint Lawrence Seaway, and factors to be considered in issuance of regulations.

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.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 1223. Vessel operating requirements

(a) In general

Subject to the requirements of section 1224 of this title, the Secretary—

(1) in any port or place under the jurisdiction of the United States, in the navigable waters of the United States, or in any area covered by an international agreement negotiated pursuant to section 1230 of this title, may construct, operate, maintain, improve, or expand vessel traffic services, consisting of measures for controlling or supervising vessel traffic or for protecting navigation and the marine environment and may include, but need not be limited to one or more of the following: reporting and operating requirements, surveillance and communications systems, routing systems, and fairways;

(2) shall require appropriate vessels which operate in an area of a vessel traffic service to utilize or comply with that service;

(3) may require vessels to install and use specified navigation equipment, communications equipment, electronic relative motion analyzer equipment, or any electronic or other device necessary to comply with a vessel traffic service or which is necessary in the interests of vessel safety: *Provided*, That the Secretary shall not require fishing vessels under 300 gross tons as measured under section 14502 of title 46, or an alternate tonnage measured under section 14302 of that title as prescribed by the Secretary under section 14104 of that title or recreational vessels 65 feet or less to possess or use the equipment or devices required by this subsection solely under the authority of this chapter;

(4) may control vessel traffic in areas subject to the jurisdiction of the United States which the Secretary determines to be hazardous, or under conditions of reduced visibility, adverse weather, vessel congestion, or other hazardous circumstances by—

(A) specifying times of entry, movement, or departure;

(B) establishing vessel traffic routing schemes;

(C) establishing vessel size, speed, draft limitations and vessel operating conditions; and

(D) restricting operation, in any hazardous area or under hazardous conditions, to vessels which have particular operating characteristics or capabilities which he considers necessary for safe operation under the circumstances;

(5) may require the receipt of prearrival messages from any vessel, destined for a port or place subject to the jurisdiction of the United States, in sufficient time to permit advance vessel traffic planning prior to port entry, which shall include any information which is not already a matter of record and which the Secretary determines necessary for

the control of the vessel and the safety of the port or the marine environment; and

(6) may prohibit the use on vessels of electronic or other devices that interfere with communication and navigation equipment, except that such authority shall not apply to electronic or other devices certified to transmit in the maritime services by the Federal Communications Commission and used within the frequency bands 157.1875–157.4375 MHz and 161.7875–162.0375 MHz.

(b) Special powers

The Secretary may order any vessel, in a port or place subject to the jurisdiction of the United States or in the navigable waters of the United States, to operate or anchor in a manner he directs if—

(1) he has reasonable cause to believe such vessel does not comply with any regulation issued under this chapter or any other applicable law or treaty;

(2) he determines that such vessel does not satisfy the conditions for port entry set forth in section 1228 of this title; or

(3) by reason of weather, visibility, sea conditions, port congestion, other hazardous circumstances, or the condition of such vessel, he is satisfied that such directive is justified in the interest of safety.

(c) Port access routes

(1) In order to provide safe access routes for the movement of vessel traffic proceeding to or from ports or places subject to the jurisdiction of the United States, and subject to the requirements of paragraph (3) hereof, the Secretary shall designate necessary fairways and traffic separation schemes for vessels operating in the territorial sea of the United States and in high seas approaches, outside the territorial sea, to such ports or places. Such a designation shall recognize, within the designated area, the paramount right of navigation over all other uses.

(2) No designation may be made by the Secretary pursuant to this subsection, if such a designation, as implemented, would deprive any person of the effective exercise of a right granted by a lease or permit executed or issued under other applicable provisions of law: *Provided*, That such right has become vested prior to the time of publication of the notice required by clause (A) of paragraph (3) hereof: *Provided further*, That the determination as to whether the designation would so deprive any such person shall be made by the Secretary, after consultation with the responsible official under whose authority the lease was executed or the permit issued.

(3) Prior to making a designation pursuant to paragraph (1) hereof, and in accordance with the requirements of section 1224 of this title, the Secretary shall—

(A) within six months after date of enactment of this Act (and may, from time to time thereafter), undertake a study of the potential traffic density and the need for safe access routes for vessels in any area for which fairways or traffic separation schemes are proposed or which may otherwise be considered and shall publish notice of such undertaking in the Federal Register;

(B) in consultation with the Secretary of State, the Secretary of the Interior, the Secretary of Commerce, the Secretary of the Army, and the Governors of affected States, as their responsibilities may require, take into account all other uses of the area under consideration (including, as appropriate, the exploration for, or exploitation of, oil, gas, or other mineral resources, the construction or operation of deepwater ports or other structures on or above the seabed or subsoil of the submerged lands or the Outer Continental Shelf of the United States, the establishment or operation of marine or estuarine sanctuaries, and activities involving recreational or commercial fishing); and

(C) to the extent practicable, reconcile the need for safe access routes with the needs of all other reasonable uses of the area involved.

(4) In carrying out his responsibilities under paragraph (3), the Secretary shall proceed expeditiously to complete any study undertaken. Thereafter, he shall promptly issue a notice of proposed rule-making for the designation contemplated or shall have published in the Federal Register a notice that no designation is contemplated as a result of the study and the reason for such determination.

(5) In connection with a designation made pursuant to this subsection, the Secretary—

(A) shall issue reasonable rules and regulations governing the use of such designated areas, including the applicability of rules 9 and 10 of the International Regulations for Preventing Collisions at Sea, 1972, relating to narrow channels and traffic separation schemes, respectively, in waters where such regulations apply;

(B) to the extent that he finds reasonable and necessary to effectuate the purposes of the designation, make the use of designated fairways and traffic separation schemes mandatory for specific types and sizes of vessels, foreign and domestic, operating in the territorial sea of the United States and for specific types and sizes of vessels of the United States operating on the high seas beyond the territorial sea of the United States;

(C) may, from time to time, as necessary, adjust the location or limits of designated fairways or traffic separation schemes, in order to accommodate the needs of other uses which cannot be reasonably accommodated otherwise: *Provided*, That such an adjustment will not, in the judgement of the Secretary, unacceptably adversely affect the purpose for which the existing designation was made and the need for which continues; and

(D) shall, through appropriate channels, (i) notify cognizant international organizations of any designation, or adjustment thereof, and (ii) take action to seek the cooperation of foreign States in making it mandatory for vessels under their control to use any fairway or traffic separation scheme designated pursuant to this subsection in any area of the high seas, to the same extent as required by the Secretary for vessels of the United States.

(d) Exception

Except pursuant to international treaty, convention, or agreement, to which the United

States is a party, this chapter shall not apply to any foreign vessel that is not destined for, or departing from, a port or place subject to the jurisdiction of the United States and that is in—

- (1) innocent passage through the territorial sea of the United States, or
- (2) transit through the navigable waters of the United States which form a part of an international strait.

(e) Cooperative agreements

(1) The Secretary may enter into cooperative agreements with public or private agencies, authorities, associations, institutions, corporations, organizations, or other persons to carry out the functions under subsection (a)(1) of this section.

(2) A nongovernmental entity may not under this subsection carry out an inherently governmental function.

(3) As used in this paragraph, the term “inherently governmental function” means any activity that is so intimately related to the public interest as to mandate performance by an officer or employee of the Federal Government, including an activity that requires either the exercise of discretion in applying the authority of the Government or the use of judgment in making a decision for the Government.

(Pub. L. 92-340, § 4, formerly title I, § 103, July 10, 1972, 86 Stat. 426; renumbered and amended Pub. L. 95-474, § 2, Oct. 17, 1978, 92 Stat. 1472; Pub. L. 101-380, title IV, § 4107(a), Aug. 18, 1990, 104 Stat. 514; Pub. L. 104-324, title VII, § 705, Oct. 19, 1996, 110 Stat. 3934; Pub. L. 108-293, title III, § 302, Aug. 9, 2004, 118 Stat. 1041; Pub. L. 109-241, title IX, § 901(d), July 11, 2006, 120 Stat. 564.)

REFERENCES IN TEXT

The date of enactment of this Act, referred to in subsec. (c)(3)(A), probably means the date of enactment of Pub. L. 95-474, which was approved Oct. 17, 1978.

The International Regulations for Preventing Collisions at Sea, 1972, referred to in subsec. (c)(5)(A), came into effect pursuant to the Convention on the International Regulations for Preventing Collisions at Sea, 1972. See International Regulations for Preventing Collisions at Sea, 1972 note under section 1602 of this title.

AMENDMENTS

2006—Subsecs. (a)(6), (e). Pub. L. 109-241 amended directory language of Pub. L. 108-293, § 302. See 2004 Amendment note below.

2004—Subsec. (a)(6). Pub. L. 108-293, § 302(1), as amended by Pub. L. 109-241, added par. (6).

Subsec. (e). Pub. L. 108-293, § 302(2), as amended by Pub. L. 109-241, which directed the addition of subsec. (e) at the end of subsec. (a) of this section, was executed by adding subsec. (e) at the end of this section.

1996—Subsec. (a)(3). Pub. L. 104-324 inserted “as measured under section 14502 of title 46, or an alternate tonnage measured under section 14302 of that title as prescribed by the Secretary under section 14104 of that title” after “300 gross tons”.

1990—Subsec. (a). Pub. L. 101-380, § 4107(a)(1), substituted “Secretary—” for “Secretary may—”.

Subsec. (a)(1). Pub. L. 101-380, § 4107(a)(2), substituted “may construct, operate, maintain, improve, or expand” for “establish, operate, and maintain”.

Subsec. (a)(2). Pub. L. 101-380, § 4107(a)(3), substituted “shall require appropriate” for “require”.

Subsec. (a)(3). Pub. L. 101-380, § 4107(a)(4), inserted “may” before “require”, which was executed by making the insertion before “require” the first place it appeared to reflect the probable intent of Congress.

Subsec. (a)(4). Pub. L. 101-380, § 4107(a)(5), inserted “may” before “control”.

Subsec. (a)(5). Pub. L. 101-380, § 4107(a)(6), inserted “may” before “require”.

1978—Pub. L. 95-474 substituted provision relating to vessel operating requirements for provision relating to the investigatory powers of the Secretary, production of witnesses and documents, and fees and allowances for witnesses.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-241, title IX, § 901(d), July 11, 2006, 120 Stat. 564, provided in part that the amendment made by section 901(d) is effective Aug. 9, 2004.

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.

NOTICE OF ARRIVAL FOR FOREIGN VESSELS ON THE OUTER CONTINENTAL SHELF

Pub. L. 109-347, title I, § 109, Oct. 13, 2006, 120 Stat. 1893, provided that:

“(a) NOTICE OF ARRIVAL.—Not later than 180 days after the date of the enactment of this Act [Oct. 13, 2006], the Secretary of the department in which the Coast Guard is operating shall update and finalize the rulemaking on notice of arrival for foreign vessels on the Outer Continental Shelf.

“(b) CONTENT OF REGULATIONS.—The regulations promulgated pursuant to subsection (a) shall be consistent with information required under the Notice of Arrival under section 160.206 of title 33, Code of Federal Regulations, as in effect on the date of the enactment of this Act [Oct. 13, 2006].”

DIRECTION OF VESSEL MOVEMENT STUDY; SUBMITTAL OF REPORT TO CONGRESS

Section 4107(b) of Pub. L. 101-380 provided that:

“(1) STUDY.—The Secretary shall conduct a study—

“(A) of whether the Secretary should be given additional authority to direct the movement of vessels on navigable waters and should exercise such authority; and

“(B) to determine and prioritize the United States ports and channels that are in need of new, expanded, or improved vessel traffic service systems, by evaluating—

“(i) the nature, volume, and frequency of vessel traffic;

“(ii) the risks of collisions, spills, and damages associated with that traffic;

“(iii) the impact of installation, expansion, or improvement of a vessel traffic service system; and

“(iv) all other relevant costs and data.

“(2) REPORT.—Not later than 1 year after the date of the enactment of this Act [Aug. 18, 1990], the Secretary shall submit to the Congress a report on the results of the study conducted under paragraph (1) and recommendations for implementing the results of that study.”

TERRITORIAL SEA OF UNITED STATES

For extension of territorial sea of United States, see Proc. No. 5928, set out as a note under section 1331 of Title 43, Public Lands.

§ 1223a. Electronic charts

(a) System requirements

(1) Requirements

Subject to paragraph (2), the following vessels, while operating on the navigable waters of the United States, shall be equipped with and operate electronic charts under regula-

tions prescribed by the Secretary of the department in which the Coast Guard is operating:

(A) A self-propelled commercial vessel of at least 65 feet overall length.

(B) A vessel carrying more than a number of passengers for hire determined by the Secretary.

(C) A towing vessel of more than 26 feet in overall length and 600 horsepower.

(D) Any other vessel for which the Secretary decides that electronic charts are necessary for the safe navigation of the vessel.

(2) Exemptions and waivers

The Secretary may—

(A) exempt a vessel from paragraph (1), if the Secretary finds that electronic charts are not necessary for the safe navigation of the vessel on the waters on which the vessel operates; and

(B) waive the application of paragraph (1) with respect to operation of vessels on navigable waters of the United States specified by the Secretary, if the Secretary finds that electronic charts are not needed for safe navigation on those waters.

(b) Regulations

The Secretary of the department in which the Coast Guard is operating shall prescribe regulations implementing subsection (a) of this section before January 1, 2007, including requirements for the operation and maintenance of the electronic charts required under subsection (a) of this section.

(Pub. L. 92-340, § 4A, as added Pub. L. 108-293, title IV, § 410, Aug. 9, 2004, 118 Stat. 1045.)

§ 1224. Considerations by Secretary

In carrying out his duties and responsibilities under section 1223 of this title, the Secretary shall—

(a) take into account all relevant factors concerning navigation and vessel safety, protection of the marine environment, and the safety and security of United States ports and waterways, including but not limited to—

(1) the scope and degree of the risk or hazard involved;

(2) vessel traffic characteristics and trends, including traffic volume, the sizes and types of vessels involved, potential interference with the flow of commercial traffic, the presence of any unusual cargoes, and other similar factors;

(3) port and waterway configurations and variations in local conditions of geography, climate, and other similar factors;

(4) the need for granting exemptions for the installation and use of equipment or devices for use with vessel traffic services for certain classes of small vessels, such as self-propelled fishing vessels and recreational vessels;

(5) the proximity of fishing grounds, oil and gas drilling and production operations, or any other potential or actual conflicting activity;

(6) environmental factors;

(7) economic impact and effects;

(8) existing vessel traffic services; and

(9) local practices and customs, including voluntary arrangements and agreements within the maritime community; and

(b) at the earliest possible time, consult with and receive and consider the views of representatives of the maritime community, ports and harbor authorities or associations, environmental groups, and other parties who may be affected by the proposed actions.

(Pub. L. 92-340, § 5, formerly title I, § 104, July 10, 1972, 86 Stat. 427; renumbered and amended Pub. L. 95-474, § 2, Oct. 17, 1978, 92 Stat. 1474; Pub. L. 107-295, title IV, § 443(2), Nov. 25, 2002, 116 Stat. 2132.)

AMENDMENTS

2002—Subsec. (a). Pub. L. 107-295 substituted “safety, protection of the marine environment, and the safety and security of United States ports and waterways,” for “safety and protection of the marine environment,” in introductory provisions.

1978—Pub. L. 95-474 substituted provision relating to factors to be considered by the Secretary and to consultation by the Secretary with affected groups for provision relating to the issuance of rules and regulations by the Secretary.

STUDY OF DESIRABILITY AND FEASIBILITY OF SHORE-STATION SYSTEMS FOR MONITORING VESSELS

Section 3 of Pub. L. 95-474 authorized the Secretary, in consultation with the Secretary of Commerce and other appropriate departments or agencies of the Federal Government to study the desirability and feasibility of shore-station systems for monitoring vessels within the Fishery Conservation Zone as defined in former section 1802(8) of Title 16, Conservation, required the Secretary to report his findings to Congress, within two years after Oct. 17, 1978, and authorized appropriations for such study for fiscal years 1979 and 1980.

§ 1225. Waterfront safety

(a) In general

The Secretary may take such action as is necessary to—

(1) prevent damage to, or the destruction of, any bridge or other structure on or in the navigable waters of the United States, or any land structure or shore area immediately adjacent to such waters; and

(2) protect the navigable waters and the resources therein from harm resulting from vessel or structure damage, destruction, or loss. Such action may include, but need not be limited to—

(A) establishing procedures, measures, and standards for the handling, loading, unloading, storage, stowage, and movement on the structure (including the emergency removal, control, and disposition) of explosives or other dangerous articles and substances, including oil or hazardous material as those terms are defined in section 2101 of title 46;

(B) prescribing minimum safety equipment requirements for the structure to assure adequate protection from fire, explosion, natural disaster, and other serious accidents or casualties;

(C) establishing water or waterfront safety zones, or other measures for limited, con-

trolled, or conditional access and activity when necessary for the protection of any vessel, structure, waters, or shore area; and (D) establishing procedures for examinations to assure compliance with the requirements prescribed under this section.

(b) State law

Nothing contained in this section, with respect to structures, prohibits a State or political subdivision thereof from prescribing higher safety equipment requirements or safety standards than those which may be prescribed by regulations hereunder.

(Pub. L. 92-340, § 6, formerly title I, § 105, July 10, 1972, 86 Stat. 427; renumbered and amended Pub. L. 95-474, § 2, Oct. 17, 1978, 92 Stat. 1475.)

CODIFICATION

In subsec. (a)(2)(A), “section 2101 of title 46” substituted for “section 4417a of the Revised Statutes [46 U.S.C. 391a]” on authority of Pub. L. 98-89, § 2(b), Aug. 26, 1983, 97 Stat. 598, section 1 of which enacted Title 46, Shipping.

AMENDMENTS

1978—Pub. L. 95-474 substituted provisions relating to waterfront safety for provision requiring the Secretary to report to Congress within one year his recommendations for legislation to achieve coordination between functions authorized under Pub. L. 92-340 and the functions of any other agencies and to eliminate duplication of these functions.

§ 1226. Port, harbor, and coastal facility security

(a) General authority

The Secretary may take actions described in subsection (b) of this section to prevent or respond to an act of terrorism against—

- (1) an individual, vessel, or public or commercial structure, that is—
 - (A) subject to the jurisdiction of the United States; and
 - (B) located within or adjacent to the marine environment; or
- (2) a vessel of the United States or an individual on board that vessel.

(b) Specific authority

Under subsection (a) of this section, the Secretary may—

- (1) carry out or require measures, including inspections, port and harbor patrols, the establishment of security and safety zones, and the development of contingency plans and procedures, to prevent or respond to acts of terrorism;
- (2) recruit members of the Regular Coast Guard and the Coast Guard Reserve and train members of the Regular Coast Guard and the Coast Guard Reserve in the techniques of preventing and responding to acts of terrorism; and
- (3) dispatch properly trained and qualified armed Coast Guard personnel on vessels and public or commercial structures on or adjacent to waters subject to United States jurisdiction to deter or respond to acts of terrorism or transportation security incidents, as defined in section 70101 of title 46.

(c) Nondisclosure of port security plans

Notwithstanding any other provision of law, information related to security plans, proce-

dures, or programs for passenger vessels or passenger terminals authorized under this chapter is not required to be disclosed to the public.

(Pub. L. 92-340, § 7, as added Pub. L. 99-399, title IX, § 906, Aug. 27, 1986, 100 Stat. 890; amended Pub. L. 104-324, title III, § 302, Oct. 19, 1996, 110 Stat. 3917; Pub. L. 107-295, title I, § 107(a), Nov. 25, 2002, 116 Stat. 2088.)

PRIOR PROVISIONS

A prior section 1226, Pub. L. 92-340, § 7, formerly title I, § 106, July 10, 1972, 86 Stat. 427; renumbered § 7 and amended Pub. L. 95-474, § 2, Oct. 17, 1978, 92 Stat. 1475, related to requirement respecting federally licensed pilots on any foreign or domestic self-propelled vessel engaged in the foreign trade when operating in the navigable waters of the United States in areas, etc., where a pilot is not otherwise required by State law, prior to repeal by Pub. L. 98-557, § 29(g), Oct. 30, 1984, 98 Stat. 2875.

AMENDMENTS

- 2002—Subsec. (b)(3). Pub. L. 107-295 added par. (3).
1996—Subsec. (c). Pub. L. 104-324 added subsec. (c).

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.

REPORT ON USE OF NON-COAST GUARD PERSONNEL

Pub. L. 107-295, title I, § 107(b), Nov. 25, 2002, 116 Stat. 2088, provided that: “The Secretary of the department in which the Coast Guard is operating shall evaluate and report to the Congress on—

- “(1) the potential use of Federal, State, or local government personnel, and documented United States Merchant Marine personnel, to supplement Coast Guard personnel under section 7(b)(3) of the Ports and Waterways Safety Act (33 U.S.C. 1226(b)(3));
- “(2) the possibility of using personnel other than Coast Guard personnel to carry out Coast Guard personnel functions under that section and whether additional legal authority would be necessary to use such personnel for such functions; and
- “(3) the possibility of utilizing the United States Merchant Marine Academy, State maritime academies, or Coast Guard approved maritime industry schools in the United States, to provide training under that section.”

§ 1227. Investigatory powers

(a) Secretary

The Secretary may investigate any incident, accident, or act involving the loss or destruction of, or damage to any structure subject to this chapter, or which affects or may affect the safety or environmental quality of the ports, harbors, or navigable waters of the United States.

(b) Powers

In an investigation under this section, the Secretary may issue subpoenas to require the attendance of witnesses and the production of documents or other evidence relating to such incident, accident, or act. If any person refuses to obey a subpoena, the Secretary may request the Attorney General to invoke the aid of the appropriate district court of the United States to

compel compliance with the subpoena. Any district court of the United States may, in the case of refusal to obey a subpoena, issue an order requiring compliance with the subpoena, and failure to obey the order may be punished by the court as contempt. Witnesses may be paid fees for travel and attendance at rates not exceeding those allowed in a district court of the United States.

(Pub. L. 92-340, §8, formerly title I, §107, July 10, 1972, 86 Stat. 427; renumbered and amended Pub. L. 95-474, §2, Oct. 17, 1978, 92 Stat. 1476.)

AMENDMENTS

1978—Pub. L. 95-474 substituted provision relating to the investigatory powers of the Secretary for provision relating to criminal penalties.

§ 1228. Conditions for entry to ports in the United States

(a) In general

No vessel, subject to the provisions of chapter 37 of title 46, shall operate in the navigable waters of the United States or transfer cargo or residue in any port or place under the jurisdiction of the United States, if such vessel—

(1) has a history of accidents, pollution incidents, or serious repair problems which, as determined by the Secretary, creates reason to believe that such vessel may be unsafe or may create a threat to the marine environment; or

(2) fails to comply with any applicable regulation issued under this chapter, chapter 37 of title 46, or under any other applicable law or treaty; or

(3) discharges oil or hazardous material in violation of any law of the United States or in a manner or quantities inconsistent with the provisions of any treaty to which the United States is a party; or

(4) does not comply with any applicable vessel traffic service requirements; or

(5) is manned by one or more officers who are licensed by a certificating state which the Secretary has determined, pursuant to section 9101 of title 46, does not have standards for licensing and certification of seafarers which are comparable to or more stringent than United States standards or international standards which are accepted by the United States; or

(6) is not manned in compliance with manning levels as determined by the Secretary to be necessary to insure the safe navigation of the vessel; or

(7) while underway, does not have at least one licensed deck officer on the navigation bridge who is capable of clearly understanding English.

(b) Exceptions

The Secretary may allow provisional entry of a vessel not in compliance with subsection (a) of this section, if the owner or operator of such vessel proves, to the satisfaction of the Secretary, that such vessel is not unsafe or a threat to the marine environment, and if such entry is necessary for the safety of the vessel or persons aboard. In addition, paragraphs (1), (2), (3), and (4) of subsection (a) of this section shall not apply if the owner or operator of such vessel

proves, to the satisfaction of the Secretary, that such vessel is no longer unsafe or a threat to the marine environment, and is no longer in violation of any applicable law, treaty, regulation or condition, as appropriate. Clauses (5) and (6) of subsection (a) of this section shall become applicable eighteen months after October 17, 1978.

(Pub. L. 92-340, §9, as added Pub. L. 95-474, §2, Oct. 17, 1978, 92 Stat. 1476; amended Pub. L. 101-380, title IV, §4106(c), Aug. 18, 1990, 104 Stat. 514.)

AMENDMENTS

1990—Subsec. (a). Pub. L. 101-380, §4106(c)(1), substituted “chapter 37 of title 46” for “section 4417a of the Revised Statutes, as amended” in provisions preceding par. (1) and in par. (2) and substituted “section 9101 of title 46” for “section 4417a(11) of the Revised Statutes, as amended” in par. (5).

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.

§ 1229. Applicability

This chapter shall not apply to the Panama Canal. The authority granted to the Secretary under sections 1223, 1224, and 1225 of this title shall not be delegated with respect to the Saint Lawrence Seaway to any agency other than the Saint Lawrence Seaway Development Corporation. Any other authority granted the Secretary under this chapter shall be delegated to the Saint Lawrence Seaway Development Corporation to the extent he determines such delegation is necessary for the proper operation of the Saint Lawrence Seaway.

(Pub. L. 92-340, §10, as added Pub. L. 95-474, §2, Oct. 17, 1978, 92 Stat. 1477; amended Pub. L. 98-557, §29(h), Oct. 30, 1984, 98 Stat. 2875.)

AMENDMENTS

1984—Pub. L. 98-557 struck out reference to section 1226 of this title.

§ 1230. International agreements

(a) Transmittal of regulations

The Secretary shall transmit, via the Secretary of State, to appropriate international bodies or forums, any regulations issued under this chapter, for consideration as international standards.

(b) Agreements

The President is authorized and encouraged to—

(1) enter into negotiations and conclude and execute agreements with neighboring nations, to establish compatible vessel standards and vessel traffic services, and to establish, operate, and maintain international vessel traffic services, in areas and under circumstances of mutual concern; and

(2) enter into negotiations, through appropriate international bodies, and conclude and execute agreements to establish vessel traffic services in appropriate areas of the high seas.

(c) Operations

The Secretary, pursuant to any agreement negotiated under subsection (b) of this section

which is binding upon the United States in accordance with constitutional requirements, may—

(1) require vessels in the vessel traffic service area to utilize or to comply with the vessel traffic service, including the carrying or installation of equipment and devices as necessary for the use of the service; and

(2) waive, by order or regulation, the application of any United States law or regulation concerning the design, construction, operation, equipment, personnel qualifications, and manning standards for vessels operating in waters over which the United States exercises jurisdiction if such vessel is not en route to or from a United States port or place, and if vessels en route to or from a United States port or place are accorded equivalent waivers of laws and regulations of the neighboring nation, when operating in waters over which that nation exercises jurisdiction.

(d) Ship reporting systems

The Secretary, in cooperation with the International Maritime Organization, is authorized to implement and enforce two mandatory ship reporting systems, consistent with international law, with respect to vessels subject to such reporting systems entering the following areas of the Atlantic Ocean: Cape Cod Bay, Massachusetts Bay, and Great South Channel (in the area generally bounded by a line starting from a point on Cape Ann, Massachusetts at 42 deg. 39' N., 70 deg. 37' W; then northeast to 42 deg. 45' N., 70 deg. 13' W; then southeast to 42 deg. 10' N., 68 deg. 31' W, then south to 41 deg. 00' N., 68 deg. 31' W; then west to 41 deg. 00' N., 69 deg. 17' W; then northeast to 42 deg. 05' N., 70 deg. 02' W, then west to 42 deg. 04' N., 70 deg. 10' W; and then along the Massachusetts shoreline of Cape Cod Bay and Massachusetts Bay back to the point on Cape Ann at 42 deg. 39' N., 70 deg. 37' W) and in the coastal waters of the Southeastern United States within about 25 nm along a 90 nm stretch of the Atlantic seaboard (in an area generally extending from the shoreline east to longitude 80 deg. 51.6' W with the southern and northern boundary at latitudes 30 deg. 00' N., 31 deg. 27' N., respectively).

(Pub. L. 92-340, §11, as added Pub. L. 95-474, §2, Oct. 17, 1978, 92 Stat. 1477; amended Pub. L. 105-383, title III, §313, Nov. 13, 1998, 112 Stat. 3424.)

AMENDMENTS

1998—Subsec. (d). Pub. L. 105-383 added subsec. (d).

§ 1231. Regulations

(a) In general

In accordance with the provisions of section 553 of title 5, the Secretary shall issue, and may from time to time amend or repeal, regulations necessary to implement this chapter.

(b) Procedures

The Secretary, in the exercise of this regulatory authority, shall establish procedures for consulting with, and receiving and considering the views of all interested parties, including—

(1) interested Federal departments and agencies,

(2) officials of State and local governments,

(3) representatives of the maritime community,

(4) representatives of port and harbor authorities or associations,

(5) representatives of environmental groups,

(6) any other interested parties who are knowledgeable or experienced in dealing with problems involving vessel safety, port and waterways safety, and protection of the marine environment, and

(7) advisory committees consisting of all interested segments of the public when the establishment of such committees is considered necessary because the issues involved are highly complex or controversial.

(Pub. L. 92-340, §12, as added Pub. L. 95-474, §2, Oct. 17, 1978, 92 Stat. 1477.)

§ 1231a. Towing Safety Advisory Committee

(a) Establishment; membership

There is established a Towing Safety Advisory Committee (hereinafter referred to as the “Committee”). The Committee shall consist of eighteen members with particular expertise, knowledge, and experience regarding shallow-draft inland and coastal waterway navigation and towing safety as follows:

(1) Seven members representing the barge and towing industry, reflecting a regional geographic balance.

(2) One member representing the offshore mineral and oil supply vessel industry.

(3) One member representing holders of active licensed Masters or Pilots of towing vessels with experience on the Western Rivers and the Gulf Intracoastal Waterway.

(4) One member representing the holders of active licensed Masters of towing vessels in offshore service.

(5) One member representing Masters who are active ship-docking or harbor towing vessel.¹

(6) One member representing licensed or unlicensed towing vessel engineers with formal training and experience.

(7) Two members representing each of the following groups:

(A) Port districts, authorities, or terminal operators.

(B) Shippers (of whom at least one shall be engaged in the shipment of oil or hazardous materials by barge).

(8) Two members representing the general public.

(b) Appointments; Chairman, Vice Chairman, and observers; publication in Federal Register

The Secretary of the department in which the Coast Guard is operating (hereinafter referred to as the “Secretary”) shall appoint the members of the Committee. The Secretary shall designate one of the members of the Committee as the Chairman and one of the members as the Vice Chairman. The Vice Chairman shall act as Chairman in the absence or incapacity of, or in the event of a vacancy in the office of, the

¹ So in original.

Chairman. The Secretary may request the Secretary of the Army and the Secretary of Commerce to each designate a representative to participate as an observer on the Committee. The Secretary shall, not less often than once a year, publish notice in the Federal Register for solicitation of nominations for membership on the Committee.

(c) Functions; meetings; public proceedings and records; disclosures to Congress

The Committee shall advise, consult with, and make recommendations to the Secretary on matters relating to shallow-draft inland and coastal waterway navigation and towing safety. Any advice or recommendation made by the Committee to the Secretary shall reflect the independent judgment of the Committee on the matter concerned. The Secretary shall consult with the Committee before taking any significant action affecting shallow-draft inland and coastal waterway navigation and towing safety. The Committee shall meet at the call of the Secretary, but in any event not less than once during each calendar year. All proceedings of the Committee shall be open to the public, and a record of the proceedings shall be made available for public inspection. The Committee is authorized to make available to Congress any information, advice, and recommendations which the Committee is authorized to give to the Secretary.

(d) Compensation and travel expenses; administrative services; personnel; authorization of appropriations

Members of the Committee who are not officers or employees of the United States shall serve without pay and members of the Committee who are officers or employees of the United States shall receive no additional pay on account of their service on the Committee. While away from their homes or regular places of business, members of the Committee may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5. The Secretary shall furnish to the Committee an executive secretary and such secretarial, clerical, and other services as are considered necessary for the conduct of its business. There are authorized to be appropriated such sums as may be necessary to implement the provisions of this subsection.

(e) Termination

Unless extended by subsequent Act of Congress, the Committee shall terminate on September 30, 2020.

(Pub. L. 96-380, Oct. 6, 1980, 94 Stat. 1521; Pub. L. 97-322, title I, § 118(d), Oct. 15, 1982, 96 Stat. 1587; Pub. L. 98-557, § 16(a), Oct. 30, 1984, 98 Stat. 2866; Pub. L. 101-225, title I, § 105(b), Dec. 12, 1989, 103 Stat. 1910; Pub. L. 104-324, title III, § 304(c), Oct. 19, 1996, 110 Stat. 3917; Pub. L. 107-295, title III, § 336, Nov. 25, 2002, 116 Stat. 2105; Pub. L. 108-293, title IV, § 418(g), Aug. 9, 2004, 118 Stat. 1049; Pub. L. 111-281, title VI, § 621(e), Oct. 15, 2010, 124 Stat. 2976.)

CODIFICATION

Section was not enacted as part of the Ports and Waterways Safety Act which comprises this chapter.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111-281, § 621(e)(1), added subsec. (a) and struck out former subsec. (a) which established the Towing Safety Advisory Committee and its membership requirements.

Subsec. (e). Pub. L. 111-281, § 621(e)(2), substituted “September 30, 2020” for “September 30, 2010”.

2004—Subsec. (e). Pub. L. 108-293 substituted “September 30, 2010” for “September 30, 2005”.

2002—Subsec. (e). Pub. L. 107-295 substituted “September 30, 2005” for “September 30, 2000”.

1996—Subsec. (e). Pub. L. 104-324 substituted “September 30, 2000” for “September 30, 1995”.

1989—Subsec. (e). Pub. L. 101-225 substituted “September 30, 1995” for “September 30, 1990”.

1984—Subsec. (e). Pub. L. 98-557 substituted “on September 30, 1990” for “five years from the date of enactment of this Act”.

1982—Subsec. (b). Pub. L. 97-322, § 118(d)(1), required the Secretary, not less often than once a year, to publish notice in the Federal Register for solicitation of nominations for membership on the Committee.

Subsec. (c). Pub. L. 97-322, § 118(d)(2), authorized the Committee to make available to Congress any information, advice, and recommendations which the Committee is authorized to give to the Secretary.

Subsec. (d). Pub. L. 97-322, § 118(d)(3), inserted introductory provisions respecting compensation and travel expenses of members of the Committee.

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.

§ 1232. Enforcement provisions

(a) Civil penalty

(1) Any person who is found by the Secretary, after notice and an opportunity for a hearing, to have violated this chapter or a regulation issued hereunder shall be liable to the United States for a civil penalty, not to exceed \$25,000 for each violation. Each day of a continuing violation shall constitute a separate violation. The amount of such civil penalty shall be assessed by the Secretary, or his designee, by written notice. In determining the amount of such 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 such other matters as justice may require.

(2) The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section.

(3) 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.

(b) Criminal penalty

(1) Any person who willfully and knowingly violates this chapter or any regulation issued hereunder commits a class D felony.

(2) Any person who, in the willfull¹ and knowing violation of this chapter or of any regulation issued hereunder, uses a dangerous weapon, or engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce the provisions of this chapter or the regulations issued hereunder, commits a class C felony.

(c) In rem liability

Any vessel subject to the provisions of this chapter, which is used in violation of this chapter, or any regulations issued hereunder, shall be liable in rem for any civil penalty assessed pursuant to subsection (a) of this section and may be proceeded against in the United States district court for any district in which such vessel may be found.

(d) Injunction

The United States district courts shall have jurisdiction to restrain violations of this chapter or of regulations issued hereunder, for cause shown.

(e) Denial of entry

Except as provided in section 1228 of this title, the Secretary may, subject to recognized principles of international law, deny entry into the navigable waters of the United States to any port or place under the jurisdiction of the United States or to any vessel not in compliance with the provisions of this chapter or the regulations issued hereunder.

(f) Withholding of clearance

(1) If any owner, operator, or individual in charge of a vessel is liable for a penalty or fine under this section, or if reasonable cause exists to believe that the owner, operator, or individual in charge may be subject to a penalty or fine under this section, the Secretary of the Treasury, upon the request of the Secretary, shall with respect to such vessel refuse or revoke any clearance required by section 60105 of title 46.

(2) Clearance refused or revoked under this subsection may be granted upon filing of a bond or other surety satisfactory to the Secretary.

(Pub. L. 92-340, §13, as added Pub. L. 95-474, §2, Oct. 17, 1978, 92 Stat. 1478; amended Pub. L. 101-380, title IV, §4302(j), Aug. 18, 1990, 104 Stat. 539; Pub. L. 104-324, title III, §312(b), Oct. 19, 1996, 110 Stat. 3920.)

CODIFICATION

In subsec. (f)(1), “section 60105 of title 46” substituted for “section 4197 of the Revised Statutes of the United States (46 App. U.S.C. 91)” on authority of Pub. L. 109-304, §18(c), Oct. 6, 2006, 120 Stat. 1709, which Act enacted section 60105 of Title 46, Shipping.

AMENDMENTS

1996—Subsec. (f). Pub. L. 104-324 amended heading and text of subsec. (f) generally. Prior to amendment, text read as follows: “The Secretary of the Treasury shall withhold or revoke, at the request of the Secretary, the clearance, required by section 91 of title 46, Appendix, of any vessel, the owner or operator of which is subject to any of the penalties in this section. Clearance may be granted in such cases upon the filing of a bond or other surety satisfactory to the Secretary.”

¹ So in original. Probably should be “willful”.

1990—Subsec. (b)(1). Pub. L. 101-380, §4302(j)(1), substituted “commits a class D felony” for “shall be fined not more than \$50,000 for each violation or imprisoned for not more than five years, or both”.

Subsec. (b)(2). Pub. L. 101-380, §4302(j)(2), which directed the substitution of “commits a class C felony.” for “shall, in lieu of the penalties prescribed in paragraph (1), be fined not more than \$100,000, or imprisoned for not more than 10 years, or both.”, was executed by making the substitution for “shall, in lieu of the penalties prescribed in paragraph (1), be fined not more than \$100,000, or imprisoned for not more than ten years, or both.”

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.

§ 1232a. Navigational hazards

(a) Reporting procedure

The Secretary shall establish a program to encourage fishermen and other vessel operators to report potential or existing navigational hazards involving pipelines to the Secretary through Coast Guard field offices.

(b) Secretary’s response

(1) Upon notification by the operator of a pipeline of a hazard to navigation with respect to that pipeline, the Secretary shall immediately notify Coast Guard headquarters, the Office of Pipeline Safety, other affected Federal and State agencies, and vessel owners and operators in the pipeline’s vicinity.

(2) Upon notification by any other person of a hazard or potential hazard to navigation with respect to a pipeline, the Secretary shall promptly determine whether a hazard exists, and if so shall immediately notify Coast Guard headquarters, the Office of Pipeline Safety, other affected Federal and State agencies, vessel owners and operators in the pipeline’s vicinity, and the owner and operator of the pipeline.

(c) Establishment of standards

The Secretary shall, within six months after November 16, 1990, establish standards, for the purposes of this section, for what constitutes a hazard to navigation.

(d) “Pipelines” defined

For purposes of this section, the term “pipelines” has the meaning given the term “pipeline facilities” in section 60101(a)(18) of title 49.

(Pub. L. 92-340, §14, as added Pub. L. 101-599, §2, Nov. 16, 1990, 104 Stat. 3040.)

CODIFICATION

In subsec. (d), “section 60101(a)(18) of title 49” substituted for “the Natural Gas Pipeline Safety Act of 1968 [49 App. U.S.C. 1671 et seq.] and the Hazardous Liquid Pipeline Safety Act of 1979 [49 App. U.S.C. 2001 et seq.]” on authority of Pub. L. 103-272, §6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

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.

§ 1232b. Requirement to notify Coast Guard of release of objects into the navigable waters of the United States

(a) Requirement

As soon as a person has knowledge of any release from a vessel or facility into the navigable waters of the United States of any object that creates an obstruction prohibited under section 403 of this title, such person shall notify the Secretary and the Secretary of the Army of such release.

(b) Restriction on use of notification

Any notification provided by an individual in accordance with subsection (a) may not be used against such individual in any criminal case, except a prosecution for perjury or for giving a false statement.

(Pub. L. 92-340, §15, as added Pub. L. 109-241, title VI, §602, July 11, 2006, 120 Stat. 553.)

§ 1233. Regulations as to regattas or marine parades

The Commandant of the Coast Guard is authorized and empowered in his discretion to issue from time to time regulations, not contrary to law, to promote the safety of life on navigable waters during regattas or marine parades.

(Apr. 28, 1908, ch. 151, §1, 35 Stat. 69; Mar. 4, 1913, ch. 141, §1, 37 Stat. 736; 1946 Reorg. Plan No. 3, §§101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.)

CODIFICATION

Section was not enacted as part of the Ports and Waterways Safety Act which comprises this chapter.

Section was formerly classified to section 454 of former Title 46, Shipping.

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.

Coast Guard transferred to Department of Transportation, and all functions, powers, and duties relating to Coast Guard of Secretary of the Treasury and of other officers and offices of Department of the Treasury transferred to Secretary of Transportation by Pub. L. 89-670, §6(b)(1), Oct. 15, 1966, 80 Stat. 938. Section 6(b)(2) of Pub. L. 89-670, however, provided that notwithstanding such transfer of functions, Coast Guard shall operate as part of Navy in time of war or when President directs as provided in section 3 of Title 14, Coast Guard. See section 108 of Title 49, Transportation.

For transfer of functions of other officers, employees, and agencies of Department of the Treasury, with certain exceptions, to Secretary of the Treasury with power to delegate, see Reorg. Plan No. 26 of 1950, §§1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees. Functions of Coast Guard, and Com-

mandant of Coast Guard, were excepted from transfer when Coast Guard is operating as part of Navy under sections 1 and 3 of Title 14.

“Commandant of the Coast Guard” substituted for “Secretary of Commerce” on authority of Reorg. Plan No. 3 of 1946, §§101-104, set out in the Appendix to Title 5.

Upon incorporation into the Code, the words “Secretary of Commerce” were substituted for “Secretary of Commerce and Labor” to conform to act Mar. 4, 1913, which provided that the Secretary of Commerce and Labor should be called the Secretary of Commerce.

§ 1234. Enforcement of regulations; use of public or private vessels

To enforce such regulations the Commandant of the Coast Guard may detail any public vessel in the service of the Coast Guard and make use of any private vessel tendered gratuitously for the purpose, or upon the request of the Commandant of the Coast Guard the head of any other department may enforce the regulations issued under sections 1233 and 1235 of this title by means of any public vessel of such department and of any private vessel tendered gratuitously for the purpose.

(Apr. 28, 1908, ch. 151, §2, 35 Stat. 69; Mar. 4, 1913, ch. 141, §1, 37 Stat. 736; 1946 Reorg. Plan No. 3, §§101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.)

CODIFICATION

Section was not enacted as part of the Ports and Waterways Safety Act which comprises this chapter.

Section was formerly classified to section 455 of former Title 46, Shipping.

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.

Coast Guard transferred to Department of Transportation, and all functions, powers, and duties relating to Coast Guard of Secretary of the Treasury and of other officers and offices of Department of the Treasury transferred to Secretary of Transportation by Pub. L. 89-670, §6(b)(1), Oct. 15, 1966, 80 Stat. 938. Section 6(b)(2) of Pub. L. 89-670, however, provided that notwithstanding such transfer of functions, Coast Guard shall operate as part of Navy in time of war or when President directs as provided in section 3 of Title 14, Coast Guard. See section 108 of Title 49, Transportation.

For transfer of functions of other officers, employees, and agencies of Department of the Treasury, with certain exceptions, to Secretary of the Treasury with power to delegate, see Reorg. Plan No. 26 of 1950, §§1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees. Functions of Coast Guard, and Commandant of Coast Guard, were excepted from transfer when Coast Guard is operating as part of Navy under sections 1 and 3 of Title 14.

“Commandant of the Coast Guard” substituted for “Secretary of Commerce” and a reference to Department of Commerce changed to Coast Guard on authority of Reorg. Plan No. 3 of 1946, §§101-104, set out in the Appendix to Title 5.

Upon incorporation into the Code, the words “Secretary of Commerce” were substituted for “Secretary of Commerce and Labor” to conform to act Mar. 4, 1913,

which provided that the Secretary of Commerce and Labor should be called the Secretary of Commerce.

§ 1235. Transfer of authority to regulate to head of other department

The authority and power bestowed upon the Commandant of the Coast Guard by sections 1233 and 1234 of this title may be transferred for any special occasion to the head of another department by the President whenever in his judgment such transfer is desirable.

(Apr. 28, 1908, ch. 151, § 3, 35 Stat. 69; Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736; 1946 Reorg. Plan No. 3, §§ 101–104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.)

CODIFICATION

Section was not enacted as part of the Ports and Waterways Safety Act which comprises this chapter.

Section was formerly classified to section 456 of former Title 46, Shipping.

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.

Coast Guard transferred to Department of Transportation, and all functions, powers, and duties relating to Coast Guard of Secretary of the Treasury and of other officers and offices of Department of the Treasury transferred to Secretary of Transportation by Pub. L. 89–670, § 6(b)(1), Oct. 15, 1966, 80 Stat. 938. Section 6(b)(2) of Pub. L. 89–670, however, provided that notwithstanding such transfer of functions, Coast Guard shall operate as part of Navy in time of war or when President directs as provided in section 3 of Title 14, Coast Guard. See section 108 of Title 49, Transportation.

For transfer of functions of other officers, employees, and agencies of Department of the Treasury, with certain exceptions, to Secretary of the Treasury with power to delegate, see Reorg. Plan No. 26 of 1950, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees. Functions of Coast Guard, and Commandant of Coast Guard, were excepted from transfer when Coast Guard is operating as part of Navy under sections 1 and 3 of Title 14.

“Commandant of the Coast Guard” substituted for “Secretary of Commerce” on authority of Reorg. Plan No. 3 of 1946, §§ 101–104, set out in the Appendix to Title 5.

Upon incorporation into the Code, the words “Secretary of Commerce” were substituted for “Secretary of Commerce and Labor” to conform to act Mar. 4, 1913, which provided that the Secretary of Commerce and Labor should be called the Secretary of Commerce.

§ 1236. Penalties for violations of regulations

For any violation of regulations issued pursuant to sections 1233 to 1235 of this title the following penalties shall be incurred:

(a) A licensed officer shall be liable to suspension or revocation of license in the manner now prescribed by law for incompetency or misconduct.

(b) Any person in charge of the navigation of a vessel other than a licensed officer shall be liable to a penalty of \$5,000.

(c) The owner of a vessel (including any corporate officer of a corporation owning the ves-

sel) actually on board shall be liable to a penalty of \$5,000, unless the violation of regulations shall have occurred without his knowledge.

(d) Any other person shall be liable to a penalty of \$2,500.

The Commandant of the Coast Guard is authorized and empowered to mitigate or remit any penalty herein provided for in the manner prescribed by law for the mitigation or remission of penalties for violation of the navigation laws.

(Apr. 28, 1908, ch. 151, § 4, 35 Stat. 69; Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736; 1946 Reorg. Plan No. 3, §§ 101–104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097; Pub. L. 101–380, title IV, § 4302(k), Aug. 18, 1990, 104 Stat. 539.)

CODIFICATION

Section was not enacted as part of the Ports and Waterways Safety Act which comprises this chapter.

Section was formerly classified to section 457 of former Title 46, Shipping.

AMENDMENTS

1990—Subsecs. (b) to (d). Pub. L. 101–380 substituted “\$5,000” for “\$500” in subsecs. (b) and (c) and “\$2,500” for “\$250” in subsec. (d).

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.

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.

Coast Guard transferred to Department of Transportation, and all functions, powers, and duties relating to Coast Guard of Secretary of the Treasury and of other officers and offices of Department of the Treasury transferred to Secretary of Transportation by Pub. L. 89–670, § 6(b)(1), Oct. 15, 1966, 80 Stat. 938. Section 6(b)(2) of Pub. L. 89–670, however, provided that notwithstanding such transfer of functions, Coast Guard shall operate as part of Navy in time of war or when President directs as provided in section 3 of Title 14, Coast Guard. See section 108 of Title 49, Transportation.

For transfer of functions of other officers, employees, and agencies of Department of the Treasury, with certain exceptions, to Secretary of the Treasury with power to delegate, see Reorg. Plan No. 26 of 1950, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees. Functions of Coast Guard, and Commandant of Coast Guard, were excepted from transfer when Coast Guard is operating as part of Navy under sections 1 and 3 of Title 14.

“Commandant of the Coast Guard” substituted for “Secretary of Commerce” on authority of Reorg. Plan No. 3 of 1946, §§ 101–104, set out in the Appendix to Title 5.

Upon incorporation into the Code, the words “Secretary of Commerce” were substituted for “Secretary of Commerce and Labor” to conform to act Mar. 4, 1913, which provided that the Secretary of Commerce and Labor should be called the Secretary of Commerce.

CHAPTER 26—WATER POLLUTION PREVENTION AND CONTROL		Sec.
SUBCHAPTER I—RESEARCH AND RELATED PROGRAMS		1301. Sewer overflow control grants.
Sec.		SUBCHAPTER III—STANDARDS AND ENFORCEMENT
1251.	Congressional declaration of goals and policy.	1311. Effluent limitations.
1252.	Comprehensive programs for water pollution control.	1312. Water quality related effluent limitations.
1252a.	Reservoir projects, water storage; modification; storage for other than for water quality; opinion of Federal agency, committee resolutions of approval; provisions inapplicable to projects with certain prescribed water quality benefits in relation to total project benefits.	1313. Water quality standards and implementation plans.
1253.	Interstate cooperation and uniform laws.	1313a. Revised water quality standards.
1254.	Research, investigations, training, and information.	1314. Information and guidelines
1254a.	Research on effects of pollutants.	1315. State reports on water quality.
1255.	Grants for research and development.	1316. National standards of performance.
1256.	Grants for pollution control programs.	1317. Toxic and pretreatment effluent standards.
1257.	Mine water pollution control demonstrations.	1318. Records and reports; inspections.
1257a.	State demonstration programs for cleanup of abandoned mines for use as waste disposal sites; authorization of appropriations.	1319. Enforcement.
1258.	Pollution control in the Great Lakes.	1320. International pollution abatement.
1259.	Training grants and contracts.	1321. Oil and hazardous substance liability.
1260.	Applications; allocation.	1321a. Prevention of small oil spills.
1261.	Scholarships.	1321b. Improved coordination with tribal governments.
1262.	Definitions and authorizations.	1321c. International efforts on enforcement.
1263.	Alaska village demonstration projects.	1322. Marine sanitation devices.
1263a.	Grants to Alaska to improve sanitation in rural and Native villages.	1323. Federal facilities pollution control.
1264.	Omitted.	1324. Clean lakes.
1265.	In-place toxic pollutants.	1325. National Study Commission.
1266.	Hudson River reclamation demonstration project.	1326. Thermal discharges.
1267.	Chesapeake Bay.	1327. Omitted.
1268.	Great Lakes.	1328. Aquaculture.
1269.	Long Island Sound.	1329. Nonpoint source management programs.
1270.	Lake Champlain Basin Program.	1330. National estuary program.
1271.	Sediment survey and monitoring.	SUBCHAPTER IV—PERMITS AND LICENSES
1271a.	Research and development program.	1341. Certification.
1272.	Environmental dredging.	1342. National pollutant discharge elimination system.
1273.	Lake Pontchartrain Basin.	1343. Ocean discharge criteria.
1274.	Wet weather watershed pilot projects.	1344. Permits for dredged or fill material.
SUBCHAPTER II—GRANTS FOR CONSTRUCTION OF TREATMENT WORKS		1345. Disposal or use of sewage sludge.
1281.	Congressional declaration of purpose.	1346. Coastal recreation water quality monitoring and notification.
1281a.	Total treatment system funding.	SUBCHAPTER V—GENERAL PROVISIONS
1281b.	Availability of Farmers Home Administration funds for non-Federal share.	1361. Administration.
1282.	Federal share.	1362. Definitions.
1283.	Plans, specifications, estimates, and payments.	1363. Water Pollution Control Advisory Board.
1284.	Limitations and conditions.	1364. Emergency powers.
1285.	Allotment of grant funds.	1365. Citizen suits.
1286.	Reimbursement and advanced construction.	1366. Appearance.
1287.	Authorization of appropriations.	1367. Employee protection.
1288.	Areawide waste treatment management.	1368. Federal procurement.
1289.	Basin planning.	1369. Administrative procedure and judicial review.
1290.	Annual survey.	1370. State authority.
1291.	Sewage collection systems.	1371. Authority under other laws and regulations.
1292.	Definitions.	1372. Labor standards.
1293.	Loan guarantees.	1373. Public health agency coordination.
1293a.	Contained spoil disposal facilities.	1374. Effluent Standards and Water Quality Information Advisory Committee.
1294.	Public information and education on recycling and reuse of wastewater, use of land treatment, and reduction of wastewater volume.	1375. Reports to Congress; detailed estimates and comprehensive study on costs; State estimates.
1295.	Requirements for American materials.	1375a. Report on coastal recreation waters.
1296.	Determination of priority of projects.	1376. Authorization of appropriations.
1297.	Guidelines for cost-effectiveness analysis.	1377. Indian tribes.
1298.	Cost effectiveness.	SUBCHAPTER VI—STATE WATER POLLUTION CONTROL REVOLVING FUNDS
1299.	State certification of projects.	1381. Grants to States for establishment of revolving funds.
1300.	Pilot program for alternative water source projects.	1382. Capitalization grant agreements.
		1383. Water pollution control revolving loan funds.
		1384. Allotment of funds.
		1385. Corrective action.
		1386. Audits, reports, and fiscal controls; intended use plan.
		1387. Authorization of appropriations.
		CODIFICATION
		The Federal Water Pollution Control Act, comprising this chapter, was originally enacted by act June 30,