TITLE 46—SHIPPING

This title was enacted by Pub. L. 98–89, § 1, Aug. 26, 1983, 97 Stat. 500; Pub. L. 99–509, title V, subtitle B, § 5101, Oct. 21, 1986, 100 Stat. 1913; Pub. L. 100–424, § 6, Sept. 9, 1988, 102 Stat. 1591; and Pub. L. 100–710, Nov. 23, 1988, 102 Stat. 4735

Subtitle		Sec.
I.	**GENERAL**	**101**
II.	**VESSELS AND SEAMEN**	**2101**
III.	**MARITIME LIABILITY**	**30101**
[IV.	**RESERVED]**	
V.	**MERCHANT MARINE**	**53101**
VI.	**MISCELLANEOUS**	**70101**
	[BALANCE OF TITLE RESERVED]	

AMENDMENTS

2003—Pub. L. 108–136, div. C, title XXXV, § 3531(b), Nov. 24, 2003, 117 Stat. 1817, added item V.

2002—Pub. L. 107–295, title I, § 102(b), Nov. 25, 2002, 116 Stat. 2084, added item VI.

1988—Pub. L. 100–710, title I, § 102(b), Nov. 23, 1988, 102 Stat. 4738, amended title analysis generally, substituting ''GENERAL'' for ''[Reserved—general]'' in item I and adding item III.

TABLE SHOWING DISPOSITION OF ALL SECTIONS OF FORMER TITLE 46

[Former sections of Title 46 that are not included in Title 46, Shipping, as enacted by Pub. L. 98–89, subtitle B of title V of Pub. L. 99–509, section 6 of Pub. L. 100–424, and Pub. L. 100–710 and that have not been repealed are set out in the Appendix to Title 46 and retain the same section numbers.]

Title 46 Former Sections	*Title 46 New Sections*
1	Rep.
2	2103
3	Rep.
4	2105
5, 6	Rep.
7	2107
8	2108
9 (less (c))	3316
9(c)	46 App.
11, 12	Rep.
13, 14	46 App.
15–41	Rep.
42	46 App.
43–56	Rep.
57	46 App.
58	Rep.
59	46 App.
60–63	Rep.
65(1)	2101(10)
65(2)	2101(11)
65(3)	2101(34)
65a	12113
65b	12102
65c	12114
65d	12115
65e	12103
65f	12116
65g	12104
65h	12105
65i	12106
65j	12107
65k	12108
65*l*	12109
65m	12110
65n	12122
65*o*	12111

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65r	12118
65s	12119
65t	12120
65u	2107, 12122(a)
65v(1)	2104
65v(2)	12121
65w	12101
71	12102, 14102, 14104, 14501, 14502, 14504, 14511, 14521, 14522
72	14503
73, 74	Rep.
75	14512
76	Rep.
77	14502, 14512
78, 79	Rep.
80	(See former 660–1)
81	14306
82	3101
83	14502, 14513
83a–83g	14513
83h	14102
83i	14702
83j	14701
83k	2107
85–85g	Rep.
86	5114, 5115
86a	5101
86b	5102
86c	5102, 5103, 5104, 5106
86d	5107
86e	5108
86f	5109
86g	5112
86h	5113
86i	5116
88	5102
88a	5104, 5108
88b	5103, 5107
88c	5112
88d	5109
88e	5112
88f	5113
88g	5116
88h, 88i	Rep.
91	46 App.
91a–96	Rep.
97, 98	46 App.
99	Rep.
100	46 App.
101, 102	Rep.
103	Rep.
104	46 App.
105–110	Rep.
111	46 App.
112, 113	Rep.
121–125	46 App.
126, 127	Rep.
128, 129	46 App.
130, 131	Rep.
132–135	46 App.
141–146	46 App.
151–162	Rep.
163	46 App.

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170	3306(a)(5), Rep. in part
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171–175	Rep.
178, 179	Rep.
181–183	46 App.
183a	Rep.
183b–196	46 App.
201	11301
202	11302
203	11303
211	8501(a)
212	8501(b)
213	8501(c), (e)
214	7101
214(c)	7106
215	8501(d), 8502
216(a)	9301(2)
216(b)	2101(34)
216(c)	9301(3)
216(d)	9301(1)
216(e), (f)	Rep.
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216b(a)–(c)	9303
216b(d)	9305
216b(e)	9304
216c	9303
216d	9305
216e(a)–(c)	9308
216e(d)	2107
216e(e)	2106
216f	9302(c)
216g	9306
216h	9307
216i	Rep.
221	8103
222	8101
223	8301
224	7101, 8101
224a	8303, 8304
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225	7106, 7109, 7113
226	7101, 7106, 7703
227	Rep.
228	7101, 7106, 7703
229	7101, 7106, 7703
229a	7101, 7103
229b	7101, 7103
229c	7106, 7108, 7318
229d	Rep.
229e	7105
229f	7110
229g	7103, 7318
229h	Rep.
230	7112
231	7105
232	7110
233	7109
234	3315
235	8104
236	8103
237, 238	Rep.
239	6101, 6301, 7703
239(d)	6303
239(e)	6304, 7705
239(f)	6304
239(g)	6305, 7701
239(i)	6306
239(j)	6301, 6307
239(k)	6305
239a(a)	7503(a), 7704(a)
239a(b)	2101(34)
239a(c)	7302
239b(a)	7503(b)
239b(b)	7704(b), (c)
240	7703
241	8304
242	7101, 7102, 8302(a)–(d)
243	7101, 7104, 7107, 7108
244	7101, 7105
245	8302(g), (h)
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246(b)	Rep.
246(c)	7703
247	7101

TABLE SHOWING DISPOSITION OF ALL SECTIONS OF FORMER TITLE 46—Continued

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262	46 App.
263–276	Rep.
277	46 App.
278–288	Rep.
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294–315	Rep.
316	46 App.
317, 318	Rep.
319–324	46 App.
325	Rep.
326–328	46 App.
329, 330	Rep.
331	2110
332–335	Rep.
336	46 App.
351–353	Rep.
354, 355	46 App.
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362	2109, 3301(9), 3314
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362(b)	3504
362(c)	3505
363	2109
364	8502
365	Rep.
366	3306
367	2101(16), (33), 2303, 3301(7), 3302
369	3305, 3306, 3316
369(b)	3503
369(e)	3318
371	Rep.
372	2103
373–374a	Rep.
375	3306
376–382a–1	Rep.
382b	2104, 2111, 2112
382b–1	3317(b)
382c–385	Rep.
390	3302, 3304
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390(b)	2101(35)
390(d)	2101(34)
390(e)	2101(13)
390(f)	2101(27)
390(g)	2101(30)
390(h)	2101(28)
390(i)	2101(29)
390a	3301(4), (5), (8), 3305
390a(a)	3307(2)
390a(b)	3317(a), 7114
390b	3306, 8901, 8902
390c	3303(a), 3309, 3311
390c(b), (c)	3313
390d	2106, 3318(a), 8906
390e–390g	Rep.
391	3301(1), (4), (9), 3304, 3305
391(b)	3307(3)
391(c)	2101(22), 3307(1)
391(e)	3302
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391a(2)(A)	2101(9)
391a(2)(B)	2101(12)
391a(2)(C)	2101(14)
391a(2)(D)	2101(15)
391a(2)(E)	2101(20)
391a(2)(F)	3701(4)
391a(2)(G)	2101(24)
391a(2)(H)	2101(5)
391a(2)(I)	2101(34)
391a(2)(J)	3701(5)
391a(2)(K)	3701(6)
391a(2)(L)	2101(46)
391a(2)(M)	2101(38)
391a(2)(N)	2101(8)
391a(2)(O)	2101(23)
391a(2)(P)	3701(2)
391a(2)(Q)	3701(3)
391a(2)(R)	3701(1)
391a(2)(S)	2101(7)
391a(3)	2101(39), 2301, 3303, 3702(a)

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391a(6)	3703
391a(7)	3704–3709
391a(8)	3309, 3313
391a(8)(A)	3710, 3712
391a(8)(B)	3711, 3712
391a(8)(C)	3711
391a(8)(D)	3710
391a(8)(E)	3710, 3711
391a(9)	9102
391a(10)(A)	8703(a)
391a(10)(B)	9101(b)
391a(10)(C)	7317, 8703(b)
391a(10)(D)	Rep. See 7701 et seq.
391a(11)	9101(a)
391a(12)	3703
391a(13)	3713
391a(14)	2107, 3718
391a(14)(C)	2106
391a(15)	3714
391a(16)	3717
391a(17)	3715
391a(18)	3716
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392	3304–3306
392(b)	3307(3)
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395	3301(6), 3305, 3311
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395(e)	2101(32)
396, 397	Rep.
398	3318
399	3309, 3311, 3314
400	3312
401, 402	Rep.
403	3318
404	2101(13), (16), (17), 3301(1), 3302, 3306, 3307
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405	2101(40), 3301(9), 3305
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405(b)(2)	8904
405(b)(3)	8905(b)
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407	3305, 3318
408	3305, 3306, 3318
409	Rep.
410	3318
411, 412	3306
413	3318
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416	2104, 3306
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442	3302
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444	46 App.
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452	3501(b), (c)
453	2113
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459	3306
460, 460a, 461	3502

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466b	3902
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470, 471	8102
472	Rep.
473	3306
474–476	Rep.
477–479	3306
480	2301
481	2106, 3306
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481(c)	2106
481(d)	3318
482, 483	3306
484–488	Rep.
489	3306
490	Rep.
491	46 App.
492	3506
493–496	Rep.
497	2106, 3318, 8502
498	Rep.
511–522	Rep.
526	2101(43)
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526f	Rep.
526g	4102(a)
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526i	4102(c)
526j	4102(d)
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531	10601
532	Rep. See 11501
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543	2104
544, 545	Rep.
546	10102
547–549	Rep.
561, 562	Rep.
563	11110
564	10301, 10302
565	10305
566	10301
567, 568	10321
569	10309
570	10308
571	10321
572, 573	Rep.
574	10301, 10501, 10502
575	10508
576	10509
577	10307
578	11107
579	Rep.
591	10313(a)
592	10313(b)
593	10313(b)
594	10313(c)
595	10313(d)
596	10313(e)–(i), 10504
597	2101(12), 10313(e)–(i), 10504
598	10313(e), 10504(a), (d), 10505(d)
599	2101(12), 10314, 10315, 10505, 10506
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600	10317
601	11108, 11109
602	11111
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622	10703
623	10711
624	10704, 10705
625	10706
626	10707

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643(b)	7304
643(c)	7302, 10306
643(e)	10311
643(f)	7319, 7502
643(h)	7501
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643a	8701
643b	Rep.
644	10312(a), (b), (d)–(f)
645, 646, 651	Rep.
652	10312(c)
653	10901, 10902(a), 10907
654	10901, 10903(a), (b)
655	10901, 10904
656	10901, 10905
657	10905
658	10901, 10906, 10908
659	10903(c)
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662	10902(b)
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664	10907
665	10321, 11106(b)–(d)
666	11102(a)
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668, 669	Rep.
670, 671	11103
672	8701, 8702
672(a)	2101(34)
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672(b)(1)	7307
672(b)(2)	7308
672(b)(3)	7309, 7310
672(b)(4)	7311
672(c)	7301, 7315
672(d)	8702(d)
672(e)	8702(b), (c)
672(f)	7312
672(g)	7313, 7314
672(h)	8103
672(i)	7302
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672a	8103
672b, 672b–1, 672c	Rep.
673	8104
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679	11104(b)–(d)
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684	11105
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686, 687	Rep.
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692	Rep.
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702	11502
703	11503
704	T. 18 § 2196
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709	Rep.
710	11506
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713	10101, 10303, 10304

TABLE SHOWING DISPOSITION OF ALL SECTIONS OF FORMER TITLE 46—Continued

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729–731	46 App.
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763	Rep.
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791–799	Rep.
801–803	46 App.
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808	46 App.
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809–810a	Rep.
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881	3305, 3316, 12119
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883–885	46 App.
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887–889	46 App.
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891a	Rep.
891b, 891c	46 App.
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941(b) (last sentence)	31323(c)
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951 (2d par. less proviso)	31301(6)(B)
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1126c, 1126d	Rep.
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1131	46 App.
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1151–1155	46 App.
1155a	Rep.
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1214	Rep.
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1224, 1225	Rep.
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1246	Rep.
1247, 1248	46 App.
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1279c–1295e	46 App.
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1470	12305
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1472	12307
1473	12308
1474	13101
1475	13102
1476	13103
1477	13104
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1482	13110
1483	2302(b), 4311(a), 12309(a)
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1606	Rep.
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1717	Rep.
1720	Rep.
1721	Rep.

ENACTING CLAUSES

Pub. L. 100–710, title I, §102(a), Nov. 23, 1988, 102 Stat. 4738, provided that: ''Certain general and permanent laws of the United States, related to definitions and maritime commercial instruments and liens, are revised, consolidated, and enacted by paragraph (3) of this subsection [probably means subsection (c) of this section] as subtitle III of title 46, United States Code, 'Shipping'.''

Section 1 of Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 500, provided in part that: ''Certain general and permanent laws of the United States, related to vessels and seamen, are revised, consolidated, and enacted as title 46, United States Code, 'Shipping' ''.

CONSTRUCTION

Section 105 of Pub. L. 100–710, title I, Nov. 23, 1988, 102 Stat. 4751, provided that:

''(a) A reference to a law replaced by section 102 of this Act, including a reference in a regulation, order, or other law, is deemed to refer to the corresponding provision of this Act.

''(b) An order, rule, or regulation in effect under a law replaced by section 102 of this Act continues in ef-

fect under the corresponding provision of this Act until repealed, amended, or superseded.

''(c) An action taken or an offense committed under a law replaced by section 102 of this Act is deemed to have been taken or committed under the corresponding provision of this Act.

''(d) An inference of legislative construction is not to be drawn by reason of the caption or catch line of a provision enacted by section 102 of this Act.

''(e) If a provision of this Act is held invalid, all valid provisions that are severable from the invalid provision remain in effect. If a provision of this Act is held invalid in any of its applications, the provision remains valid for all valid applications that are severable from any of the invalid applications.''

Section 5103(a)–(f) of Pub. L. 99–509, title V, subtitle B, Oct. 21, 1986, 100 Stat. 1927, provided that:

''(a) Laws effective after January 1, 1986, that are inconsistent with this subtitle supersede this subtitle to the extent of the inconsistency.

''(b) A reference to a law replaced by this subtitle, including a reference in a regulation, order, or other law, is deemed to refer to the corresponding provision of this subtitle.

''(c) An order, rule, or regulation in effect under a law replaced by this subtitle continues in effect under the corresponding provision of this subtitle until repealed, amended, or superseded.

''(d) An action taken or an offense committed under a law replaced by this subtitle is deemed to have been taken or committed under the corresponding provision of this subtitle.

''(e) An inference of legislative construction is not to be drawn by reason of the caption or catch line of a provision enacted by this subtitle.

''(f) If a provision enacted by this subtitle is held invalid, all valid provisions that are severable from the invalid provision remain in effect. If a provision of this subtitle is held invalid in one or more of its applications, the provision remains in effect in all valid applications that are severable from the invalid application or applications.''

Section 2(a)–(f) of Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 598, provided that:

''(a) Laws effective after December 31, 1982, that are inconsistent with this Act supersede this Act to the extent of the inconsistency.

''(b) A reference to a law replaced by this Act, including a reference in a regulation, order, or other law, is deemed to refer to the corresponding provision of this Act.

''(c) An order, rule, or regulation in effect under a law replaced by this Act continues in effect under the corresponding provision of this Act until repealed, amended, or superseded.

''(d) An action taken or an offense committed under a law replaced by this Act is deemed to have been taken or committed under the corresponding provision of this Act.

''(e) An inference of legislative construction is not to be drawn by reason of the caption or catch line of a provision enacted by this Act.

''(f) If a provision enacted by this Act is held invalid, all valid provisions that are severable from the invalid provision remain in effect. If a provision of this Act is held invalid in one or more of its applications, the provision remains in effect in all valid applications that are severable from the invalid application or applications.''

CODIFICATION OF SHIPPING AND MARITIME LAWS BY FEDERAL MARITIME COMMISSION AND SECRETARY OF TRANSPORTATION

Section 2(j) of Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 599, provided that: ''Within 2 years after the date of enactment of this Act [Aug. 26, 1983], the Federal Maritime Commission and the Secretary of Transportation each shall submit to Congress a proposed codification of the laws within their respective jurisdictions related to shipping and maritime matters.''

REPEALS AND SAVINGS PROVISIONS

Section 106(a) of Pub. L. 100–710, title I, Nov. 23, 1988, 102 Stat. 4752, provided that: ''The repeal of a law by this title may not be construed as a legislative implication that the provision was or was not in effect before its repeal.''

Section 106(b) of Pub. L. 100–710, title I, Nov. 23, 1988, 102 Stat. 4752, repealed specified laws relating to shipping, except for rights and duties that matured, penalties that were incurred, and proceedings that were begun before the effective date of this title, which is Jan. 1, 1989, with certain exceptions and qualifications, see section 107 of Pub. L. 100–710, set out as a note under section 30101 of this title.

Section 5104(a) of Pub. L. 99–509, title V, subtitle B, Oct. 21, 1986, 100 Stat. 1928, provided that: ''The repeal of a law by this subtitle may not be construed as a legislative implication that the provision was or was not in effect before its repeal.''

Section 5104(b) of Pub. L. 99–509, title V, subtitle B, Oct. 21, 1986, 100 Stat. 1928, repealed specified laws relating to shipping, except for rights and duties that matured, penalties that were incurred, and proceedings that were begun before Oct. 21, 1986.

Section 4(a) of Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 599, provided that: ''The repeal of a law by this Act may not be construed as a legislative implication that the provision was or was not in effect before its repeal.''

Section 4(b) of Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 599, repealed specified laws relating to shipping, except for rights and duties that matured, penalties that were incurred, and proceedings that were begun before Aug. 26, 1983, and except as provided by section 2 of Pub. L. 98–89, set out as notes above and notes under sections 3101, 3302, 3715, and 6301 of this title.

[Subtitle I—General]

[NO PRESENT SECTIONS]

Subtitle II—Vessels and Seamen

PART A—GENERAL PROVISIONS

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21.	**General**	**2101**
23.	**Operation of vessels generally**	**2301**

PART B—INSPECTION AND REGULATION OF VESSELS

31.	**General**	**3101**
32.	**Management of vessels**	**3201**
33.	**Inspection generally**	**3301**
35.	**Carriage of passengers**	**3501**
37.	**Carriage of liquid bulk dangerous cargoes**	**3701**
39.	**Carriage of animals [1]**	**3901**
41.	**Uninspected vessels generally**	**4101**
43.	**Recreational vessels**	**4301**
45.	**Fish processing vessels [2]**	**4501**
47.	**Abandonment of barges**	**4701**

PART C—LOAD LINES OF VESSELS

51.	**Load lines**	**5101**

PART D—MARINE CASUALTIES

61.	**Reporting marine casualties**	**6101**
63.	**Investigating marine casualties**	**6301**

PART E—MERCHANT SEAMEN LICENSES, CERTIFICATES, AND DOCUMENTS

71.	**Licenses and certificates of registry**	**7101**

[1] Chapter repealed by Pub. L. 107–171 without corresponding amendment of subtitle analysis.

[2] Chapter heading amended by Pub. L. 100–424 without corresponding amendment of subtitle analysis.

73. Merchant mariners' documents 7301
75. General procedures for licensing, certification, and documentation 7501
77. Suspension and revocation 7701

PART F—MANNING OF VESSELS

81. General 8101
83. Masters and officers 8301
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PART G—MERCHANT SEAMEN PROTECTION AND RELIEF

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121. Documentation of vessels 12101
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PART I—STATE BOATING SAFETY PROGRAMS

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PART J—MEASUREMENT OF VESSELS

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143. Convention measurement 14301
145. Regulatory measurement 14501
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AMENDMENTS

2000—Pub. L. 106–398, § 1 [[div. A], title X, § 1087(g)(6)], Oct. 30, 2000, 114 Stat. 1654, 1654A–294, substituted ''mariner benefits'' for ''Mariner Benefits'' in item 112.

1998—Pub. L. 105–368, title IV, § 402(b), Nov. 11, 1998, 112 Stat. 3337, added item 112.

1996—Pub. L. 104–324, title VI, § 602(b), Oct. 19, 1996, 110 Stat. 3930, added item 32.

1992—Pub. L. 102–587, title V, § 5304, Nov. 4, 1992, 106 Stat. 5083, added item 47.

1988—Pub. L. 100–710, title I, § 101(b), Nov. 23, 1988, 102 Stat. 4738, added item 125.

Pub. L. 100–424, § 6(b), Sept. 9, 1988, 102 Stat. 1592, added item 106.

1986—Pub. L. 99–509, title V, § 5101(1), Oct. 21, 1986, 100 Stat. 1913, inserted items for parts C and J.

1985—Pub. L. 99–36, § 1(a)(9)(A), May 15, 1985, 99 Stat. 67, substituted ''Merchant Seamen Licenses, Certifications, and'' for ''Licenses, Certificates, and Merchant Mariners' '' in heading for part E.

1984—Pub. L. 98–364, title IV, § 402(7)(A), July 17, 1984, 98 Stat. 446, inserted ''generally'' in item 41, reenacted item 43 without change, and added item 45.

PART A—GENERAL PROVISIONS

HISTORICAL AND REVISION NOTES

Part A contains general provisions that apply throughout the subtitle and provisions that apply generally to the operation of all vessels.

CHAPTER 21—GENERAL

Sec.
2101. General definitions.
2102. Limited definitions.
2103. Superintendence of the merchant marine.
2104. Delegation.
2105. Report.
2106. Liability in rem.
2107. Civil penalty procedures.
2108. Refund of penalties.
2109. Public vessels.
2110. Fees.
2111. Pay for overtime services.
2112. Authority to change working hours.
2113. Authority to exempt certain vessels.
2114. Protection of seamen against discrimination.
2115. Civil penalty to enforce alcohol and dangerous drug testing.

HISTORICAL AND REVISION NOTES

Chapter 21 contains definitions that are general in nature and applicable to all references within Subtitle II—Vessels and Seamen. The chapter provides the basic authority and responsibility for the enforcement and administration of this subtitle with appropriate delegation and reporting requirements.

AMENDMENTS

1996—Pub. L. 104–324, title III, § 303(b), Oct. 19, 1996, 110 Stat. 3917, added item 2115.

1990—Pub. L. 101–508, title X, § 10401(b), Nov. 5, 1990, 104 Stat. 1388–398, substituted ''Fees'' for ''Fees prohibited'' in item 2110.

1984—Pub. L. 98–557, § 13(b), Oct. 30, 1984, 98 Stat. 2864, added item 2114.

§ 2101. General definitions

In this subtitle—

(1) ''associated equipment''—

(A) means—

(i) a system, accessory, component, or appurtenance of a recreational vessel; or

(ii) a marine safety article intended for use on board a recreational vessel; but

(B) does not include radio equipment.

(2) ''barge'' means a non-self-propelled vessel.

(3) ''Boundary Line'' means a line established under section 2(b) of the Act of February 19, 1895 (33 U.S.C. 151).

(3a) ''citizen of the United States'' means a national of the United States as defined in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)) or an individual citizen of the Trust Territory of the Pacific Islands who is exclusively domiciled in the Northern Mariana Islands within the meaning of section 1005(e) of the Covenant to establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (48 U.S.C. 1681 note).[1]

(4) ''Coast Guard'' means the organization established and continued under section 1 of title 14.

(5) ''commercial service'' includes any type of trade or business involving the transportation of goods or individuals, except service performed by a combatant vessel.

(5a) ''consideration'' means an economic benefit, inducement, right, or profit including pecuniary payment accruing to an individual, person, or entity, but not including a voluntary sharing of the actual expenses of the

[3] So in original. Only first word should be capitalized.

[1] See References in Text note below.

voyage, by monetary contribution or donation of fuel, food, beverage, or other supplies.

(6) ''consular officer'' means an officer or employee of the United States Government designated under regulations to grant visas.

(7) ''crude oil'' means a liquid hydrocarbon mixture occurring naturally in the earth, whether or not treated to render it suitable for transportation, and includes crude oil from which certain distillate fractions may have been removed, and crude oil to which certain distillate fractions may have been added.

(8) ''crude oil tanker'' means a tanker engaged in the trade of carrying crude oil.

(8a) ''dangerous drug'' means a narcotic drug, a controlled substance, or a controlled substance analog (as defined in section 102 of the Comprehensive Drug Abuse[2] and Control Act of 1970 (21 U.S.C. 802)).

(9) ''discharge'', when referring to a substance discharged from a vessel, includes spilling, leaking, pumping, pouring, emitting, emptying, or dumping, however caused.

(10) ''documented vessel'' means a vessel for which a certificate of documentation has been issued under chapter 121 of this title.

(10a) ''Exclusive Economic Zone'' means the zone established by Presidential Proclamation Numbered 5030, dated March 10, 1983.

(11) ''fish'' means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life, except marine mammals and birds.

(11a) ''fishing vessel'' means a vessel that commercially engages in the catching, taking, or harvesting of fish or an activity that can reasonably be expected to result in the catching, taking, or harvesting of fish.

(11b) ''fish processing vessel'' means a vessel that commercially prepares fish or fish products other than by gutting, decapitating, gilling, skinning, shucking, icing, freezing, or brine chilling.

(11c) ''fish tender vessel'' means a vessel that commercially supplies, stores, refrigerates, or transports fish, fish products, or materials directly related to fishing or the preparation of fish to or from a fishing, fish processing, or fish tender vessel or a fish processing facility.

(12) ''foreign vessel'' means a vessel of foreign registry or operated under the authority of a country except the United States.

(13) ''freight vessel'' means a motor vessel of more than 15 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title that carries freight for hire, except an oceanographic research vessel or an offshore supply vessel.

(13a) ''Great Lakes barge'' means a non-self-propelled vessel of at least 3,500 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title operating on the Great Lakes.

(14) ''hazardous material'' means a liquid material or substance that is—

(A) flammable or combustible;

(B) designated a hazardous substance under section 311(b) of the Federal Water Pollution Control Act (33 U.S.C. 1321); or

(C) designated a hazardous material under section 5103(a) of title 49;

(14a) ''major conversion'' means a conversion of a vessel that—

(A) substantially changes the dimensions or carrying capacity of the vessel;

(B) changes the type of the vessel;

(C) substantially prolongs the life of the vessel; or

(D) otherwise so changes the vessel that it is essentially a new vessel, as decided by the Secretary.

(15) ''marine environment'' means—

(A) the navigable waters of the United States and the land and resources in and under those waters;

(B) the waters and fishery resources of an area over which the United States asserts exclusive fishery management authority;

(C) the seabed and subsoil of the outer Continental Shelf of the United States, the resources of the Shelf, and the waters superjacent to the Shelf; and

(D) the recreational, economic, and scenic values of the waters and resources referred to in subclauses (A)–(C) of this clause.

(15a) ''mobile offshore drilling unit'' means a vessel capable of engaging in drilling operations for the exploration or exploitation of subsea resources.

(16) ''motor vessel'' means a vessel propelled by machinery other than steam.

(17) ''nautical school vessel'' means a vessel operated by or in connection with a nautical school or an educational institution under section 558 of title 40.

(17a) ''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.

(17b) ''numbered vessel'' means a vessel for which a number has been issued under chapter 123 of this title.

(18) ''oceanographic research vessel'' means a vessel that the Secretary finds is being employed only in instruction in oceanography or limnology, or both, or only in oceanographic or limnological research, including those studies about the sea such as seismic, gravity meter, and magnetic exploration and other marine geophysical or geological surveys, atmospheric research, and biological research.

(19) ''offshore supply vessel'' means a motor vessel of more than 15 gross tons but less than 500 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title that regularly carries goods, supplies, individuals in addition to the crew, or equipment in support of exploration, exploitation, or production of offshore mineral or energy resources.

(20) ''oil'' includes oil of any type or in any form, including petroleum, fuel oil, sludge, oil

[2] So in original. Probably should be ''Abuse Prevention''.

refuse, and oil mixed with wastes except dredged spoil.

(20a) ''oil spill response vessel'' means a vessel that is designated in its certificate of inspection as such a vessel, or that is adapted to respond to a discharge of oil or a hazardous material.

(20b) ''overall in length'' means—

(A) for a foreign vessel or a vessel engaged on a foreign voyage, the greater of—

(i) 96 percent of the length on a waterline at 85 percent of the least molded depth measured from the top of the keel (or on a vessel designed with a rake of keel, on a waterline parallel to the designed waterline); or

(ii) the length from the fore side of the stem to the axis of the rudder stock on that waterline; and

(B) for any other vessel, the horizontal distance of the hull between the foremost part of the stem and the aftermost part of the stern, excluding fittings and attachments.

(21) ''passenger''—

(A) means an individual carried on the vessel except—

(i) the owner or an individual representative of the owner or, in the case of a vessel under charter, an individual charterer or individual representative of the charterer;

(ii) the master; or

(iii) a member of the crew engaged in the business of the vessel who has not contributed consideration for carriage and who is paid for on board services;

(B) on an offshore supply vessel, means an individual carried on the vessel except—

(i) an individual included in clause (i), (ii), or (iii) of subparagraph (A) of this paragraph;

(ii) an employee of the owner, or of a subcontractor to the owner, engaged in the business of the owner;

(iii) an employee of the charterer, or of a subcontractor to the charterer, engaged in the business of the charterer; or

(iv) an individual employed in a phase of exploration, exploitation, or production of offshore mineral or energy resources served by the vessel;

(C) on a fishing vessel, fish processing vessel, or fish tender vessel, means an individual carried on the vessel except—

(i) an individual included in clause (i), (ii), or (iii) of subparagraph (A) of this paragraph;

(ii) a managing operator;

(iii) an employee of the owner, or of a subcontractor to the owner, engaged in the business of the owner;

(iv) an employee of the charterer, or of a subcontractor to the charterer, engaged in the business of the charterer; or

(v) an observer or sea sampler on board the vessel pursuant to a requirement of State or Federal law; or

(D) on a sailing school vessel, means an individual carried on the vessel except—

(i) an individual included in clause (i), (ii), or (iii) of subparagraph (A) of this paragraph;

(ii) an employee of the owner of the vessel engaged in the business of the owner, except when the vessel is operating under a demise charter;

(iii) an employee of the demise charterer of the vessel engaged in the business of the demise charterer; or

(iv) a sailing school instructor or sailing school student.

(21a) ''passenger for hire'' means a passenger for whom consideration is contributed as a condition of carriage on the vessel, whether directly or indirectly flowing to the owner, charterer, operator, agent, or any other person having an interest in the vessel.

(22) ''passenger vessel'' means a vessel of at least 100 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title—

(A) carrying more than 12 passengers, including at least one passenger for hire;

(B) that is chartered and carrying more than 12 passengers; or

(C) that is a submersible vessel carrying at least one passenger for hire.

(23) ''product carrier'' means a tanker engaged in the trade of carrying oil except crude oil.

(24) ''public vessel'' means a vessel that—

(A) is owned, or demise chartered, and operated by the United States Government or a government of a foreign country; and

(B) is not engaged in commercial service.

(25) ''recreational vessel'' means a vessel—

(A) being manufactured or operated primarily for pleasure; or

(B) leased, rented, or chartered to another for the latter's pleasure.

(26) ''recreational vessel manufacturer'' means a person engaged in the manufacturing, construction, assembly, or importation of recreational vessels, components, or associated equipment.

(27) ''sailing instruction'' means teaching, research, and practical experience in operating vessels propelled primarily by sail and may include—

(A) any subject related to that operation and to the sea, including seamanship, navigation, oceanography, other nautical and marine sciences, and maritime history and literature; and

(B) only when in conjunction with a subject referred to in subclause (A) of this clause, instruction in mathematics and language arts skills to sailing school students having learning disabilities.

(28) ''sailing school instructor'' means an individual who is on board a sailing school vessel to provide sailing instruction, but does not include an operator or crewmember who is among those required to be on board the vessel to meet a requirement established under part F of this subtitle.

(29) ''sailing school student'' means an individual who is on board a sailing school vessel to receive sailing instruction.

(30) ''sailing school vessel'' means a vessel—

(A) that is less than 500 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title;

(B) carrying more than 6 individuals who are sailing school instructors or sailing school students;

(C) principally equipped for propulsion by sail, even if the vessel has an auxiliary means of propulsion; and

(D) owned or demise chartered, and operated by an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(3)) and exempt from tax under section 501(a) of that Code, or by a State or political subdivision of a State, during times that the vessel is operated by the organization, State, or political subdivision only for sailing instruction.

(31) ''scientific personnel'' means individuals on board an oceanographic research vessel only to engage in scientific research, or to instruct or receive instruction in oceanography or limnology.

(32) ''seagoing barge'' means a non-self-propelled vessel of at least 100 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title making voyages beyond the Boundary Line.

(33) ''seagoing motor vessel'' means a motor vessel of at least 300 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title making voyages beyond the Boundary Line.

(34) ''Secretary'', except in part H, means the head of the department in which the Coast Guard is operating.

(35) ''small passenger vessel'' means a wing-in-ground craft, regardless of tonnage, carrying at least one passenger for hire, and a vessel of less than 100 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title—

(A) carrying more than 6 passengers, including at least one passenger for hire;

(B) that is chartered with the crew provided or specified by the owner or the owner's representative and carrying more than 6 passengers;

(C) that is chartered with no crew provided or specified by the owner or the owner's representative and carrying more than 12 passengers; or

(D) that is a submersible vessel carrying at least one passenger for hire.

(36) ''State'' means a State of the United States, Guam, Puerto Rico, the Virgin Islands, American Samoa, the District of Columbia, the Northern Mariana Islands, and any other territory or possession of the United States.

(37) ''steam vessel'' means a vessel propelled in whole or in part by steam, except a recreational vessel of not more than 40 feet in length.

(37a) ''submersible vessel'' means a vessel that is capable of operating below the surface of the water.

(38) ''tanker'' means a self-propelled tank vessel constructed or adapted primarily to carry oil or hazardous material in bulk in the cargo spaces.

(39) ''tank vessel'' means a vessel that is constructed or adapted to carry, or that carries, oil or hazardous material in bulk as cargo or cargo residue, and that—

(A) is a vessel of the United States;

(B) operates on the navigable waters of the United States; or

(C) transfers oil or hazardous material in a port or place subject to the jurisdiction of the United States.

(40) ''towing vessel'' means a commercial vessel engaged in or intending to engage in the service of pulling, pushing, or hauling along side, or any combination of pulling, pushing, or hauling along side.

(41) ''undocumented'' means not having and not required to have a document issued under chapter 121 of this title.

(42) ''uninspected passenger vessel'' means an uninspected vessel—

(A) of at least 100 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title—

(i) carrying not more than 12 passengers, including at least one passenger for hire; or

(ii) that is chartered with the crew provided or specified by the owner or the owner's representative and carrying not more than 12 passengers; and

(B) of less than 100 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title—

(i) carrying not more than 6 passengers, including at least one passenger for hire; or

(ii) that is chartered with the crew provided or specified by the owner or the owner's representative and carrying not more than 6 passengers.

(43) ''uninspected vessel'' means a vessel not subject to inspection under section 3301 of this title that is not a recreational vessel.

(44) ''United States'', when used in a geographic sense, means the States of the United States, Guam, Puerto Rico, the Virgin Islands, American Samoa, the District of Columbia, the Northern Mariana Islands, and any other territory or possession of the United States.

(45) ''vessel'' has the same meaning given that term in section 3 of title 1.

(46) ''vessel of the United States'' means a vessel documented or numbered under the laws of the United States or titled under the law of a State.

(47) ''vessel of war'' means a vessel—

(A) belonging to the armed forces of a country;

(B) bearing the external marks distinguishing vessels of war of that country;

(C) under the command of an officer commissioned by the government of that country and whose name appears in the appropriate service list or its equivalent; and

(D) staffed by a crew under regular armed forces discipline.

(48) ''wing-in-ground craft'' means a vessel that is capable of operating completely above the surface of the water on a dynamic air cushion created by aerodynamic lift due to the ground effect between the vessel and the water's surface.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 501; Pub. L. 98–364, title IV, §402(1), July 17, 1984, 98 Stat. 445; Pub. L. 98–454, title III, §301(a), Oct. 5, 1984, 98 Stat. 1734; Pub. L. 98–557, §34(a), Oct. 30, 1984, 98 Stat. 2876; Pub. L. 99–307, §1(1), (2), May 19, 1986, 100 Stat. 444; Pub. L. 99–509, title V, §5102(b)(1), Oct. 21, 1986, 100 Stat. 1926; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 99–640, §§10(b)(1), 11(a), 13(d), Nov. 10, 1986, 100 Stat. 3549–3551; Pub. L. 100–239, §6(a)(1), Jan. 11, 1988, 101 Stat. 1781; Pub. L. 100–424, §8(c)(1), Sept. 9, 1988, 102 Stat. 1593; Pub. L. 100–710, title I, §104(a)(1), (2), Nov. 23, 1988, 102 Stat. 4749; Pub. L. 101–225, title II, §209, Dec. 12, 1989, 103 Stat. 1913; Pub. L. 101–380, title IV, §4103(a)(2)(A), Aug. 18, 1990, 104 Stat. 511; Pub. L. 101–595, title VI, §603(1), Nov. 16, 1990, 104 Stat. 2993; Pub. L. 102–587, title V, §5208(a), Nov. 4, 1992, 106 Stat. 5075; Pub. L. 103–206, title V, §§502–510, Dec. 20, 1993, 107 Stat. 2439–2441; Pub. L. 103–272, §5(*l*), July 5, 1994, 108 Stat. 1375; Pub. L. 104–324, title VII, §709, title XI, §1104(a), Oct. 19, 1996, 110 Stat. 3934, 3966; Pub. L. 105–383, title III, §301(b)(1), Nov. 13, 1998, 112 Stat. 3417; Pub. L. 107–217, §3(m)(1), Aug. 21, 2002, 116 Stat. 1302; Pub. L. 107–295, title IV, §419, Nov. 25, 2002, 116 Stat. 2124.)

HISTORICAL AND REVISION NOTES

A number of definitions are provided because of the need to define jurisdictional and applicability limits of various sections to the many types and classes of vessels.

Revised section	*Source section (U.S. Code)*
2101(1)	46:1452(8)
2101(2)	
2101(3)	
2101(4)	14:1
2101(5)	46:391a(2)(H)
2101(6)	
2101(7)	46:391a(2)(S)
2101(8)	46:391a(2)(N)
2101(9)	46:391a(2)(A)
2101(10)	46:65(1)
2101(11)	46:65(2)
2101(12)	46:391a(2)(B) 46:597 46:599
2101(13)	46:404 46:390(e)
2101(14)	46:391a(2)(C)
2101(15)	46:391a(2)(D)
2101(16)	46:361 46:367 46:404
2101(17)	46:404 46:1295f(c) 46:1295g(e)(1)
2101(18)	46:441(1)
2101(19)	46:404–1(1)
2101(20)	46:391a(2)(E)
2101(21)	46:390(a) 46:404–1(4) 46:1452(5)
2101(22)	46:391(c)
2101(23)	46:391a(2)(O)
2101(24)	46:391a(2)(G)
2101(25)	46:1452(1)(A), (B)
2101(26)	46:1452(7)
2101(27)	46:390(f)
2101(28)	46:390(h)
2101(29)	46:390(i)
2101(30)	46:390(g)
2101(31)	46:441(2)
2101(32)	46:395(e)
2101(33)	46:367
2101(34)	33:151 46:216(b) 46:239a(b) 46:390(d) 46:391a(2)(I) 46:405(b)(1)(A) 46:481(a) 46:672(a) 46:1452(9)
2101(35)	46:390(b)
2101(36)	
2101(37)	46:361
2101(38)	46:391a(2)(M)
2101(39)	46:391a(3)
2101(40)	46:405
2101(41)	46:1452(3)
2101(42)	46:1452(1)(C)
2101(43)	46:526
2101(44)	
2101(45)	1:3 46:1452(2)
2101(46)	46:391a(2)(L)

Section 2101(1) defines the type of ''associated equipment'' that is involved in the use of recreational boats that are subject to Federal regulatory authority. This equipment is subject to a number of controls under federally established construction and performance standards. Radio equipment is exempt from these regulatory controls, since this equipment continues to be regulated by the Federal Communications Commission.

Section 2101(2) defines ''barge'' as a vessel that is non-self-propelled and that is often pushed ahead, towed alongside, or towed astern on a hawser by a towing vessel. It does not include a vessel that is propelled by sail only.

Section 2101(3) defines ''boundary line'' for the establishment of jurisdictional parameters for various maritime safety laws. Public Law 96–324, codified at 33 U.S.C. 151, permits the Secretary to establish appropriate identifiable lines dividing inland waters of the U.S. from the high seas for the purpose of determining the applicability of these laws. These laws will now be included within subtitle II of title 46—Shipping. These lines may not be located more than twelve nautical miles seaward of the baseline from which the territorial sea is measured and may differ in position for the purposes of different parts or sections of subtitle II.

Section 2101(4) defines ''Coast Guard''.

Section 2101(5) provides that wherever the term ''commercial service'' is used it is to include all vessels except those that are primarily used for combatant purposes. This is to make sure that vessels that are engaged in the transportation of goods or individuals are subject to the applicable maritime and environmental safety laws, even if they are sovereign controlled vessels.

Section 2101(6) defines ''consular officer'' as one who has authority to issue visas. Traditionally this person is knowledgeable and familiar with the maritime safety and seamen's welfare laws.

Section 2101(7) defines ''crude oil'' because certain equipment requirements like inert gas systems, segregated ballast tanks, crude oil washing systems or special ballast arrangements are applicable only to tank vessels that carry crude oil. Crude oil is still included within the definition of ''hazardous material'' and ''oil''.

Section 2101(8) defines a ''crude oil tanker'' as one engaged in carrying crude oil. The definition does not include a tank barge since a tanker is defined as a self-propelled tank vessel. See also 2101(38).

Section 2101(9) makes it clear that the term ''discharge'' when referring to a substance that emanates from a vessel and is related to the marine environmental laws concerning pollution by oil or hazardous substances.

Section 2101(10) defines a ''documented vessel'' as any vessel of the United States that has been issued a certificate of documentation that might include a register, enrollment, license, or enrollment and license for various trades.

Section 2101(11) lists what is included in the term ''fisheries'' for the purpose of documentation of vessels and is intended to be all-inclusive of the numerous types of fishing activities.

Section 2101(12) defines ''foreign vessel'' as any foreign flag or foreign operated vessel that is operated under the jurisdiction or authority of a government other than the United States.

Section 2101(13) defines a ''freight vessel'' as a motor vessel or any vessel propelled by diesel or other internal combustion engines and that carries freight for hire.

Section 2101(14) defines ''hazardous materials'' as a broad range of materials that are not only flammable or combustible but are also designated under related maritime safety and environmental laws.

Section 2101(15) defines ''marine environment'' as an all-inclusive term that was developed to cover land and water areas that could be affected by pollution from all vessels and not only tank vessels.

Section 2101(16) defines ''motor vessel'' as a vessel propelled by machinery other than steam to make it clear that these vessels are not steam vessels.

Section 2101(17) defines ''nautical school vessel'' as a vessel that can be a privately owned and operated as well as a publicly owned and operated school vessel.

Section 2101(18) defines ''oceanographic research vessel'' as a vessel employed in oceanography or limnology research or instruction. It is defined because this type of vessel, while not inspected and certified as such, is subject to a number of special statutory and regulatory requirements.

Section 2101(19) defines ''offshore supply vessel'' as a class of vessel that is limited by tonnage and its employment in the mineral and oil industry and while so employed it is not a small passenger vessel.

Section 2101(20) defines ''oil'' to include oil of any type, in any form, or in any mixture. This is the definition that originated with marine environment and pollution laws and continues the definition that was adopted by port and tanker safety laws.

Section 2101(21) defines the term ''passengers'' in relation to various types of vessels. Due to the complexity of existing laws with respect to the definitions of ''passenger'' on various categories of vessels and the need to not make any changes of a substantive nature that could be construed as controversial, four definitions of ''passenger'' have been included.

Section 2101(22) defines ''passenger vessel'' as one that is at least 100 gross tons and carries at least one passenger for hire.

Section 2101(23) defines ''product carrier'' as a tanker that is engaged in carrying oil. This definition when read with the definition of tanker means that it is a self-propelled vessel. A tank barge carrying oil products is a tank vessel but is not subject to the special standards or requirements for a product carrier.

Section 2101(24) defines a ''public vessel'' as a governmental vessel that is not in commercial service. It should be noted that a sovereign-controlled foreign-flag vessel that is engaged in commercial service is not a public vessel and is subject to maritime safety and environment laws.

Section 2101(25) defines a ''recreational vessel'' as a class of vessel whose primary purpose is for pleasure. These vessels while not subject to inspection are subject to certain requirements of law to improve boating safety.

Section 2101(26) defines a ''recreational vessel manufacturer'' as one that is involved with not only the recreational vessels themselves but also with their components or associated equipment.

Section 2101(27), (28), (29), and (30) provides a number of definitions that define the type of instruction, instructor, student, and vessel that is involved in the teaching of sailing.

Section 2101(31) defines ''scientific personnel'' as individuals engaged in oceanography or limnology because they are specially treated under various maritime safety requirements.

Section 2101(32) defines a ''seagoing barge'' as a vessel that is at least 100 gross tons making voyages to sea beyond the boundary line.

Section 2101(33) defines a ''seagoing motor vessel'' as a vessel that must be a motor vessel, as defined in 2101(15), of at least 300 gross tons making voyages to sea beyond the boundary line.

Section 2101(34) defines ''Secretary'' so that maritime safety and seamen's welfare jurisdiction remains within the Coast Guard at all times.

Section 2101(35) defines ''small passenger vessel'' as one that is less than 100 gross tons carrying more than six passengers as defined in section 2101(21).

Section 2101(36) defines ''State'' as a State, territory or possession of the United States and is used to establish jurisdictional limits for the application of the various maritime safety and environmental safety laws of this subtitle. This definition is further limited by definitions in section 2102 that relate to recreational boating safety and facility improvement programs.

Section 2101(37) defines a ''steam vessel'' as a vessel propelled by steam. However, steam vessels of not more than 40 feet that are used exclusively for pleasure are not included.

Section 2101(38) defines ''tanker'' as a self-propelled tank vessel that has been constructed or primarily adapted to carry oil or hazardous material in bulk in the cargo spaces. This vessel is a subclass of tank vessel, which is defined in section 2101(39). This subclass definition is necessary because certain statutory minimum requirements that are consistent with internationally accepted standards are solely applicable to these vessels.

Section 2101(39) defines a ''tank vessel'' as a vessel carrying oil or hazardous materials in bulk or residue including a tanker as defined in section 2101(38).

Section 2101(40) defines ''towing vessel'' as a vessel in commercial service that pushes, pulls, or tows alongside and includes what is traditionally known as a tug.

Section 2101(41) defines ''undocumented'' which, in part, facilitates the classification of vessels that may be numbered by the proper issuing authority in a State.

Section 2101(42) defines an ''uninspected passenger vessel'' as a vessel carrying six or less passengers.

Section 2101(43) defines an ''uninspected vessel'' as a vessel not subject to inspection and certification by the Coast Guard under section 3301. Recreational vessels and inland towing vessels are typical uninspected vessels.

Section 2101(44) defines ''United States'' to establish geographical boundaries for the applicability of the various maritime safety and environmental safety laws of this subtitle. This definition is further limited by definitions in section 2102 that relate to recreational boating safety and facility improvement programs.

Section 2101(45) makes it clear that ''vessel'' as used in this subtitle has the same meaning as is provided in section 3 of title 1, of the U.S.C.

Section 2101(46) defines ''vessel of the United States'' as a vessel that is documented or numbered under the laws of the United States. A documented vessel and those vessels that are numbered by a State or Federal authority are afforded the protection of the laws of the United States.

REFERENCES IN TEXT

Section 1005(e) of the Covenant to establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, referred to in par. (3a), is set out as a note under section 1801 of Title 48, Territories and Insular Possessions.

Presidential Proclamation Numbered 5030, referred to in par. (10a), is set out under section 1453 of Title 16, Conservation.

Presidential Proclamation No. 5928, referred to in par. (17a), is set out under section 1331 of Title 43, Public Lands.

AMENDMENTS

2002—Par. (17). Pub. L. 107–217 substituted ''section 558 of title 40'' for ''section 13 of the Coast Guard Authorization Act of 1986''.

Par. (35). Pub. L. 107–295, §419(a), inserted ''a wing-in-ground craft, regardless of tonnage, carrying at least one passenger for hire, and'' after ''`small passenger vessel' means'' in introductory provisions.

Par. (48). Pub. L. 107–295, §419(b), added par. (48).

1998—Pars. (17a), (17b). Pub. L. 105–383 added par. (17a) and redesignated former par. (17a) as (17b).

1996—Par. (13). Pub. L. 104–324, §709(1), inserted ''as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' after ''15 gross tons''.

Par. (13a). Pub. L. 104–324, §709(2), inserted ''as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' after ''3,500 gross tons''.

Par. (19). Pub. L. 104–324, §709(3), inserted ''as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' after ''500 gross tons''.

Par. (20a). Pub. L. 104–324, §1104(a)(2), added par. (20a). Former par. (20a) redesignated (20b).

Par. (20b). Pub. L. 104–324, §1104(a)(1), redesignated par. (20a) as (20b).

Par. (22). Pub. L. 104–324, §709(4), inserted ''as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' after ''100 gross tons''.

Par. (30)(A). Pub. L. 104–324, §709(5), inserted ''as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' after ''500 gross tons''.

Par. (32). Pub. L. 104–324, §709(6), inserted ''as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' after ''100 gross tons''.

Par. (33). Pub. L. 104–324, §709(7), inserted ''as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' after ''300 gross tons''.

Par. (35). Pub. L. 104–324, §709(8), inserted ''as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' after ''100 gross tons''.

Par. (42). Pub. L. 104–324, §709(9), inserted ''as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' after ''100 gross tons'' in subpars. (A) and (B).

1994—Par. (14)(C). Pub. L. 103–272 substituted ''section 5103(a) of title 49'' for ''section 104 of the Hazardous Materials Transportation Act (49 App. U.S.C. 1803)''.

1993—Par. (5a). Pub. L. 103–206, §507, added par. (5a).

Par. (19). Pub. L. 103–206, §508, inserted ''individuals in addition to the crew,'' after ''supplies,'' and struck out ''and is not a small passenger vessel'' after ''resources''.

Par. (21). Pub. L. 103–206, §502, amended par. (21) generally, substituting subpars. (A) to (D) defining ''passenger'' for former subpars. (A) to (F) defining ''passenger''.

Par. (21a). Pub. L. 103–206, §506, added par. (21a).

Par. (22). Pub. L. 103–206, §503, amended par. (22) generally. Prior to amendment, par. (22) read as follows: ''`passenger vessel' means a vessel of at least 100 gross tons carrying at least one passenger for hire.''

Par. (30)(B). Pub. L. 103–206, §509, substituted ''more than 6'' for ''at least 6''.

Par. (35). Pub. L. 103–206, §504, amended par. (35) generally. Prior to amendment, par. (35) read as follows: ''`small passenger vessel' means a vessel of less than 100 gross tons carrying more than 6 passengers (as defined in clause (21)(B) and (C) of this section).''

Par. (37a). Pub. L. 103–206, §510, added par. (37a).

Par. (42). Pub. L. 103–206, §505, amended par. (42) generally. Prior to amendment, par. (42) read as follows: ''`uninspected passenger vessel' means an uninspected vessel carrying not more than 6 passengers.''

1992—Par. (13a). Pub. L. 102–587 added par. (13a).

1990—Par. (8a). Pub. L. 101–380 added par. (8a).

Par. (14)(C). Pub. L. 101–595 substituted ''(49 App. U.S.C. 1803)'' for ''(49 U.S.C. 1803)''.

1989—Par. (17a). Pub. L. 101–225 added par. (17a).

1988—Par. (10a). Pub. L. 100–239 added par. (10a).

Par. (14a). Pub. L. 100–424 added par. (14a).

Par. (34). Pub. L. 100–710, §104(a)(1), inserted '', except in part H,'' before ''means''.

Par. (46). Pub. L. 100–710, §104(a)(2), inserted ''or titled under the law of a State'' before period at end.

1986—Par. (11b). Pub. L. 99–640, §10(b)(1), inserted ''freezing,''.

Par. (14)(C). Pub. L. 99–307, §1(1), substituted ''Materials'' for ''Material''.

Par. (15a). Pub. L. 99–640, §11(a), added par. (15a).

Par. (17). Pub. L. 99–640, §13(d), inserted ''or an educational institution under section 13 of the Coast Guard Authorization Act of 1986''.

Par. (20a). Pub. L. 99–509, §5102(b)(1)(A), added par. (20a).

Par. (21)(A)(ii). Pub. L. 99–307, §1(2)(A), inserted ''or other individual engaged in the business of the vessel who has not contributed consideration for carriage on board the vessel'' after ''crewmember''.

Par. (21)(B). Pub. L. 99–307, §1(2)(D), struck out ''or a sailing school vessel,'' after ''passenger vessel''.

Par. (21)(B)(v) to (vii). Pub. L. 99–307, §1(2)(B), added cls. (v) and (vi) and struck out former cls. (v) to (vii) which read as follows:

''(v) a guest on board a vessel that is being operated only for pleasure, or a guest on board a sailing school vessel, who has not contributed consideration for carriage on board;

''(vi) an individual on board a towing vessel of at least 50 gross tons who has not contributed consideration for carriage on board; or

''(vii) a sailing school instructor or sailing school student.''

Par. (21)(F). Pub. L. 99–307, §1(2)(C), added subpar. (F).

Par. (30)(D). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

Par. (47). Pub. L. 99–509, §5102(b)(1)(B), added par. (47).

1984—Par. (3a). Pub. L. 98–454 added par. (3a).

Par. (11). Pub. L. 98–364, §402(1)(A), substituted ''`fish' means finfish, mollusks, crustaceans, and all other forms of marine animal and plant lift, except marine mammals and birds'' for ''`fisheries' includes planting, cultivating, catching, taking, or harvesting fish, shellfish, marine animals, pearls, shells, or marine vegetation at a place in the fishery conservation zone established by section 101 of the Magnuson Fishery Conservation and Management Act of 1976 (16 U.S.C. 1811)'', which is now covered in section 12101 of this title.

Pars. (11a) to (11c). Pub. L. 98–364, §402(1)(B), added pars. (11a) to (11c).

Par. (21)(B). Pub. L. 98–557, §34(a)(1), inserted reference to a sailing school vessel in provisions preceding cl. (i).

Par. (21)(E). Pub. L. 98–364, §402(1)(C), added subpar. (E).

Par. (27). Pub. L. 98–557, §34(a)(2), designated existing provisions as subpar. (A) and added subpar. (B).

EFFECTIVE DATE OF 1992 AMENDMENT

Section 5208(c), (d) of Pub. L. 102–587 provided that:

''(c) For Great Lakes barges placed in operation after the date of enactment of this Act [Nov. 4, 1992], the amendments made by this section [amending this section and section 3301 of this title] take effect on the date of enactment of this Act.

''(d)(1) For Great Lakes barges in operation on the date of enactment of this Act, the amendments made by this section take effect one year after the date of enactment of this Act.

''(2) The Secretary of Transportation may impose reasonable interim requirements to assure safe operation of the barges affected by paragraph (1).''

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 Title 33, Navigation and Navigable Waters.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–710 effective Jan. 1, 1989, with certain exceptions and qualifications, see section 107 of Pub. L. 100–710, set out as an Effective Date note under section 30101 of this title.

SHORT TITLE OF 2002 AMENDMENT

Pub. L. 107–295, § 1(a), Nov. 25, 2002, 116 Stat. 2064, provided that: ''This Act [see Tables for classification] may be cited as the 'Maritime Transportation Security Act of 2002'.''

Pub. L. 107–295, title II, § 201, Nov. 25, 2002, 116 Stat. 2093, provided that: ''This title [enacting section 1902a of Title 33, Navigation and Navigable Waters, amending sections 3302, 12111, 31325, and 31343 of this title, sections 808 and 883 of the Appendix to this title, section 5313 of Title 5, Government Organization and Employees, and section 102 of Title 49, Transportation, enacting provisions set out as notes under sections 12106 and 12111 of this title and section 102 of Title 49, and amending provisions set out as notes under section 12106 of this title] may be cited as the 'Maritime Policy Improvement Act of 2002'.''

SHORT TITLE OF 1998 AMENDMENT

Pub. L. 105–277, div. C, title II, § 201, Oct. 21, 1998, 112 Stat. 2681–616, provided that: ''This title [amending sections 12102, 12122, and 31322 of this title, enacting provisions set out as notes under section 12102 of this title and section 1851 of Title 16, Conservation, amending provisions set out as a note under section 1274 of the Appendix to this title, and repealing provisions set out as a note under section 12102 of this title] may be cited as the 'American Fisheries Act'.''

SHORT TITLE OF 1996 AMENDMENT

Section 601 of title VI of Pub. L. 104–324 provided that: ''This title [enacting sections 3103 and 3201 to 3205 of this title, amending sections 3306 to 3309, 3316, and 3710 of this title, and enacting provisions set out as notes under sections 3201 and 3306 of this title] may be cited as the 'Coast Guard Regulatory Reform Act of 1996'.''

SHORT TITLE OF 1993 AMENDMENT

Section 501 of title V of Pub. L. 103–206 provided that: ''This title [amending this section and sections 2113, 3306, and 4105 of this title and enacting provisions set out as notes under this section and section 3306 of this title] may be cited as the 'Passenger Vessel Safety Act of 1993'.''

SHORT TITLE OF 1990 AMENDMENT

Section 601 of title VI of Pub. L. 101–595 provided that: ''This title [amending this section and sections 2102, 3302, 4502, 5102, 5114, 8103, 8104, 8702, 12109, 12501, 12503, 12505, and 31308 of this title, repealing sections 4104, 5115, 8105, and 14102 of this title, and enacting provisions set out as notes under sections 4502 and 7306 of this title] may be cited as the 'Aleutian Trade Act of 1990'.''

SHORT TITLE OF 1988 AMENDMENTS

Section 1 of Pub. L. 100–424 provided that: ''This Act [enacting chapter 106 and sections 4505 to 4508 and 6104 of this title, amending this section and sections 3102, 3701, 4101, 4102, 4501 to 4504, and 6103 of this title, repealing sections 531 to 534 of the Appendix to this title, and enacting provisions set out as notes under sections 4501, 4502, 4508, and 7101 of this title] may be cited as the 'Commercial Fishing Industry Vessel Safety Act of 1988'.''

Section 1 of Pub. L. 100–239 provided that: ''This Act [enacting section 8704 of this title, amending this section, sections 8103, 8702, 12101, 12102, 12106 to 12108 of this title, sections 251 and 883 of the Appendix to this title, and section 1802 of title 16, Conservation, and enacting provisions set out as notes under sections 8103, 8704, 12102, 12105, and 12108 of this title and section 883 of the Appendix of this title] may be cited as the 'Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987'.''

SHORT TITLE OF 1984 AMENDMENT

Section 401 of title IV of Pub. L. 98–364 provided that: ''This title [enacting sections 4501 to 4504, and 7311a of this title, amending this section and sections 3301, 3302, 3304, 3306, 3702, 7111, 7301, 7306, 7312, 8102, 8104, 8701, 8702, 10101, 11108, 11109, and 12101 of this title and enacting provisions set out as a note under section 3302 of this title] may be cited as the 'Commercial Fishing Industry Vessel 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.

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.

FISHING AND FISH TENDER VESSELS

Section 321 of Pub. L. 103–206 provided that:

''(a) In this section, 'fish tender vessel', 'fishing vessel', and 'tank vessel' have the meanings given those terms under section 2101 of title 46, United States Code.

''(b) A fishing vessel or fish tender vessel of not more than 750 gross tons, when engaged only in the fishing industry, shall not be deemed to be a tank vessel for the purposes of any law.

''(c)(1) This section does not affect the authority of the Secretary of Transportation under chapter 33 of title 46, United States Code, to regulate the operation of the vessels listed in subsection (b) to ensure the safe carriage of oil and hazardous substances.

''(2) This section does not affect the requirement for fish tender vessels engaged in the Aleutian trade to comply with chapters 33, 45, 51, 81, and 87 of title 46, United States Code, as provided in the Aleutian Trade Act of 1990 (Public Law 101–595) [see Short Title of 1990 Amendment note above].''

APPLICABILITY DATE FOR REVISED REGULATIONS

Section 513 of Pub. L. 103–206 provided that:

''(a) APPLICABILITY DATE FOR CERTAIN CHARTERED VESSELS.—Revised regulations governing small passenger vessels and passenger vessels (as the definitions of those terms in section 2101 of title 46, United States Code, are amended by this Act) shall not, before the date that is 6 months after the date of enactment of this Act [Dec. 20, 1993], apply to such vessels when chartered with no crew provided.

''(b) EXTENSION OF PERIOD.—The Secretary of the department in which the Coast Guard is operating shall extend for up to 30 additional months or until issuance

of a certificate of inspection, whichever occurs first, the period of inapplicability specified in subsection (a) if the owner of the vessel concerned carries out the provisions of subsection (c) to the satisfaction of the Secretary.

''(c) CONDITIONS FOR EXTENSION.—To receive an extension authorized by subsection (b), the owner of the vessel shall—

''(1) make application for inspection with the Coast Guard within 6 months after the date of enactment of this Act [Dec. 20, 1993];

''(2) make the vessel available for examination by the Coast Guard prior to the carriage of passengers;

''(3)(A) correct especially any hazardous conditions involving the vessel's structure, electrical system, and machinery installation, such as (i) grossly inadequate, missing, unsound, or severely deteriorated frames or major structural members; (ii) wiring systems or electrical appliances without proper grounding or overcurrent protection; and (iii) significant fuel or exhaust system leaks;

''(B) equip the vessel with lifesaving and fire fighting equipment, or the portable equivalent, required for the route and number of persons carried; and

''(C) verify through stability tests, calculations, or other practical means (which may include a history of safe operations) that the vessel's stability is satisfactory for the size, route, and number of passengers; and

''(4) develop a work plan approved by the Coast Guard to complete in a good faith effort all requirements necessary for issuance of a certificate of inspection as soon as practicable.

''(d) OPERATION OF VESSEL DURING EXTENSION PERIOD.—The owner of a vessel receiving an extension under this section shall operate the vessel under the conditions of route, service, number of passengers, manning, and equipment as may be prescribed by the Coast Guard for the extension period.''

TANK VESSEL DEFINITION CLARIFICATION

Pub. L. 102–587, title V, § 5209, Nov. 4, 1992, 106 Stat. 5076, as amended by Pub. L. 105–383, title IV, § 422, Nov. 13, 1998, 112 Stat. 3439, provided that:

''(a) In this section, 'offshore supply vessel', 'fish tender vessel', 'fishing vessel', and 'tank vessel' have the meanings given those terms under section 2101 of title 46, United States Code.

''(b) The following vessels are deemed not to be a tank vessel for the purposes of any law:

''(1) An offshore supply vessel.

''(2) A fishing or fish tender vessel of not more than 750 gross tons that transfers without charge to a fishing vessel owned by the same person.

''(3) A vessel—

''(A) configured, outfitted, and operated primarily for dredging operations; and

''(B) engaged in dredging operations which transfers fuel to other vessels engaged in the same dredging operations without charge.

''(c)(1) This section does not affect the authority of the Secretary of Transportation under chapter 33 of title 46, United States Code, to regulate the operation of the vessels listed in subsection (b) to ensure the safe carriage of oil and hazardous substances.

''(2) This section does not affect the requirement for fish tender vessels engaged in the Aleutian trade to comply with chapters 33, 45, 51, 81, and 87 of title 46, United States Code, as provided in the Aleutian Trade Act of 1990 ([title VI of] Public Law 101–595) [see Short Title of 1990 Amendment note above].

''(d) Current regulations governing the vessels in subsection (b) remain in effect.''

§ 2102. Limited definitions

(a) In chapters 37, 43, 51, and 123 of this title and part I of this subtitle—

(1) ''eligible State'' means a State that has a State recreational boating safety program accepted by the Secretary.

(2) ''State'' and ''United States'', in addition to their meanings under section 2101(36) and (44) of this title, include the Trust Territory of the Pacific Islands.

(3) ''State recreational boating safety program'' means education, assistance, and enforcement activities conducted for marine casualty prevention, reduction, and reporting for recreational boating.

(b) In chapters 33, 45, 51, 81, and 87 of this title, ''Aleutian trade'' means the transportation of cargo (including fishery related products) for hire on board a fish tender vessel to or from a place in Alaska West of 153 degrees west longitude and east of 172 degrees East longitude, if that place receives weekly common carrier service by water, to or from a place in the United States (except a place in Alaska).

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 505; Pub. L. 98–369, div. A, title X, § 1011(a), July 18, 1984, 98 Stat. 1013; Pub. L. 99–509, title V, § 5102(b)(2), Oct. 21, 1986, 100 Stat. 1926; Pub. L. 101–595, title VI, § 602(a), Nov. 16, 1990, 104 Stat. 2990.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
2102	46:1452(10)–(14)

Section 2102 contains a number of definitions that are limited to recreational vessels in Chapter 43 of Part B and the numbering of these vessels in Chapter 123 of Part H.

AMENDMENTS

1990—Pub. L. 101–595 designated existing provisions as subsec. (a) and added subsec. (b).

1986—Pub. L. 99–509 inserted reference to chapters 37 and 51.

1984—Par. (1). Pub. L. 98–369, § 1011(a)(1), struck out ''and facilities improvement'' after ''recreational boating safety''.

Par. (3). Pub. L. 98–369, § 1011(a)(2), (3), redesignated par. (5) as (3) and struck out former par. (3) which defined a State recreational boating facilities improvement program.

Par. (4). Pub. L. 98–369, § 1011(a)(2), struck out par. (4) which defined State recreational boating safety and facilities improvement program.

Par. (5). Pub. L. 98–369, § 1011(a)(3), redesignated par. (5) as (3).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective Oct. 1, 1984, to apply with respect to fiscal years beginning after Sept. 30, 1984, see section 1013 of Pub. L. 98–369, set out as a note under section 13101 of this title.

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.

§ 2103. Superintendence of the merchant marine

The Secretary has general superintendence over the merchant marine of the United States and of merchant marine personnel insofar as the enforcement of this subtitle is concerned and insofar as those vessels and personnel are not subject, under other law, to the supervision of another official of the United States Government. In the interests of marine safety and seamen's welfare, the Secretary shall enforce this subtitle

and shall carry out correctly and uniformly administer this subtitle. The Secretary may prescribe regulations to carry out the provisions of this subtitle.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 506; Pub. L. 99–307, § 9, May 19, 1986, 100 Stat. 447.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
2103	46:2 46:372 46:689

Section 2103 provides the Secretary with the authority to superintend the merchant marine and those involved personnel insofar as the vessels and personnel are not subject, under other laws, to the supervision of another official. The Secretary has the duty to enforce the laws with respect to vessels and seamen and to carry out correctly and uniformly these laws and regulations. The term ''superintendence'' is used to indicate the Secretary's broad responsibility for overseeing maritime safety and seamen's welfare, including employment, shipping, navigation, and protection of the marine environment.

AMENDMENTS

1986—Pub. L. 99–307 substituted ''subtitle. The Secretary may prescribe regulations to carry out the provisions of this subtitle'' for ''subtitle and regulations prescribed under this subtitle''.

§ 2104. Delegation

(a) The Secretary may delegate the duties and powers conferred by this subtitle to any officer, employee, or member of the Coast Guard, and may provide for the subdelegation of those duties and powers.

(b) When this subtitle authorizes an officer or employee of the Customs Service to act in place of a Coast Guard official, the Secretary may designate that officer or employee subject to the approval of the Secretary of the Treasury.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 506.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
2104	46:65v(1) 46:382b 46:416 46:543 46:689

Section 2104 provides the Secretary with authority to delegate duties and powers to others. It also contains the authority to designate an officer or employee of the United States Customs Service to act in the place of a Coast Guard official.

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.

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 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.

§ 2105. Report

The Secretary shall provide for the investigation of the operation of this subtitle and of all laws related to marine safety, and shall require that a report be made to the Secretary annually about those matters that may require improvement or amendment.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 506.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
2105	46:4

Section 2105 requires the Secretary to investigate the operation of this subtitle and all laws related to maritime safety and requires appropriate reports to ensure that the Secretary is attentive to all the shipping laws under the Secretary's superintendence.

§ 2106. Liability in rem

When a vessel is made liable in rem under this subtitle, the vessel may be libeled and proceeded against in a district court of the United States in which the vessel is found.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 506.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
2106	46:170(14) 46:216e(e) 46:390d 46:391a(14)(C) 46:436 46:462 46:481(c) 46:497 46:526*o* 46:672(j) 46:1484(b)

Section 2106 provides that when a vessel is made liable in rem the vessel may be libeled and proceeded against in a United States district court.

§ 2107. Civil penalty procedures

(a) After notice and an opportunity for a hearing, a person found by the Secretary to have violated this subtitle or a regulation prescribed under this subtitle for which a civil penalty is provided, is liable to the United States Government for the civil penalty provided. The amount of the civil penalty shall be assessed by the Secretary by written notice. In determining the amount of the penalty, the Secretary shall consider the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other matters that justice requires.

(b) The Secretary may compromise, modify, or remit, with or without consideration, a civil penalty under this subtitle until the assessment is referred to the Attorney General.

(c) If a 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 for collection in an appropriate district court of the United States.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 506.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
2107	33:364 46:7 46:65u 46:216e(d) 46:391a(14) 46:526*o* 46:526p 46:1484(c)

Section 2107 provides for standard procedures for the handling of civil penalties for infractions of law or regulation. Some changes were made to increase some antiquated and inadequate penalties.

The assessment of civil penalties under this section should not require an ''on the record'' hearing within the meaning of the Administrative Procedures Act (APA). It is intended that these civil penalties be assessed in a fair manner. However, the Committee recognizes that statutes passed in the last decade have involved the Coast Guard in tens of thousands of civil penalty enforcement cases and that it is necessary that the penalties be assessed efficiently. The Coast Guard's procedural regulations for assessing civil penalties ensure that the essential elements of due process, notice, and opportunity to be heard, are provided to alleged violators (see 33 CFR Subpart 1.07). The more rigid and time-consuming procedures applicable to APA adjudications are unwarranted in the case of Coast Guard civil penalty assessment procedures and would seriously hamper the orderly enforcement of these administrative penalties.

§ 2108. Refund of penalties

The Secretary may refund or remit a civil penalty collected under this subtitle if—

(1) application has been made for refund or remission of the penalty within one year from the date of payment; and

(2) the Secretary finds that the penalty was unlawfully, improperly, or excessively imposed.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 507.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
2108	46:8

Section 2108 provides for the refunding of civil penalties.

§ 2109. Public vessels

Except as otherwise provided, this subtitle does not apply to a public vessel of the United States. However, this subtitle does apply to a vessel (except a Coast Guard or a Saint Lawrence Seaway Development Corporation vessel) owned or operated by the Department of Transportation or by any corporation organized or controlled by the Department.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 507; Pub. L. 99–509, title V, § 5102(b)(3), Oct. 21, 1986, 100 Stat. 1927.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
2109	46:362 46:363 46:391a(4)

Section 2109 exempts public vessels from the applicability of the maritime safety and seamen's welfare laws of this subtitle although some public vessels are inspected under interagency voluntary agreements.

AMENDMENTS

1986—Pub. L. 99–509 substituted ''Except as otherwise provided, this'' for ''This''.

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.

§ 2110. Fees

(a)(1) Except as otherwise provided in this title, the Secretary shall establish a fee or charge for a service or thing of value provided by the Secretary under this subtitle, in accordance with section 9701 of title 31.

(2) The Secretary may not establish a fee or charge under paragraph (1) for inspection or examination of a non-self-propelled tank vessel under part B of this title[1] that is more than $500 annually. The Secretary may not establish a fee or charge under paragraph (1) for inspection or examination of a small passenger vessel under this title that is more than $300 annually for such vessels under 65 feet in length, or more than $600 annually for such vessels 65 feet in length and greater. The Secretary may not establish a fee or charge under paragraph (1) for inspection or examination under this title for any publicly-owned ferry.

(3) The Secretary may, by regulation, adjust a fee or charge collected under this subsection to accommodate changes in the cost of providing a specific service or thing of value, but the adjusted fee or charge may not exceed the total cost of providing the service or thing of value for which the fee or charge is collected, including the cost of collecting the fee or charge.

(4) The Secretary may not collect a fee or charge under this subsection that is in conflict with the international obligations of the United States.

(5) The Secretary may not collect a fee or charge under this subsection for any search or rescue service.

(b)(1) The Secretary shall establish a fee or charge as provided in paragraph (2) of this subsection, and collect it annually in fiscal years 1993 and 1994, from the owner or operator of each recreational vessel to which paragraph (2) of this subsection applies.

(2) The fee or charge established under paragraph (1) of this subsection is as follows:

(A) in fiscal year 1993—

(i) for vessels of more than 21 feet in length but less than 27 feet, not more than $35;

(ii) for vessels of at least 27 feet in length but less than 40 feet, not more than $50; and

(iii) for vessels of at least 40 feet in length, not more than $100.[2]

[1] So in original. Probably should be ''subtitle''.

[2] So in original. The period probably should be ''; and''.

(B) in fiscal year 1994—

(i) for vessels of at least 37 feet in length but less than 40 feet, not more than $50; and

(ii) for vessels of at least 40 feet in length, not more than $100.

(3) The fee or charge established under this subsection applies only to vessels operated on the navigable waters of the United States where the Coast Guard has a presence.

(4) The fee or charge established under this subsection does not apply to a—

(A) public vessel; or

(B) vessel deemed to be a public vessel under section 827 of title 14.

(5) The Secretary shall provide to each person who pays a fee or charge under this subsection a separate document on which appears, in readily discernible print, only the following statement: ''The fees[3] for which this document was provided was established under the Omnibus Budget Reconciliation Act of 1990. Persons paying this fee can expect no increase in the quantity, quality, or variety of services the person receives from the Coast Guard as a result of that payment.''

(c) In addition to the collection of fees and charges established under subsections (a) and (b), the Secretary may recover appropriate collection and enforcement costs associated with delinquent payments of the fees and charges.

(d)(1) The Secretary may employ any Federal, State, or local agency or instrumentality, or any private enterprise or business, to collect a fee or charge established under this section. A private enterprise or business selected by the Secretary to collect fees or charges—

(A) shall be subject to reasonable terms and conditions agreed to by the Secretary and the enterprise or business;

(B) shall provide appropriate accounting to the Secretary; and

(C) may not institute litigation as part of that collection.

(2) A Federal agency shall account for the agency's costs of collecting the fee or charge under this subsection as a reimbursable expense, and the costs shall be credited to the account from which expended.

(e) A person that violates this section by failing to pay a fee or charge established under this section is liable to the United States Government for a civil penalty of not more than $5,000 for each violation.

(f) When requested by the Secretary, the Secretary of the Treasury shall deny the clearance required by section 4197 of the Revised Statutes of the United States (46 App. U.S.C. 91) to a vessel for which a fee or charge established under this section has not been paid until the fee or charge is paid or until a bond is posted for the payment.

(g) The Secretary may exempt a person from paying a fee or charge established under this section if the Secretary determines that it is in the public interest to do so.

(h) Fees and charges collected by the Secretary under this section shall be deposited in the general fund of the Treasury as offsetting receipts of the department in which the Coast Guard is operating and ascribed to Coast Guard activities.

(i) The collection of a fee or charge under this section does not alter or expand the functions, powers, responsibilities, or liability of the United States under any law for the performance of services or the provision of a thing of value for which a fee or charge is collected under this section.

(j) The Secretary may not establish or collect a fee or charge for the inspection under part B of this subtitle of training vessels operated by state[4] maritime academies.

(k) The Secretary may not plan, implement or finalize any regulation that would promulgate any new maritime user fee which was not implemented and collected prior to January 1, 1998, including a fee or charge for any domestic icebreaking service or any other navigational assistance service. This subsection expires on September 30, 2006.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 507; Pub. L. 99–509, title V, § 5102(b)(4), Oct. 21, 1986, 100 Stat. 1927; Pub. L. 100–710, title I, § 104(a)(3), Nov. 23, 1988, 102 Stat. 4749; Pub. L. 101–508, title X, § 10401(a), Nov. 5, 1990, 104 Stat. 1388–397; Pub. L. 102–241, § 53, Dec. 19, 1991, 105 Stat. 2232; Pub. L. 102–582, title V, § 501(a), Nov. 2, 1992, 106 Stat. 4909; Pub. L. 102–587, title V, § 5207, Nov. 4, 1992, 106 Stat. 5075; Pub. L. 104–324, title XI, § 1112, Oct. 19, 1996, 110 Stat. 3970; Pub. L. 105–383, title II, § 207, Nov. 13, 1998, 112 Stat. 3416; Pub. L. 107–295, title III, § 344, Nov. 25, 2002, 116 Stat. 2106.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
2110	46:331

Section 2110 prevents the assessment of user fees for certain maritime safety and seamen's welfare services unless otherwise provided for by law. These include:

Measurement of tonnage and certifying the same, except that the compensation and necessary travel and subsistence expenses of the officers so measuring or certifying such vessels at the request of the owners thereof at a place other than a port of entry or a customs station shall be paid by such owners; issuing of license or granting of certificate of registry, record, or enrollment, including all indorsements on the same and oath; indorsement of change of master; certifying and receiving manifest, including master's oath and permit; granting permit to vessels licensed for the fisheries to touch and trade; granting certificate of payment of tonnage dues; recording bill of sale, mortgage, hypothecation or conveyance, or the discharge of such mortgage or hypothecation; furnishing certificate of title; furnishing the crew list; certificate of protection to seamen; bill of health; shipping or discharging of seamen; apprenticing boys to the merchant service; inspecting, examining, and licensing steam vessels, including inspection certificate and copies thereof; and licensing of master, engineer, pilot, or mate of a vessel.

REFERENCES IN TEXT

The Omnibus Budget Reconciliation Act of 1990, referred to in subsec. (b)(5), is Pub. L. 101–508, Nov. 5, 1990, 104 Stat. 1388. For complete classification of this Act to the Code, see Tables.

[3] So in original. Probably should be ''fee''.

[4] So in original. Probably should be capitalized.

AMENDMENTS

2002—Subsec. (k). Pub. L. 107–295 substituted ''2006'' for ''2001''.

1998—Subsec. (k). Pub. L. 105–383 added subsec. (k).

1996—Subsec. (a)(2). Pub. L. 104–324, § 1112, which directed amendment of section 10401(g) of Pub. L. 101–508 by inserting ''The Secretary may not establish a fee or charge under paragraph (1) for inspection or examination of a small passenger vessel under this title that is more than $300 annually for such vessels under 65 feet in length, or more than $600 annually for such vessels 65 feet in length and greater. The Secretary may not establish a fee or charge under paragraph (1) for inspection or examination under this title for any publicly-owned ferry.'' after ''annually.'', was executed by making insertion in subsec. (a)(2) of this section to reflect the probable intent of Congress, because section 10401(a) of Pub. L. 101–508 amended this section generally, and section 10401 of Pub. L. 101–508 did not contain a subsec. (g).

1992—Subsec. (b)(1). Pub. L. 102–582, § 501(a)(1), substituted ''1993 and 1994'' for ''1991, 1992, 1993, 1994, and 1995'' and ''to which paragraph (2) of this subsection applies'' for ''that is greater than 16 feet in length''.

Subsec. (b)(2). Pub. L. 102–582, § 501(a)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The fee or charge established under paragraph (1) of this subsection is as follows:

''(A) for vessels greater than 16 feet in length but less than 20 feet, not more than $25;

''(B) for vessels of at least 20 feet in length but less than 27 feet, not more than $35;

''(C) for vessels of at least 27 feet in length but less than 40 feet, not more than $50; and

''(D) for vessels of at least 40 feet in length, not more than $100.''

Subsec. (j). Pub. L. 102–587 added subsec. (j).

1991—Subsec. (b)(5). Pub. L. 102–241 added par. (5).

1990—Pub. L. 101–508, as amended by Pub. L. 104–324, substituted ''Fees'' for ''Fees prohibited'' as section catchline and amended text generally. Prior to amendment, text read as follows: ''Fees may not be charged or collected by the Secretary for services provided for in this subtitle related to the engagement and discharge of seamen, the inspection and examination of vessels under part B of this subtitle, and the licensing of masters, mates, pilots, and engineers, except when specifically provided for in this subtitle.'' See 1996 Amendment note above.

1988—Pub. L. 100–710 substituted ''and the licensing of masters, mates, pilots, and engineers'' for ''the licensing of masters, mates, pilots, and engineers, and the documentation of vessels''.

1986—Pub. L. 99–509 substituted ''examination of vessels under part B of this subtitle'' for ''examination of vessels'' and struck out ''measurement or'' before ''documentation''.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 501(b) of Pub. L. 102–582 provided that: ''The amendments made by this section [amending this section] are effective October 1, 1992.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–710 effective Jan. 1, 1989, with certain exceptions and qualifications, see section 107 of Pub. L. 100–710, set out as an Effective Date note under section 30101 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.

ACCEPTANCE OF EVIDENCE OF PAYMENT OF COAST GUARD FEES

Section 5214 of Pub. L. 102–587 provided that: ''The Secretary of Transportation may not issue a citation for failure to pay a fee or charge established under section 2110 of title 46, United States Code, to an owner or operator of a recreational vessel who provides reasonable evidence of prior payment of the fee or charge to a Coast Guard boarding officer.''

§ 2111. Pay for overtime services

(a) The Secretary may prescribe a reasonable rate of extra pay for overtime services of civilian officers and employees of the Coast Guard required to remain on duty between 5 p.m. and 8 a.m., or on Sundays or holidays, to perform services related to—

(1) the inspection of vessels or their equipment;

(2) the engagement and discharge of crews of vessels;

(3) the measurement of vessels; and

(4) the documentation of vessels.

(b) Except for Sundays and holidays, the overtime rate provided under subsection (a) of this section is one-half day's additional pay for each 2 hours of overtime (or part of 2 hours of at least one hour). The total extra pay may be not more than 2 and one-half days' pay for any one period from 5 p.m. to 8 a.m.

(c) The overtime rate provided under subsection (a) of this section for Sundays and holidays is 2 additional days' pay.

(d) The owner, charterer, managing operator, agent, master, or individual in charge of the vessel shall pay the amount of the overtime pay provided under this section to the official designated by regulation. The official shall deposit the amount paid to the Treasury as miscellaneous receipts. Payment to the officer or employee entitled to the pay shall be made from the annual appropriations for salaries and expenses of the Coast Guard.

(e) The overtime pay provided under this section shall be paid if the authorized officers and employees have been ordered to report for duty and have reported, even if services requested were not performed.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 507.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
2111	46:382b

Section 2111 provides for the payment of overtime rates for work performed by civilian officers and employees of the Coast Guard for certain specified activities.

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.

§ 2112. Authority to change working hours

In a port at which the customary working hours begin before 8 a.m. or end after 5 p.m., the

Secretary may regulate the working hours of the officers and employees referred to in section 2111 of this title so that those hours conform to the prevailing working hours of the port. However—

(1) the total period for which overtime pay may be required under section 2111 of this title may not be more than 15 hours between any 2 periods of ordinary working hours on other than Sundays and holidays;

(2) the length of the working day for the officers and employees involved may not be changed; and

(3) the rate of overtime pay may not be changed.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 508.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
2112	46:382b

Section 2112 provides the Secretary with the authority to regulate the working hours of civilian officers and employees of the Coast Guard to conform with the prevailing working hours of a port.

§ 2113. Authority to exempt certain vessels

If the Secretary decides that the application of a provision of part B, C, F, or G of this subtitle is not necessary in performing the mission of the vessel engaged in excursions or an oceanographic research vessel, or not necessary for the safe operation of certain vessels carrying passengers, the Secretary by regulation may—

(1) for a vessel, issue a special permit specifying the conditions of operation and equipment;

(2) exempt an oceanographic research vessel from that provision under conditions the Secretary may specify;

(3) establish different operating and equipment requirements for vessels defined in section 2101(42)(A) of this title;

(4) establish different structural fire protection, manning, operating, and equipment requirements for vessels of at least 100 gross tons but less than 300 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title carrying not more than 150 passengers on domestic voyages if the owner of the vessel—

(A) makes application for inspection to the Coast Guard within 6 months of the date of enactment of the Passenger Vessel Safety Act of 1993; and

(B) provides satisfactory documentation that the vessel was chartered at least once within the previous 12 months prior to the date of enactment of that Act; and

(5) establish different structural fire protection, manning, operating, and equipment requirements for former public vessels of the United States of at least 100 gross tons but less than 500 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title, carrying not more than 150 passengers on domestic voyages, if the owner of the vessel—

(A) makes application for inspection to the Coast Guard within 6 months of the date of enactment of the Passenger Vessel Safety Act of 1993; and

(B) provides satisfactory documentation that the vessel was chartered at least once within the previous 12 months prior to the date of enactment of that Act.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 508; Pub. L. 103–206, title V, § 511(a), Dec. 20, 1993, 107 Stat. 2441; Pub. L. 104–324, title VII, § 710, Oct. 19, 1996, 110 Stat. 3935.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
2113	46:445 46:453

Section 2113 provides the Secretary with the authority to exempt certain vessels from the inspection and manning requirements of law when vessels are engaged in excursions or oceanographic research. This is the authority of the issuance of excursion permits when special circumstances justify the waiver of certain maritime safety and seamen's welfare laws for a short period of time. It also contains flexible exemption authority for regulation of oceanographic research vessels.

REFERENCES IN TEXT

The date of enactment of the Passenger Vessel Safety Act of 1993, referred to in pars. (4) and (5), is the date of the enactment of Pub. L. 103–206, which was approved Dec. 20, 1993.

AMENDMENTS

1996—Par. (4). Pub. L. 104–324, § 710(1), inserted ''as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' after ''less than 300 gross tons''.

Par. (5). Pub. L. 104–324, § 710(2), inserted ''as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' after ''less than 500 gross tons''.

1993—Pub. L. 103–206 amended section catchline and text generally. Prior to amendment, text read as follows: ''If the Secretary decides that the application of a provision of part B or F of this subtitle is not necessary in performing the mission of a vessel engaged in excursions or an oceanographic research vessel, the Secretary by regulation may—

''(1) for an excursion vessel, issue a special permit specifying the conditions of operation and equipment; and

''(2) exempt the oceanographic research vessel from that provision under conditions the Secretary may specify.''

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.

§ 2114. Protection of seamen against discrimination

(a)(1) A person may not discharge or in any manner discriminate against a seaman because—

(A) the seaman in good faith has reported or is about to report to the Coast Guard or other appropriate Federal agency or department that the seaman believes that a violation of a maritime safety law or regulation prescribed under that law or regulation has occurred; or

(B) the seaman has refused to perform duties ordered by the seaman's employer because the seaman has a reasonable apprehension or expectation that performing such duties would result in serious injury to the seaman, other seamen, or the public.

(2) The circumstances causing a seaman's apprehension of serious injury under paragraph (1)(B) must be of such a nature that a reasonable person, under similar circumstances, would conclude that there is a real danger of an injury or serious impairment of health resulting from the performance of duties as ordered by the seaman's employer.

(3) To qualify for protection against the seaman's employer under paragraph (1)(B), the employee must have sought from the employer, and been unable to obtain, correction of the unsafe condition.

(b) A seaman discharged or otherwise discriminated against in violation of this section may bring an action in an appropriate district court of the United States. In that action, the court may order any appropriate relief, including—

(1) restraining violations of this section;

(2) reinstatement to the seaman's former position with back pay;

(3) an award of costs and reasonable attorney's fees to a prevailing plaintiff not exceeding $1,000; and

(4) an award of costs and reasonable attorney's fees to a prevailing employer not exceeding $1,000 if the court finds that a complaint filed under this section is frivolous or has been brought in bad faith.

(Added Pub. L. 98–557, § 13(a), Oct. 30, 1984, 98 Stat. 2863; amended Pub. L. 107–295, title IV, § 428, Nov. 25, 2002, 116 Stat. 2127.)

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–295, § 428(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''An owner, charterer, managing operator, agent, master, or individual in charge of a vessel may not discharge or in any manner discriminate against a seaman because the seaman in good faith has reported or is about to report to the Coast Guard that the seaman believes that a violation of this subtitle, or a regulation issued under this subtitle, has occurred.''

Subsec. (b)(3), (4). Pub. L. 107–295, § 428(b), added pars. (3) and (4).

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.

§ 2115. Civil penalty to enforce alcohol and dangerous drug testing

Any person who fails to implement or conduct, or who otherwise fails to comply with the requirements prescribed by the Secretary for, chemical testing for dangerous drugs or for evidence of alcohol use, as prescribed under this subtitle or a regulation prescribed by the Secretary to carry out the provisions of this subtitle, is liable to the United States Government for a civil penalty of not more than $5,000 for each violation. Each day of a continuing violation shall constitute a separate violation.

(Added Pub. L. 104–324, title III, § 303(a), Oct. 19, 1996, 110 Stat. 3917; amended Pub. L. 105–383, title III, § 304(b), Nov. 13, 1998, 112 Stat. 3419.)

AMENDMENTS

1998—Pub. L. 105–383 substituted ''$5,000'' for ''$1,000''.

CHAPTER 23—OPERATION OF VESSELS GENERALLY

Sec.
2301. Application.
2302. Penalties for negligent operations and interfering with safe operation.
2303. Duties related to marine casualty assistance and information.
2303a. Post serious marine casualty alcohol testing.
2304. Duty to provide assistance at sea.
2305. Injunctions.
2306. Vessel reporting requirements.
2307. Limitation of liability for Coast Guard Vessel Traffic Service pilots.

HISTORICAL AND REVISION NOTES

Chapter 23 lists requirements that relate to the general operation of all vessels. These include penalties and injunctive relief for negligent operation of a vessel. It also provides penalties for failure to render assistance.

AMENDMENTS

2002—Pub. L. 107–295, title IV, § 431(b), Nov. 25, 2002, 116 Stat. 2128, added item 2307.

1998—Pub. L. 105–383, title III, §§ 302(b), 304(d)(2), Nov. 13, 1998, 112 Stat. 3418, 3420, added item 2302, struck out former item 2302 ''Penalties for negligent operations'', and added item 2303a.

1984—Pub. L. 98–498, title II, § 212(a)(1), Oct. 19, 1984, 98 Stat. 2305, added item 2306.

§ 2301. Application

Except as provided in section 2306 of this title, this chapter applies to a vessel operated on waters subject to the jurisdiction of the United States (including the territorial sea of the United States as described in Presidential Proclamation No. 5928 of December 27, 1988) and, for a vessel owned in the United States, on the high seas.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 508; Pub. L. 98–498, title II, § 212(a)(2), Oct. 19, 1984, 98 Stat. 2305; Pub. L. 105–383, title III, § 301(b)(2), Nov. 13, 1998, 112 Stat. 3417.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
2301	46:480

Section 2301 provides that this chapter is applicable to all vessels, including foreign flag vessels, when oper-

ating on waters subject to the jurisdiction of the United States. Any vessel owned in the United States while operating on the high seas would be included. By ownership the Committee means those vessels that are documented or numbered under United States laws and those other vessels that are neither documented or numbered but are of national origin and are not documented under the laws of a foreign nation. This chapter is applicable to a foreign flag vessel that is in innocent passage through territorial waters of the United States, presently 3 miles seaward, whether or not it is bound to or from a port subject to the jurisdiction of the United States.

REFERENCES IN TEXT

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

AMENDMENTS

1998—Pub. L. 105–383 inserted ''(including the territorial sea of the United States as described in Presidential Proclamation No. 5928 of December 27, 1988)'' after ''of the United States''.

1984—Pub. L. 98–498 substituted ''Except as provided in section 2306 of this title, this chapter'' for ''This chapter''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–498 effective 180 days after Oct. 19, 1984, see section 214 of Pub. L. 98–498, set out as an Effective Date note under section 2306 of this title.

§ 2302. Penalties for negligent operations and interfering with safe operation

(a) A person operating a vessel in a negligent manner or interfering with the safe operation of a vessel, so as to endanger the life, limb, or property of a person is liable to the United States Government for a civil penalty of not more than $5,000 in the case of a recreational vessel, or $25,000 in the case of any other vessel.

(b) A person operating a vessel in a grossly negligent manner that endangers the life, limb, or property of a person commits a class A misdemeanor.

(c) An individual who is under the influence of alcohol, or a dangerous drug in violation of a law of the United States when operating a vessel, as determined under standards prescribed by the Secretary by regulation—

(1) is liable to the United States Government for a civil penalty of not more than $5,000; or

(2) commits a class A misdemeanor.

(d) For a penalty imposed under this section, the vessel also is liable in rem unless the vessel is—

(1) owned by a State or a political subdivision of a State;

(2) operated principally for governmental purposes; and

(3) identified clearly as a vessel of that State or subdivision.

(e)(1) A vessel may not transport Government-impelled cargoes if—

(A) the vessel has been detained and determined to be substandard by the Secretary for violation of an international safety convention to which the United States is a party, and the Secretary has published notice of that detention and determination in an electronic form, including the name of the owner of the vessel; or

(B) the operator of the vessel has on more than one occasion had a vessel detained and determined to be substandard by the Secretary for violation of an international safety convention to which the United States is a party, and the Secretary has published notice of that detention and determination in an electronic form, including the name of the owner of the vessel.

(2) The prohibition in paragraph (1) expires for a vessel on the earlier of—

(A) 1 year after the date of the publication in electronic form on which the prohibition is based; or

(B) any date on which the owner or operator of the vessel prevails in an appeal of the violation of the relevant international convention on which the detention is based.

(3) As used in this subsection, the term ''Government-impelled cargo'' means cargo for which a Federal agency contracts directly for shipping by water or for which (or the freight of which) a Federal agency provides financing, including financing by grant, loan, or loan guarantee, resulting in shipment of the cargo by water.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 508; Pub. L. 98–557, § 7(a), Oct. 30, 1984, 98 Stat. 2862; Pub. L. 101–380, title IV, §§ 4105(b)(2), 4302(a), Aug. 18, 1990, 104 Stat. 513, 537; Pub. L. 102–587, title V, § 5102, Nov. 4, 1992, 106 Stat. 5071; Pub. L. 105–383, title III, §§ 302(a), 304(c), title IV, § 408(a), Nov. 13, 1998, 112 Stat. 3417, 3419, 3430; Pub. L. 107–295, title III, § 325, Nov. 25, 2002, 116 Stat. 2105.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
2302(a)	46:1461(d) 46:1484(b)
2302(b)	46:1461(d) 46:1483
2302(c)	46:1484(b)

Section 2302 states that the negligent operation of a vessel is prohibited. These acts are subject to civil and criminal penalties and the involved vessel is subject to an in rem action. The negligent operation provisions have their genesis in the Act of April 25, 1940, 54 Stat. 167, when Congress prescribed that no person shall operate any motorboat or *any vessel* in a reckless or negligent manner. This provision was directed at all vessels and not those solely engaged in recreational boating. When the Federal Boat Safety Act of 1971, P.L. 92–75, 85 Stat. 217 (46 U.S.C. 1461) was enacted it adopted the reckless or negligent operation provisions of the 1940 Act. It adopted for the first time a provision for assessing civil penalties in addition to criminal penalties. It dropped the word ''reckless'' because of redundancy. It also combined the two classes of vessels; ''any motorboat or any vessel'' into one class by using the word ''vessel'' and defined vessel as including every description of watercraft.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–295 substituted ''$5,000 in the case of a recreational vessel, or $25,000 in the case of any other vessel'' for ''$1,000''

1998—Pub. L. 105–383, § 302(a)(1), substituted ''Penalties for negligent operations and interfering with safe operation'' for ''Penalties for negligent operations'' in section catchline.

Subsec. (a). Pub. L. 105–383, § 302(a)(2), substituted ''or interfering with the safe operation of a vessel, so as to endanger'' for ''that endangers''.

Subsec. (c)(1). Pub. L. 105–383, § 304(c), substituted ''$5,000; or'' for ''$1,000 for a first violation and not more than $5,000 for a subsequent violation; or''.

Subsec. (e). Pub. L. 105–383, § 408(a), added subsec. (e).

1992—Subsec. (c)(1). Pub. L. 102–587 substituted ''$1,000 for a first violation and not more than $5,000 for a subsequent violation'' for ''$1,000''.

1990—Subsec. (b). Pub. L. 101–380, § 4302(a)(1), substituted ''commits a class A misdemeanor'' for ''shall be fined not more than $5,000, imprisoned for not more than one year, or both''.

Subsec. (c). Pub. L. 101–380, §§ 4105(b)(2), 4302(a)(2)(A), substituted ''under the influence of alcohol, or a dangerous drug in violation of a law of the United States'' for ''intoxicated'' and struck out '', shall be'' after ''by the Secretary by regulation''.

Subsec. (c)(1). Pub. L. 101–380, § 4302(a)(2)(B), substituted ''is liable'' for ''liable''.

Subsec. (c)(2). Pub. L. 101–380, § 4302(a)(2)(C), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''fined not more than $5,000, imprisoned for not more than one year, or both.''

1984—Subsecs. (c), (d). Pub. L. 98–557 added subsec. (c) and redesignated former subsec. (c) as (d).

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–383, title IV, § 408(b), Nov. 13, 1998, 112 Stat. 3431, provided that: ''The amendment made by subsection (a) [amending this section] takes effect January 1, 1999.''

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 Title 33, Navigation and Navigable Waters.

§ 2303. Duties related to marine casualty assistance and information

(a) The master or individual in charge of a vessel involved in a marine casualty shall—

(1) render necessary assistance to each individual affected to save that affected individual from danger caused by the marine casualty, so far as the master or individual in charge can do so without serious danger to the master's or individual's vessel or to individuals on board; and

(2) give the master's or individual's name and address and identification of the vessel to the master or individual in charge of any other vessel involved in the casualty, to any individual injured, and to the owner of any property damaged.

(b) An individual violating this section or a regulation prescribed under this section shall be fined not more than $1,000 or imprisoned for not more than 2 years. The vessel also is liable in rem to the United States Government for the fine.

(c) An individual complying with subsection (a) of this section or gratuitously and in good faith rendering assistance at the scene of a marine casualty without objection by an individual assisted, is not liable for damages as a result of rendering assistance or for an act or omission in providing or arranging salvage, towage, medical treatment, or other assistance when the individual acts as an ordinary, reasonable, and prudent individual would have acted under the circumstances.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 509.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
2303(a)	33:367 46:1465(a)

HISTORICAL AND REVISION NOTES—CONTINUED

Revised section	*Source section (U.S. Code)*
2303(b)	33:368
2303(c)	46:1465(b)

Section 2303 requires a master or anyone in charge of a vessel to provide assistance and render aid to those involved in a marine casualty and to exchange information in a manner similar to automobile accident cases. It also includes a ''Good Samaritan'' clause that exonerates anyone from liability when rendering assistance in an ordinary, reasonable, or prudent manner.

§ 2303a. Post serious marine casualty alcohol testing

(a) The Secretary shall establish procedures to ensure that after a serious marine casualty occurs, alcohol testing of crew members or other persons responsible for the operation or other safety-sensitive functions of the vessel or vessels involved in such casualty is conducted no later than 2 hours after the casualty occurs, unless such testing cannot be completed within that time due to safety concerns directly related to the casualty.

(b) The procedures in subsection (a) shall require that if alcohol testing cannot be completed within 2 hours of the occurrence of the casualty, such testing shall be conducted as soon thereafter as the safety concerns in subsection (a) have been adequately addressed to permit such testing, except that such testing may not be required more than 8 hours after the casualty occurs.

(Added Pub. L. 105–383, title III, § 304(d)(1), Nov. 13, 1998, 112 Stat. 3419.)

§ 2304. Duty to provide assistance at sea

(a) A master or individual in charge of a vessel shall render assistance to any individual found at sea in danger of being lost, so far as the master or individual in charge can do so without serious danger to the master's or individual's vessel or individuals on board.

(b) A master or individual violating this section shall be fined not more than $1,000, imprisoned for not more than 2 years, or both.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 509.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
2304	46:728

Section 2304 requires a master or individual in charge of a vessel to render assistance to those in danger at sea if able to do so without seriously endangering the vessel or crew.

§ 2305. Injunctions

(a) The district courts of the United States have jurisdiction to enjoin the negligent operation of vessels prohibited by this chapter on the petition of the Attorney General for the United States Government.

(b) When practicable, the Secretary shall—

(1) give notice to any person against whom an action for injunctive relief is considered under this section an opportunity to present that person's views; and

(2) except for a knowing and willful violation, give the person a reasonable opportunity to achieve compliance.

(c) The failure to give notice and opportunity to present views under subsection (b) of this section does not preclude the court from granting appropriate relief.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 509.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
2305	46:1485

Section 2305 provides injunctive authority to enjoin the negligent operation of vessels. This authority can also be used to enjoin the operation of foreign or domestic vessels on our waters when they are unsuitable for the voyage intended.

§ 2306. Vessel reporting requirements

(a)(1) An owner, charterer, managing operator, or agent of a vessel of the United States, having reason to believe (because of lack of communication with or nonappearance of a vessel or any other incident) that the vessel may have been lost or imperiled, immediately shall—

(A) notify the Coast Guard; and

(B) use all available means to determine the status of the vessel.

(2) When more than 48 hours have passed since the owner, charterer, managing operator, or agent of a vessel required to report to the United States Flag Merchant Vessel Location Filing System under authority of section 212(A) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1122a), has received a communication from the vessel, the owner, charterer, managing operator, or agent immediately shall—

(A) notify the Coast Guard; and

(B) use all available means to determine the status of the vessel.

(3) A person notifying the Coast Guard under paragraph (1) or (2) of this subsection shall provide the name and identification number of the vessel, the names of individuals on board, and other information that may be requested by the Coast Guard. The owner, charterer, managing operator, or agent also shall submit written confirmation to the Coast Guard within 24 hours after nonwritten notification to the Coast Guard under those paragraphs.

(4) An owner, charterer, managing operator, or agent violating this subsection is liable to the United States Government for a civil penalty of not more than $5,000 for each day during which the violation occurs.

(b)(1) The master of a vessel of the United States required to report to the System shall report to the owner, charterer, managing operator, or agent at least once every 48 hours.

(2) A master violating this subsection is liable to the Government for a civil penalty of not more than $1,000 for each day during which the violation occurs.

(c) The Secretary may prescribe regulations to carry out this section.

(Added Pub. L. 98–498, title II, § 212(a)(3), Oct. 19, 1984, 98 Stat. 2305.)

EFFECTIVE DATE

Section 214 of Pub. L. 98–498 provided that: ''Sections 211(a) and 212 of this subtitle [enacting this section and amending sections 2302, 3309, 6101, and 6103 of this title] are effective one hundred and eighty days after the date of enactment of this Act [Oct. 19, 1984].''

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.

§ 2307. Limitation of liability for Coast Guard Vessel Traffic Service pilots

Any pilot, acting in the course and scope of his or her duties while at a United States Coast Guard Vessel Traffic Service, who provides information, advice, or communication assistance while under the supervision of a Coast Guard officer, member, or employee shall not be liable for damages caused by or related to such assistance unless the acts or omissions of such pilot constitute gross negligence or willful misconduct.

(Added Pub. L. 107–295, title IV, § 431(a), Nov. 25, 2002, 116 Stat. 2128.)

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.

PART B—INSPECTION AND REGULATION OF VESSELS

HISTORICAL AND REVISION NOTES

Part B provides authority and responsibility for the inspection and regulation of vessels by the Coast Guard. This part specifies those vessels subject to inspection, those that are specifically exempt from inspection, and related inspection requirements and procedures. Due to the need for special requirements for the inspection and regulation of passenger vessels and those vessels carrying liquid bulk dangerous cargoes separate chapters have been developed. Additional chapters provide for recreational vessels and those other vessels that are regulated but are not subject to inspection and certification by the Coast Guard. It should also be noted that the United States is signatory to a number of international treaties on maritime safety and seamen's welfare, such as the various Safety of Life at Sea (SOLAS) treaties, and that their provisions and requirements are part of United States maritime law and in many cases are quite extensive.

CHAPTER 31—GENERAL

Sec.
3101. Authority to suspend inspection.
3102. Immersion suits.
3103. Use of reports, documents, and records.

AMENDMENTS

1996—Pub. L. 104–324, title VI, § 603(b), Oct. 19, 1996, 110 Stat. 3930, added item 3103.

1988—Pub. L. 100–424, § 8(a)(3), Sept. 9, 1988, 102 Stat. 1593, substituted ''Immersion'' for ''Exposure'' in item 3102.

1985—Pub. L. 99–36, § 2, May 15, 1985, 99 Stat. 68, repealed section 22 of Pub. L. 98–557 and the amendments made by that section, which added first identical item 3102, effective Nov. 8, 1984, thereby leaving Pub. L. 98–623 as the sole authority for the addition of item 3102. See 1984 Amendment note below.

1984—Pub. L. 98–557, § 22(a)(2), Oct. 30, 1984, 98 Stat. 2871, and Pub. L. 98–623, title VII, § 701(a)(2), Nov. 8, 1984, 98 Stat. 3413, added identical item 3102. See 1985 Amendment note above.

§ 3101. Authority to suspend inspection

When the President decides that the needs of foreign commerce require, the President may suspend a provision of this part for a foreign-built vessel registered as a vessel of the United States on conditions the President may specify.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 510.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
3101	46:82

Section 3101 provides the President with the authority to suspend the inspection laws for a foreign-built reflagged U.S. vessel when the needs of foreign commerce require this. For example, if a foreign-flag vessel is reflagged in the U.S. but does not meet the specific Coast Guard inspection requirements, the President could suspend these requirements.

EFFECTIVE DATE

Section 2(g)(1) of Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 599, provided that: ''Part B [chapters 31 to 43] of subtitle II and sections 7306 (related to able seaman sail) and 7311 of title 46 (as enacted by section 1 of this Act) take effect April 15, 1984, or when regulations for sailing school vessels under part B are effective, whichever is earlier.'' [Part B of subtitle II and sections 7306 (related to able seaman sail) and 7311 of title 46 effective Apr. 15, 1984, in absence of regulations for sailing school vessels under part B on that date.]

DELEGATION OF FUNCTIONS

For delegation to Secretary of the Treasury of authority vested in President by this section, see Ex. Ord. No. 10289, Sept. 17, 1951, 16 F.R. 9499, as amended, set out as a note under section 301 of Title 3, The President.

§ 3102. Immersion suits

(a) The Secretary shall by regulation require immersion suits on vessels designated by the Secretary that operate in the Atlantic Ocean north of 32 degrees North latitude or south of 32 degrees South latitude and in all other waters north of 35 degrees North latitude or south of 35 degrees South latitude. The Secretary may not exclude a vessel from designation under this section only because that vessel carries other life-saving equipment.

(b) The Secretary shall establish standards for an immersion suit required by this section, including standards to guarantee adequate thermal protection, buoyance, and flotation stability.

(c)(1) The owner, charterer, managing operator, agent, master, or individual in charge of a vessel violating this section or a regulation prescribed under this section is liable to the United States Government for a civil penalty of not more than $5,000. The vessel also is liable in rem for the penalty.

(2) The owner, charterer, managing operator, agent, master, or individual in charge of a vessel violating this section or a regulation prescribed under this section may be fined not more than $25,000, imprisoned for not more than 5 years, or both.

(Added Pub. L. 98–557, § 22(a)(1), Oct. 30, 1984, 98 Stat. 2871; amended Pub. L. 98–623, title VII, § 701(a)(1), Nov. 8, 1984, 98 Stat. 3413; Pub. L. 99–36, § 2, May 15, 1985, 99 Stat. 68; Pub. L. 100–424, § 8(a)(1), (2), Sept. 9, 1988, 102 Stat. 1592, 1593.)

CODIFICATION

Pub. L. 98–557 and Pub. L. 98–623 enacted identical section 3102 of this title. Section 22 of Pub. L. 98–557, which enacted first identical section 3102 of this title, was repealed by section 2 of Pub. L. 99–36, set out below as a Repeal of Duplicate Section note.

AMENDMENTS

1988—Pub. L. 100–424 substituted ''Immersion'' for ''Exposure'' in section catchline, and ''immersion'' for ''exposure'' in subsecs. (a) and (b).

REPEAL OF DUPLICATE SECTION 3102; REFERENCES THERETO AND REGULATIONS AND ACTIONS THEREUNDER

Section 2 of Pub. L. 99–36 provided that: ''Section 22 of the Coast Guard Authorization Act of 1984 (Public Law 98–557; 98 Stat. 2871), and the amendments made by such section [enacting first identical section 3102 of this title and provisions set out as a note under this section and amending the analysis of chapter 31 of this title], are repealed as of November 8, 1984. Regulations prescribed and actions taken under, and references to, such section and the amendments made by such section are deemed to be regulations prescribed and actions taken under, and references to, section 701 of the Act of November 8, 1984 (Public Law 98–623; 98 Stat. 3413), and the amendments made by such section 701 [enacting second identical section 3102 of this title and provisions set out as a note under this section and amending the analysis of chapter 31 of this title].''

REGULATIONS

Section 701(b), (c) of title VII of Pub. L. 98–623 provided:

''(b) Section 3102 of title 46, United States Code (as added by subsection (a) of this section), does not limit the authority of the Secretary of the department in which the Coast Guard is operating to prescribe regulations requiring exposure suits on vessels not required by section 3102 to have exposure suits.

''(c) The regulations prescribed under section 3102 of title 46, United States Code (as added by subsection (a) of this section), shall be effective not later than 60 days after the date of enactment of this title [Nov. 8, 1984].'' [Regulations effective Dec. 30, 1984, see 49 F.R. 50722, Dec. 31, 1984.]

[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.]

Similar provisions were contained in section 22(b), (c) of Pub. L. 98–557, which was repealed by section 2 of Pub. L. 99–36, set out above as a Repeal of Duplicate Section note.

§ 3103. Use of reports, documents, and records

The Secretary may rely, as evidence of compliance with this subtitle, on—

(1) reports, documents, and records of other persons who have been determined by the Secretary to be reliable; and

(2) other methods the Secretary has determined to be reliable.

(Added Pub. L. 104–324, title VI, § 603(a), Oct. 19, 1996, 110 Stat. 3930.)

CHAPTER 32—MANAGEMENT OF VESSELS

Sec.
3201. Definitions.
3202. Application.
3203. Safety management system.
3204. Implementation of safety management system.
3205. Certification.

§ 3201. Definitions

In this chapter—

(1) ''International Safety Management Code'' has the same meaning given that term in chapter IX of the Annex to the International Convention for the Safety of Life at Sea, 1974;

(2) ''responsible person'' means—

(A) the owner of a vessel to which this chapter applies; or

(B) any other person that has—

(i) assumed the responsibility for operation of a vessel to which this chapter applies from the owner; and

(ii) agreed to assume with respect to the vessel responsibility for complying with all the requirements of this chapter and the regulations prescribed under this chapter.

(3) ''vessel engaged on a foreign voyage'' means a vessel to which this chapter applies—

(A) arriving at a place under the jurisdiction of the United States from a place in a foreign country;

(B) making a voyage between places outside the United States; or

(C) departing from a place under the jurisdiction of the United States for a place in a foreign country.

(Added Pub. L. 104–324, title VI, § 602(a), Oct. 19, 1996, 110 Stat. 3928.)

SAFETY MANAGEMENT CODE REPORT AND POLICY

Pub. L. 105–383, title III, § 306, Nov. 13, 1998, 112 Stat. 3420, provided that:

''(a) REPORT ON IMPLEMENTATION AND ENFORCEMENT OF THE INTERNATIONAL SAFETY MANAGEMENT CODE.—

''(1) The Secretary of Transportation (in this section referred to as the 'Secretary') shall conduct a study—

''(A) reporting on the status of implementation of the International Safety Management Code (hereafter referred to in this section as 'Code');

''(B) detailing enforcement actions involving the Code, including the role documents and reports produced pursuant to the Code play in such enforcement actions;

''(C) evaluating the effects the Code has had on marine safety and environmental protection, and identifying actions to further promote marine safety and environmental protection through the Code;

''(D) identifying actions to achieve full compliance with and effective implementation of the Code; and

''(E) evaluating the effectiveness of internal reporting and auditing under the Code, and recommending actions to ensure the accuracy and candidness of such reporting and auditing.

These recommended actions may include proposed limits on the use in legal proceedings of documents produced pursuant to the Code.

''(2) The Secretary shall provide opportunity for the public to participate in and comment on the study conducted under paragraph (1).

''(3) Not later than 18 months after the date of the enactment of this Act [Nov. 13, 1998], the Secretary shall submit to the Congress a report on the results of the study conducted under paragraph (1).

''(b) POLICY.—

''(1) Not later than 9 months after submission of the report in subsection (a)(3), the Secretary shall develop a policy to achieve full compliance with and effective implementation of the Code. The policy may include—

''(A) enforcement penalty reductions and waivers, limits on the use in legal proceedings of documents produced pursuant to the Code, or other incentives to ensure accurate and candid reporting and auditing;

''(B) any other measures to achieve full compliance with and effective implementation of the Code; and

''(C) if appropriate, recommendations to Congress for any legislation necessary to implement one or more elements of the policy.

''(2) The Secretary shall provide opportunity for the public to participate in the development of the policy in paragraph (1).

''(3) Upon completion of the policy in paragraph (1), the Secretary shall publish the policy in the Federal Register and provide opportunity for public comment on the policy.''

VESSEL MANAGEMENT METHODS STUDY

Section 602(c) of Pub. L. 104–324 provided that:

''(1) IN GENERAL.—The Secretary of the department in which the Coast Guard is operating shall conduct, in cooperation with the owners, charterers, and managing operators of vessels documented under chapter 121 of title 46, United States Code, and other interested persons, a study of the methods that may be used to implement and enforce the International Management Code for the Safe Operation of Ships and for Pollution Prevention under chapter IX of the Annex to the International Convention for the Safety of Life at Sea, 1974.

''(2) REPORT.—The Secretary shall submit to the Congress a report of the results of the study required under paragraph (1) before the earlier of—

''(A) the date that final regulations are prescribed under section 3203 of title 46, United States Code (as enacted by subsection (a)[)]; or

''(B) the date that is 1 year after the date of enactment of this Act [Oct. 19, 1996].''

INTERNATIONAL CONVENTION FOR SAFETY OF LIFE AT SEA

For International Conventions for the Safety of Life at Sea to which the United States has been a party, see section 1602 of Title 33, Navigation and Navigable Waters, and notes thereunder.

§ 3202. Application

(a) MANDATORY APPLICATION.—This chapter applies to a vessel that—

(1)(A) is transporting more than 12 passengers described in section 2101(21)(A) of this title; or

(B) is of at least 500 gross tons as measured under section 14302 of this title and is a tank-

er, freight vessel, bulk freight vessel, high speed freight vessel, or self-propelled mobile offshore drilling unit; and

(2)(A) is engaged on a foreign voyage; or

(B) is a foreign vessel departing from a place under the jurisdiction of the United States on a voyage, any part of which is on the high seas.

(b) VOLUNTARY APPLICATION.—This chapter applies to a vessel not described in subsection (a) of this section if the owner of the vessel requests the Secretary to apply this chapter to the vessel.

(c) EXCEPTION.—Except as provided in subsection (b) of this section, this chapter does not apply to—

(1) a barge;

(2) a recreational vessel not engaged in commercial service;

(3) a fishing vessel;

(4) a vessel operating on the Great Lakes or its tributary and connecting waters; or

(5) a public vessel.

(Added Pub. L. 104–324, title VI, § 602(a), Oct. 19, 1996, 110 Stat. 3928; amended Pub. L. 108–293, title IV, § 405(a), Aug. 9, 2004, 118 Stat. 1043.)

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–293 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''This chapter applies to the following vessels engaged on a foreign voyage:

''(1) Beginning July 1, 1998—

''(A) a vessel transporting more than 12 passengers described in section 2101(21)(A) of this title; and

''(B) a tanker, bulk freight vessel, or high-speed freight vessel, of at least 500 gross tons.

''(2) Beginning July 1, 2002, a freight vessel and a self-propelled mobile offshore drilling unit of at least 500 gross tons.''

§ 3203. Safety management system

(a) IN GENERAL.—The Secretary shall prescribe regulations which establish a safety management system for responsible persons and vessels to which this chapter applies, including—

(1) a safety and environmental protection policy;

(2) instructions and procedures to ensure safe operation of those vessels and protection of the environment in compliance with international and United States law;

(3) defined levels of authority and lines of communications between, and among, personnel on shore and on the vessel;

(4) procedures for reporting accidents and nonconformities with this chapter;

(5) procedures for preparing for and responding to emergency situations; and

(6) procedures for internal audits and management reviews of the system.

(b) COMPLIANCE WITH CODE.—Regulations prescribed under this section shall be consistent with the International Safety Management Code with respect to vessels to which this chapter applies under section 3202(a) of this title.

(Added Pub. L. 104–324, title VI, § 602(a), Oct. 19, 1996, 110 Stat. 3928; amended Pub. L. 108–293, title IV, § 405(b), Aug. 9, 2004, 118 Stat. 1043.)

AMENDMENTS

2004—Subsec. (b). Pub. L. 108–293 substituted ''vessels to which this chapter applies under section 3202(a) of this title'' for ''vessels engaged on a foreign voyage''.

§ 3204. Implementation of safety management system

(a) SAFETY MANAGEMENT PLAN.—Each responsible person shall establish and submit to the Secretary for approval a safety management plan describing how that person and vessels of the person to which this chapter applies will comply with the regulations prescribed under section 3203(a) of this title.

(b) APPROVAL.—Upon receipt of a safety management plan submitted under subsection (a), the Secretary shall review the plan and approve it if the Secretary determines that it is consistent with and will assist in implementing the safety management system established under section 3203.

(c) PROHIBITION ON VESSEL OPERATION.—A vessel to which this chapter applies under section 3202(a) may not be operated without having on board a Safety Management Certificate and a copy of a Document of Compliance issued for the vessel under section 3205 of this title.

(Added Pub. L. 104–324, title VI, § 602(a), Oct. 19, 1996, 110 Stat. 3929.)

§ 3205. Certification

(a) ISSUANCE OF CERTIFICATE AND DOCUMENT.—After verifying that the responsible person for a vessel to which this chapter applies and the vessel comply with the applicable requirements under this chapter, the Secretary shall issue for the vessel, on request of the responsible person, a Safety Management Certificate and a Document of Compliance.

(b) MAINTENANCE OF CERTIFICATE AND DOCUMENT.—A Safety Management Certificate and a Document of Compliance issued for a vessel under this section shall be maintained by the responsible person for the vessel as required by the Secretary.

(c) VERIFICATION OF COMPLIANCE.—The Secretary shall—

(1) periodically review whether a responsible person having a safety management plan approved under section 3204(b) and each vessel to which the plan applies is complying with the plan; and

(2) revoke the Secretary's approval of the plan and each Safety Management Certificate and Document of Compliance issued to the person for a vessel to which the plan applies, if the Secretary determines that the person or a vessel to which the plan applies has not complied with the plan.

(d) ENFORCEMENT.—At the request of the Secretary, the Secretary of the Treasury shall withhold or revoke the clearance required by section 4197 of the Revised Statutes (46 U.S.C. App. 91) of a vessel that is subject to this chapter under section 3202(a) of this title or to the International Safety Management Code, if the vessel does not have on board a Safety Management Certificate and a copy of a Document of Compliance for the vessel. Clearance may be granted on

filing a bond or other surety satisfactory to the Secretary.

(Added Pub. L. 104–324, title VI, § 602(a), Oct. 19, 1996, 110 Stat. 3929.)

CHAPTER 33—INSPECTION GENERALLY

Sec.
3301. Vessels subject to inspection.
3302. Exemptions.
3303. Reciprocity for foreign vessels.
3304. Transporting individuals in addition to crew.
3305. Scope and standards of inspection.
3306. Regulations.
3307. Frequency of inspection.
3308. Examinations.
3309. Certificate of inspection.
3310. Records of certification.
3311. Certificate of inspection required.
3312. Display of certificate of inspection.
3313. Compliance with certificate of inspection.
3314. Expiration of certificate of inspection.
3315. Disclosure of defects and protection of informants.
3316. Classification societies.
3317. Fees.
3318. Penalties.

HISTORICAL AND REVISION NOTES

Chapter 33 consolidates the laws governing the inspection and certification of vessels by the Coast Guard that have developed over a period in excess of 140 years. The original laws were directed to the safety of the relatively new and potentially dangerous steam vessel. The demand for Federal remedial legislation began during the early 1800's after frequent and disastrous explosions of steam boilers on passenger vessels. This directly led to the first maritime safety laws in 1838 that required periodic inspection and certification of vessels engaged in the transportation of passengers and freight on the waters of the United States. This was followed by a more extensive steamboat inspection law in 1852 which adopted for the first time the principle of licensing for river pilots and engineers. It also created a new Federal maritime safety inspection service called the Federal Inspection Service that eventually became the Bureau of Marine Inspection and Navigation, whose duties were temporarily assumed in 1941 and permanently assumed in 1946 by the United States Coast Guard.

In 1864 the principal inspection and licensing provisions of the 1852 act were made applicable to ferries, towing vessels, and canal boats. However, steamboat explosions continued with high loss of life and property. One of the greatest of all disasters, the destruction of the passenger vessel *Sultana* by explosion and fire with a loss of life estimated at more than 1500 lives in April 1865, led to renewed legislation efforts. In 1871 this culminated with legislation that combined a number of new requirements into a coherent and unified body of maritime safety laws. At the time of the adoption of the Revised Statutes in 1874, a maritime safety code was well established for vessels propelled in whole or in part by steam.

In the more than 100 years since then, as the public recognized the need for vessel safety legislation, primarily as the result of maritime disasters, other classes of vessels were subjected to Federal inspection or regulatory control. These included vessels propelled by gas, fluid, naphtha, or electric motors in 1897; sail vessels and barges carrying passengers for hire in 1898; seagoing barges in 1908; motorboats in 1910; steam vessels owned by the Department of Commerce in 1919; seagoing vessels of 300 gross tons and over on June 20, 1936; all tank vessels carrying flammable or combustible liquid cargo in bulk regardless of size or means of propulsion of June 23, 1936; motorboats again in 1940; all vessels carrying more than six passengers in 1956; tank vessels again in 1978; and offshore supply vessels in 1980. There was also considerable legislation that amended or supplemented these primary maritime safety laws.

The net result has been a patchwork quilt of categories and classifications that requires a tabulation of more than seventy different classes of inspected vessels. This revision gathers into one section of the law all classes of vessels that are subject to inspection and certification without changing the application of present law as to any one class of vessel. The revision does not alter the application of the present law so as to expand inspection requirements to any vessel presently not subject to inspection nor to remove from inspection any vessel that is presently subject to inspection.

AMENDMENTS

1996—Pub. L. 104–324, title VI, § 607(b)(2), Oct. 19, 1996, 110 Stat. 3932, substituted ''Classification societies'' for ''United States classification societies'' in item 3316.

1986—Pub. L. 99–307, § 1(5)(B), May 19, 1986, 100 Stat. 445, substituted ''Transporting'' for ''Carrying'' in item 3304.

§ 3301. Vessels subject to inspection

The following categories of vessels are subject to inspection under this part:

(1) freight vessels.
(2) nautical school vessels.
(3) offshore supply vessels.
(4) passenger vessels.
(5) sailing school vessels.
(6) seagoing barges.
(7) seagoing motor vessels.
(8) small passenger vessels.
(9) steam vessels.
(10) tank vessels.
(11) fish processing vessels.
(12) fish tender vessels.
(13) Great Lakes barges.
(14) oil spill response vessels.
(15) towing vessels.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 510; Pub. L. 98–364, title IV, § 402(2), July 17, 1984, 98 Stat. 445; Pub. L. 102–587, title V, § 5208(b), Nov. 4, 1992, 106 Stat. 5076; Pub. L. 104–324, title XI, § 1104(g), Oct. 19, 1996, 110 Stat. 3967; Pub. L. 108–293, title IV, § 415(a), Aug. 9, 2004, 118 Stat. 1047.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
3301(1)	46:391
	46:404
3301(2)	46:1295f(c)
3301(3)	46:404–1
3301(4)	46:390a
	46:391
3301(5)	46:390a
3301(6)	46:395
3301(7)	46:367
3301(8)	46:390a
3301(9)	46:362
	46:391
	46:405
3301(10)	46:391a

Section 3301 lists all classes of vessels that are subject to inspection and certification by the Coast Guard. This section represents one of the sought-after advantages of the bill to simplify access to the provisions of law governing the regulation of vessels. Under the present law, a vessel's inspection status must be determined by examining a table appearing at section 2.01–7A of title 46, Code of Federal Regulations that divides all vessels into more than 70 separate classes.

It is important to note that while the classes of vessels are now limited to ten, there is no prohibition against developing regulations to meet the special needs of various size vessels within any one category. For example, it is expected that the Coast Guard will continue the practice of establishing standards for

freight vessels of not more than 100 gross tons and other standards for larger freight vessels.

It should also be noted that a particular vessel can, when engaged in various types of operations, be subject to varying inspection laws. For example, an offshore supply vessel could be classed as a small passenger vessel or a passenger vessel when it operates as a crew boat carrying individuals other than those defined in section 2101(21). If the offshore supply vessel is 500 gross tons and over it would then be subject to inspection as a seagoing motor vessel, a freight vessel, or a passenger vessel.

AMENDMENTS

2004—Par. (15). Pub. L. 108–293 added par. (15).
1996—Par. (14). Pub. L. 104–324 added par. (14).
1992—Par. (13). Pub. L. 102–587 added par. (13).
1984—Pars. (11), (12). Pub. L. 98–364 added pars. (11) and (12).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–587 effective Nov. 4, 1992, for Great Lakes barges placed in operation after Nov. 4, 1992, and effective one year after Nov. 4, 1992, for Great Lakes barges in operation on Nov. 4, 1992, with provision for interim safety requirements, see section 5208(c), (d) of Pub. L. 102–587, set out as a note under section 2101 of this title.

EFFECTIVE DATE

Chapter effective Apr. 15, 1984, see section 2(g)(1) of Pub. L. 98–89, set out as a note under section 3101 of this title.

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98–498, title II, § 210, Oct. 19, 1984, 98 Stat. 2303, provided that: ''This subtitle [subtitle A (§§ 210–214) of title II of Pub. L. 98–498, enacting section 2306 of this title, amending sections 2301, 3309, 3311, 3318, 6101, and 6103 of this title and section 183 of the Appendix to this title, and enacting provisions set out as notes under section 2306 of this title and section 183 of the Appendix to this title] may be cited as the 'Maritime Safety Act of 1984'.''

PILOT PROGRAM

Pub. L. 105–383, title IV, § 412(b), Nov. 13, 1998, 112 Stat. 3432, provided that:

''(1) IN GENERAL.—The Secretary may establish a pilot program to exempt a vessel of at least 300 gross tons as measured under chapter 143 or chapter 145 of title 46, United States Code, from the requirement to be inspected under section 3301(7) of title 46, United States Code, as a seagoing motor vessel, if—

''(A) the vessel does not carry any cargo or passengers for hire;

''(B) the vessel does not engage in commercial service, commercial fisheries, or oceanographic research; and

''(C) the vessel does not engage in towing.

''(2) EXPIRATION OF AUTHORITY.—The authority to grant the exemptions under this subsection expires 2 years after the date of the enactment of this Act [Nov. 13, 1998]. Any specific exemptions granted under this subsection shall nonetheless remain in effect.''

SMALL PASSENGER VESSEL PILOT INSPECTION PROGRAM WITH STATE OF MINNESOTA

Section 1122 of Pub. L. 104–324 provided that:

''(a) IN GENERAL.—The Secretary may enter into an agreement with the State under which the State may inspect small passenger vessels operating in waters of that State designated by the Secretary, if—

''(1) the State plan for the inspection of small passenger vessels meets such requirements as the Secretary may require to ensure the safety and operation of such vessels in accordance with the standards that would apply if the Coast Guard were inspecting such vessels; and

''(2) the State will provide such information obtained through the inspection program to the Secretary annually in such form and in such detail as the Secretary may require.

''(b) FEES.—The Secretary may adjust or waive the user fee imposed under section 3317 of title 46, United States Code, for the inspection of small passenger vessels inspected under the State program.

''(c) TERMINATION.—The authority provided by subsection (a) terminates on December 31, 1999.

''(d) DEFINITIONS.—For purposes of this section—

''(1) SECRETARY.—The term 'Secretary' means the Secretary of the department in which the Coast Guard is operating.

''(2) STATE.—The term 'State' means the State of Minnesota.

''(3) SMALL PASSENGER VESSEL.—The term 'small passenger vessel' means a small passenger vessel (as defined in section 2101(35) of title 46, United States Code) of not more than 40 feet overall in length.''

[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.]

§ 3302. Exemptions

(a) A vessel is not excluded from one category only because the vessel is—

(1) included in another category of section 3301 of this title; or

(2) excluded by this section from another category of section 3301 of this title.

(b) Except as provided in subsection (c)(3) of this section, a fishing vessel[1] including a vessel chartered part-time as a fish tender vessel, is exempt from section 3301(1), (7), (11), and (12) of this title.

(c)(1) Except as provided in paragraph (3) of this subsection, a fish processing vessel of not more than 5,000 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title is exempt from section 3301(1), (6), (7), (11), and (12) of this title.

(2) Except as provided in paragraphs (3) and (4) of this subsection, a fish tender vessel of not more than 500 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title is exempt from section 3301(1), (6), (7), (11), and (12) of this title.

(3)(A) A fishing vessel or fish processing vessel is exempt from section 3301(1), (6), and (7) of this title when transporting cargo (including fisheries-related cargo) to or from a place in Alaska if—

(i) that place does not receive weekly common carrier service by water from a place in the United States;

(ii) that place receives such common carrier service and the cargo is of a type not accepted by that common carrier service; or

(iii) the cargo is proprietary cargo owned by the owner of the vessel or any affiliated entity or subsidiary.

[1] So in original. Probably should be followed by a comma.

(B) A fish tender vessel of not more than 500 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title, which is qualified to engage in the Aleutian trade is exempt from section 3301(1), (6), and (7) of this title when transporting cargo (including fisheries-related cargo) to or from a place in Alaska outside the Aleutian trade geographic area if—

(i) that place does not receive weekly common carrier service by water from a place in the United States;

(ii) that place receives such common carrier service and the cargo is of a type not accepted by that common carrier service; or

(iii) the cargo is proprietary cargo owned by the owner of the vessel or any affiliated entity or subsidiary.

(C) In this paragraph, the term ''proprietary cargo'' means cargo that—

(i) is used by the owner of the vessel or any affiliated entity or subsidiary in activities directly related to fishing or the processing of fish;

(ii) is consumed by employees of the owner of the vessel or any affiliated entity or subsidiary who are engaged in fishing or in the processing of fish; or

(iii) consists of fish or fish products harvested or processed by the owner of the vessel or any affiliated entity or subsidiary.

(D) Notwithstanding the restrictions in subparagraph (B) of this paragraph, vessels qualifying under subparagraph (B) may transport cargo (including fishery-related products) from a place in Alaska receiving weekly common carrier service by water to a final destination in Alaska not receiving weekly service by water from common carriers.

(4) A fish tender vessel is exempt from section 3301(1), (6), and (7) of this title when engaged in the Aleutian trade if the vessel—

(A) is not more than 500 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title;

(B) has an incline test performed by a marine surveyor; and

(C) has written stability instructions posted on board the vessel.

(d)(1) A motor vessel of less than 150 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title, constructed before August 23, 1958, is not subject to inspection under section 3301(1) of this title if the vessel is owned or demise chartered to a cooperative or association that only transports cargo owned by at least one of its members on a nonprofit basis between places within the waters of—

(A) southeastern Alaska shoreward of the Boundary Line; or

(B) southeastern Alaska shoreward of the Boundary Line and—

(i) Prince Rupert, British Columbia; or

(ii) waters of Washington shoreward of the Boundary Line, via sheltered waters, as defined in article I of the treaty dated December 9, 1933, between the United States and Canada defining certain waters as sheltered waters.

(2) The transportation authorized under this subsection is limited to and from places not receiving annual weekly transportation service from any part of the United States by an established water common carrier. However, the limitation does not apply to transporting cargo of a character not accepted for transportation by that carrier.

(e) A vessel laid up, dismantled, or out of commission is exempt from inspection.

(f) Section 3301(4) and (8) of this title does not apply to an oceanographic research vessel because it is carrying scientific personnel.

(g)(1) Except when compliance with major structural or major equipment requirements is necessary to remove an especially hazardous condition, an offshore supply vessel is not subject to regulations or standards for those requirements if the vessel—

(A) was operating as an offshore supply vessel before January 2, 1979; or

(B) was contracted for before January 2, 1979, and entered into service as an offshore supply vessel before October 6, 1980.

(2) After December 31, 1988, this subsection does not apply to an offshore supply vessel that is at least 20 years of age.

(h) An offshore supply vessel operating on January 1, 1979, under a certificate of inspection issued by the Secretary, is subject to an inspection standard or requirement only if the standard or requirement could have been prescribed for the vessel under authority existing under law on October 5, 1980.

(i)(1) The Secretary may issue a permit exempting a vessel from any part of the requirements of this part for vessels transporting cargo, including bulk fuel, from one place in Alaska to another place in Alaska only if the vessel—

(A) is not more than 300 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title;

(B) is in a condition that does not present an immediate threat to the safety of life or the environment; and

(C) was operating in the waters off Alaska as of June 1, 1976, or the vessel is a replacement for a vessel that was operating in the waters off Alaska as of June 1, 1976, if the vessel being replaced is no longer in service.

(2) Except in a situation declared to be an emergency by the Secretary, a vessel operating under a permit may not transport cargo to or from a place if the cargo could be transported by another commercial vessel that is reasonably available and that does not require exemptions to operate legally or if the cargo could be readily transported by overland routes.

(3) A permit may be issued for a specific voyage or for not more than one year. The permit may impose specific requirements about the amount or type of cargo to be carried, manning, the areas or specific routes over which the ves-

sel may operate, or other similar matters. The duration of the permit and restrictions contained in the permit shall be at the sole discretion of the Secretary.

(4) A designated Coast Guard official who has reason to believe that a vessel issued a permit is in a condition or is operated in a manner that creates an immediate threat to the safety of life or the environment or is operated in a manner that is inconsistent with the terms of the permit, may direct the master or individual in charge to take immediate and reasonable steps to safeguard life and the environment, including directing the vessel to a port or other refuge.

(5) If a vessel issued a permit creates an immediate threat to the safety of life or the environment, or is operated in a manner inconsistent with the terms of the permit or the requirements of paragraph (2) of this subsection, the permit may be revoked. The owner, charterer, managing operator, agent, master, or individual in charge of a vessel issued a permit, that willfully permits the vessel to be operated, or operates, the vessel in a manner inconsistent with the terms of the permit, is liable to the United States Government for a civil penalty of not more than $1,000.

(j) Notwithstanding another provision of this chapter, the Secretary is not required to inspect or prescribe regulations for a nautical school vessel of not more than 15 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title—

(1) when used in connection with a course of instruction dealing with any aspect of maritime education or study; and

(2) operated by—

(A) the United States Merchant Marine Academy; or

(B) a State maritime academy assisted under section 1304 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1295c).

(k) Only the boiler, engine, and other operating machinery of a steam vessel that is a recreational vessel of not more than 65 feet overall in length are subject to inspection under section 3301(9) of this title.

(*l*)(1) The Secretary may issue a permit exempting the following vessels from the requirements of this part for passenger vessels so long as the vessels are owned by nonprofit organizations and operated as nonprofit memorials to merchant mariners:

(A) The steamship John W. Brown (United States official number 242209), owned by Project Liberty Ship Baltimore, Incorporated, located in Baltimore, Maryland.

(B) The steamship Lane Victory (United States official number 248094), owned by the United States Merchant Marine Veterans of World War II, located in San Pedro, California.

(C) The steamship Jeremiah O'Brien (United States official number 243622), owned by the National Liberty Ship Memorial, Inc..[2]

(D) The SS Red Oak Victory (United States official number 249410), owned by the Richmond Museum Association, located in Richmond, California.

(E) The SS American Victory (United States official number 248005), owned by Victory Ship, Inc., of Tampa, Florida.

(F) The LST–325, owned by USS LST Ship Memorial, Incorporated, located in Mobile, Alabama.

(2) The Secretary may issue a permit for a specific voyage or for not more than one year. The Secretary may impose specific requirements about the number of passengers to be carried, manning, the areas or specific routes over which the vessel may operate, or other similar matters.

(3) A designated Coast Guard official who has reason to believe that a vessel operating under this subsection is in a condition or is operated in a manner that creates an immediate threat to life or the environment or is operated in a manner that is inconsistent with this section, may direct the master or individual in charge to take immediate and reasonable steps to safeguard life and the environment, including directing the vessel to a port or other refuge.

(m) A seagoing barge is not subject to inspection under section 3301(6) of this title if the vessel is unmanned and does not carry—

(1) a hazardous material as cargo; or

(2) a flammable or combustible liquid, including oil, in bulk.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 510; Pub. L. 98–364, title IV, § 402(3), July 17, 1984, 98 Stat. 445; Pub. L. 99–307, § 1(3), (4), May 19, 1986, 100 Stat. 444; Pub. L. 101–595, title III, § 303(a), title VI, §§ 602(b), 603(2), Nov. 16, 1990, 104 Stat. 2983, 2990, 2993; Pub. L. 103–206, title III, § 311, Dec. 20, 1993, 107 Stat. 2426; Pub. L. 104–324, title VII, § 711, title XI, § 1110, Oct. 19, 1996, 110 Stat. 3935, 3969; Pub. L. 106–65, div. C, title XXXVI, § 3604, Oct. 5, 1999, 113 Stat. 976; Pub. L. 107–295, title II, § 208, Nov. 25, 2002, 116 Stat. 2098.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
3302	46:367 46:390 46:391(e) 46:404 46:420 46:442

Section 3302 does three things. It makes clear that a vessel included in one of the ten categories of vessels subject to inspection is not necessarily excluded from another category of vessel that is subject to inspection. For example, a vessel inspected and certified as a small passenger vessel would, when carrying oil or hazardous materials in bulk as cargo or cargo residue, also have to be inspected as a tank vessel. It makes it clear that a vessel excluded by section 3302 from the requirements of inspection in any one of the ten categories is not necessarily excluded from inspection as a vessel in another category. This section also contains a number of exemptions for certain classes of vessels and for those vessels engaged in a specific trade that have been considered to be of a special circumstance.

AMENDMENTS

2002—Subsec. (*l*)(1)(D) to (F). Pub. L. 107–295 added subpars. (D) to (F).

1999—Subsec. (*l*)(1)(C). Pub. L. 106–65 substituted ''owned by the National Liberty Ship Memorial, Inc.'' for ''owned by the United States Maritime Administration''.

[2] So in original.

1996—Subsec. (b). Pub. L. 104–324, § 1110(1), substituted ''Except as provided in subsection (c)(3) of this section, a fishing vessel'' for ''A fishing vessel,''.

Subsec. (c)(1). Pub. L. 104–324, §§ 711(1), 1110(2), substituted ''Except as provided in paragraph (3) of this subsection, a fish processing vessel'' for ''A fish processing vessel'' and inserted ''as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' after ''5,000 gross tons''.

Subsec. (c)(2). Pub. L. 104–324, §§ 711(2), 1110(3), substituted ''Except as provided in paragraphs (3) and (4) of this subsection, a fish tender vessel'' for ''A fish tender vessel'' and inserted ''as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' after ''500 gross tons''.

Subsec. (c)(3). Pub. L. 104–324, § 1110(4), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''A fishing, fish processing, or fish tender vessel of not more than 500 gross tons is exempt from section 3301(1), (6), and (7) of this title if—

''(A) when transporting cargo to or from a place in Alaska—

''(i) that place does not receive weekly common carrier service by water from a place in the United States; or

''(ii) the cargo is of a type not accepted by that common carrier service; or

''(B) in the case of a fish tender vessel, the vessel is not engaged in the Aleutian trade.''

Subsec. (c)(4)(A). Pub. L. 104–324, § 711(3), inserted ''as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' after ''500 gross tons''.

Subsec. (d)(1). Pub. L. 104–324, § 711(4), inserted ''as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' after ''150 gross tons''.

Subsec. (i)(1)(A). Pub. L. 104–324, § 711(5), inserted ''as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' after ''300 gross tons''.

Subsec. (j). Pub. L. 104–324, § 711(6), inserted ''as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' after ''15 gross tons''.

1993—Subsec. (m). Pub. L. 103–206 added subsec. (m).

1990—Subsec. (c)(3), (4). Pub. L. 101–595, § 602(b), added pars. (3) and (4).

Subsec. (j)(2)(B). Pub. L. 101–595, § 603(2), substituted ''(46 App. U.S.C. 1295c)'' for ''(46 App. U.S.C. 1295(c))''.

Subsec. (*l*). Pub. L. 101–595, § 303(a), added subsec. (*l*).

1986—Subsec. (i)(5). Pub. L. 99–307, § 1(3), substituted ''charterer'' for ''charter''.

Subsec. (k). Pub. L. 99–307, § 1(4), added subsec. (k).

1984—Subsec. (b). Pub. L. 98–364 amended subsec. (b) generally, which prior to amendment read as follows: ''A motor vessel engaged in fishing as a regular business, including oystering, clamming, crabbing, or the kelp or sponge industry, is exempt from section 3301(1), (4), and (7) of this title.''

Subsec. (c). Pub. L. 98–364 amended subsec. (c) generally, which prior to amendment read as follows:

''(1) Before January 1, 1988, a motor vessel is exempt from section 3301(1), (4), and (7) of this title if the vessel is not more than 500 gross tons and—

''(A) is a cannery tender or a fishing tender in the salmon or crab fisheries of Alaska, Oregon, and Washington; and

''(B) only carries cargo to or from vessels in those fisheries or a facility used in processing or assembling fishery products, or transports cannery or fishing personnel to or from operating locations.

''(2) Before January 1, 1988, a vessel is exempt from section 3301(1), (4), (6), and (7) of this title if the vessel is not more than 5,000 gross tons and is used only in processing and assembling fishery products in the fisheries of Alaska, Oregon, and Washington.''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 602(b) of Pub. L. 101–595 effective Nov. 16, 1990, except that requirements imposed by subsec. (c)(4)(B) and (C), effective six months after Nov. 16, 1990, see section 602(f) of Pub. L. 101–595, set out as a note under section 4502 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.

VESSELS REPAIRED OR RETROFITTED FOR MOBILE TRADE FAIR PURPOSES DEEMED OUT OF COMMISSION

Pub. L. 100–418, title X, § 10003(b), Aug. 23, 1988, 102 Stat. 1573, provided that: ''For one year after the date of enactment of this Act [Aug. 23, 1988], a vessel that is undergoing repair or retrofitting for use solely for mobile trade fair purposes is deemed to be out of commission under section 3302(e) of title 46, United States Code, during the repair or retrofitting.''

EXEMPTION OF CERTAIN FISHING AND FISH PROCESSING VESSELS

Section 403 of Pub. L. 98–364, as amended by Pub. L. 99–36, § 3, May 15, 1985, 99 Stat. 68; Pub. L. 101–225, title III, § 306, Dec. 12, 1989, 103 Stat. 1925, provided that:

''(a) Except as provided in chapter 37 of title 46, United States Code, and before January 1, 1991, a fishing, fish processing, or fish tender vessel, that is (1) not more than 500 gross tons and (2) in operation, or contracted for purchase to be used as a vessel of this type, before July 1, 1984, may transport cargo to or from a place in Alaska not receiving weekly transportation service from a port of the United States by an established water common carrier, except that the service limitation does not apply to transporting cargo of a type not accepted by that carrier.

''(b) A fish processing vessel entered into service before January 1, 1988, and more than 1,600 gross tons or entered into service after December 31, 1987, and having more than 16 individuals on board primarily employed in the preparation of fish or fish products is exempt from section 8702(b) of title 46, United States Code, until 18 months after the date of enactment of this Act [July 17, 1984].

''(c) As used in subsections (a) and (b) of this section, the terms 'fishing vessel', 'fish processing vessel' and 'fish tender vessel' shall have the meaning given to such terms in section 2101 of title 46, United States Code.''

OFFSHORE SUPPLY VESSELS; TRANSITION PERIOD FOR COMPLIANCE WITH VESSEL INSPECTION PROVISIONS

Section 2(i) of Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 599, provided that: ''Each offshore supply vessel described in section 3302(g) of title 46 (as enacted by section 1 of this Act), that was registered with the Secretary of Transportation under section 4426a(7) of the Revised Statutes [former 46 U.S.C. 404–1(7)] but that has not been inspected by the Secretary shall be held to be in compliance with all applicable vessel inspection laws pending verification by actual inspection or until one year after the date of enactment of this Act [Aug. 26, 1983], whichever is earlier.''

§ 3303. Reciprocity for foreign vessels

Except as provided in chapter 37 and section 3505 of this title, a foreign vessel of a country

having inspection laws and standards similar to those of the United States and that has an unexpired certificate of inspection issued by proper authority of its respective country, is subject to an inspection to ensure that the condition of the vessel is as stated in its current certificate of inspection. A foreign country is considered to have inspection laws and standards similar to those of the United States when it is a party to an International Convention for Safety of Life at Sea to which the United States Government is currently a party. A foreign certificate of inspection may be accepted as evidence of lawful inspection only when presented by a vessel of a country that has by its laws accorded to vessels of the United States visiting that country the same privileges accorded to vessels of that country visiting the United States.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 512; Pub. L. 102–587, title V, § 5210(a), Nov. 4, 1992, 106 Stat. 5076; Pub. L. 104–324, title XI, § 1111, Oct. 19, 1996, 110 Stat. 3970; Pub. L. 108–293, title IV, § 411(b), Aug. 9, 2004, 118 Stat. 1046.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
3303	46:362(a) 46:390c 46:391a(3)

Section 3303 acknowledges the international concept of comity with respect to recognizing inspection laws and standards for foreign flag vessels that are similar to those of the United States. If a foreign nation is signatory to the International Convention for Safety of Life at Sea, it is presumed to have similar standards. However, reciprocity requirements for foreign flag tank vessels are included in chapter 37. Subsection (b) provides for a mutual waiver of fees for the inspection of foreign vessels carrying passengers from the United States.

AMENDMENTS

2004—Pub. L. 108–293 inserted ''and section 3505'' after ''chapter 37''.

1996—Pub. L. 104–324 struck out subsec. (a) designation and subsec. (b) which read as follows: ''The Secretary shall collect and pay to the Treasury the same fees for the inspection of foreign vessels carrying passengers from the United States that a foreign country charges vessels of the United States trading to the ports of that country. The Secretary may waive at any time the collection of the fees on notice of the proper authorities of any country concerned that the collection of fees for the inspection of vessels of the United States has been discontinued.''

1992—Subsec. (a). Pub. L. 102–587, in first sentence, struck out ''only'' after ''is subject'' and substituted ''the condition of the vessel is'' for ''the condition of the vessel's propulsion equipment and lifesaving equipment are''.

INTERNATIONAL CONVENTION FOR SAFETY OF LIFE AT SEA

For International Conventions for the Safety of Life at Sea to which the United States has been a party, see section 1602 of Title 33, Navigation and Navigable Waters, and notes thereunder.

§ 3304. Transporting individuals in addition to crew

(a) A documented vessel transporting cargo that transports not more than 12 individuals in addition to the crew on international voyages, or not more than 16 individuals in addition to the crew on other voyages, is not subject to inspection as a passenger vessel or a small passenger vessel if the vessel is otherwise subject to inspection under this chapter.

(b) Except when subsection (e) of this section applies, before an individual in addition to the crew is transported on a vessel as permitted by this section, the owner, charterer, managing operator, agent, master, or individual in charge of the vessel first shall notify the individual of the presence on board of dangerous articles as defined by law, and of other conditions or circumstances that would constitute a risk of safety to the individual on board.

(c) A privilege authorized by this section applies to a vessel of a foreign country that affords a similar privilege to vessels of the United States in trades not restricted to vessels under its own flag.

(d) A fishing, fish processing, or fish tender vessel that transports not more than 12 individuals employed in the fishing industry in addition to the crew is not subject to inspection as a passenger or small passenger vessel.

(e) The Secretary may by regulation allow individuals in addition to the crew to be transported in an emergency or under section 2304 of this title.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 513; Pub. L. 98–364, title IV, § 402(4), July 17, 1984, 98 Stat. 446; Pub. L. 99–307, § 1(5)(A), May 19, 1986, 100 Stat. 444.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
3304	46:390–393 46:882

Section 3304 permits the carriage of not more than 12 individuals in addition to the crew on international voyages or not more than 16 individuals in addition to the crew on other voyages without subjecting a documented vessel carrying cargo to the inspection requirements of a passenger vessel. This section permits the bulk of vessels subject to the International Convention for Safety of Life at Sea to carry up to 12 passengers and to permit other cargo vessels, primarily those engaged in the coastwise trade, to carry up to 16 passengers without being categorized as passenger vessels. It also requires that these individuals be notified of the presence of dangerous articles or other conditions or circumstances that constitute a risk of safety. This is of prime importance on tank vessels that carry flammable or hazardous cargoes.

AMENDMENTS

1986—Pub. L. 99–307, § 1(5)(A)(i), substituted ''Transporting'' for ''Carrying'' in section catchline.

Subsec. (a). Pub. L. 99–307, § 1(5)(A)(ii), substituted ''transporting cargo that transports'' for ''carrying cargo that carries'' and inserted ''if the vessel is otherwise subject to inspection under this chapter''.

Subsec. (b). Pub. L. 99–307, § 1(5)(A)(iii), substituted ''Except when subsection (e) of this section applies, before'' for ''Before'' and ''transported'' for ''carried''.

Subsec. (c). Pub. L. 99–307, § 1(5)(A)(iv), substituted ''A privilege'' for ''The privilege''.

Subsec. (e). Pub. L. 99–307, § 1(5)(A)(v), added subsec. (e).

1984—Subsec. (d). Pub. L. 98–364 added subsec. (d).

§ 3305. Scope and standards of inspection

(a)(1) The inspection process shall ensure that a vessel subject to inspection—

(A) is of a structure suitable for the service in which it is to be employed;

(B) is equipped with proper appliances for lifesaving, fire prevention, and firefighting;

(C) has suitable accommodations for the crew, sailing school instructors, and sailing school students, and for passengers on the vessel if authorized to carry passengers;

(D) has an adequate supply of potable water for drinking and washing by passengers and crew;

(E) is in a condition to be operated with safety to life and property; and

(F) complies with applicable marine safety laws and regulations.

(2) In determining the adequacy of the supply of potable water under paragraph (1)(D), the Secretary shall consider—

(A) the size and type of vessel;

(B) the number of passengers or crew on board;

(C) the duration and routing of voyages; and

(D) guidelines for potable water recommended by the Centers for Disease Control and Prevention and the Public Health Service.

(b) If an inspection, or examination under section 3308 of this title, reveals that a life preserver, lifesaving device, or firehose is defective and incapable of being repaired, the owner or master shall destroy the life preserver, lifesaving device, or firehose in the presence of the official conducting the inspection or examination.

(c) A nautical school vessel operated by a civilian nautical school or by an educational institution under section 558 of title 40 shall be inspected like a small passenger vessel or a passenger vessel, depending on its tonnage.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 513; Pub. L. 99–36, § 1(a)(1), May 15, 1985, 99 Stat. 67; Pub. L. 99–640, § 13(e), Nov. 10, 1986, 100 Stat. 3551; Pub. L. 107–217, § 3(m)(2), Aug. 21, 2002, 116 Stat. 1302; Pub. L. 108–293, title IV, § 416, Aug. 9, 2004, 118 Stat. 1047.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
3305	46:369 46:390a 46:391 46:392 46:395 46:404–1 46:405 46:406 46:407 46:408 46:660a 46:881

Section 3305 consolidates, at one place, the basic scope of coverage of the inspection process. It is to be noted that the time difference in enactment of various statutes has resulted in some anomalies. Thus, for example, R.S. 4417 (46 U.S.C. 391) which had originally set periods of inspection and vested authority in ''local inspectors'' was expanded over the years to provide the base for inspection of certain classes of vessels as well as setting out the periods and scope. The distillation of inspection objectives and standards in later laws and the transfer of all functions of separately created bureaus and functionaries to the Coast Guard permit this consolidation. There are those who have a desire to see the scope and standards of inspection be more specific in law similar to those presently applicable to boilers and boiler plating that predate 1871. The Committee believes this serves no useful purpose since the specifics are either antiquated or too limiting and have, in fact, been superceded by the statutorily authorized adoption of various industrial specifications, standards, and codes by the Coast Guard. These include the American Bureau of Shipping (ABS), American Society of Mechanical Engineers (ASME), American National Standards Institute (ANSI), American Society for Testing and Materials (ASTM), American Welding Society (AWS), Underwriters Laboratories (UL), and many others. In addition, Coast Guard regulations must also implement and conform to the numerous international maritime safety treaties to which the United States is signatory. The Committee expects that the regulatory flexibility being provided will not reduce the present vessel inspection requirements that have been historically developed.

Section 3305(a) establishes the statutory scope of the Coast Guard's vessel inspection authority and duty. The inspection process shall ensure that a vessel is of suitable structure, equipment, and accommodations, is maintained in an operating condition consistent with safety of life and property, and complies with applicable marine safety laws and regulations.

Subsection (b) requires that defective life preservers and firehose be destroyed in the presence of the inspecting official, normally a qualified Coast Guard marine inspector. The Committee believes that if this equipment is defective for use on an inspected vessel, it should be destroyed so that it cannot be used on an uninspected or recreational vessel.

Subsection (c) provides flexibility in the inspection of various sizes of nautical school vessels.

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–293, § 416(b), designated existing provisions as par. (1), redesignated former pars. (1) to (6) as subpars. (A) to (F), respectively, of par. (1), and added par. (2).

Subsec. (a)(4) to (6). Pub. L. 108–293, § 416(a), added par. (4) and redesignated former pars. (4) and (5) as (5) and (6), respectively.

2002—Subsec. (c). Pub. L. 107–217 substituted ''section 558 of title 40'' for ''section 13 of the Coast Guard Authorization Act of 1986''.

1986—Subsec. (c). Pub. L. 99–640 inserted ''or by an educational institution under section 13 of the Coast Guard Authorization Act of 1986''.

1985—Subsec. (b). Pub. L. 99–36 substituted ''lifesaving'' and ''life preserver, lifesaving device, or firehose'' for ''life-saving'' and ''life preserver or firehose'', respectively.

§ 3306. Regulations

(a) To carry out this part and to secure the safety of individuals and property on board vessels subject to inspection, the Secretary shall prescribe necessary regulations to ensure the proper execution of, and to carry out, this part in the most effective manner for—

(1) the design, construction, alteration, repair, and operation of those vessels, including superstructures, hulls, fittings, equipment, appliances, propulsion machinery, auxiliary machinery, boilers, unfired pressure vessels, piping, electric installations, and accommodations for passengers and crew, sailing school instructors, and sailing school students;

(2) lifesaving equipment and its use;

(3) firefighting equipment, its use, and precautionary measures to guard against fire;

(4) inspections and tests related to paragraphs (1), (2), and (3) of this subsection; and

(5) the use of vessel stores and other supplies of a dangerous nature.

(b)(1) Equipment and material subject to regulation under this section may not be used on any vessel without prior approval of the Secretary.

(2) Except with respect to use on a public vessel, the Secretary may treat an approval of equipment or materials by a foreign government as approval by the Secretary for purposes of paragraph (1) if the Secretary determines that—

(A) the design standards and testing procedures used by that government meet the requirements of the International Convention for the Safety of Life at Sea, 1974;

(B) the approval of the equipment or material by the foreign government will secure the safety of individuals and property on board vessels subject to inspection; and

(C) for lifesaving equipment, the foreign government—

(i) has given equivalent treatment to approvals of lifesaving equipment by the Secretary; and

(ii) otherwise ensures that lifesaving equipment approved by the Secretary may be used on vessels that are documented and subject to inspection under the laws of that country.

(c) In prescribing regulations for sailing school vessels, the Secretary shall consult with representatives of the private sector having experience in the operation of vessels likely to be certificated as sailing school vessels. The regulations shall—

(1) reflect the specialized nature of sailing school vessel operations, and the character, design, and construction of vessels operating as sailing school vessels; and

(2) include requirements for notice to sailing school instructors and sailing school students about the specialized nature of sailing school vessels and applicable safety regulations.

(d) In prescribing regulations for nautical school vessels operated by the United States Merchant Marine Academy or by a State maritime academy (as defined in section 1302(3) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1295a(3))), the Secretary shall consider the function, purpose, and operation of the vessels, their routes, and the number of individuals who may be carried on the vessels.

(e) When the Secretary finds it in the public interest, the Secretary may suspend or grant exemptions from the requirements of a regulation prescribed under this section related to lifesaving and firefighting equipment, muster lists, ground tackle and hawsers, and bilge systems.

(f) In prescribing regulations for offshore supply vessels, the Secretary shall consider the characteristics, methods of operation, and the nature of the service of offshore supply vessels.

(g) In prescribing regulations for fish processing or fish tender vessels, the Secretary shall consult with representatives of the private sector having experience in the operation of these vessels. The regulations shall reflect the specialized nature and economics of fish processing or fish tender vessel operations and the character, design, and construction of fish processing or fish tender vessels.

(h) The Secretary shall establish appropriate structural fire protection, manning, operating, and equipment requirements for vessels of at least 100 gross tons but less than 300 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title carrying not more than 150 passengers on domestic voyages, which meet the eligibility criteria of section 2113(4) of this title.

(i) The Secretary shall establish appropriate structural fire protection, manning, operating, and equipment requirements for former public vessels of the United States of at least 100 gross tons but less that 500 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title carrying not more than 150 passengers on domestic voyages, which meet the eligibility criteria of section 2113(5) of this title.

(j) The Secretary may establish by regulation a safety management system appropriate for the characteristics, methods of operation, and nature of service of towing vessels.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 513; Pub. L. 98–364, title IV, § 402(5), July 17, 1984, 98 Stat. 446; Pub. L. 103–206, title V, § 512(a), Dec. 20, 1993, 107 Stat. 2442; Pub. L. 104–324, title VI, § 604(a), (c), title VII, § 712, Oct. 19, 1996, 110 Stat. 3930, 3931, 3936; Pub. L. 108–293, title IV, § 415(b), Aug. 9, 2004, 118 Stat. 1047.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
3306	46:366
	46:369
	46:375
	46:390b
	46:392
	46:404
	46:408
	46:411
	46:412
	46:416
	46:420
	46:445
	46:459
	46:473
	46:477
	46:478
	46:479
	46:481
	46:482
	46:483
	46:489
	46:526p
	46:1295f(c)

Section 3306 contains broad authority to prescribe regulations for the proper inspection and certification of vessels. It provides regulatory flexibility for meeting technological changes. The section also permits flexibility in prescribing regulations for nautical school vessels operated by the United States Merchant Marine Academy or by a State maritime academy. The Secretary may suspend or grant exemptions to certain limited inspection requirements when the Secretary finds that this is necessary in the public interest. It also contains the requirement that in regulating offshore supply vessels consideration must be given to the special nature of their operations.

AMENDMENTS

2004—Subsec. (j). Pub. L. 108–293 added subsec. (j).

1996—Subsec. (a)(4). Pub. L. 104–324, § 604(c), substituted ''paragraphs (1), (2), and (3)'' for ''clauses (1)–(3)''.

Subsec. (b). Pub. L. 104–324, § 604(a), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as

follows: ''Equipment subject to regulation under this section may not be used on any vessel without prior approval as prescribed by regulation.''

Subsec. (h). Pub. L. 104–324, § 712(1), inserted ''as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' after ''300 gross tons''.

Subsec. (i). Pub. L. 104–324, § 712(2), inserted ''as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' after ''500 gross tons''.

1993—Subsecs. (h), (i). Pub. L. 103–206 added subsecs. (h) and (i).

1984—Subsec. (g). Pub. L. 98–364 added subsec. (g).

REGULATIONS

Section 512(b), (c) of Pub. L. 103–206 provided that:

''(b) The Secretary of Transportation shall, within twenty-four months of the date of enactment of this Act [Dec. 20, 1993], prescribe regulations establishing the structural fire protection, manning, operating, and equipment requirements for vessels which meet the requirements of subsections (h) and (i) of section 3306 of title 46, United States Code, as amended by this Act.

''(c) Before the Secretary of Transportation prescribes regulations under subsections (h) and (i) of section 3306 of title 46, United States Code, as amended by this Act, the Secretary may prescribe the route, service, manning, and equipment for those vessels based on existing passenger vessel and small passenger vessel regulations.''

FOREIGN APPROVALS

Section 604(b) of Pub. L. 104–324 provided that: ''The Secretary of Transportation, in consultation with other interested Federal agencies, shall work with foreign governments to have those governments approve the use of the same equipment and materials on vessels documented under the laws of those countries that the Secretary requires on United States documented vessels.''

INTERNATIONAL CONVENTION FOR SAFETY OF LIFE AT SEA

For International Conventions for the Safety of Life at Sea to which the United States has been a party, see section 1602 of Title 33, Navigation and Navigable Waters, and notes thereunder.

§ 3307. Frequency of inspection

Each vessel subject to inspection under this part shall undergo an initial inspection for certification before being put into service. After being put into service—

(1) each passenger vessel, nautical school vessel, and small passenger vessel allowed to carry more than 12 passengers on a foreign voyage shall be inspected at least once a year; and

(2) any other vessel shall be inspected at least once every 5 years.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 514; Pub. L. 104–324, title VI, § 605(a), Oct. 19, 1996, 110 Stat. 3931.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
3307(1)	46:391(c) 46:1295f(c)
3307(2)	46:390a(a) 46:404–1(6)(i)
3307(3)	46:391(b) 46:392(b) 46:404–1(6)(ii)

Section 3307 requires each vessel subject to inspection to undergo an initial inspection prior to being placed in service. This is normally started during the construction or reconstruction phase and is a continuing process until final certification for operation in a particular trade. Subsequent periodic inspections are also required for various types of vessels. It is to be noted that a freight vessel of less than 100 gross tons shall be inspected at 3 year intervals while the larger freight vessel has a 2 year inspection period. This is being done to retain the existing procedure of issuing 3 year certificates of inspection to smaller vessels, however, this does not prevent periodic inspections or examinations at intervening periods.

AMENDMENTS

1996—Par. (1). Pub. L. 104–324, § 605(a)(1), substituted '', nautical school vessel, and small passenger vessel allowed to carry more than 12 passengers on a foreign voyage'' for ''and nautical school vessel'' and inserted ''and'' at end.

Pars. (2), (3). Pub. L. 104–324, § 605(a)(2), (3), redesignated par. (3) as (2), substituted ''5 years'' for ''2 years'', and struck out former par. (2) which read as follows: ''each small passenger vessel, freight vessel or offshore supply vessel of less than 100 gross tons, and sailing school vessel shall be inspected at least once every 3 years; and''.

§ 3308. Examinations

In addition to inspections required by section 3307 of this title, the Secretary shall examine or have examined—

(1) each vessel subject to inspection at proper times to ensure compliance with law and regulations; and

(2) crewmember accommodations on each vessel subject to inspection at least once a month or when the vessel enters United States ports to ensure that the accommodations are—

(A) of the size required by law and regulations;

(B) properly ventilated and in a clean and sanitary condition; and

(C) equipped with proper plumbing and mechanical appliances required by law and regulations, and the appliances are in good working condition.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 514; Pub. L. 104–324, title VI, § 603(c), Oct. 19, 1996, 110 Stat. 3930.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
3308	46:435 46:660a 46:660b

Section 3308 requires the Secretary to carry out additional inspections as might be necessary to ensure compliance with applicable laws and regulations, and to ensure that accommodations are maintained in a sanitary condition and that all appliances are in good working order.

AMENDMENTS

1996—Pub. L. 104–324 inserted ''or have examined'' after ''examine'' in introductory provisions.

§ 3309. Certificate of inspection

(a) When an inspection under section 3307 of this title has been made and a vessel has been found to be in compliance with the requirements of law and regulations, a certificate of inspec-

tion, in a form prescribed by the Secretary, shall be issued to the vessel.

(b) The Secretary may issue a temporary certificate of inspection in place of a regular certificate of inspection issued under subsection (a) of this section.

(c) At least 30 days before the current certificate of inspection issued to a vessel under subsection (a) of this section expires, the owner, charterer, managing operator, agent, master, or individual in charge of the vessel shall submit to the Secretary in writing a notice that the vessel—

(1) will be required to be inspected; or

(2) will not be operated so as to require an inspection.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 515; Pub. L. 98–498, title II, § 211(a), Oct. 19, 1984, 98 Stat. 2303; Pub. L. 104–324, title VI, § 606, Oct. 19, 1996, 110 Stat. 3931.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
3309	46:390c 46:391a(8) 46:395(d) 46:399

Section 3309 provides for the issuance of a certificate of inspection that attests to the fact that the vessel has been found to be in compliance with the applicable maritime safety laws and regulations. Under this provision the Coast Guard can issue a temporary certificate of inspection upon compliance with the applicable laws or regulations to facilitate the preparation, processing, and forwarding of the regular certificate of inspection to the vessel. A temporary certificate does not imply less than satisfactory compliance.

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–324 struck out ''(but not more than 60 days)'' after ''30 days'' in introductory provisions.

1984—Subsec. (c). Pub. L. 98–498 added subsec. (c).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–498 effective 180 days after Oct. 19, 1984, see section 214 of Pub. L. 98–498, set out as an Effective Date note under section 2306 of this title.

§ 3310. Records of certification

The Secretary shall keep records of certificates of inspection of vessels and of all acts in the examination and inspection of vessels, whether of approval or disapproval.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 515.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
3310	46:414

Section 3310 contains the requirement for maintaining inspection records.

§ 3311. Certificate of inspection required

(a) Except as provided in subsection (b), a vessel subject to inspection under this part may not be operated without having on board a certificate of inspection issued under section 3309 of this title.

(b) The Secretary may direct the owner, charterer, managing operator, agent, master, or individual in charge of a vessel subject to inspection under this chapter and not having on board a certificate of inspection—

(1) to have the vessel proceed to mooring and remain there until a certificate of inspection is issued;

(2) to take immediate steps necessary for the safety of the vessel, individuals on board the vessel, or the environment; or

(3) to have the vessel proceed to a place to make repairs necessary to obtain a certificate of inspection.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 515; Pub. L. 98–498, title II, § 211(b), Oct. 19, 1984, 98 Stat. 2304.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
3311	46:390c 46:395 46:399

Section 3311 prohibits the operation of a vessel subject to inspection without having on board a valid certificate of inspection.

AMENDMENTS

1984—Pub. L. 98–498 designated existing provisions as subsec. (a), substituted ''Except as provided in subsection (b), a vessel'' for ''A vessel'', struck out ''valid'' before ''certificate of inspection'', and added subsec. (b).

§ 3312. Display of certificate of inspection

The certificate of inspection issued to a vessel under section 3309 of this title shall be displayed, suitably framed, in a conspicuous place on the vessel. When it is not practicable to so display the certificate, it shall be carried in the manner prescribed by regulation.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 515.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
3312	46:400

Section 3312 requires the conspicuous display of the certificate of inspection to provide notice that the vessel is in compliance with applicable maritime safety laws and regulations. The section also applies to the posting of the temporary certificate of inspection.

§ 3313. Compliance with certificate of inspection

(a) During the term of a vessel's certificate of inspection, the vessel must be in compliance with its conditions, unless relieved by a suspension or an exemption granted under section 3306(e) of this title.

(b) When a vessel is not in compliance with its certificate or fails to meet a standard prescribed by this part or a regulation prescribed under this part—

(1) the owner, charterer, managing operator, agent, master, or individual in charge shall be ordered in writing to correct the noted deficiencies promptly;

(2) the Secretary may permit any repairs to be made at a place most convenient to the owner, charterer, or managing operator when the Secretary decides the repairs can be made with safety to those on board and the vessel;

(3) the vessel may be required to cease operating at once; and

(4) if necessary, the certificate shall be suspended or revoked.

(c) The vessel's certificate of inspection shall be revoked if a condition unsafe to life that is ordered to be corrected under this section is not corrected at once.

(d) The owner, charterer, managing operator, agent, master, or individual in charge of a vessel whose certificate has been suspended or revoked shall be given written notice immediately of the suspension or revocation. The owner or master may appeal to the Secretary the suspension or revocation within 30 days of receiving the notice, as provided by regulations prescribed by the Secretary.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 515.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
3313	46:390c 46:391a(8) 46:435

Section 3313 requires a vessel to be maintained in a condition so as to always be in compliance with the applicable laws and regulations. Here the master, owner, or other responsible party is required to maintain the vessel to inspection standards and to correct all deficiencies observed. When a vessel is not in compliance with its certificate the responsible parties shall be ordered in writing to correct the deficiencies promptly. The section provides flexibility as to when and where these deficiencies may be corrected consistent with the safety of the vessel and crew. The section provides authority to require the vessel to cease operating or, if necessary, to suspend or revoke its certificate of inspection when found not to be in compliance with its certificate or regulations. The owner or master, or other responsible party must be given written notice and may appeal this action within 30 days of receiving the notice.

§ 3314. Expiration of certificate of inspection

(a) If the certificate of inspection of a vessel expires when the vessel is on a foreign voyage, the vessel may complete the voyage to a port of the United States within 30 days of the expiration of the certificate without incurring the penalties for operating without a certificate of inspection.

(b) If the certificate of inspection would expire within 15 days of sailing on a foreign voyage from a United States port, the vessel shall secure a new certificate of inspection before sailing, unless the voyage is scheduled to be completed prior to the expiration date of the certificate. If a voyage scheduled to be completed in that time is not so completed, the applicable penalties may be enforced unless the failure to meet the schedule was beyond the control of the owner, charterer, managing operator, agent, master, or individual in charge of the vessel.

(c) When the certificate of inspection of a foreign vessel carrying passengers, operated on a regularly established line, expires at sea after leaving the country to which it belongs or when the vessel is in the United States, the Secretary may permit the vessel to sail on its regular route without further inspection than would have been required had the certificate not expired. This permission applies only when the vessel will be regularly inspected and issued a certificate before the vessel's next return to the United States.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 516.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
3314	46:362 46:399

Section 3314 contains the procedures for when a vessel's certificate of inspection expires while on a foreign voyage.

§ 3315. Disclosure of defects and protection of informants

(a) Each individual licensed under part E of this subtitle shall assist in the inspection or examination under this part of the vessel on which the individual is serving, and shall point out defects and imperfections known to the individual in matters subject to regulations and inspection. The individual also shall make known to officials designated to enforce this part, at the earliest opportunity, any marine casualty producing serious injury to the vessel, its equipment, or individuals on the vessel.

(b) An official may not disclose the name of an individual providing information under this section, or the source of the information, to a person except a person authorized by the Secretary. An official violating this subsection is liable to disciplinary action under applicable law.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 516.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
3315	46:234

Section 3315 requires an individual holding a license issued by the Coast Guard to assist inspection authorities and to make defects and imperfections known to those authorities. Anyone licensed also has a duty to report any marine casualty producing serious injury to the vessel, its equipment, or individuals on board the vessel. These licensed individuals who have this statutorily imposed duty to disclose are also protected by prohibiting any government official from disclosing the identity or source of the information except as authorized by the Secretary.

§ 3316. Classification societies

(a) Each department, agency, and instrumentality of the United States Government shall recognize the American Bureau of Shipping as its agent in classifying vessels owned by the Government and in matters related to classification, as long as the Bureau is maintained as an organization having no capital stock and paying no dividends. The Secretary and the Secretary of Transportation each shall appoint one representative (except when the Secretary is the Secretary of Transportation, in which case the Secretary shall appoint both representatives) who shall represent the Government on the executive committee of the Bureau. The Bureau shall agree that the representatives shall be accepted by it as active members of the committee. The representatives shall serve without compensation, except for necessary traveling expenses.

(b)(1) The Secretary may delegate to the American Bureau of Shipping or another classification society recognized by the Secretary as meeting acceptable standards for such a society, for a vessel documented or to be documented under chapter 121 of this title, the authority to—

(A) review and approve plans required for issuing a certificate of inspection required by this part;

(B) conduct inspections and examinations; and

(C) issue a certificate of inspection required by this part and other related documents.

(2) The Secretary may make a delegation under paragraph (1) to a foreign classification society only—

(A) to the extent that the government of the foreign country in which the society is headquartered delegates authority and provides access to the American Bureau of Shipping to inspect, certify, and provide related services to vessels documented in that country; and

(B) if the foreign classification society has offices and maintains records in the United States.

(3) When an inspection or examination has been delegated under this subsection, the Secretary's delegate—

(A) shall maintain in the United States complete files of all information derived from or necessarily connected with the inspection or examination for at least 2 years after the vessel ceases to be certified; and

(B) shall permit access to those files at all reasonable times to any officer, employee, or member of the Coast Guard designated—

(i) as a marine inspector and serving in a position as a marine inspector; or

(ii) in writing by the Secretary to have access to those files.

(c)(1) A classification society (including an employee or agent of that society) may not review, examine, survey, or certify the construction, repair, or alteration of a vessel in the United States unless—

(A) the society has applied for approval under this subsection and the Secretary has reviewed and approved that society with respect to the conduct of that society under paragraph (2); or

(B) the society is a full member of the International Association of Classification Societies.

(2) The Secretary may approve a person for purposes of paragraph (1) only if the Secretary determines that—

(A) the vessels surveyed by the person while acting as a classification society have an adequate safety record; and

(B) the person has an adequate program to—

(i) develop and implement safety standards for vessels surveyed by the person;

(ii) make the safety records of the person available to the Secretary in an electronic format;

(iii) provide the safety records of a vessel surveyed by the person to any other classification society that requests those records for the purpose of conducting a survey of the vessel; and

(iv) request the safety records of a vessel the person will survey from any classification society that previously surveyed the vessel.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 516; Pub. L. 104–324, title VI, § 607(a), (b)(1), Oct. 19, 1996, 110 Stat. 3931, 3932; Pub. L. 108–293, title IV, § 413(a), Aug. 9, 2004, 118 Stat. 1046.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
3316	46:9 (less (c)) 46:369 46:881

Section 3316 prescribes the relationship between certain classification societies and the Federal Government with respect to the promotion of maritime safety and the security of life and property at sea. Briefly stated, a classification society, like the American Bureau of Shipping (ABS), establishes and administers standards for the design, construction, and periodic survey of commercial vessels, yachts, and other marine structures. Classification certifies adherence to these standards, thus representing that a vessel or structure possesses the structural and mechanical fitness required for its intended service.

The section requires that a Federal department, agency, or instrumentality recognize the American Bureau of Shipping as its agent for classing vessels owned by the Federal Government and in any matters related to classification. In effect, the ABS has a statutory monopoly on classing vessels of the United States Government. Additionally, the section contains the authority to permit the Secretary to rely on reports, documents, and certificates issued by a classification society that is similar to the American Bureau of Shipping. However, a ''similar classification society'' continues to mean one that is organized like the American Bureau of Shipping with attendant governmental representation.

AMENDMENTS

2004—Subsec. (c). Pub. L. 108–293 added subsec. (c).

1996—Pub. L. 104–324, § 607(b)(1), substituted ''Classification societies'' for ''United States classification societies'' in section catchline.

Subsec. (a). Pub. L. 104–324, § 607(a)(3), which directed the substitution of ''American Bureau of Shipping'' for ''Bureau'', was executed by making the substitution the first place appearing, to reflect the probable intent of Congress.

Pub. L. 104–324, § 607(a)(1), (2), redesignated subsec. (b) as (a) and struck out former subsec. (a) which read as follows: ''In carrying out this part, the Secretary may rely on reports, documents, and certificates issued by the American Bureau of Shipping or a similar United States classification society, or an agent of the Bureau or society.''

Subsec. (b). Pub. L. 104–324, § 607(a)(2), (4), redesignated subsec. (c) as (b), added pars. (1) and (2), redesignated former par. (2) as (3), and struck out former par. (1) which read as follows: ''To the maximum extent practicable, the Secretary may delegate to the Bureau or a similar United States classification society, or an agent of the Bureau or society, the inspection or examination, in the United States or in a foreign country, of a vessel documented or to be documented as a vessel of the United States. The Bureau, society, or agent may issue the certificate of inspection required by this part and other certificates essential to documentation.'' Former subsec. (b) redesignated (a).

Subsec. (c). Pub. L. 104–324, § 607(a)(2), redesignated subsec. (c) as (b).

Subsec. (d). Pub. L. 104–324, § 607(a)(1), struck out subsec. (d) which read as follows: ''The Secretary also may make an agreement with or use the Bureau or a similar United States classification society, or an agent of the Bureau or society, for reviewing and approving plans required for issuing a certificate of inspection.''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–293, title IV, § 413(b), Aug. 9, 2004, 118 Stat. 1046, provided that: ''Section 3316(c)(1) of title 46, United States Code, shall apply with respect to operation as a classification society on or after January 1, 2005.''

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.

§ 3317. Fees

(a) The Secretary may prescribe by regulation fees for inspecting or examining a small passenger vessel or a sailing school vessel.

(b) When an inspection or examination under this part of a documented vessel or a foreign vessel is conducted at a foreign port or place at the request of the owner or managing operator of the vessel, the owner or operator shall reimburse the Secretary for the travel and subsistence expenses incurred by the personnel assigned to perform the inspection or examination. Amounts received as reimbursement for these expenses shall be credited to the appropriation for operating expenses of the Coast Guard.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 517; Pub. L. 102–587, title V, § 5211, Nov. 4, 1992, 106 Stat. 5076.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
3317	46:390a(b) 46:382b–1

Section 3317 provides the regulatory authority for prescribing fees for the inspection of small passenger vessels and sailing school vessels. Although section 2110 generally prohibits fees of this nature, this provision is consistent with the exception that permits specific statutory authorization for fee collection. Subsection (b) requires the reimbursement of expenses for the conduct of an inspection or examination at a foreign port or place when done there for the convenience of the owner or operator of the vessel.

AMENDMENTS

1992—Subsec. (b). Pub. L. 102–587 substituted ''under this part of a documented vessel or a foreign vessel'' for ''under this chapter of a documented vessel''.

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.

§ 3318. Penalties

(a) Except as otherwise provided in this part, the owner, charterer, managing operator, agent, master, or individual in charge of a vessel operated in violation of this part or a regulation prescribed under this part, and a person violating a regulation that applies to a small passenger vessel, freight vessel of less than 100 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title, or sailing school vessel, are liable to the United States Government for a civil penalty of not more than $5,000. The vessel also is liable in rem for the penalty.

(b)(1) A person that knowingly manufactures, sells, offers for sale, or possesses with intent to sell, any equipment subject to this part, and the equipment is so defective as to be insufficient to accomplish the purpose for which it is intended, commits a class D felony.

(2) A person commits a class D felony if the person—

(A) alters or services lifesaving, fire safety, or any other equipment subject to this part for compensation; and

(B) by that alteration or servicing, intentionally renders that equipment unsafe and unfit for the purpose for which it is intended.

(c) A person that employs a means or device whereby a boiler may be subjected to a pressure greater than allowed by the terms of the vessel's certificate of inspection commits a class D felony.

(d) A person that deranges or hinders the operation of any machinery or device employed on a vessel to denote the state of steam or water in any boiler or to give warning of approaching danger, or permits the water level of any boiler when in operation of a vessel to fall below its prescribed low-water line, commits a class D felony.

(e) A person that alters, defaces, obliterates, removes, or destroys any plans or specifications required by and approved under a regulation prescribed under section 3306 of this title, with intent to deceive or impede any official of the United States in carrying out that official's duties, commits a class A misdemeanor.

(f) A person commits a class D felony.[1] if the person—

(1) forges or counterfeits with intent to make it appear genuine any mark or stamp prescribed for material to be tested and approved under section 3306 of this title or a regulation prescribed under section 3306;

(2) knowingly uses, affixes, or causes to be used or affixed, any such forged or counterfeited mark or stamp to or on material of any description;

(3) with fraudulent intent, possesses any such mark, stamp, or other device knowing it to be forged or counterfeited; or

(4) with fraudulent intent, marks or causes to be marked with the trademark or name of another, material required to be tested and approved under section 3306 of this title or a regulation prescribed under section 3306.

[1] So in original. The period probably should be a comma.

(g) A person is liable to the Government for a civil penalty of not more than $5,000, if the person—

(1) interferes with the inspection of a nautical school vessel;

(2) violates a regulation prescribed for a nautical school vessel;

(3) is an owner of a nautical school vessel operated in violation of this part; or

(4) is an officer or member of the board of directors of a school, organization, association, partnership, or corporation owning a nautical school vessel operated in violation of a regulation prescribed for a nautical school vessel.

(h) An owner, charterer, managing operator, agent, master, or individual in charge of a vessel that fails to give the notice required by section 3304(b) of this title is liable to the Government for a civil penalty of not more than $1,000. The vessel also is liable in rem for the penalty.

(i) A person violating section 3309(c) of this title is liable to the Government for a civil penalty of not more than $1,000.

(j)(1) An owner, charterer, managing operator, agent, master, or individual in charge of a vessel required to be inspected under this chapter operating the vessel without the certificate of inspection is liable to the Government for a civil penalty of not more than $10,000 for each day during which the violation occurs, except when the violation involves operation of a vessel of less than 1,600 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title, the penalty is not more than $2,000 for each day during which the violation occurs. The vessel also is liable in rem for the penalty.

(2) A person is not liable for a penalty under this subsection if—

(A) the owner, charterer, managing operator, agent, master, or individual in charge of the vessel has notified the Secretary under section 3309(c) of this title;

(B) the owner, charterer, managing operator, agent, master, or individual in charge of the vessel has complied with all other directions and requirements for obtaining an inspection under this part; and

(C) the Secretary believes that unforeseen circumstances exist so that it is not feasible to conduct a scheduled inspection before the expiration of the certificate of inspection.

(k) The owner, charterer, managing operator, agent, master, or individual in charge of a vessel failing to comply with a direction issued by the Secretary under section 3311(b) of this title is liable to the Government for a civil penalty of not more than $10,000 for each day during which the violation occurs. The vessel also is liable in rem for the penalty.

(*l*) A person committing an act described by subsections (b)–(f) of this section is liable to the Government for a civil penalty of not more than $5,000. If the violation involves the operation of a vessel, the vessel also is liable in rem for the penalty.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 517; Pub. L. 98–498, title II, § 211(c), Oct. 19, 1984, 98 Stat. 2304; Pub. L. 99–307, § 1(6), May 19, 1986, 100 Stat. 445; Pub. L. 101–380, title IV, § 4302(b), Aug. 18, 1990, 104 Stat. 538; Pub. L. 104–324, title III, § 310, title VII, § 713, Oct. 19, 1996, 110 Stat. 3919, 3936.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
3318	46:369(e) 46:390d 46:398 46:403 46:407 46:408 46:410 46:413 46:436 46:481(d) 46:1295f(d)(2), (3)

Section 3318 provides for a number of specific civil and criminal penalties.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–324, § 713(1), inserted ''as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' after ''100 gross tons''.

Subsec. (b)(1). Pub. L. 104–324, § 310, designated existing provisions as par. (1) and added par. (2).

Subsec. (j)(1). Pub. L. 104–324, § 713(2), inserted ''as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' after ''1,600 gross tons''.

1990—Subsec. (b). Pub. L. 101–380, § 4302(b)(1), substituted ''commits a class D felony'' for ''shall be fined not more than $10,000, imprisoned for not more than 5 years, or both''.

Subsec. (c). Pub. L. 101–380, § 4302(b)(2), substituted ''commits a class D felony'' for ''shall be fined not more than $5,000, imprisoned for not more than 5 years, or both''.

Subsec. (d). Pub. L. 101–380, § 4302(b)(3), substituted ''commits a class D felony'' for ''shall be fined not more than $5,000, imprisoned for not more than 5 years, or both''.

Subsec. (e). Pub. L. 101–380, § 4302(b)(4), substituted ''commits a class A misdemeanor'' for ''shall be fined not more than $10,000, imprisoned for not more than 2 years, or both''.

Subsec. (f). Pub. L. 101–380, § 4302(b)(5), substituted ''commits a class D felony.'' for ''shall be fined not less than $1,000 but not more than $10,000, and imprisoned for not less than 2 years but not more than 5 years,''.

1986—Subsec. (f). Pub. L. 99–307 in provision preceding par. (1) substituted ''than'' for ''then'' in two places.

1984—Subsec. (a). Pub. L. 98–498, § 211(c)(1), substituted ''Except as otherwise provided in this part, the'' for ''The'' and ''not more than $5,000'' for ''$1,000, except that when the violation involves operation of a barge, the penalty is $500''.

Subsec. (c). Pub. L. 98–498, § 211(c)(2), substituted ''$5,000'' for ''$2,000''.

Subsec. (d). Pub. L. 98–498, § 211(c)(3), substituted ''$5,000'' for ''$2,000''.

Subsec. (e). Pub. L. 98–498, § 211(c)(4), substituted ''$10,000'' for ''$2,000''.

Subsec. (f). Pub. L. 98–498, § 211(c)(5), substituted ''$10,000'' for ''$5,000''.

Subsec. (g). Pub. L. 98–498, § 211(c)(6), substituted ''is liable to the Government for a civil penalty of not more than $5,000'' for ''shall be fined not more than $10,000, imprisoned for not more than one year, or both''.

Subsec. (h). Pub. L. 98–498, § 211(c)(7), substituted ''Government for a civil penalty of not more than $1,000.'' for ''United States Government for a civil penalty of not more than $500.''

Subsecs. (i) to (*l*). Pub. L. 98–498, § 211(c)(8), added subsecs. (i) to (*l*).

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 Title 33, Navigation and Navigable Waters.

CHAPTER 35—CARRIAGE OF PASSENGERS

Sec.
3501. Number of passengers.
3502. List or count of passengers.
3503. Fire-retardant materials.
3504. Notification to passengers.
3505. Prevention of departure.
3506. Copies of laws.

HISTORICAL AND REVISION NOTES

Chapter 35 consolidates the laws that have specific application to the carriage of passengers. They provide special provisions for listing and counting the number of passengers on board a vessel, for notifying the general public of the safety standards that are applicable, and for related control measures.

§ 3501. Number of passengers

(a) Each certificate of inspection issued to a vessel carrying passengers (except a ferry) shall include a statement on the number of passengers that the vessel is permitted to carry.

(b) The owner, charterer, managing operator, agent, master, or individual in charge of a vessel is liable to a person suing them for carrying more passengers than the number of passengers permitted by the certificate of inspection in an amount equal to—

(1) passage money; and

(2) $100 for each passenger in excess of the number of passengers permitted.

(c) An owner, charterer, managing operator, agent, master, or individual in charge of a vessel that knowingly carries more passengers than the number of passengers permitted by the certificate of inspection also shall be fined not more than $100, imprisoned for not more than 30 days, or both.

(d) The vessel also is liable in rem for a penalty under this section.

(e) An offshore supply vessel may not carry passengers except in an emergency.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 519; Pub. L. 99–36, § 1(a)(2), May 15, 1985, 99 Stat. 67.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
3501	46:404–1 46:451 46:452 46:462

Section 3501 requires that a vessel carrying passengers, including a passenger vessel as well as a small passenger vessel (except a ferry), shall have on the certificate of inspection a statement as to the number of passengers the vessel is permitted to carry. It also provides penalties for carrying passengers in excess of the number permitted.

AMENDMENTS

1985—Subsec. (a). Pub. L. 99–36, § 1(a)(2)(A), struck out the comma after ''(except a ferry)''.

Subsec. (c). Pub. L. 99–36, § 1(a)(2)(B), substituted ''carries more passengers than the number of passengers permitted by the certificate of inspection'' for ''violates subsection (b) of this section''.

EFFECTIVE DATE

Chapter effective Apr. 15, 1984, see section 2(g)(1) of Pub. L. 98–89, set out as a note under section 3101 of this title.

§ 3502. List or count of passengers

(a) The owner, charterer, managing operator, master, or individual in charge of the following categories of vessels carrying passengers shall keep a correct list of passengers received and delivered from day to day:

(1) vessels arriving from foreign ports (except at United States Great Lakes ports from Canadian Great Lakes ports).

(2) seagoing vessels in the coastwise trade.

(3) passenger vessels making voyages of more than 300 miles on the Great Lakes except from a Canadian to a United States port.

(b) The master of a vessel carrying passengers (except a vessel listed in subsection (a) of this section) shall keep a correct count of all passengers received and delivered.

(c) Lists and counts required under this section shall be open to the inspection of designated officials of the Coast Guard and the Customs Service at all times. The total number of passengers shall be provided to the Coast Guard when requested.

(d) This section applies to a foreign vessel arriving at a United States port.

(e) The owner, charterer, managing operator, master, or individual in charge of a passenger vessel failing to make a list or count of passengers as required by this section is liable to the United States Government for a civil penalty of $100. The vessel also is liable in rem for the penalty.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 519.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
3502	46:460 46:460a 46:461 46:462

Section 3502 is related to section 3501 and requires the listing or counting of passengers on certain vessels. This requirement applies to large as well as small passenger vessels when operating on the types of voyages enumerated. This section also applies to a foreign vessel arriving at a port or place in the United States.

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.

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 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.

§ 3503. Fire-retardant materials

(a) A passenger vessel of the United States having berth or stateroom accommodations for at least 50 passengers shall be granted a certificate of inspection only if the vessel is constructed of fire-retardant materials. Before November 1, 2008, this section does not apply to any vessel in operation before January 1, 1968, and operating only within the Boundary Line.

(b)(1) When a vessel is exempted from the fire-retardant standards of this section—

(A) the owner or managing operator of the vessel shall notify prospective passengers that the vessel does not comply with applicable fire safety standards due primarily to the wooden construction of passenger berthing areas;

(B) the owner or managing operator of the vessel may not disclaim liability to a passenger for death, injury, or any other loss caused by fire due to the negligence of the owner or managing operator;

(C) the penalties provided in section 3504(c) of this title apply to a violation of this subsection; and

(D) the owner or managing operator of the vessel shall notify the Coast Guard of structural alterations to the vessel, and with regard to those alterations comply with any noncombustible material requirements that the Coast Guard prescribes for nonpublic spaces. Coast Guard requirements shall be consistent with preservation of the historic integrity of the vessel in areas carrying or accessible to passengers or generally visible to the public.

(2) The Secretary shall prescribe regulations under this subsection on the manner in which prospective passengers are to be notified.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 519; Pub. L. 99–307, § 1(7)(A), May 19, 1986, 100 Stat. 444; Pub. L. 102–241, § 20, Dec. 19, 1991, 105 Stat. 2216; Pub. L. 104–324, title XI, § 1133, Oct. 19, 1996, 110 Stat. 3985.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
3503	46:369(b)

Section 3503 requires the use of fire retardant materials on a vessel having berthing facilities for at least 50 passengers. This requirement in the case of vessels engaged in foreign trade is consistent with our international treaty obligations, which impose extensive and additional fire safety standards. A waiver that grandfathers existing inland river passenger vessels is also included.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–324 substituted ''Before November 1, 2008, this section does not apply to any vessel in operation before January 1, 1968, and operating only within the Boundary Line.'' for ''Before November 1, 1998, this section does not apply to a vessel in operation before January 1, 1968, and operating only on the inland rivers.''

1991—Subsec. (a). Pub. L. 102–241, § 20(1), substituted ''1998'' for ''1993''.

Subsec. (b)(1)(D). Pub. L. 102–241, § 20(2), added subpar. (D).

1986—Pub. L. 99–307 designated existing provision as subsec. (a), substituted ''November 1, 1993'' for ''November 1, 1988'' and inserted ''in operation before January 1, 1968, and'' after ''to a vessel'', and added subsec. (b).

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.

NOTIFICATION TO PROSPECTIVE PASSENGERS OF NONCOMPLIANCE WITH FIRE-RETARDANT STANDARDS

Section 1(7)(B) of Pub. L. 99–307 provided that: ''Until the regulations required by subclause (A) of this clause [see subsec. (b)(2) of this section] become effective, the owner or managing operator shall notify prospective passengers in all promotional literature and on each ticket that the vessel does not comply with those standards due primarily to the wooden construction of passenger berthing areas.''

§ 3504. Notification to passengers

(a) A person selling passage on a foreign or domestic passenger vessel having berth or stateroom accommodations for at least 50 passengers and embarking passengers at United States ports for a coastwise or an international voyage shall notify each prospective passenger of the safety standards applicable to the vessel in a manner prescribed by regulation.

(b) All promotional literature or advertising through any medium of communication in the United States offering passage or soliciting passengers for ocean voyages anywhere in the world shall include information similar to the information described in subsection (a) of this section, and shall specify the registry of each vessel named, as a part of the advertisement or description of the voyage. Except for the inclusion of the country of registry of the vessel, this subsection does not apply to voyages by vessels meeting the safety standards described in section 3505 of this title.

(c) A person violating this section or a regulation prescribed under this section is liable to the United States Government for a civil penalty of not more than $10,000. If the violation involves the sale of tickets for passage, the owner, charterer, managing operator, agent, master, individual in charge, or any other person involved in each violation also is liable to the Government for a civil penalty of $500 for each ticket sold. The vessel on which passage is sold also is liable in rem for a violation of this section or a regulation prescribed under this section.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 519.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
3504	46:362(b)

Section 3504 requires notification to the public of the safety standards that are applicable to certain foreign flag or United States passenger vessels. In addition, all promotional literature or advertising that offers passage or solicits passengers for ocean voyages anywhere in the world shall include a safety standard statement and shall specify the registry of the vessel. If the vessel meets the international standards to which the United States adheres, then the safety standard statement need not be included. In all other cases the type of safety standard statement that must be included is as pre-

scribed by regulation. This section is intended to place the United States public on notice as to the degree of fire safety compliance of a foreign-flag passenger vessel that does not operate or depart from a port or place in the United States but does embark passengers from the United States at nearby foreign ports. Departures from foreign ports are undertaken because the foreign-flag passenger vessel cannot comply with the safety standards applicable to a United States flag passenger vessel.

§ 3505. Prevention of departure

Notwithstanding section 3303 of this title, a foreign vessel carrying a citizen of the United States as a passenger or embarking passengers from a United States port may not depart from a United States port if the Secretary finds that the vessel does not comply with the standards stated in the International Convention for the Safety of Life at Sea to which the United States Government is currently a party.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 520; Pub. L. 102–587, title V, § 5210(b), Nov. 4, 1992, 106 Stat. 5076; Pub. L. 108–293, title IV, § 411(a), Aug. 9, 2004, 118 Stat. 1045.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
3505	46:362(c)

Section 3505 prohibits the departure from a United States port or place of any passenger vessel of more than 100 gross tons having berthing for at least 50 passengers, if the vessel does not comply with the international maritime safety standards applicable to United States vessels.

AMENDMENTS

2004—Pub. L. 108–293 reenacted section catchline without change and amended text generally. Prior to amendment, text read as follows: ''Notwithstanding section 3303(a) of this title, a foreign vessel may not depart from a United States port with passengers who are embarked at that port, if the Secretary finds that the vessel does not comply with the standards stated in the International Convention for the Safety of Life at Sea to which the United States Government is currently a party.''

1992—Pub. L. 102–587 substituted ''foreign vessel may not depart'' for ''foreign or domestic vessel of more than 100 gross tons having berth or stateroom accommodations for at least 50 passengers may not depart''.

INTERNATIONAL CONVENTION FOR SAFETY OF LIFE AT SEA

For International Conventions for the Safety of Life at Sea to which the United States has been a party, see section 1602 of Title 33, Navigation and Navigable Waters, and notes thereunder.

§ 3506. Copies of laws

A master of a passenger vessel shall keep on board a copy of this subtitle, to be provided by the Secretary at reasonable cost. If the master fails to do so, the master is liable to the United States Government for a civil penalty of $200.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 520.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
3506	46:492

Section 3506 requires the master of a passenger vessel to keep on board a copy of subtitle II of title 46, U.S.C. Copies of the subtitle shall be provided by the Secretary at reasonable cost.

CHAPTER 37—CARRIAGE OF LIQUID BULK DANGEROUS CARGOES

Sec.
3701. Definitions.
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3717. Marine safety information system.
3718. Penalties.
3719. Reduction of oil spills from non-self-propelled tank vessels.[1]

AMENDMENTS

1996—Pub. L. 104–324, title IX, § 901(c), Oct. 19, 1996, 110 Stat. 3947, added item 3719.

1990—Pub. L. 101–380, title IV, § 4115(c), Aug. 18, 1990, 104 Stat. 520, added item 3703a.

HISTORICAL AND REVISION NOTES

Chapter 37 consolidates the laws that are applicable to vessels that transport oil or hazardous material in bulk as cargo or cargo residue.

The history of Federal authority to carry out a tank vessel safety program begins with the enactment of the so-called Tank Vessel Act of 1936 which, as amended, is presently codified in section 391a of title 46, United States Code. The 1936 Act remained essentially the same until it was amended by the Ports and Waterways Safety Act of 1972. The 1972 amendment contained more specific standards for the protection of a tank vessel and its crew and added vessel standards to improve the quality of the marine environment. After a rash of tank vessel accidents during the latter part of 1976 and early 1977 within our territorial seas and in nearby coastal waters, there was an outpouring of public attention to the need to protect United States ports and waterways, for the safety of tank vessels, and for the protection of the marine environment. This led to the enactment of the Port and Tanker Safety Act of 1978, which provided broader and more extensive regulatory authority over areas already regulated and over many areas not previously regulated. It provided for improvements in the supervision and control of vessels of all types operating in the navigable waters of the United States, and in the safety of all tank vessels, foreign or domestic, that transport or transfer oil or hazardous cargoes in ports or places subject to the jurisdiction of the United States. The 1978 amendments also reflect, in part, certain tank vessel standards and requirements that have been accepted internationally, in particular those developed by the International Conference on Tanker Safety and Pollution Prevention held in London in February, 1978.

§ 3701. Definitions

In this chapter—

(1) ''existing'', when referring to a type of vessel to which this chapter applies, means a vessel that is not a new vessel.

[1] So in original. Does not conform to section catchline.

[(2) Repealed. Pub. L. 100–424, § 8(c)(2), Sept. 9, 1988, 102 Stat. 1593.]

(3) ''new'', when referring to a type of vessel to which this chapter applies, means a vessel—

(A) for which the building contract is placed after June 1, 1979;

(B) in the absence of a building contract, the keel of which is laid, or which is at a similar stage of construction, after January 1, 1980;

(C) the delivery of which is after June 1, 1982; or

(D) that has undergone a major conversion under a contract made after June 1, 1979, or construction work that began after January 1, 1980, or was completed after June 1, 1982.

(4) ''person'' means an individual (even if not a citizen or national of the United States), a corporation, partnership, association, or other entity (even if not organized or existing under the laws of a State), the United States Government, a State or local government, a government of a foreign country, or an entity of one of those governments.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 521; Pub. L. 99–509, title V, § 5102(b)(5), Oct. 21, 1986, 100 Stat. 1927; Pub. L. 100–424, § 8(c)(2), Sept. 9, 1988, 102 Stat. 1593.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
3701(1)	46:391a(2)(R)
3701(2)	46:391a(2)(P)
3701(3)	46:391a(2)(Q)
3701(4)	46:391a(2)(F)
3701(5)	46:391a(2)(J)
3701(6)	46:391a(2)(K)

Section 3701 contains definitions that are of a special nature with limited applicability to this chapter.

AMENDMENTS

1988—Par. (2). Pub. L. 100–424 struck out par. (2) which read as follows: ''''major conversion' means a conversion of an existing vessel that substantially changes the dimensions or carrying capacity of the vessel or changes the type of vessel or substantially prolongs its life or that otherwise so changes the vessel that it is essentially a new vessel, as decided by the Secretary.''

1986—Pars. (5), (6). Pub. L. 99–509 struck out par. (5) defining ''State'' as including Trust Territory of the Pacific Islands in addition to its meaning under section 2101(36) of this title, and struck out par. (6) defining ''United States'' as including the Trust Territory of the Pacific Islands in addition to its meaning under section 2101(44) of this title.

EFFECTIVE DATE

Chapter effective Apr. 15, 1984, see section 2(g)(1) of Pub. L. 98–89, set out as a note under section 3101 of this title.

§ 3702. Application

(a) Subject to subsections (b)–(e) of this section, this chapter applies to a tank vessel.

(b) This chapter does not apply to a documented vessel that would be subject to this chapter only because of the transfer of fuel from the fuel supply tanks of the vessel to offshore drilling or production facilities in the oil industry if the vessel is—

(1) not more than 500 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title;

(2) not a tanker; and

(3) in the service of oil exploitation.

(c) This chapter does not apply to a fishing or fish tender vessel of not more than 500 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title when engaged only in the fishing industry.

(d) This chapter does not apply to a fish processing vessel of not more than 5,000 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title. However, the vessel is subject to regulation by the Secretary when carrying flammable or combustible liquid cargo in bulk.

(e) This chapter does not apply to a foreign vessel on innocent passage on the navigable waters of the United States.

(f) This chapter does not apply to an oil spill response vessel if—

(1) the vessel is used only in response-related activities; or

(2) the vessel is—

(A) not more than 500 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title;

(B) designated in its certificate of inspection as an oil spill response vessel; and

(C) engaged in response-related activities.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 521; Pub. L. 98–364, title IV, § 402(6), July 17, 1984, 98 Stat. 446; Pub. L. 104–324, title VII, § 714, title XI, § 1104(b), Oct. 19, 1996, 110 Stat. 3936, 3966.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
3702	46:391a

Section 3702, with certain exceptions, makes this chapter applicable to any tank vessel operating in the navigable waters of the United States or transferring oil or hazardous materials in any port or place subject to the jurisdiction of the United States, and which carries oil or any hazardous materials in bulk as cargo or in residue, regardless of tonnage, size or manner of propulsion; whether it is self-propelled or not; whether it is carrying freight or passengers for hire or not; and whether it is a vessel of the United States or a foreign vessel.

It exempts certain small vessels documented in the service of oil exploitation, certain small tender and fishing vessels used in the Northwest salmon or crab fisheries, certain vessels used in the processing and assembling of fishery products used in the Northwest fisheries, public vessels, and foreign vessels engaged on innocent passage on the navigable waters of the United States. However, processing vessels, while not treated as tank vessels, are still subject to regulation when carrying flammable or combustible liquid cargo in bulk.

AMENDMENTS

1996—Subsec. (b)(1). Pub. L. 104–324, § 714(1), inserted ''as measured under section 14502 of this title, or an al-

ternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' after ''500 gross tons''.

Subsec. (c). Pub. L. 104–324, § 714(2), inserted ''as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' after ''500 gross tons''.

Subsec. (d). Pub. L. 104–324, § 714(3), inserted ''as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' after ''5,000 gross tons''.

Subsec. (f). Pub. L. 104–324, § 1104(b), added subsec. (f).

1984—Subsec. (c). Pub. L. 98–364, § 402(6)(A), substituted ''This chapter does not apply to a fishing or fish tender vessel of not more than 500 gross tons when engaged only in the fishing industry'' for ''This chapter does not apply to a cannery tender, fishing tender, or fishing vessel of not more than 500 gross tons, used in the salmon or crab fisheries of Alaska, Oregon, or Washington, when engaged only in the fishing industry''.

Subsec. (d). Pub. L. 98–364, § 402(6)(B), substituted ''This chapter does not apply to a fish processing vessel of not more than 5,000 gross tons'' for ''This chapter does not apply to a vessel of not more than 5,000 gross tons used in processing and assembling fishery products of the fisheries of Alaska, Oregon, and Washington''.

§ 3703. Regulations

(a) The Secretary shall prescribe regulations for the design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels to which this chapter applies, that may be necessary for increased protection against hazards to life and property, for navigation and vessel safety, and for enhanced protection of the marine environment. The Secretary may prescribe different regulations applicable to vessels engaged in the domestic trade, and also may prescribe regulations that exceed standards set internationally. Regulations prescribed by the Secretary under this subsection are in addition to regulations prescribed under other laws that may apply to any of those vessels. Regulations prescribed under this subsection shall include requirements about—

(1) superstructures, hulls, cargo holds or tanks, fittings, equipment, appliances, propulsion machinery, auxiliary machinery, and boilers;

(2) the handling or stowage of cargo, the manner of handling or stowage of cargo, and the machinery and appliances used in the handling or stowage;

(3) equipment and appliances for lifesaving, fire protection, and prevention and mitigation of damage to the marine environment;

(4) the manning of vessels and the duties, qualifications, and training of the officers and crew;

(5) improvements in vessel maneuvering and stopping ability and other features that reduce the possibility of marine casualties;

(6) the reduction of cargo loss if a marine casualty occurs; and

(7) the reduction or elimination of discharges during ballasting, deballasting, tank cleaning, cargo handling, or other such activity.

(b) In prescribing regulations under subsection (a) of this section, the Secretary shall consider the types and grades of cargo permitted to be on board a tank vessel.

(c) In prescribing regulations under subsection (a) of this section, the Secretary shall establish procedures for consulting with, and receiving and considering the views of—

(1) interested departments, agencies, and instrumentalities of the United States Government;

(2) officials of State and local governments;

(3) representatives of port and harbor authorities and associations;

(4) representatives of environmental groups; and

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

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 522.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
3703	46:391a(6) 46:391a(12)

Section 3703 requires the Secretary to issue regulations to implement this section. Specific items are listed to be included within the regulations issued. The regulatory authority must be exercised under the Administrative Procedure Act and, in prescribing these regulations, the Secretary must consider the kinds and grades of cargo carried on board. Furthermore, in addition to any requirements of the Administrative Procedure Act, the Secretary must establish specific consultation procedures for considering the views of various specified interested officials, groups, and individuals. The procedures are intended to provide for consultation as early as possible in the regulatory process.

STUDIES ADDRESSING VARIOUS SOURCES OF OIL SPILL RISK

Pub. L. 104–324, title IX, § 903, Oct. 19, 1996, 110 Stat. 3947, provided that:

''(a) STUDY OF GROUP-5 FUEL OIL SPILLS.—

''(1) DEFINITION.—In this subsection, the term 'group-5 fuel oil' means a petroleum-based oil that has a specific gravity of greater than 1.0.

''(2) COORDINATION OF STUDY.—The Secretary of Transportation shall coordinate with the Marine Board of the National Research Council to conduct a study of the relative environmental and public health risks posed by discharges of group-5 fuel oil.

''(3) MATTERS TO BE INCLUDED.—The study under this subsection shall include a review and analysis of—

''(A) the specific risks posed to the public health or welfare of the United States, including fish, shellfish and wildlife, public and private property, shorelines, beaches, habitat, and other natural resources under the jurisdiction or control of the United States, as a result of an actual or threatened discharge of group-5 fuel oil from a vessel or facility;

''(B) cleanup technologies currently available to address actual or threatened discharge of group-5 fuel oil; and

''(C) any technological and financial barriers that prevent the prompt remediation of discharges of group-5 fuel oil.

''(4) REPORT.—Not later than 18 months after the date of enactment of this Act [Oct. 19, 1996], the Secretary of Transportation shall submit to the Committee on Environment and Public Works and the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Transportation and Infrastructure of the House of Rep-

resentatives a report on the results of the study under this subsection.

''(5) RULEMAKING.—If the Secretary of Transportation determines, based on the results of the study under this subsection, that there are significant risks to public health or the environment resulting from the actual or threatened discharge of group-5 fuel oil from a vessel or facility that cannot be technologically or economically addressed by existing or anticipated cleanup efforts, the Secretary may initiate a rulemaking to take such action as is necessary to abate the threat.

''(b) STUDY OF AUTOMATIC FUELING SHUTOFF EQUIPMENT.—

''(1) COORDINATION OF STUDY.—The Secretary of Transportation shall coordinate with the Marine Board of the National Research Council to conduct a study of the unintentional or accidental discharge of fuel oil during lightering or fuel loading or off-loading activity.

''(2) MATTERS TO BE INCLUDED.—The study under this subsection shall include a review and analysis of current monitoring and fueling practices to determine the need for automatic fuel shutoff equipment to prevent the accidental discharge of fuel oil, and whether such equipment is needed as a supplement to or replacement of existing preventive equipment or procedures.

''(3) REPORT.—Not later than 18 months after the date of enactment of this Act [Oct. 19, 1996], the Secretary of Transportation shall submit to the Committee on Environment and Public Works and the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report on the results of the study under this subsection.

''(4) RULEMAKING.—If the Secretary of Transportation determines, based on the results of the study conducted under this subsection, that the use of automatic oil shutoff equipment is necessary to prevent the actual or threatened discharge of oil during lightering or fuel loading or off[-]loading activity, the Secretary may initiate a rulemaking to take such action as is necessary to abate a threat to public health or the environment.

''(c) LIGHTERING STUDY.—The Secretary of Transportation shall coordinate with the Marine Board of the National Research Council on a study into the actual incidence and risk of oil spills from lightering operations off the coast of the United States. Among other things, the study shall address the manner in which existing regulations are serving to reduce oil spill risks. The study shall take into account current or proposed international rules and standards and also include recommendations on measures that would be likely to further reduce the risks of oil spills from lightering operations. Not later than 18 months after the date of enactment of this Act [Oct. 19, 1996], the Secretary shall submit a report on the study to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.''

EXISTING TANK VESSEL RESEARCH

Pub. L. 104–324, title XI, § 1134, Oct. 19, 1996, 110 Stat. 3985, provided that:

''(a) FUNDING.—The Secretary of Transportation shall take steps to allocate funds appropriated for research, development, testing, and evaluation, including the combination of funds from any source available and authorized for this purpose, to ensure that any Government-sponsored project intended to evaluate double hull alternatives that provide equal or greater protection to the marine environment, or interim solutions to remediate potential environmental damage resulting from oil spills from existing tank vessels, commenced prior to the date of enactment of this section [Oct. 19, 1996], is fully funded for completion by the end of fiscal year 1997. Any vessel construction or repair necessary to carry out the purpose of this section must be performed in a shipyard located in the United States.

''(b) USE OF PUBLIC VESSELS.—The Secretary may provide vessels owned by, or demise chartered to, and operated by the Government and not engaged in commercial service, without reimbursement, for use in and the support of projects sponsored by the Government for research, development, testing, evaluation, and demonstration of new or improved technologies that are effective in preventing or mitigating oil discharges and protecting the environment.''

OIL SPILL PREVENTION AND RESPONSE TECHNOLOGY TEST AND EVALUATION PROGRAM

Pub. L. 103–206, title III, § 310, Dec. 20, 1993, 107 Stat. 2425, provided that:

''(a) Not later than 6 months after the date of enactment of this Act [Dec. 20, 1993], the Secretary of Transportation shall establish a program to evaluate the technological feasibility and environmental benefits of having tank vessels carry oil spill prevention and response technology. To implement the program the Secretary shall—

''(1) publish in the Federal Register an invitation for submission of proposals including plans and procedures for testing; and

''(2) review and evaluate technology using, to the maximum extent possible, existing evaluation and performance standards.

''(b) The Secretary shall, to the maximum extent possible, incorporate in the program established in subsection (a), the results of existing studies and evaluations of oil spill prevention and response technology carried on tank vessels.

''(c) Not later than 2 years after the date of the enactment of this Act [Dec. 20, 1993], the Secretary shall evaluate the results of the program established in subsection (a) and submit a report to Congress with recommendations on the feasibility and environmental benefits of, and appropriate equipment and utilization standards for, requiring tank vessels to carry oil spill prevention and response equipment.

''(d) Not later than 6 months after the date of the enactment of this Act [Dec. 20, 1993], the Secretary shall evaluate and report to the Congress on the feasibility of using segregated ballast tanks for emergency transfer of cargo and storage of recovered oil.''

REGULATIONS REQUIRING PERIODIC GAUGING OF PLATING THICKNESS FOR OIL CARRYING COMMERCIAL VESSELS

Pub. L. 101–380, title IV, § 4109, Aug. 18, 1990, 104 Stat. 515, provided that: ''Not later than 1 year after the date of the enactment of this Act [Aug. 18, 1990], the Secretary shall issue regulations for vessels constructed or adapted to carry, or that carry, oil in bulk as cargo or cargo residue—

''(1) establishing minimum standards for plating thickness; and

''(2) requiring, consistent with generally recognized principles of international law, periodic gauging of the plating thickness of all such vessels over 30 years old operating on the navigable waters or the waters of the exclusive economic zone.''

REGULATIONS REQUIRING USE OF OVERFILL AND TANK LEVEL OR MONITORING DEVICES ON OIL CARRYING COMMERCIAL VESSELS

Pub. L. 101–380, title IV, § 4110, Aug. 18, 1990, 104 Stat. 515, as amended by Pub. L. 108–293, title VII, § 702(a), Aug. 9, 2004, 118 Stat. 1068, provided that:

''(a) STANDARDS.—The Secretary may establish, by regulation, minimum standards for devices for warning persons of overfills and tank levels of oil in cargo tanks and devices for monitoring the pressure of oil cargo tanks.

''(b) USE.—No sooner than 1 year after the Secretary prescribes regulations under subsection (a), the Secretary may issue regulations establishing, consistent

with generally recognized principles of international law, requirements concerning the use of—

''(1) overfill devices, and

''(2) tank level or pressure monitoring devices,

which are referred to in subsection (a) and which meet any standards established by the Secretary under subsection (a), on vessels constructed or adapted to carry, or that carry, oil in bulk as cargo or cargo residue on the navigable waters and the waters of the exclusive economic zone.''

TANKER NAVIGATION SAFETY STANDARDS STUDY

Pub. L. 101–380, title IV, § 4111, Aug. 18, 1990, 104 Stat. 515, directed Secretary, not later than 2 years after Aug. 18, 1990, to conduct a study and report to Congress on whether existing laws and regulations are adequate to ensure safe navigation of vessels transporting oil or hazardous substances in bulk on navigable waters and waters of the exclusive economic zone.

RULES GOVERNING OPERATION OF VESSELS ON AUTO-PILOT OR WITH UNATTENDED ENGINE ROOM

Pub. L. 101–380, title IV, § 4114(a), Aug. 18, 1990, 104 Stat. 517, provided that: ''In order to protect life, property, and the environment, the Secretary shall initiate a rulemaking proceeding within 180 days after the date of the enactment of this Act [Aug. 18, 1990] to define the conditions under, and designate the waters upon, which tank vessels subject to section 3703 of title 46, United States Code, may operate in the navigable waters with the auto-pilot engaged or with an unattended engine room.''

REGULATIONS REQUIRING ESCORTS FOR CERTAIN TANKERS; ''TANKER'' DEFINED

Pub. L. 101–380, title IV, § 4116(c), (d), Aug. 18, 1990, 104 Stat. 523, provided that:

''(c) ESCORTS FOR CERTAIN TANKERS.—Not later than 6 months after the date of the enactment of this Act [Aug. 18, 1990], the Secretary shall initiate issuance of regulations under section 3703(a)(3) of title 46, United States Code, to define those areas, including Prince William Sound, Alaska, and Rosario Strait and Puget Sound, Washington (including those portions of the Strait of Juan de Fuca east of Port Angeles, Haro Strait, and the Strait of Georgia subject to United States jurisdiction), on which single hulled tankers over 5,000 gross tons transporting oil in bulk shall be escorted by at least two towing vessels (as defined under section 2101 of title 46, United States Code) or other vessels considered appropriate by the Secretary.

''(d) TANKER DEFINED.—In this section [amending section 8502 of this title] the term 'tanker' has the same meaning the term has in section 2101 of title 46, United States Code.''

§ 3703a. Tank vessel construction standards

(a) Except as otherwise provided in this section, a vessel to which this chapter applies shall be equipped with a double hull—

(1) if it is constructed or adapted to carry, or carries, oil in bulk as cargo or cargo residue; and

(2) when operating on the waters subject to the jurisdiction of the United States, including the Exclusive Economic Zone.

(b) This section does not apply to—

(1) a vessel used only to respond to a discharge of oil or a hazardous substance;

(2) a vessel of less than 5,000 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title equipped with a double containment system determined by the Secretary to be as effective as a double hull for the prevention of a discharge of oil;

(3) before January 1, 2015—

(A) a vessel unloading oil in bulk at a deepwater port licensed under the Deepwater Port Act of 1974 (33 U.S.C. 1501 et seq.); or

(B) a delivering vessel that is offloading in lightering activities—

(i) within a lightering zone established under section 3715(b)(5) of this title; and

(ii) more than 60 miles from the baseline from which the territorial sea of the United States is measured;

(4) a vessel documented under chapter 121 of this title that was equipped with a double hull before August 12, 1992;

(5) a barge of less than 1,500 gross tons (as measured under chapter 145 of this title) carrying refined petroleum product in bulk as cargo in or adjacent to waters of the Bering Sea, Chukchi Sea, and Arctic Ocean and waters tributary thereto and in the waters of the Aleutian Islands and the Alaskan Peninsula west of 155 degrees west longitude; or

(6) a vessel in the National Defense Reserve Fleet pursuant to section 11 of the Merchant Ship Sales Act of 1946 (50 App. U.S.C. 1744).

(c)(1) In this subsection, the age of a vessel is determined from the later of the date on which the vessel—

(A) is delivered after original construction;

(B) is delivered after completion of a major conversion; or

(C) had its appraised salvage value determined by the Coast Guard and is qualified for documentation under section 4136 of the Revised Statutes of the United States (46 App. U.S.C. 14).

(2) A vessel of less than 5,000 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title for which a building contract or contract for major conversion was placed before June 30, 1990, and that is delivered under that contract before January 1, 1994, and a vessel of less than 5,000 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title that had its appraised salvage value determined by the Coast Guard before June 30, 1990, and that qualifies for documentation under section 4136 of the Revised Statutes of the United States (46 App. U.S.C. 14) before January 1, 1994, may not operate in the navigable waters or the Exclusive Economic Zone of the United States after January 1, 2015, unless the vessel is equipped with a double hull or with a double containment system determined by the Secretary to be as effective as a double hull for the prevention of a discharge of oil.

(3) A vessel for which a building contract or contract for major conversion was placed before June 30, 1990, and that is delivered under that contract before January 1, 1994, and a vessel that had its appraised salvage value determined by the Coast Guard before June 30, 1990, and that qualifies for documentation under section 4136 of

the Revised Statutes of the United States (46 App. U.S.C. 14) before January 1, 1994, may not operate in the navigable waters or Exclusive Economic Zone of the United States unless equipped with a double hull—

(A) in the case of a vessel of at least 5,000 gross tons but less than 15,000 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title—

(i) after January 1, 1995, if the vessel is 40 years old or older and has a single hull, or is 45 years old or older and has a double bottom or double sides;

(ii) after January 1, 1996, if the vessel is 39 years old or older and has a single hull, or is 44 years old or older and has a double bottom or double sides;

(iii) after January 1, 1997, if the vessel is 38 years old or older and has a single hull, or is 43 years old or older and has a double bottom or double sides;

(iv) after January 1, 1998, if the vessel is 37 years old or older and has a single hull, or is 42 years old or older and has a double bottom or double sides;

(v) after January 1, 1999, if the vessel is 36 years old or older and has a single hull, or is 41 years old or older and has a double bottom or double sides;

(vi) after January 1, 2000, if the vessel is 35 years old or older and has a single hull, or is 40 years old or older and has a double bottom or double sides; and

(vii) after January 1, 2005, if the vessel is 25 years old or older and has a single hull, or is 30 years old or older and has a double bottom or double sides;

(B) in the case of a vessel of at least 15,000 gross tons but less than 30,000 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title—

(i) after January 1, 1995, if the vessel is 40 years old or older and has a single hull, or is 45 years old or older and has a double bottom or double sides;

(ii) after January 1, 1996, if the vessel is 38 years old or older and has a single hull, or is 43 years old or older and has a double bottom or double sides;

(iii) after January 1, 1997, if the vessel is 36 years old or older and has a single hull, or is 41 years old or older and has a double bottom or double sides;

(iv) after January 1, 1998, if the vessel is 34 years old or older and has a single hull, or is 39 years old or older and has a double bottom or double sides;

(v) after January 1, 1999, if the vessel is 32 years old or older and has a single hull, or 37 years old or older and has a double bottom or double sides;

(vi) after January 1, 2000, if the vessel is 30 years old or older and has a single hull, or is 35 years old or older and has a double bottom or double sides;

(vii) after January 1, 2001, if the vessel is 29 years old or older and has a single hull, or is 34 years old or older and has a double bottom or double sides;

(viii) after January 1, 2002, if the vessel is 28 years old or older and has a single hull, or is 33 years old or older and has a double bottom or double sides;

(ix) after January 1, 2003, if the vessel is 27 years old or older and has a single hull, or is 32 years old or older and has a double bottom or double sides;

(x) after January 1, 2004, if the vessel is 26 years old or older and has a single hull, or is 31 years old or older and has a double bottom or double sides; and

(xi) after January 1, 2005, if the vessel is 25 years old or older and has a single hull, or is 30 years old or older and has a double bottom or double sides; and

(C) in the case of a vessel of at least 30,000 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title—

(i) after January 1, 1995, if the vessel is 28 years old or older and has a single hull, or 33 years old or older and has a double bottom or double sides;

(ii) after January 1, 1996, if the vessel is 27 years old or older and has a single hull, or is 32 years old or older and has a double bottom or double sides;

(iii) after January 1, 1997, if the vessel is 26 years old or older and has a single hull, or is 31 years old or older and has a double bottom or double sides;

(iv) after January 1, 1998, if the vessel is 25 years old or older and has a single hull, or is 30 years old or older and has a double bottom or double sides;

(v) after January 1, 1999, if the vessel is 24 years old or older and has a single hull, or 29 years old or older and has a double bottom or double sides; and

(vi) after January 1, 2000, if the vessel is 23 years old or older and has a single hull, or is 28 years old or older and has a double bottom or double sides.

(4) Except as provided in subsection (b) of this section—

(A) a vessel that has a single hull may not operate after January 1, 2010; and

(B) a vessel that has a double bottom or double sides may not operate after January 1, 2015.

(d) The operation of barges described in subsection (b)(5) outside waters described in that subsection shall be on any conditions as the Secretary may require.

(e)(1) For the purposes of this section and except as otherwise provided in paragraphs (2) and (3) of this subsection, the gross tonnage of a vessel shall be the gross tonnage that would have been recognized by the Secretary on July 1, 1997, as the tonnage measured under section 14502 of this title, or as an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title.

(2)(A) The Secretary may waive the application of paragraph (1) to a tank vessel if—

(i) the owner of the tank vessel applies to the Secretary for the waiver before January 1, 1998;

(ii) the Secretary determines that—

(I) the owner of the tank vessel has entered into a binding agreement to alter the tank vessel in a shipyard in the United States to reduce the gross tonnage of the tank vessel by converting a portion of the cargo tanks of the tank vessel into protectively located segregated ballast tanks; and

(II) that conversion will result in a significant reduction in the risk of a discharge of oil;

(iii) at least 60 days before the date of the issuance of the waiver, the Secretary—

(I) publishes notice that the Secretary has received the application and made the determinations required by clause (ii), including a description of the agreement entered into pursuant to clause (ii)(I); and

(II) provides an opportunity for submission of comments regarding the application; and

(iv) the alterations referred to in clause (ii)(I) are completed before the later of—

(I) the date by which the first special survey of the tank vessel is required to be completed after the date of the enactment of the National Defense Authorization Act for Fiscal Year 1998; or

(II) July 1, 1999.

(B) A waiver under subparagraph (A) shall not be effective after the expiration of the 3-year period beginning on the first date on which the tank vessel would have been prohibited by subsection (c) from operating if the alterations referred to in subparagraph (A)(ii)(I) were not made.

(3) This subsection does not apply to a tank vessel that, before July 1, 1997, had undergone, or was the subject of a contract for, alterations that reduce the gross tonnage of the tank vessel, as shown by reliable evidence acceptable to the Secretary.

(Added Pub. L. 101–380, title IV, § 4115(a), Aug. 18, 1990, 104 Stat. 517; amended Pub. L. 104–324, title VII, § 715, title XI, § 1103, Oct. 19, 1996, 110 Stat. 3937, 3966; Pub. L. 105–85, div. C, title XXXVI, § 3606, Nov. 18, 1997, 111 Stat. 2077.)

REFERENCES IN TEXT

The Deepwater Port Act of 1974, referred to in subsec. (b)(3)(A), is Pub. L. 93–627, Jan. 3, 1975, 88 Stat. 2126, as amended, which is classified generally to chapter 29 (§ 1501 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1501 of Title 33 and Tables.

The date of the enactment of the National Defense Authorization Act for Fiscal Year 1998, referred to in subsec. (e)(2)(A)(iv)(I), is the date of enactment of Pub. L. 105–85, which was approved Nov. 18, 1997.

AMENDMENTS

1997—Subsec. (e). Pub. L. 105–85 added subsec. (e).

1996—Subsec. (b)(2). Pub. L. 104–324, § 715(1), inserted ''as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' after ''5,000 gross tons''.

Subsec. (b)(4) to (6). Pub. L. 104–324, § 1103(1), added pars. (4) to (6).

Subsec. (c)(2). Pub. L. 104–324, § 715(2), inserted ''as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' after ''5,000 gross tons'' in two places.

Subsec. (c)(3)(A). Pub. L. 104–324, § 715(3), inserted ''as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' after ''15,000 gross tons''.

Subsec. (c)(3)(B). Pub. L. 104–324, § 715(4), inserted ''as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' after ''30,000 gross tons''.

Subsec. (c)(3)(C). Pub. L. 104–324, § 715(5), inserted ''as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' after ''30,000 gross tons''.

Subsec. (d). Pub. L. 104–324, § 1103(2), added subsec. (d).

EFFECTIVE DATE

Section applicable to incidents occurring after Aug. 18, 1990, see section 1020 of Pub. L. 101–380, set out as a note under section 2701 of Title 33, Navigation and Navigable Waters.

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.

TANK VESSELS OVER 5,000 GROSS TONS TO COMPLY UNTIL JANUARY 1, 2015, WITH ENVIRONMENTALLY PROTECTIVE STRUCTURAL AND OPERATIONAL REQUIREMENTS

Section 4115(b) of Pub. L. 101–380 provided that: ''The Secretary shall, within 12 months after the date of the enactment of this Act [Aug. 18, 1990], complete a rulemaking proceeding and issue a final rule to require that tank vessels over 5,000 gross tons affected by section 3703a of title 46, United States Code, as added by this section, comply until January 1, 2015, with structural and operational requirements that the Secretary determines will provide as substantial protection to the environment as is economically and technologically feasible.''

STUDY ON OTHER STRUCTURAL AND OPERATIONAL TANK VESSEL REQUIREMENTS

Pub. L. 101–380, title IV, § 4115(e), Aug. 18, 1990, 104 Stat. 520, as amended by Pub. L. 105–383, title IV, § 423, Nov. 13, 1998, 112 Stat. 3440; Pub. L. 108–293, title VII, § 705, Aug. 9, 2004, 118 Stat. 1075, provided that:

''(1) OTHER REQUIREMENTS.—Not later than 6 months after the date of enactment of this Act [Aug. 18, 1990], the Secretary shall determine, based on recommendations from the National Academy of Sciences or other qualified organizations, whether other structural and operational tank vessel requirements will provide protection to the marine environment equal to or greater than that provided by double hulls, and shall report to the Congress that determination and recommendations for legislative action.

''(2) REVIEW AND ASSESSMENT.—The Secretary shall—

''(A) periodically review recommendations from the National Academy of Sciences and other qualified organizations on methods for further increasing the environmental and operational safety of tank vessels;

''(B) not later than 5 years after the date of enactment of this Act [Aug. 18, 1990], assess the impact of this section on the safety of the marine environment

and the economic viability and operational makeup of the maritime oil transportation industry; and

''(C) report the results of the review and assessment to the Congress with recommendations for legislative or other action.

''(3) No later than one year after the date of enactment of the Coast Guard and Maritime Transportation Act of 2004 [Aug. 9, 2004], the Secretary shall, taking into account the recommendations contained in the report by the Marine Board of the National Research Council entitled 'Environmental Performance of Tanker Design in Collision and Grounding' and dated 2001, establish and publish an environmental equivalency evaluation index (including the methodology to develop that index) to assess overall outflow performance due to collisions and groundings for double hull tank vessels and alternative hull designs.''

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.

§ 3704. Coastwise trade vessels

A segregated ballast tank, a crude oil washing system, or an inert gas system, required by this chapter or a regulation prescribed under this chapter, on a vessel entitled to engage in the coastwise trade under section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), shall be installed in the United States (except the trust territories). A vessel failing to comply with this section may not engage in the coastwise trade.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 522.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
3704	46:391a(7)

Section 3704 requires any tank vessel that is entitled to engage in the coastwise trade to install certain equipment in the United States under the penalty of losing coastwise trading privileges if the installation work is done in a foreign country.

§ 3705. Crude oil tanker minimum standards

(a) A new crude oil tanker of at least 20,000 deadweight tons shall be equipped with—

(1) protectively located segregated ballast tanks;

(2) a crude oil washing system; and

(3) a cargo tank protection system consisting of a fixed deck froth system and a fixed inert gas system.

(b)(1) An existing crude oil tanker of at least 40,000 deadweight tons shall be equipped with—

(A) segregated ballast tanks; or

(B) a crude oil washing system.

(2) Compliance with paragraph (1) of this subsection may be delayed until June 1, 1985, for any tanker of less than 70,000 deadweight tons that has dedicated clean ballast tanks.

(c) An existing crude oil tanker of at least 20,000 deadweight tons but less than 40,000 deadweight tons, and at least 15 years of age, shall be equipped with segregated ballast tanks or a crude oil washing system before January 2, 1986, or the date on which the tanker reaches 15 years of age, whichever is later.

(d) An existing crude oil tanker of at least 20,000 deadweight tons shall be equipped with an inert gas system. However, for a crude oil tanker of less than 40,000 deadweight tons not fitted with high capacity tank washing machines, the Secretary may grant an exemption if the vessel's owner can show clearly that compliance would be unreasonable and impracticable due to the vessel's design characteristics.

(e) A crude oil tanker engaged in transferring oil from an offshore oil exploitation or production facility on the Outer Continental Shelf of the United States shall be equipped with segregated ballast tanks, or may operate with dedicated clean ballast tanks or special ballast arrangements. However, the tanker shall comply with other applicable minimum standards of this section.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 523.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
3705(a)	46:391a(7)(A)
3705(b)	46:391a(7)(D)
3705(c)	46:391a(7)(E)
3705(d)	46:391a(7)(F)
3705(e)	46:391a(7)(M)

Section 3705 requires compliance with certain minimum standards by a crude oil tanker, which is self-propelled. In general, the minimum required standards are consistent with those international standards that have been adopted as Protocols to the 1974 Safety of Life at Sea Convention and the 1973 Marine Pollution Convention.

Section 3705(a) requires new crude oil tankers of 20,000 deadweight tons or above to have protectively located segregated ballast tanks, a crude oil washing system, and a specified cargo tank protection system.

Section 3705(b) requires existing crude oil tankers of 40,000 deadweight tons or above to have segregated ballast tanks or a crude oil washing system. Compliance may be delayed until June 1, 1985 for smaller tankers that have dedicated clean ballast tanks.

Section 3705(c) requires existing crude oil tankers of 20,000 deadweight tons or above, but less than 40,000 deadweight tons, that are 15 years or older, to have segregated ballast tanks or a crude oil washing system by January 1, 1985 or if less than 15 years old, by the date on which it reaches 15 years of age.

Section 3705(d) requires existing crude oil tankers of 20,000 deadweight tons or above, to install an inert gas system. An exemption for crude oil tankers of less than 40,000 deadweight tons not fitted with high-capacity tank washing machines may be granted by the Secretary, only if it is demonstrated that compliance would be unreasonable and impracticable due to the vessel's design characteristics.

Section 3705(e) requires existing crude oil tankers of 20,000 deadweight tons or above, engaged in the transfer of oil from Outer Continental Shelf oil exploitation or production facilities, to have segregated ballast tanks or be operated with dedicated clean ballast tanks or special ballast arrangements.

§ 3706. Product carrier minimum standards

(a) A new product carrier of at least 30,000 deadweight tons shall be equipped with protectively located segregated ballast tanks.

(b) A new product carrier of at least 20,000 deadweight tons shall be equipped with a cargo tank protection system consisting of a fixed deck froth system and a fixed inert gas system or, if the product carrier carries dedicated products incompatible with the cargo tank protection system, an alternate protection system authorized by the Secretary.

(c) An existing product carrier of at least 40,000 deadweight tons shall be equipped with segregated ballast tanks or may operate with dedicated clean ballast tanks.

(d) An existing product carrier of at least 20,000 deadweight tons but less than 40,000 deadweight tons, and at least 15 years of age, shall be equipped with segregated ballast tanks or may operate with dedicated clean ballast tanks before January 2, 1986, or the date on which it reaches 15 years of age, whichever is later.

(e) An existing product carrier of at least 40,000 deadweight tons, or an existing product carrier of at least 20,000 deadweight tons but less than 40,000 deadweight tons that is fitted with high-capacity tank washing machines, shall be equipped with an inert gas system.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 523.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
3706(a)	46:391a(7)(B)
3706(b)	46:391a(7)(C)
3706(c)	46:391a(7)(G)
3706(d)	46:391a(7)(H)
3706(e)	46:391a(7)(I)

Section 3706 requires compliance with certain minimum standards by a product carrier, which is a self-propelled tank vessel.

Section 3706(a) requires new product carriers of 30,000 deadweight tons or above, to have protectively located segregated ballast tanks.

Section 3706(b) requires new product carriers of 20,000 deadweight tons or above, to have a cargo tank protection system consisting of a fixed deck froth system or a fixed inert gas system. If the products carried are incompatible with the cargo tank protection system, then an alternative protection system may be authorized.

Section 3706(c) requires existing product carriers of 40,000 deadweight tons or above, to have segregated ballast tanks or to operate with dedicated clean ballast tanks.

Section 3706(d) requires existing product carriers of 20,000 deadweight tons or above, but less than 40,000 deadweight tons, that are 15 years or older, to have segregated ballast tanks by January 1, 1985, or on the date on which it reaches 15 years of age or, in the alternative, that the vessel operate with dedicated clean ballast tanks.

Section 3706(e) requires existing product carriers of 40,000 deadweight tons or above, or to existing product carriers, fitted with high-capacity tank washing machines, of 20,000 deadweight tons but less than 40,000 deadweight tons, to install an inert gas system.

§ 3707. Tanker minimum standards

(a) A new tanker of at least 10,000 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title shall be equipped with—

(1) 2 remote steering gear control systems operable separately from the navigating bridge;

(2) the main steering gear control in the steering gear compartment;

(3) means of communications and rudder angle indicators on the navigating bridge, a remote steering gear control station, and the steering gear compartment;

(4) at least 2 identical and adequate power units for the main steering gear;

(5) an alternative and adequate power supply, either from an emergency source of electrical power or from another independent source of power located in the steering gear compartment; and

(6) means of automatic starting and stopping of power units with attendant alarms at all steering stations.

(b) An existing tanker of at least 10,000 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title shall be equipped with—

(1) 2 remote steering gear control systems operable separately from the navigating bridge;

(2) the main steering gear control in the steering gear compartment; and

(3) means of communications and rudder angle indicators on the navigating bridge, a remote steering gear control station, and the steering gear compartment.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 524; Pub. L. 104–324, title VII, § 716, Oct. 19, 1996, 110 Stat. 3937.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
3707(a)	46:391a(7)(K)
3707(b)	46:391a(7)(L)

Section 3707 requires compliance with certain minimum standards by a tanker, which is a self-propelled tank vessel.

Section 3707(a) requires new tankers of 10,000 gross tons or above, to have two remote steering gear control systems, a main steering gear control in the steering gear compartment, a means of communications and rudder angle indicators at specified locations, two or more specified power units for the main steering gear, an alternative and adequate power supply of specified characteristics, and a means of automatic operation of power units, with attendant alarms at all steering stations.

Section 3707(b) requires existing tankers of 10,000 gross tons or above, to have two remote steering gear control systems, a main steering gear control in the steering gear compartment, and a means of communication and rudder angle indicators at specified locations.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–324, § 716(1), inserted ''as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' after ''10,000 gross tons'' in introductory provisions.

Subsec. (b). Pub. L. 104–324, § 716(2), inserted ''as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' after ''10,000 gross tons''.

§ 3708. Self-propelled tank vessel minimum standards

A self-propelled tank vessel of at least 10,000 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title shall be equipped with—

(1) a dual radar system with short-range and long-range capabilities, each with true-north features;

(2) an electronic relative motion analyzer that is at least functionally equivalent to equipment complying with specifications established by the Secretary of Transportation;

(3) an electronic position-fixing device;

(4) adequate communications equipment;

(5) a sonic depth finder;

(6) a gyrocompass; and

(7) up-to-date charts.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 524; Pub. L. 104–324, title VII, § 717, Oct. 19, 1996, 110 Stat. 3937.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
3708	46:391a(7)(J)

Section 3708 requires compliance with certain minimum standards by a self-propelled tank vessel. These requirements apply to any tank vessel of 10,000 gross tons or above with no distinction being made as to whether or not the vessel is ''primarily'' constructed or adapted to carry oil or hazardous material in bulk in the cargo spaces. These vessels are required to be equipped with a dual radar system, a computerized relative motion analyzer, an electronic position fixing device, adequate communications equipment, a sonic depth finder, a gyrocompass, and up-to-date charts.

AMENDMENTS

1996—Pub. L. 104–324 inserted ''as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' after ''10,000 gross tons''.

§ 3709. Exemptions

The Secretary may exempt a vessel from the minimum requirements established by sections 3704–3706 of this title for segregated ballast, crude oil washing, and dedicated clean ballast if the Secretary decides that shore-based reception facilities are a preferred method of handling ballast and that adequate facilities are readily available.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 524.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
3709	46:391a(7)(N)

Section 3709 provides the Secretary with the authority to exempt certain minimum tanker requirements of sections 3704, 3705, and 3706 when shorebased reception facilities are a better way of handling ballast and when the facilities are adequate and readily available.

§ 3710. Evidence of compliance by vessels of the United States

(a) A vessel of the United States to which this chapter applies that has on board oil or hazardous material in bulk as cargo or cargo residue must have a certificate of inspection issued under this part, endorsed to indicate that the vessel complies with regulations prescribed under this chapter.

(b) Each certificate endorsed under this section is valid for not more than 5 years and may be renewed as specified by the Secretary. In appropriate circumstances, the Secretary may issue a temporary certificate valid for not more than 30 days. A certificate shall be suspended or revoked if the Secretary finds that the vessel does not comply with the conditions under which the certificate was issued.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 524; Pub. L. 104–324, title VI, § 605(b), Oct. 19, 1996, 110 Stat. 3931.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
3710	46:391a(8)(A) 46:391a(8)(E)

Section 3710 prohibits any vessels of the United States subject to this chapter from having on board oil or hazardous material in bulk as cargo or in residue, unless it has a required Certificate of Inspection endorsed to indicate vessel compliance with applicable regulations. Certificates shall be valid for a period not to exceed two years and may be renewed as specified by the Secretary. The Secretary may issue temporary certificates of not more than thirty days duration and may revoke or suspend any certificate under designated circumstances.

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–324 substituted ''5 years'' for ''24 months''.

§ 3711. Evidence of compliance by foreign vessels

(a) A foreign vessel to which this chapter applies may operate on the navigable waters of the United States, or transfer oil or hazardous material in a port or place under the jurisdiction of the United States, only if the vessel has been issued a certificate of compliance by the Secretary. The Secretary may issue the certificate only after the vessel has been examined and found to be in compliance with this chapter and regulations prescribed under this chapter. The Secretary may accept any part of a certificate, endorsement, or document, issued by the government of a foreign country under a treaty, convention, or other international agreement to which the United States is a party, as a basis for issuing a certificate of compliance.

(b) A certificate issued under this section is valid for not more than 24 months and may be renewed as specified by the Secretary. In appropriate circumstances, the Secretary may issue a temporary certificate valid for not more than 30 days.

(c) A certificate shall be suspended or revoked if the Secretary finds that the vessel does not comply with the conditions under which the certificate was issued.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 525.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
3711	46:391a(8)(B) 46:391a(8)(C) 46:391a(8)(E)

Section 3711 prohibits any foreign vessel from operating on the navigable waters of the United States or from transferring oil or hazardous material in any port or place under the jurisdiction of the United States, unless it has a certificate of compliance issued by the

Secretary indicating that the vessel has been examined and found to be in compliance with the provisions of the applicable regulations. It also authorizes the Secretary to accept, in whole or in part, an appropriate foreign certificate issued pursuant to any international agreement to which the United States is a party, as a basis for issuing the certificate of compliance. This means that the Secretary does not have to accept foreign certificates as evidence of compliance, but may take additional action to assure compliance with applicable domestic laws and regulations and international treaty provisions.

§ 3712. Notification of noncompliance

The Secretary shall notify the owner, charterer, managing operator, agent, master, or individual in charge of a vessel found not to be in compliance with a regulation prescribed under this part and state how compliance may be achieved.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 525.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
3712	46:391a(8)(A) 46:391a(8)(B)

Section 3712 requires the Secretary to notify appropriate parties when a vessel is found not to be in compliance with applicable requirements, standards, or regulations and what remedial steps must be taken in order to comply with them.

§ 3713. Prohibited acts

(a) A person may not—

(1) violate this chapter or a regulation prescribed under this chapter;

(2) refuse to permit any official, authorized by the Secretary to enforce this chapter, to board a vessel or to enter a shore area, place, or premises, under a person's control to make an inspection under this chapter; or

(3) refuse to obey a lawful directive issued under this chapter.

(b) A vessel to which this chapter applies may not—

(1) operate on the navigable waters of the United States or use a port or place subject to the jurisdiction of the United States when not in compliance with this chapter or a regulation prescribed under this chapter;

(2) fail to comply with a lawful directive issued under this chapter; or

(3) carry a type or grade of oil or hazardous material in bulk as cargo or cargo residue unless its certificate is endorsed to allow that carriage.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 525.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
3713	46:391a(13)

Section 3713(a) prohibits any person from violating any provision of this chapter or a regulation prescribed under its authority. It prohibits the refusal to permit authorized officials to board a vessel or to enter a shore area for the purposes of inspection of the vessel or premises. It also prohibits the refusal to obey any lawful directive issued under this chapter.

Section 3713(b) prohibits any vessel, subject to the provisions of this chapter from operating on the navigable waters of the United States, or from using any port or place subject to the jurisdiction of the United States while not in compliance with any provision of applicable law or regulation. It further prohibits any vessel from failing to comply with a lawful directive issued pursuant to the authority of this chapter. It also prohibits the vessel from carrying oil or hazardous material as cargo or cargo residue unless its certificate is so endorsed to permit its carriage.

§ 3714. Inspection and examination

(a)(1) The Secretary shall have each vessel to which this chapter applies inspected or examined at least once each year.

(2) Each of those vessels that is more than 10 years of age shall undergo a special and detailed inspection of structural strength and hull integrity as specified by the Secretary.

(3) The Secretary may make contracts for conducting inspections or examinations in the United States and in foreign countries. An inspector conducting an inspection or examination under contract may not issue a certificate of inspection or a certificate of compliance, but the inspector may issue a temporary certificate.

(4) The Secretary shall prescribe by regulation reasonable fees for an inspection or examination conducted under this section outside the United States, or which, when involving a foreign vessel, is conducted under a contract authorized by paragraph (3) of this subsection. The owner, charterer, or managing operator of a vessel inspected or examined by the Secretary is liable for the fees. Amounts received as fees shall be deposited in the Treasury.

(5) The Secretary may allow provisional entry of a vessel to conduct an inspection or examination under this chapter.

(b) Each vessel to which this chapter applies shall have on board those documents the Secretary considers necessary for inspection and enforcement, including documents listing—

(1) the type, grade, and approximate quantities of cargo on board;

(2) the shipper and consignee of the cargo;

(3) the places of origin and destination of the vessel; and

(4) the name of an agent in the United States authorized to accept service of legal process.

(c) Each vessel to which this chapter applies that operates in the United States shall have a person designated as authorized to accept service of legal process for the vessel.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 526; Pub. L. 99–307, § 1(8), May 19, 1986, 100 Stat. 445.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
3714	46:391a(15)

Section 3714(a) requires the Secretary to establish a program for the inspection of tank vessels, foreign or domestic, at least once each year. The Committee contemplates that United States vessels will be issued a 2 year certificate of inspection with a mid-period examination. The Committee also contemplates that foreign-flag vessels will continue to be tracked and boarded at least once a year or when they first arrive in the United States. The Secretary may examine the foreign-flag tank vessel but may accept, as a basis for the issuance of a certificate of compliance, in whole or in part a foreign-issued certificate.

Each vessel over 10 years of age must undergo a special and detailed inspection of structural strength and hull integrity, as specified by the Secretary. An inspection or examination may be conducted by any officer authorized by the Secretary. The Committee expects that, whenever possible, a qualified marine inspector will be used wherever the vessel undergoes these 10-year inspections. The Secretary may also contract for inspections or examinations in the United States and in foreign countries.

The primary reason for including a provision that permits the contracting for the conduct of inspections and examinations is to provide flexibility in foreign areas where Coast Guard marine inspectors are not normally available.

A contract inspector may be authorized to act on behalf of the Secretary, but may not issue a certificate of inspection or compliance. The inspector may, however, issue a temporary certificate.

The Committee understands that the 10-year inspections of United States-flag and foreign-flag vessels may occur at the time the vessel is scheduled for shipyard availability to complete the periodic classification society survey.

The Secretary is also authorized and directed to prescribe by regulation reasonable fees for certain inspections or examinations conducted pursuant to this section based on the cost incurred. The owner of any vessel inspected or examined by the Secretary or his designee shall be liable for the fee. Amounts received as fees under this section are to be deposited in the Treasury.

Section 3714(b) requires each vessel subject to this chapter to have on board those documents the Secretary declares are necessary for inspection or enforcement, including, but not limited to documents indicating the kind, grade, and approximate quantities of any cargo on board; the shipper and consignee of the cargo; the points of origin and destination of the vessel; and the name of an agent in the United States authorized to accept legal process.

Section 3714(c) requires each vessel subject to this chapter to have a person authorized to accept service of legal process for the vessel.

AMENDMENTS

1986—Subsec. (a)(4). Pub. L. 99–307 substituted ''charterer'' for ''charter''.

§ 3715. Lightering

(a) A vessel may transfer oil or hazardous material in a port or place subject to the jurisdiction of the United States, when the cargo has been transferred from another vessel on the navigable waters of the United States or in the marine environment, only if—

(1) the transfer was conducted consistent with regulations prescribed by the Secretary;

(2) both the delivering and receiving vessels had on board, at the time of transfer, a certificate of inspection or a certificate of compliance, as would have been required under section 3710 or 3711 of this title, had the transfer taken place in a port or place subject to the jurisdiction of the United States; and

(3) the delivering and the receiving vessel had on board at the time of transfer, a certificate of financial responsibility as would have been required under section 1016 of the Oil Pollution Act of 1990, had the transfer taken place in a place subject to the jurisdiction of the United States;

(4) the delivering and the receiving vessel had on board at the time of transfer, evidence that each vessel is operating in compliance with section 311(j) of the Federal Water Pollution Control Act (33 U.S.C. 1321(j)); and

(5) the delivering and the receiving vessel are operating in compliance with section 3703a of this title.

(b) The Secretary shall prescribe regulations to carry out subsection (a) of this section. The regulations shall include provisions on—

(1) minimum safe operating conditions, including sea state, wave height, weather, proximity to channels or shipping lanes, and other similar factors;

(2) the prevention of spills;

(3) equipment for responding to a spill;

(4) the prevention of any unreasonable interference with navigation or other reasonable uses of the high seas, as those uses are defined by treaty, convention, or customary international law;

(5) the establishment of lightering zones; and

(6) requirements for communication and prearrival messages.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 526; Pub. L. 101–380, title IV, § 4115(d), Aug. 18, 1990, 104 Stat. 520.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
3715	46:391a(17)

Section 3715 requires the Secretary to control lightering operations; that is, the transferring of cargoes at sea from large deep-draft vessels to shallow-draft vessels for subsequent transfer to shoreside terminals due to the inability of the larger tank vessels to enter shallow ports. It prohibits a tank vessel from unloading any cargo of oil or hazardous material at any port or terminal under the jurisdiction of the United States, unless the cargo has been transferred in accordance with lightering regulations. It also prohibits the shoreside transfer unless both the delivering and receiving vessels involved in the prior lightering had on board at the time of the offshore transfer, the certificates that would have been required had the transfer taken place in a port or place subject to the jurisdiction of the United States.

The regulations to be prescribed by the Secretary shall include a number of specific considerations but may include any related matters deemed necessary to promote navigation and vessel safety and protection of the marine environment. The Secretary must consider standards for minimum safe operating conditions, including sea state, wave height, weather, vessel traffic, the prevention of oil spills, and oil spill response equipment. In regulating this operation, there must not be any unreasonable interference with international navigation or reasonable uses of the high seas, and there must be established lightering zones with attendant communications and prearrival message requirements.

REFERENCES IN TEXT

Section 1016 of the Oil Pollution Act of 1990, referred to in subsec. (a)(3), is classified to section 2716 of Title 33, Navigation and Navigable Waters.

AMENDMENTS

1990—Subsec. (a)(3) to (5). Pub. L. 101–380 added pars. (3) to (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 Title 33, Navigation and Navigable Waters.

EFFECTIVE DATE

Section 2(g)(2) of Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 599, provided that: ''Section 3715(a) of title 46 (as enacted by section 1 of this Act) is effective on the day after the effective date of the regulations prescribed by the Secretary under section 3715(b) of title 46.'' [Regulations effective Apr. 26, 1984, see 49 F.R. 11170, Mar. 26, 1984.]

§ 3716. Tank washings

(a) A vessel may not transfer cargo in a port or place subject to the jurisdiction of the United States if, before arriving, the vessel has discharged tank washings containing oil or hazardous material in preparation for loading at that port or place in violation of the laws of the United States or in a manner or quantities inconsistent with a treaty to which the United States is a party.

(b) The Secretary shall establish effective control and supervisory measures to carry out this section.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 527.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
3716	46:391a(18)

Section 3716 requires the Secretary to establish effective control and supervisory measures to prohibit the discharge of tank washings by dumping at sea. The section also prohibits the dumping vessel from subsequently loading any cargo at a port or terminal subject to the jurisdiction of the United States. This section is intended to prohibit the practice of discharging a cargo of oil or hazardous substance, then going to sea to clean tanks by pumping tank washing mixtures overboard, and then returning to a port or terminal subject to the jurisdiction of the United States for the purpose of loading a cargo that was incompatible with the prior cargo.

§ 3717. Marine safety information system

(a) The Secretary shall establish a marine safety information system that shall contain information about each vessel to which this chapter applies that operates on the navigable waters of the United States, or that transfers oil or hazardous material in a port or place under the jurisdiction of the United States. In acquiring this information, the Secretary shall make full use of publicly available information. The Secretary may by regulation require the vessel to provide information that the Secretary considers necessary to carry out this subsection, including—

(1) the name of each person with an ownership interest in the vessel;

(2) details of compliance with the financial responsibility requirements of applicable laws or regulations;

(3) registration information, including all changes in the name of the vessel;

(4) the history of marine casualties and serious repair problems of the vessel; and

(5) a record of all inspections and examinations of a vessel conducted under section 3714 of this title.

(b) On written request from the Secretary, the head of each department, agency, or instrumentality of the United States Government shall provide available information that the Secretary considers necessary to confirm the information received under subsection (a) of this section.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 527.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
3717	46:391a(16)

Section 3717 requires the Secretary to establish a marine safety information system which is to contain selected information on any tank vessel, foreign or domestic, that comes within the jurisdiction of the United States. This information must be recorded and maintained up-to-date and is available from a number of sources. In some instances, this information is required as a condition of entry. This information shall include certain ownership interests, financial responsibility information, all registered names that the vessel has had since it was built, the present and prior countries of registry, history of accidents or serious repair problems, record of the various inspections or examinations required, and any other data the Secretary deems appropriate to carry out the intent of the section. The section also provides for interagency cooperation and the furnishing of available data and information.

§ 3718. Penalties

(a)(1) A person violating this chapter or a regulation prescribed under this chapter is liable to the United States Government for a civil penalty of not more than $25,000. Each day of a continuing violation is a separate violation.

(2) Each vessel to which this chapter applies that is operated in violation of this chapter or a regulation prescribed under this chapter is liable in rem for a civil penalty under this subsection.

(b) A person willfully and knowingly violating this chapter or a regulation prescribed under this chapter commits a class D felony.

(c) Instead of the penalties provided by subsection (b) of this section, a person willfully and knowingly violating this chapter or a regulation prescribed under this chapter, and using a dangerous weapon, or engaging in conduct that causes bodily injury or fear of imminent bodily injury to an official authorized to enforce this chapter or a regulation prescribed under this chapter, commits a class C felony.

(d) The district courts of the United States have jurisdiction to restrain a violation of this chapter or a regulation prescribed under this chapter.

(e)(1) If any owner, operator, or individual in charge of a vessel is liable for any 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 any 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 4197 of the Revised Statutes of the United States (46 App. U.S.C. 91).

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

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 527; Pub. L. 101–380, title IV, § 4302(c), Aug. 18, 1990, 104 Stat.

538; Pub. L. 104–324, title III, § 312(d), Oct. 19, 1996, 110 Stat. 3921.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
3718	46:391a(14)

Section 3718 provides the authority to assess civil penalties for violation of the chapter or regulations. Each violation subjects the violator to a penalty not to exceed $25,000 for each violation and, in the case of a continuing violation, each day shall constitute a separate violation and the vessel is liable in rem. The procedures for assessing penalties are found in section 2107 of part A.

With respect to criminal penalties, a willful or knowing violation of the section or a regulation subjects the offender, upon conviction, to a criminal fine of not more than $50,000 for each violation or imprisonment for not more than 1 year, or both. If the willful and knowing violation involves the use of a dangerous weapon or constitutes an assault or battery, the offender is subjected to a fine of not more than $100,000 or imprisonment of not more than 10 years, or both.

In addition, where the owner or operator of the vessel is subject to any of the penalties prescribed, the Secretary of the Treasury is directed to withhold required Customs clearance, at the request of the Secretary. Clearance may be granted upon the filing of a bond or other surety satisfactory to the Secretary.

AMENDMENTS

1996—Subsec. (e). Pub. L. 104–324 amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: ''At the request of the Secretary, the Secretary of the Treasury shall withhold or revoke the clearance required by section 4197 of the Revised Statutes (46 App. U.S.C. 91) of a vessel the owner or operator of which is subject to a penalty under this section. Clearance may be granted on filing a bond or other surety satisfactory to the Secretary.''

1990—Subsec. (b). Pub. L. 101–380, § 4302(c)(1), substituted ''commits a class D felony'' for ''shall be fined not more than $50,000, imprisoned for not more than 5 years, or both''.

Subsec. (c). Pub. L. 101–380, § 4302(c)(2), substituted ''commits a class C felony'' for ''shall be fined not more than $100,000, imprisoned for not more than 10 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 Title 33, Navigation and Navigable Waters.

§ 3719. Reduction of oil spills from single hull non-self-propelled tank vessels

The Secretary shall, in consultation with the Towing Safety Advisory Committee and taking into consideration the characteristics, methods of operation, and the size and nature of service of single hull non-self-propelled tank vessels and towing vessels, prescribe regulations requiring a single hull non-self-propelled tank vessel that operates in the open ocean or coastal waters, or the vessel towing it, to have at least one of the following:

(1) A crew member and an operable anchor on board the tank vessel that together are capable of arresting the tank vessel without additional assistance under reasonably foreseeable sea conditions.

(2) An emergency system on the tank vessel or towing vessel that without additional assistance under reasonably foreseeable sea conditions will allow the tank vessel to be retrieved by the towing vessel if the tow line ruptures.

(3) Any other measure or combination of measures that the Secretary determines will provide protection against grounding of the tank vessel comparable to that provided by the measures described in paragraph (1) or (2).

(Added Pub. L. 104–324, title IX, § 901(a), Oct. 19, 1996, 110 Stat. 3946.)

REGULATIONS

Section 901(b) of Pub. L. 104–324 provided that: ''The Secretary of the department in which the Coast Guard is operating shall issue regulations required under section 3719 of title 46, United States Code, as added by subsection (a), by not later than October 1, 1997.''

[CHAPTER 39—REPEALED]

[§§ 3901, 3902. Repealed. Pub. L. 107–171, title X, § 10418(a)(20), May 13, 2002, 116 Stat. 508]

Section 3901, Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 528, related to regulations for accommodations for export animals.

Section 3902, Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 528, related to penalties.

CHAPTER 41—UNINSPECTED VESSELS GENERALLY

Sec.
4101. Application.
4102. Safety equipment.
4103. Exemptions.
[4104. Repealed.]
4105. Uninspected passenger vessels.
4106. Penalties.

HISTORICAL AND REVISION NOTES

Chapter 41 applies to vessels that are not subject to inspection and certification under chapter 33.

The Federal authority to regulate uninspected vessels originated with the Motorboat Act of 1910 (Public Law 61–201, 36 Stat. 462) when Congress established standards with respect to navigation lights, machinery requirements, life preservers, and for the licensing of operators on small vessels carrying passengers. This was an extension of Federal regulatory authority over certain non-steam-propelled vessels, that is, those recreational vessels and commercial vessels that are propelled by machinery other than steam.

Thirty years later, the 1910 Act was amended by the Motorboat Act of 1940 (Public Law 76–484, 54 Stat. 163), which added to the equipment that was required and provided for other regulatory controls. In this manner the Federal Government continued to exercise some degree of maritime safety supervision over the commercial and recreational vessel sector that was ''uninspected''. This was important because steam towing vessels were converting to diesel propulsion and were therefore no longer subject to the detailed periodic and extensive hull, machinery, and equipment inspections of a Federal agency. In addition, the number of recreational vessels primarily propelled by gasoline were increasing and were also suffering casualties from explosions and fires.

AMENDMENTS

1990—Pub. L. 101–595, title VI, § 603(3)(B), Nov. 16, 1990, 104 Stat. 2993, struck out item 4104 ''Regulations''.

1984—Pub. L. 98–364, title IV, § 402(7)(B), July 17, 1984, 98 Stat. 446, inserted ''GENERALLY'' in chapter heading.

§ 4101. Application

This chapter applies to an uninspected vessel not subject to chapter 45 of this title—

(1) on the navigable waters of the United States; or

(2) owned in the United States and operating on the high seas.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 528; Pub. L. 100–424, § 8(b), Sept. 9, 1988, 102 Stat. 1593.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
4101	46:526u

Section 4101 makes this chapter applicable to uninspected vessels, as defined in section 2101(43), that operate on the navigable waters of the United States or that are owned in the United States and while operating on the high seas. Therefore a vessel that operates on waters that are considered to be solely State waters would not be subject to these Federal requirements.

AMENDMENTS

1988—Pub. L. 100–424 inserted ''not subject to chapter 45 of this title'' after ''an uninspected vessel''.

EFFECTIVE DATE

Chapter effective Apr. 15, 1984, see section 2(g)(1) of Pub. L. 98–89, set out as a note under section 3101 of this title.

§ 4102. Safety equipment

(a) Each uninspected vessel propelled by machinery shall be provided with the number, type, and size of fire extinguishers, capable of promptly and effectively extinguishing burning liquid fuel, that may be prescribed by regulation. The fire extinguishers shall be kept in condition for immediate and effective use and so placed as to be readily accessible.

(b) Each uninspected vessel propelled by machinery shall carry at least one readily accessible life preserver or other lifesaving device, of the type prescribed by regulation, for each individual on board.

(c) Each uninspected vessel shall have the carburetors of each engine of the vessel (except an outboard motor) using gasoline as fuel, equipped with an efficient flame arrestor, backfire trap, or other similar device prescribed by regulation.

(d) Each uninspected vessel using a volatile liquid as fuel shall be provided with the means prescribed by regulation for properly and efficiently ventilating the bilges of the engine and fuel tank compartments, so as to remove any explosive or flammable gases.

(e) Each manned uninspected vessel owned in the United States and operating beyond 3 nautical miles from the baselines from which the territorial sea of the United States is measured or beyond three nautical miles from the coastline of the Great Lakes shall be equipped with the number and type of alerting and locating equipment, including emergency position indicating radio beacons, prescribed by the Secretary.

(f)(1) The Secretary, in consultation with the Towing Safety Advisory Committee and taking into consideration the characteristics, methods of operation, and nature of service of towing vessels, may require the installation, maintenance, and use of a fire suppression system or other measures to provide adequate assurance that fires on board towing vessels can be suppressed under reasonably foreseeable circumstances.

(2) The Secretary shall require under paragraph (1) the use of a fire suppression system or other measures to provide adequate assurance that a fire on board a towing vessel that is towing a non-self-propelled tank vessel can be suppressed under reasonably foreseeable circumstances.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 528; Pub. L. 99–640, § 16, Nov. 10, 1986, 100 Stat. 3552; Pub. L. 100–424, § 2(c), Sept. 9, 1988, 102 Stat. 1590; Pub. L. 100–540, § 1(a), Oct. 28, 1988, 102 Stat. 2719; Pub. L. 104–324, title IX, § 902(a), Oct. 19, 1996, 110 Stat. 3947; Pub. L. 105–383, title III, § 301(b)(3), Nov. 13, 1998, 112 Stat. 3417.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
4102(a)	46:526g
4102(b)	46:526e
4102(c)	46:526i
4102(d)	46:526j

Section 4102 requires uninspected vessels to comply with certain provisions that incorporate minimum safety equipment and construction requirements. The Committee intends that the term life preserver include all types of personal equipment, including exposure suits with floatation characteristics.

AMENDMENTS

1998—Subsec. (e). Pub. L. 105–383 substituted ''owned in the United States and operating beyond 3 nautical miles from the baselines from which the territorial sea of the United States is measured'' for ''operating on the high seas''.

1996—Subsec. (f). Pub. L. 104–324 added subsec. (f).

1988—Subsec. (e). Pub. L. 100–540 amended subsec. (e) generally without regard to the prior repeal of subsec. (e) by Pub. L. 100–424.

Pub. L. 100–424 struck out subsec. (e) which read as follows: ''Each uninspected fishing, fish processing, or fish tender vessel operating on the high seas shall be equipped with the number and type of emergency position indicating radio beacons prescribed by regulation.'' See section 4502(a)(7) of this title.

1986—Subsec. (e). Pub. L. 99–640 added subsec. (e).

REGULATIONS

Section 902(b) of Pub. L. 104–324 provided that: ''The Secretary of the department in which the Coast Guard is operating shall issue regulations establishing the requirement described in subsection (f)(2) of section 4102 of title 46, United States Code, as added by this section, by not later than October 1, 1997.''

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.

§ 4103. Exemptions

(a) The Secretary may exempt a vessel from any part of this chapter if, under regulations prescribed by the Secretary (including regulations on special operating conditions), the Secretary finds that—

(1) good cause exists for granting an exemption; and

(2) the safety of the vessel and individuals on board will not be adversely affected.

(b) Section 4102(a) of this title does not apply to a vessel propelled by outboard motors when

competing in a race previously arranged and announced or, if the vessel is designed and intended only for racing, when operated incidental to tuning up the vessel and its engines for the race.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 529; Pub. L. 100–540, § 2, Oct. 28, 1988, 102 Stat. 2719.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
4103	46:525h

Section 4103 contains an exemption from carrying fire extinguishers, for on a vessel competing in an organized race or a vessel designed and intended for racing only.

AMENDMENTS

1988—Pub. L. 100–540 added subsec. (a) and designated existing provisions as subsec. (b).

[§ 4104. Repealed. Pub. L. 101–595, title VI, § 603(3)(A), Nov. 16, 1990, 104 Stat. 2993]

Section, Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 529, required Secretary to prescribe regulations to carry out provisions of this chapter.

§ 4105. Uninspected passenger vessels

(a) Chapter 43 of this title applies to an uninspected passenger vessel.

(b) Within twenty-four months of the date of enactment of this subsection, the Secretary shall, by regulation, require certain additional equipment which may include liferafts or other lifesaving equipment, construction standards, or specify additional operating standards for those uninspected passenger vessels defined in section 2101(42)(A) of this title.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 529; Pub. L. 103–206, title V, § 511(b), Dec. 20, 1993, 107 Stat. 2442.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
4105	46:1452 46:1453

Section 4105 provides that an uninspected passenger vessel is subject to Chapter 43, as a recreational vessel even when it is carrying not more than six passengers.

REFERENCES IN TEXT

The date of enactment of this subsection, referred to in subsec. (b), is the date of enactment of Pub. L. 103–206, which was approved Dec. 20, 1993.

AMENDMENTS

1993—Pub. L. 103–206 designated existing provisions as subsec. (a) and added subsec. (b).

§ 4106. Penalties

If a vessel to which this chapter applies is operated in violation of this chapter or a regulation prescribed under this chapter, the owner, charterer, managing operator, agent, master, and individual in charge are each liable to the United States Government for a civil penalty of not more than $5,000. The vessel also is liable in rem for the penalty.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 529; Pub. L. 100–540, § 3, Oct. 28, 1988, 102 Stat. 2719.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
4106	46:526*o*

Section 4106 provides a civil penalty of $100 for a violation of this chapter or a regulation under this chapter. The vessel also is liable in rem.

AMENDMENTS

1988—Pub. L. 100–540 substituted ''not more than $5,000'' for ''$100''.

CHAPTER 43—RECREATIONAL VESSELS

Sec.
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HISTORICAL AND REVISION NOTES

Chapter 43 contains the laws applicable to recreational vessels, which originated primarily with the enactment of the Federal Boat Safety Act of 1971 (Public Law 92–75, 85 Stat. 213). That Act embraced a number of activities, but the portion restated in this chapter deals with the establishment of national construction and performance standards for recreational vessels and their associated equipment, the necessary flexible regulatory authority for inspection and testing, Federal preemption, certain necessary prohibited acts, enforcement authority, investigation and reporting requirements, procedures for repair and defect notification, and attendant penalties and injunctive relief. These laws are a direct response to the dramatic increase in the number of recreational boats and the Congressional recognition of the maritime safety problems that recreational boating has imposed upon our more than 25 million miles of waterways.

§ 4301. Application

(a) This chapter applies to a recreational vessel and associated equipment carried in the vessel on waters subject to the jurisdiction of the United States (including the territorial sea of the United States as described in Presidential Proclamation No. 5928 of December 27, 1988) and, for a vessel owned in the United States, on the high seas.

(b) Except when expressly otherwise provided, this chapter does not apply to a foreign vessel temporarily operating on waters subject to the jurisdiction of the United States.

(c) Until there is a final judicial decision that they are navigable waters of the United States, the following waters lying entirely in New Hampshire are declared not to be waters subject to the jurisdiction of the United States within the meaning of this section: Lake Winnisquam, Lake Winnipesaukee, parts of the Merrimack River, and their tributary and connecting waters.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 529; Pub. L. 105–383, title III, § 301(b)(4), Nov. 13, 1998, 112 Stat. 3417.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
4301	46:1453

Section 4301 provides that this chapter is applicable to a recreational vessel that operates on waters subject to the jurisdiction of the United States or that is owned in the United States and while operating on the high seas.

It also provides that a foreign recreational vessel that temporarily uses our waters is not subject to the requirements of this chapter. However, if the vessel remains permanently in the United States, it would be subject to the provisions of this chapter.

Section 4301(c) recognizes the ongoing controversy over the navigability of certain waters of New Hampshire. While a recreational vessel operating on these waters need not meet the requirements of this chapter, it would be prohibited from operating on any other waters subject to the jurisdiction of the United States if it does not comply with these requirements.

REFERENCES IN TEXT

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

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–383 inserted ''(including the territorial sea of the United States as described in Presidential Proclamation No. 5928 of December 27, 1988)'' after ''of the United States''.

EFFECTIVE DATE

Chapter effective Apr. 15, 1984, see section 2(g)(1) of Pub. L. 98–89, set out as a note under section 3101 of this title.

§ 4302. Regulations

(a) The Secretary may prescribe regulations—

(1) establishing minimum safety standards for recreational vessels and associated equipment, and establishing procedures and tests required to measure conformance with those standards, with each standard—

(A) meeting the need for recreational vessel safety; and

(B) being stated, insofar as practicable, in terms of performance;

(2) requiring the installation, carrying, or use of associated equipment (including fuel systems, ventilation systems, electrical systems, sound-producing devices, firefighting equipment, lifesaving devices, signaling devices, ground tackle, life- and grab-rails, and navigational equipment) on recreational vessels and classes of recreational vessels subject to this chapter, and prohibiting the installation, carrying, or use of associated equipment that does not conform with safety standards established under this section; and

(3) requiring or permitting the display of seals, labels, plates, insignia, or other devices for certifying or evidencing compliance with safety regulations and standards of the United States Government for recreational vessels and associated equipment.

(b) Each regulation prescribed under this section shall specify an effective date that is not earlier than 180 days from the date the regulation was published, unless the Secretary finds that there exists a recreational vessel safety hazard so critical as to require an earlier effective date. However, this period may not be more than 24 months for cases involving, in the discretion of the Secretary, major product design, retooling, or major changes in the manufacturing process.

(c) In prescribing regulations under this section, the Secretary shall, among other things—

(1) consider the need for and the extent to which the regulations will contribute to recreational vessel safety;

(2) consider relevant available recreational vessel safety standards, statistics, and data, including public and private research, development, testing, and evaluation;

(3) not compel substantial alteration of a recreational vessel or item of associated equipment that is in existence, or the construction or manufacture of which is begun before the effective date of the regulation, but subject to that limitation may require compliance or performance, to avoid a substantial risk of personal injury to the public, that the Secretary considers appropriate in relation to the degree of hazard that the compliance will correct; and

(4) consult with the National Boating Safety Advisory Council established under section 13110 of this title about the considerations referred to in clauses (1)–(3) of this subsection.

(d) Section 8903 of this title does not apply to a vessel being operated for bona fide dealer demonstrations provided without fee to business invitees. However, if on the basis of substantial evidence, the Secretary decides under this section that requiring vessels so operated to be under the control of licensed individuals is necessary for boating safety, then the Secretary may prescribe regulations requiring the licensing of individuals controlling these vessels in the same manner as provided in chapter 89 of this title for individuals in control of vessels carrying passengers for hire.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 530.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
4302	46:1454 46:1455 46:1456 46:1464(g) 46:1488

Section 4302 authorizes the Secretary to prescribe regulations to carry out the provisions of this chapter. In lieu of establishing specific statutory safety requirements, subsection (a) provides flexible regulatory authority to establish uniform standards for the design, construction, materials, and performance of the boats themselves and all associated equipment. It also provides for the display of seals and other devices for certifying or evidencing compliance with applicable safety regulations or standards.

Section 4302(b) requires a regulation prescribed under this section to have an effective date that is not earlier than 180 days from publication. However, in those instances where a safety hazard may be critical an earlier effective date is authorized.

Section 4302(c) requires the Secretary to consider certain objectives in developing regulatory controls and regulations or standards and that there must be an effective consultation process.

Section 4302(d) exempts dealer demonstration boats from the requirement of having to be named by a li-

censed individual when demonstrating boats to prospective purchasers or other business invitees when no fees are charged. The Secretary may require that boats so used be under control of a licensed individual.

AVAILABILITY AND USE OF EPIRBS FOR RECREATIONAL VESSELS

Pub. L. 105–383, title III, § 309, Nov. 13, 1998, 112 Stat. 3422, provided that: ''The Secretary of Transportation, through the Coast Guard and in consultation with the National Transportation Safety Board and recreational boating organizations, shall, within 24 months of the date of the enactment of this Act [Nov. 13, 1998], assess and report to Congress on the use of emergency position indicating beacons (EPIRBs) and similar devices by operators of recreational vessels on the Intracoastal Waterway and operators of recreational vessels beyond the Boundary Line. The assessment shall at a minimum—

''(1) evaluate the current availability and use of EPIRBs and similar devices by the operators of recreational vessels and the actual and potential contribution of such devices to recreational boating safety; and

''(2) provide recommendations on policies and programs to encourage the availability and use of EPIRBS [sic] and similar devices by the operators of recreational vessels.''

§ 4303. Inspection and testing

(a) Subject to regulations, supervision, and reviews that the Secretary may prescribe, the Secretary may delegate to a person, private or public agency, or organization, or to an officer or employee under the supervision of that person or agency, any work, business, or function related to the testing, inspection, and examination necessary for compliance enforcement and for the development of data to enable the Secretary to prescribe regulations under section 4302 of this title.

(b) The Secretary may—

(1) conduct research, testing, and development necessary to carry out this chapter, including the procurement by negotiation or otherwise of experimental and other recreational vessels or associated equipment for research and testing purposes; and

(2) subsequently sell those vessels.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 531.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
4303	46:1457

Section 4303 authorizes the Secretary to delegate to certain persons or agencies or organizations any work, business, or function related to the testing, inspection, and examination necessary for compliance enforcement. The Secretary may also conduct research, testing, and development necessary to carry out this chapter, including procurement of vessels and equipment and their subsequent sale. The Committee wishes to make clear that the Secretary may sell anything that was purchased to test.

§ 4304. Importation of nonconforming vessels and equipment

The Secretary and the Secretary of the Treasury may authorize by joint regulations the importation of any nonconforming recreational vessel or associated equipment on conditions, including providing a bond, that will ensure that the recreational vessel or associated equipment will be brought into conformity with applicable safety regulations and standards of the Government before the vessel or equipment is operated on waters subject to the jurisdiction of the United States.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 531.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
4304	46:1460

Section 4304 requires the regulation and control of the importation of nonconforming recreational vessels and associated equipment. This is to assure United States manufacturers that foreign imports comply with those regulations and standards in effect for United States products so that all manufacturers will be on this same competitive footing. This is being done in lieu of providing a specific prohibition against the importation of these vessels and equipment that might be considered an imposition of a non-tariff barrier to trade.

§ 4305. Exemptions

If the Secretary considers that recreational vessel safety will not be adversely affected, the Secretary may issue an exemption from this chapter or a regulation prescribed under this chapter.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 531.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
4305	46:1458

Section 4305 permits the Secretary to grant appropriate exemptions from the requirements of this chapter when recreational vessel safety will not be adversely affected.

§ 4306. Federal preemption

Unless permitted by the Secretary under section 4305 of this title, a State or political subdivision of a State may not establish, continue in effect, or enforce a law or regulation establishing a recreational vessel or associated equipment performance or other safety standard or imposing a requirement for associated equipment (except insofar as the State or political subdivision may, in the absence of the Secretary's disapproval, regulate the carrying or use of marine safety articles to meet uniquely hazardous conditions or circumstances within the State) that is not identical to a regulation prescribed under section 4302 of this title.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 531.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
4306	46:1459 46:1460

Section 4306 establishes the Federal preemption of recreational boating standards and requirements. A State or a political subdivision may not establish, continue, or enforce a law or regulation establishing a performance or other safety standard that is not identical to a Federal standard. The Secretary may grant an exemption to a State when the State requirement is one that is needed to meet uniquely hazardous conditions or circumstances within a State. This is to provide uni-

form standards without the imposition of excessive special requirements by individual States.

§ 4307. Prohibited acts

(a) A person may not—

(1) manufacture, construct, assemble, sell or offer for sale, introduce or deliver for introduction into interstate commerce, or import into the United States, a recreational vessel, associated equipment, or component of the vessel or equipment unless—

(A)(i) it conforms with this chapter or a regulation prescribed under this chapter; and

(ii) it does not contain a defect which has been identified, in any communication to such person by the Secretary or the manufacturer of that vessel, equipment or component, as creating a substantial risk of personal injury to the public; or

(B) it is intended only for export and is so labeled, tagged, or marked on the recreational vessel or equipment, including any markings on the outside of the container in which it is to be exported;

(2) affix, attach, or display a seal, document, label, plate, insignia, or other device indicating or suggesting compliance with standards of the United States Government on, in, or in connection with, a recreational vessel or item of associated equipment that is false or misleading; or

(3) fail to provide a notification as required by this chapter or fail to exercise reasonable diligence in carrying out the notification and reporting requirements of this chapter.

(b) A person may not operate a vessel in violation of this chapter or a regulation prescribed under this chapter.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 531; Pub. L. 98–557, § 8(a), Oct. 30, 1984, 98 Stat. 2862.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
4307(a)	46:1461(a)
4307(b)	46:1461(c)

Section 4307 prohibits certain acts in the manufacture and operation of recreational vessels.

AMENDMENTS

1984—Subsec. (a)(1)(A). Pub. L. 98–557 designated existing provisions as cl. (i), substituted ''and'' for ''or'', and added cl. (ii).

§ 4308. Termination of unsafe operation

If an official charged with the enforcement of this chapter observes a recreational vessel being operated without sufficient lifesaving or firefighting devices or in an overloaded or other unsafe condition (as defined in regulations prescribed under this chapter) and, in the judgment of the official, the operation creates an especially hazardous condition, the official may direct the individual in charge of the recreational vessel to take immediate and reasonable steps necessary for the safety of individuals on board the vessel, including directing the individual in charge to return to a mooring and to remain there until the situation creating the hazard is corrected or ended.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 532; Pub. L. 99–307, § 1(9), May 19, 1986, 100 Stat. 445.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
4308	46:1462

Section 4308 authorizes an appropriate official to terminate the unsafe operation of recreational vessels. If the official observes the vessel being operated without sufficient lifesaving or firefighting devices or in an overloaded or other unsafe condition (as defined in regulations) and believes the operation creates an especially hazardous condition, the operator may be directed to take immediate and reasonable steps necessary for safety, including returning to a mooring and remaining there until the hazard is corrected or ended. This does not prevent the assessment of any applicable civil penalties nor the pursuing of appropriate criminal action.

AMENDMENTS

1986—Pub. L. 99–307 substituted ''individual in charge'' for ''operator'' in two places.

§ 4309. Investigation and reporting

(a) A recreational vessel manufacturer to whom this chapter applies shall establish and maintain records and reports and provide information the Secretary may require to enable the Secretary to decide whether the manufacturer has acted or is acting in compliance with this chapter and regulations prescribed under this chapter. On request of an officer, employee, or agent authorized by the Secretary, a recreational vessel manufacturer shall permit the officer, employee, or agent to inspect, at reasonable times, factories or other facilities, and records related to deciding whether the manufacturer has acted or is acting in compliance with this chapter and regulations prescribed under this chapter.

(b) Information reported to or otherwise obtained by the Secretary or the representative of the Secretary under this section containing or related to a trade secret or other matter referred to in section 1905 of title 18, or authorized to be exempt from public disclosure by section 552(b) of title 5, is confidential under section 1905. However, on approval of the Secretary, the information may be disclosed to other officers, employees, or agents concerned with carrying out this chapter or when it is relevant in a proceeding under this chapter.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 532.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
4309	46:1463

Section 4309 requires the establishment and maintenance of certain records by manufacturers, and the inspection and access to these records by the Secretary, at reasonable times, so as to assure Federal enforcement officials that the manufacturer has acted or is in compliance with applicable laws and regulations. It also provides protection for matters related to trade secrets and exemptions from public disclosure.

§ 4310. Repair and replacement of defects

(a) In this section, ''associated equipment'' includes only items or classes of associated equip-

ment that the Secretary shall prescribe by regulation after deciding that the application of the requirements of this section to those items or classes of associated equipment is reasonable and in furtherance of this chapter.

(b) If a recreational vessel or associated equipment has left the place of manufacture and the recreational vessel manufacturer discovers or acquires information that the manufacturer decides, in the exercise of reasonable and prudent judgment, indicates that a recreational vessel or associated equipment subject to an applicable regulation prescribed under section 4302 of this title either fails to comply with the regulation, or contains a defect that creates a substantial risk of personal injury to the public, the manufacturer shall provide notification of the defect or failure of compliance as provided by subsections (c) and (d) of this section within a reasonable time after the manufacturer has discovered the defect.

(c)(1) The notification required by subsection (b) of this section shall be given to the following persons in the following manner:

(A) by first class mail or by certified mail to the first purchaser for other than resale, except that the requirement for notification of the first purchaser shall be satisfied if the recreational vessel manufacturer exercises reasonable diligence in establishing and maintaining a list of those purchasers and their current addresses, and sends the required notice to each person on that list at the address appearing on the list.

(B) by first class mail or by certified mail to subsequent purchasers if known to the manufacturer.

(C) by first class mail or by certified mail or other more expeditious means to the dealers and distributors of the recreational vessels or associated equipment.

(2) The notification required by subsection (b) of this section is required to be given only for a defect or failure of compliance discovered by the recreational vessel manufacturer within a reasonable time after the manufacturer has discovered the defect or failure, except that the manufacturer's duty of notification under paragraph (1)(A) and (B) of this subsection applies only to a defect or failure of compliance discovered by the manufacturer within one of the following appropriate periods:

(A) if a recreational vessel or associated equipment required by regulation to have a date of certification affixed, 10 years from the date of certification.

(B) if a recreational vessel or associated equipment not required by regulation to have a date of certification affixed, 10 years from the date of manufacture.

(d) The notification required by subsection (b) of this section shall contain a clear description of the defect or failure to comply, an evaluation of the hazard reasonably related to the defect or failure, a statement of the measures to correct the defect or failure, and an undertaking by the recreational vessel manufacturer to take those measures only at the manufacturer's cost and expense.

(e) Each recreational vessel manufacturer shall provide the Secretary with a copy of all notices, bulletins, and other communications to dealers and distributors of that manufacturer, and to purchasers of recreational vessels or associated equipment of that manufacturer, about a defect related to safety in the recreational vessels or associated equipment, and any failure to comply with the regulation or order applicable to the recreational vessels or associated equipment. The Secretary may publish or otherwise disclose to the public information in the notices or other information the Secretary has that the Secretary considers will assist in carrying out this chapter. However, the Secretary may disclose any information that contains or relates to a trade secret only if the Secretary decides that the information is necessary to carry out this chapter.

(f) If, through testing, inspection, investigation, or examination of reports, the Secretary decides that a recreational vessel or associated equipment to which this chapter applies contains a defect related to safety or fails to comply with an applicable regulation prescribed under this chapter and notification under this chapter is appropriate, the Secretary shall notify the recreational vessel manufacturer of the defect or failure. The notice shall contain the findings of the Secretary and shall include a synopsis of the information on which they are based. The manufacturer may then provide the notification required by this chapter to the persons designated in this chapter or dispute the Secretary's decision. If disputed, the Secretary shall provide the manufacturer with an opportunity to present views and establish that there is no such defect or failure. When the Secretary considers it to be in the public interest, the Secretary may publish notice of the proceeding in the Federal Register and provide interested persons, including the National Boating Safety Advisory Council, with an opportunity to comment. If, after presentation by the manufacturer, the Secretary decides that the recreational vessel or associated equipment contains a defect related to safety or fails to comply with an applicable regulation, the Secretary may direct the manufacturer to provide the notifications specified in this chapter.

(g) The Secretary may prescribe regulations to carry out this section, including the establishment of procedures that require dealers and distributors to assist manufacturers in obtaining information required by this section. A regulation prescribed under this subsection does not relieve a manufacturer of any obligation imposed by this section.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 532; Pub. L. 107–295, title IV, § 433, Nov. 25, 2002, 116 Stat. 2129.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
4310	46:1464

Section 4310 imposes certain requirements on a recreational vessel and associated equipment manufacturer to provide notification of a defect or the failure of compliance after a manufacturer discovers the defect or failure. This section spells out the procedure for notification and who shall be notified. It assures the public of notification while protecting the manufacturer

from the potential of damaging and inaccurate disclosures.

AMENDMENTS

2002—Subsec. (c)(1)(A) to (C). Pub. L. 107–295, § 433(2), inserted ''by first class mail or'' before ''by certified mail''.

Subsec. (c)(2)(A), (B). Pub. L. 107–295, § 433(1), substituted ''10'' for ''5''.

§ 4311. Penalties and injunctions

(a) A person willfully operating a recreational vessel in violation of this chapter or a regulation prescribed under this chapter shall be fined not more than $5,000, imprisoned for not more than one year, or both.

(b)(1) A person violating section 4307(a) of this title is liable to the United States Government for a civil penalty of not more than $5,000, except that the maximum civil penalty may be not more than $250,000 for a related series of violations.

(2) If the Secretary decides under section 4310(f) that a recreational vessel or associated equipment contains a defect related to safety or fails to comply with an applicable regulation and directs the manufacturer to provide the notifications specified in this chapter, any person, including a director, officer or executive employee of a corporation, who knowingly and willfully fails to comply with that order, may be fined not more than $10,000, imprisoned for not more than one year, or both.

(3) When a corporation violates section 4307(a), or fails to comply with the Secretary's decision under section 4310(f), any director, officer, or executive employee of the corporation who knowingly and willfully ordered, or knowingly and willfully authorized, a violation is individually liable to the Government for a penalty under paragraphs (1) or (2) in addition to the corporation. However, the director, officer, or executive employee is not liable individually under this subsection if the director, officer, or executive employee can demonstrate by a preponderance of the evidence that—

(A) the order or authorization was issued on the basis of a decision, in exercising reasonable and prudent judgment, that the defect or the nonconformity with standards and regulations constituting the violation would not cause or constitute a substantial risk of personal injury to the public; and

(B) at the time of the order or authorization, the director, officer, or executive employee advised the Secretary in writing of acting under this subparagraph and subparagraph (A).

(c) A person violating any other provision of this chapter or other regulation prescribed under this chapter is liable to the Government for a civil penalty of not more than $1,000. If the violation involves the operation of a vessel, the vessel also is liable in rem for the penalty.

(d) When a civil penalty of not more than $200 has been assessed under this chapter, the Secretary may refer the matter of collection of the penalty directly to the United States magistrate judge of the jurisdiction in which the person liable may be found for collection procedures under supervision of the district court and under an order issued by the court delegating this authority under section 636(b) of title 28.

(e) The district courts of the United States have jurisdiction to restrain a violation of this chapter, or to restrain the sale, offer for sale, introduction or delivery for introduction into interstate commerce, or importation into the United States, of a recreational vessel or associated equipment that the court decides does not conform to safety standards of the Government. A civil action under this subsection shall be brought by filing a petition by the Attorney General for the Government. When practicable, the Secretary shall give notice to a person against whom an action for injunctive relief is contemplated and provide the person with an opportunity to present views and, except for a knowing and willful violation, shall provide the person with a reasonable opportunity to achieve compliance. The failure to give notice and provide the opportunity does not preclude the granting of appropriate relief by the district court.

(f) A person is not subject to a penalty under this chapter if the person—

(1) establishes that the person did not have reason to know, in exercising reasonable care, that a recreational vessel or associated equipment does not conform with the applicable safety standards of the Government or that the person was not advised by the Secretary or the manufacturer of that vessel, equipment or component that the vessel, equipment or component contains a defect which creates a substantial risk of personal injury to the public; or

(2) holds a certificate issued by the manufacturer of that recreational vessel or associated equipment to the effect that the recreational vessel or associated equipment conforms to all applicable recreational vessel safety standards of the Government, unless the person knows or reasonably should have known that the recreational vessel or associated equipment does not so conform.

(g) Compliance with this chapter or standards, regulations, or orders prescribed under this chapter does not relieve a person from liability at common law or under State law.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 534; Pub. L. 98–557, § 8(b), (c), Oct. 30, 1984, 98 Stat. 2862; Pub. L. 101–650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117; Pub. L. 108–293, title IV, § 406, Aug. 9, 2004, 118 Stat. 1043.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
4311(a)	46:1483
4311(b)	46:1484(a)
4311(c)	46:1484(b)
4311(d)	46:1484(d)
4311(e)	46:1485
4311(f)	46:1461(b)
4311(g)	46:1489

Section 4311 provides penalties for violating any of the provisions of this chapter or a regulation prescribed under this chapter. For a willful violation the penalty is a criminal fine; all other penalties are civil in nature.

A person violating any of the prohibited acts specified in section 4307(a)(1) is subject to a maximum civil penalty that can go as high as a $100,000 for a related series of violations. However, the section provides for no liability for good faith reliance on certifications of

compliance by others within the chain of responsibility and for defects that are not within an individual's responsibility or control.

This section also contains an alternate procedure for the collection of a civil penalty of not more than $200 through a U.S. magistrate in lieu of the civil penalty procedures of the Coast Guard. It also directs the district courts of the United States to restrain the sale, offer for sale, introduction or delivery for introduction into interstate commerce, or importation of a recreational vessel or associated equipment that does not conform to applicable safety standards. Finally, compliance with this chapter or standards, regulations, or orders does not relieve a person from liability at common law or under State law.

AMENDMENTS

2004—Subsec. (b). Pub. L. 108–293 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''A person violating section 4307(a)(1) of this title is liable to the United States Government for a civil penalty of not more than $2,000, except that the maximum civil penalty may be not more than $100,000 for a related series of violations. When a corporation violates section 4307(a)(1), any director, officer, or executive employee of the corporation who knowingly and willfully ordered, or knowingly and willfully authorized, a violation is individually liable to the Government for the penalty, in addition to the corporation. However, the director, officer, or executive employee is not liable individually under this subsection if the director, officer, or executive employee can demonstrate by a preponderance of the evidence that—

''(1) the order or authorization was issued on the basis of a decision, in exercising reasonable and prudent judgment, that the defect or the nonconformity with standards and regulations constituting the violation would not cause or constitute a substantial risk of personal injury to the public; and

''(2) at the time of the order or authorization, the director, officer, or executive employee advised the Secretary in writing of acting under this clause and clause (1) of this subsection.''

1984—Subsec. (b)(1). Pub. L. 98–557, § 8(b), inserted ''defect or the'' before ''nonconformity''.

Subsec. (f)(1). Pub. L. 98–557, § 8(c), inserted provisions relating to advice by the Secretary or manufacturer of the vessel, equipment or component respecting defects creating substantial risk of personal injury to the public.

CHANGE OF NAME

''United States magistrate judge'' substituted for ''United States magistrate'' in subsec. (d) pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

CHAPTER 45—UNINSPECTED COMMERCIAL FISHING INDUSTRY VESSELS

Sec.
4501. Application.
4502. Safety standards.
4503. Fish processing vessel certification.
4504. Prohibited acts.
4505. Termination of unsafe operations.
4506. Exemptions.
4507. Penalties.
4508. Commercial Fishing Industry Vessel Safety Advisory Committee.

AMENDMENTS

2002—Pub. L. 107–295, title III, § 331(b), Nov. 25, 2002, 116 Stat. 2105, inserted ''Safety'' before ''Advisory Committee'' in item 4508.

1988—Pub. L. 100–424, § 2(a), Sept. 9, 1988, 102 Stat. 1585, in chapter heading substituted ''UNINSPECTED COMMERCIAL FISHING INDUSTRY VESSELS'' for ''FISH PROCESSING VESSELS'', substituted ''Safety standards'' for ''Regulations'' in item 4502, ''Fish processing vessel certification'' for ''Equivalency'' in item 4503, ''Prohibited acts'' for ''Penalties'' in item 4504, and added items 4505 to 4508.

§ 4501. Application

(a) This chapter applies to an uninspected vessel which is a fishing vessel, fish processing vessel, or fish tender vessel.

(b) This chapter does not apply to the carriage of bulk dangerous cargoes regulated under chapter 37 of this title.

(Added Pub. L. 98–364, title IV, § 402(7)(C), July 17, 1984, 98 Stat. 446; amended Pub. L. 100–424, § 2(a), Sept. 9, 1988, 102 Stat. 1585.)

AMENDMENTS

1988—Pub. L. 100–424 amended section generally, in subsec. (a) substituting provisions which related to uninspected fish processing vessel entered into service after Dec. 31, 1987, having more than 16 individuals on board primarily employed in preparation of fish on navigable waters of United States or owned in United States and operating on high seas, for provisions which related to uninspected fishing vessel, fish processing vessel, or fish tender vessel, and in subsec. (b) substituting ''carriage of bulk'' for ''carriage of liquid bulk''.

FOREIGN BUILT VESSELS, EQUIVALENT COMPLIANCE UNTIL JULY 28, 1990

Section 7 of Pub. L. 100–424 provided that: ''Until July 28, 1990, a foreign built fish processing vessel subject to chapter 45 of title 46, United States Code, is deemed to comply with the requirements of that chapter if—

''(1) it has an unexpired certificate of inspection issued by a foreign country that is a party to an International Convention for Safety of Life at Sea to which the United States Government is a party; and

''(2) it is in compliance with the safety requirements of that foreign country that apply to that vessel.''

§ 4502. Safety standards

(a) The Secretary shall prescribe regulations which require that each vessel to which this chapter applies shall be equipped with—

(1) readily accessible fire extinguishers capable of promptly and effectively extinguishing a flammable or combustible liquid fuel fire;

(2) at least one readily accessible life preserver or other lifesaving device for each individual on board;

(3) an efficient flame arrestor, backfire trap, or other similar device on the carburetors of each inboard engine which uses gasoline as fuel;

(4) the means to properly and efficiently ventilate enclosed spaces, including engine and fuel tank compartments, so as to remove explosive or flammable gases;

(5) visual distress signals;

(6) a buoyant apparatus, if the vessel is of a type required by regulations prescribed by the Secretary to be equipped with that apparatus;

(7) alerting and locating equipment, including emergency position indicating radio beacons, on vessels that operate beyond 3 nautical miles from the baselines from which the territorial sea of the United States is measured, and which are owned in the United States or beyond 3 nautical miles from the coastline of the Great Lakes; and

(8) a placard as required by regulations prescribed under section 10603(b) of this title.

(b)(1) In addition to the requirements of subsection (a) of this section, the Secretary shall prescribe regulations requiring the installation, maintenance, and use of the equipment in paragraph (2) of this subsection for documented vessels to which this chapter applies that—

(A) operate beyond the Boundary Line;

(B) operate with more than 16 individuals on board; or

(C) in the case of a fish tender vessel, engage in the Aleutian trade.

(2) The equipment to be required is as follows:

(A) alerting and locating equipment, including emergency position indicating radio beacons;

(B) lifeboats or liferafts sufficient to accommodate all individuals on board;

(C) at least one readily accessible immersion suit for each individual on board that vessel when operating on the waters described in section 3102 of this title;

(D) radio communications equipment sufficient to effectively communicate with land-based search and rescue facilities;

(E) navigation equipment, including compasses, radar reflectors, nautical charts, and anchors;

(F) first aid equipment, including medicine chests; and

(G) other equipment required to minimize the risk of injury to the crew during vessel operations, if the Secretary determines that a risk of serious injury exists that can be eliminated or mitigated by that equipment.

(c)(1) In addition to the requirements described in subsections (a) and (b) of this section, the Secretary may prescribe regulations establishing the standards in paragraph (2) of this subsection for vessels to which this chapter applies that—

(A)(i) were built after December 31, 1988, or undergo a major conversion completed after that date; and

(ii) operate with more than 16 individuals on board; or

(B) in the case of a fish tender vessel, engage in the Aleutian trade.

(2) The standards shall be minimum safety standards, including standards relating to—

(A) navigation equipment, including radars and fathometers;

(B) lifesaving equipment, immersion suits, signaling devices, bilge pumps, bilge alarms, life rails, and grab rails;

(C) fire protection and firefighting equipment, including fire alarms and portable and semiportable fire extinguishing equipment;

(D) use and installation of insulation material;

(E) storage methods for flammable or combustible material; and

(F) fuel, ventilation, and electrical systems.

(d)(1) The Secretary shall prescribe regulations for the operating stability of a vessel to which this chapter applies—

(A) that was built after December 31, 1989; or

(B) the physical characteristics of which are substantially altered after December 31, 1989, in a manner that affects the vessel's operating stability.

(2) The Secretary may accept, as evidence of compliance with this subsection, a certification of compliance issued by the person providing insurance for the vessel or by another qualified person approved by the Secretary.

(e) In prescribing regulations under this chapter, the Secretary—

(1) shall consider the specialized nature and economics of the operations and the character, design, and construction of the vessel; and

(2) may not require the alteration of a vessel or associated equipment that was constructed or manufactured before the effective date of the regulation.

(f) To ensure compliance with the requirements of this chapter, at least once every 2 years the Secretary shall examine—

(1) a fish processing vessel; and

(2) a fish tender vessel engaged in the Aleutian trade.

(Added Pub. L. 98–364, title IV, § 402(7)(C), July 17, 1984, 98 Stat. 447; amended Pub. L. 98–557, § 33(a), Oct. 30, 1984, 98 Stat. 2876; Pub. L. 100–424, § 2(a), Sept. 9, 1988, 102 Stat. 1585; Pub. L. 101–595, title VI, § 602(c), Nov. 16, 1990, 104 Stat. 2990; Pub. L. 104–324, title III, § 307, Oct. 19, 1996, 110 Stat. 3918; Pub. L. 105–383, title III, § 301(b)(5), Nov. 13, 1998, 112 Stat. 3417.)

AMENDMENTS

1998—Subsec. (a)(7). Pub. L. 105–383 substituted ''beyond 3 nautical miles from the baselines from which the territorial sea of the United States is measured, and which are owned in the United States'' for ''on the high seas''.

1996—Subsec. (a)(7). Pub. L. 104–324 inserted ''or beyond 3 nautical miles from the coastline of the Great Lakes'' after ''high seas''.

1990—Subsec. (b). Pub. L. 101–595, § 602(c)(1), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''In addition to the requirements of subsection (a) of this section, the Secretary shall prescribe regulations for documented vessels to which this chapter applies that operate beyond the Boundary Line or that operate with more than 16 individuals on board, for the installation, maintenance, and use of—

''(1) alerting and locating equipment, including emergency position indicating radio beacons;

''(2) lifeboats or liferafts sufficient to accommodate all individuals on board;

''(3) at least one readily accessible immersion suit for each individual on board that vessel when operating on the waters described in section 3102 of this title;

''(4) radio communications equipment sufficient to effectively communicate with land-based search and rescue facilities;

''(5) navigation equipment, including compasses, radar reflectors, nautical charts, and anchors;

''(6) first aid equipment, including medicine chests; and

''(7) other equipment required to minimize the risk of injury to the crew during vessel operations, if the Secretary determines that a risk of serious injury exists that can be eliminated or mitigated by that equipment.''

Subsec. (c). Pub. L. 101–595, § 602(c)(1), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''In addition to the requirements described in subsections (a) and (b) of this section, the Secretary may prescribe regulations establishing minimum safety standards for vessels to which this chapter applies

that were built after December 31, 1988, or that undergo a major conversion completed after that date, and that operate with more than 16 individuals on board, including standards relating to—

''(1) navigation equipment, including radars and fathometers;

''(2) life saving equipment, immersion suits, signaling devices, bilge pumps, bilge alarms, life rails, and grab rails;

''(3) fire protection and firefighting equipment, including fire alarms and portable and semiportable fire extinguishing equipment;

''(4) use and installation of insulation material;

''(5) storage methods for flammable or combustible material; and

''(6) fuel, ventilation, and electrical systems.''

Subsec. (f). Pub. L. 101–595, § 602(c)(2), amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: ''The Secretary shall examine a fish processing vessel at least once every two years to ensure that the vessel complies with the requirements of this chapter.''

1988—Pub. L. 100–424 amended section generally, substituting ''Safety standards'' for ''Regulations'' in section catchline, adding subsecs. (a) and (b), redesignating former subsec. (a) as (c) and establishing list of standards as minimum safety standards, in addition to requirements of subsecs. (a) and (b), for vessels built after Dec. 31, 1988, or that undergo major conversion completed after that date, that operate with more than 16 individuals on board, adding subsec. (d), redesignating former subsec. (b) as (e) and striking out provisions which required Secretary to consult with representatives of private sector, experienced in operation of these vessels, to ensure practicability of regulations, and adding subsec. (f).

1984—Subsec. (b)(3). Pub. L. 98–557 substituted ''this chapter'' for ''the exemption''.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 602(f) of Pub. L. 101–595, provided that: ''This section [amending this section and sections 2102, 3302, 5102, 8104, and 8702 of this title, and enacting provisions set out as a note under section 7306 of this title] is effective on the date of enactment of this section [Nov. 16, 1990] except as follows:

''(1) The requirements imposed by section 3302(c)(4)(B) and (C) of title 46, United States Code, (as enacted by subsection (b) of this section) is effective 6 months after the date of enactment of this Act.

''(2) Before January 1, 1993, section 4502(c) (as amended by subsection (c) of this section) does not apply to a fish tender vessel engaged in the Aleutian trade, if the vessel—

''(A)(i) before September 8, 1990, operated in that trade; or

''(ii) before September 8, 1990, was purchased to be used in that trade and, before June 1, 1992, entered into service in that trade; and

''(B) does not undergo a major conversion.

''(3) Before January 1, 2003, a fish tender vessel is exempt from chapter 51 of title 46, United States Code, (as amended by subsection (d) of this section) when engaged in the Aleutian trade, if the vessel—

''(A)(i) before September 8, 1990, operated in that trade; or

''(ii) before September 8, 1990, was purchased to be used in this trade and, before June 1, 1992, entered into service in that trade;

''(B) does not undergo a major conversion; and

''(C) did not have a load line assigned at any time before the date of enactment of this Act.

''(4) The requirements imposed by section 8702(b)(2) of title 46, United States Code, (as amended by subsection (e)(2)(B) of this section) are effective 1 year after the date of enactment of this Act.''

STUDIES REGARDING SAFETY OF FISHING VESSELS

Section 5(a) of Pub. L. 100–424 directed Secretary of Transportation, utilizing National Academy of Engineering and in consultation with National Transportation Safety Board, Commercial Fishing Industry Vessel Advisory Committee, and fishing industry, to conduct a study of safety problems on fishing industry vessels, and to make recommendations regarding whether a vessel inspection program could be implemented for fishing vessels, fish tender vessels, and fish processing vessels, including recommendations on nature and scope of that inspection, and further provided for submission of the study and recommendations to Congress before Jan. 1, 1990.

Section 5(b) of Pub. L. 100–424 directed Secretary of department in which Coast Guard is operating, in consultation with Commercial Fishing Industry Vessel Advisory Committee established under section 4508 of this title, and with representatives of persons operating fish processing vessels to conduct a study of fish processing vessels that are not surveyed and classed by an organization approved by Secretary, and to make recommendations regarding what hull and machinery requirements could apply to such vessels to ensure that those vessels are operated and maintained in a condition in which they are safe to operate at sea, and further provided for submission of such study and recommendations to Congress before July 28, 1991.

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.

§ 4503. Fish processing vessel certification

(a) A fish processing vessel to which this section applies may not be operated unless the vessel—

(1) meets all survey and classification requirements prescribed by the American Bureau of Shipping or another similarly qualified organization approved by the Secretary; and

(2) has on board a certificate issued by the American Bureau of Shipping or that other organization evidencing compliance with this subsection.

(b) This section applies to a fish processing vessel to which this chapter applies that—

(1) is built after July 27, 1990; or

(2) undergoes a major conversion completed after that date.

(Added Pub. L. 98–364, title IV, § 402(7)(C), July 17, 1984, 98 Stat. 447; amended Pub. L. 98–557, § 33(b), Oct. 30, 1984, 98 Stat. 2876; Pub. L. 100–424, § 2(a), Sept. 9, 1988, 102 Stat. 1587.)

AMENDMENTS

1988—Pub. L. 100–424 amended section generally, substituting ''Fish processing vessel certification'' for ''Equivalency'' in section catchline, and provisions which require certification issued by American Bureau of Shipping or similar organization for fish processing vessel built after July 27, 1990, or undergoes major conversion completed after that date, for provisions which deemed compliance with this chapter if vessel has unexpired certificate of inspection issued by foreign country that is party to International Convention for Safety of Life at Sea to which United States is party.

1984—Pub. L. 98–557 substituted ''is deemed'' for ''shall be deemed''.

§ 4504. Prohibited acts

A person may not operate a vessel in violation of this chapter or a regulation prescribed under this chapter.

(Added Pub. L. 98–364, title IV, § 402(7)(C), July 17, 1984, 98 Stat. 447; amended Pub. L. 100–424, § 2(a), Sept. 9, 1988, 102 Stat. 1587.)

AMENDMENTS

1988—Pub. L. 100–424 amended section generally, substituting ''Prohibited acts'' for ''Penalties'' in section catchline, and provisions prohibiting operation of vessel in violation of this chapter, for provisions which imposed civil penalty not more than $1,000 for operation of vessel in violation of chapter, and liability in rem for penalty.

§ 4505. Termination of unsafe operations

An official authorized to enforce this chapter—

(1) may direct the individual in charge of a vessel to which this chapter applies to immediately take reasonable steps necessary for the safety of individuals on board the vessel if the official observes the vessel being operated in an unsafe condition that the official believes creates an especially hazardous condition, including ordering the individual in charge to return the vessel to a mooring and to remain there until the situation creating the hazard is corrected or ended; and

(2) may order the individual in charge of an uninspected fish processing vessel that does not have on board the certificate required under section 4503(1) of this title to return the vessel to a mooring and to remain there until the vessel is in compliance with that section.

(Added Pub. L. 100–424, § 2(a), Sept. 9, 1988, 102 Stat. 1587.)

§ 4506. Exemptions

(a) The Secretary may exempt a vessel from any part of this chapter if, under regulations prescribed by the Secretary (including regulations on special operating conditions), the Secretary finds that—

(1) good cause exists for granting an exemption; and

(2) the safety of the vessel and those on board will not be adversely affected.

(b) A vessel to which this chapter applies is exempt from section 4502(b)(2)(B) of this title if it—

(1) is less than 36 feet in length; and

(2) is operating—

(A) in internal waters of the United States; or

(B) within 3 nautical miles from the baselines from which the territorial sea of the United States is measured.

(Added Pub. L. 100–424, § 2(a), Sept. 9, 1988, 102 Stat. 1587; amended Pub. L. 102–587, title V, § 5222, Nov. 4, 1992, 106 Stat. 5081; Pub. L. 105–383, title III, § 301(b)(6), Nov. 13, 1998, 112 Stat. 3417.)

AMENDMENTS

1998—Subsec. (b)(2). Pub. L. 105–383 added par. (2) and struck out former par. (2) which read as follows: ''is not operating on the high seas.''

1992—Subsec. (b). Pub. L. 102–587 substituted ''4502(b)(2)(B)'' for ''4502(b)(2)''.

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.

§ 4507. Penalties

(a) The owner, charterer, managing operator, agent, master, and individual in charge of a vessel to which this chapter applies which is operated in violation of this chapter or a regulation prescribed under this chapter may each be assessed a civil penalty by the Secretary of not more than $5,000. Any vessel with respect to which a penalty is assessed under this subsection is liable in rem for the penalty.

(b) A person willfully violating this chapter or a regulation prescribed under this chapter shall be fined not more than $5,000, imprisoned for not more than one year, or both.

(Added Pub. L. 100–424, § 2(a), Sept. 9, 1988, 102 Stat. 1588.)

§ 4508. Commercial Fishing Industry Vessel Safety Advisory Committee

(a) The Secretary shall establish a Commercial Fishing Industry Vessel Safety Advisory Committee. The Committee—

(1) may advise, consult with, report to, and make recommendations to the Secretary on matters relating to the safe operation of vessels to which this chapter applies, including navigation safety, safety equipment and procedures, marine insurance, vessel design, construction, maintenance and operation, and personnel qualifications and training;

(2) may review proposed regulations under this chapter;

(3) may make available to Congress any information, advice, and recommendations that the Committee is authorized to give to the Secretary; and

(4) shall meet at the call of the Secretary, who shall call such a meeting at least once during each calendar year.

(b)(1) The Committee shall consist of seventeen members with particular expertise, knowledge, and experience regarding the commercial fishing industry as follows:

(A) ten members from the commercial fishing industry who—

(i) reflect a regional and representational balance; and

(ii) have experience in the operation of vessels to which this chapter applies or as a crew member or processing line worker on an uninspected fish processing vessel;

(B) three members from the general public, including, whenever possible, an independent expert or consultant in maritime safety and a member of a national organization composed of persons representing owners of vessels to which this chapter applies and persons representing the marine insurance industry;

(C) one member representing each of—

(i) naval architects or marine surveyors;

(ii) manufacturers of equipment for vessels to which this chapter applies;

(iii) education or training professionals related to fishing vessel, fish processing vessel, or fish tender vessel safety or personnel qualifications; and

(iv) underwriters that insure vessels to which this chapter applies.

(2) At least once each year, the Secretary shall publish a notice in the Federal Register and in newspapers of general circulation in coastal areas soliciting nominations for membership on

the Committee, and, after timely notice is published, appoint the members of the Committee. An individual may be appointed to a term as a member of the Committee more than once. The Secretary may not seek or use information concerning the political affiliation of individuals in making appointments to the Committee.

(3)(A) A member of the Committee shall serve a term of three years.

(B) If a vacancy occurs in the membership of the Committee, the Secretary shall appoint a member to fill the remainder of the vacated term.

(4) The Committee shall elect one of its members as the Chairman and one of its 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 Chairman.

(5) The Secretary shall, and any other interested agency may, designate a representative to participate as an observer with the Committee. These representatives shall, as appropriate, report to and advise the Committee on matters relating to vessels to which this chapter applies which are under the jurisdiction of their respective agencies. The Secretary's designated representative shall act as executive secretary for the Committee and perform the duties set forth in section 10(c) of the Federal Advisory Committee Act (5 App. U.S.C.).

(c)(1) The Secretary shall, whenever practicable, consult with the Committee before taking any significant action relating to the safe operation of vessels to which this chapter applies.

(2) The Secretary shall consider the information, advice, and recommendations of the Committee in consulting with other agencies and the public or in formulating policy regarding the safe operation of vessels to which this chapter applies.

(d)(1) A member of the Committee who is not an officer or employee of the United States or a member of the Armed Forces, when attending meetings of the Committee or when otherwise engaged in the business of the Committee, is entitled to receive—

(A) compensation at a rate fixed by the Secretary, not exceeding the daily equivalent of the current rate of basic pay in effect for GS–18 of the General Schedule under section 5332 of title 5 including travel time; and

(B) travel or transportation expenses under section 5703 of title 5.

(2) Payments under this section do not render a member of the Committee an officer or employee of the United States or a member of the Armed Forces for any purpose.

(3) A member of the Committee who is an officer or employee of the United States or a member of the Armed Forces may not receive additional pay based on the member's service to the Committee.

(4) The provisions of this section relating to an officer or employee of the United States or a member of the Armed Forces do not apply to a member of a reserve component of the Armed Forces unless that member is in an active status.

(e)(1) The Federal Advisory Committee Act (5 App. U.S.C.) applies to the Committee, except that the Committee terminates on September 30, 2010.

(2) Two years prior to the termination date referred to in paragraph (1) of this subsection, the Committee shall submit to Congress its recommendation regarding whether the Committee should be renewed and continued beyond the termination date.

(Added Pub. L. 100–424, §2(a), Sept. 9, 1988, 102 Stat. 1588; amended Pub. L. 101–225, title I, §106, Dec. 12, 1989, 103 Stat. 1910; Pub. L. 102–241, §25, Dec. 19, 1991, 105 Stat. 2217; Pub. L. 104–324, title III, §304(b), Oct. 19, 1996, 110 Stat. 3917; Pub. L. 107–295, title III, §331(a), Nov. 25, 2002, 116 Stat. 2105; Pub. L. 108–293, title IV, §418(a), Aug. 9, 2004, 118 Stat. 1049.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsecs. (b)(5) and (e)(1), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

2004—Subsec. (e)(1). Pub. L. 108–293, which directed the substitution of ''on September 30, 2010'' for ''of September 30, 2005'', was executed by making substitution for ''on September 30, 2005'', to reflect the probable intent of Congress.

2002—Pub. L. 107–295, §331(a)(1), inserted ''Safety'' after ''Vessel'' in section catchline.

Subsec. (a). Pub. L. 107–295, §331(a)(2), inserted ''Safety'' after ''Vessel'' in introductory provisions.

Subsec. (e)(1). Pub. L. 107–295, §331(a)(4), substituted ''on September 30, 2005'' for ''on September 30, 2000''.

Pub. L. 107–295, §331(a)(3), which directed the substitution of ''(5 App. U.S.C.)'' for ''(5 App. U.S.C. 1 et seq.)'', was executed by making substitution for ''(5 U.S.C. App. 1 et seq.)'', to reflect the probable intent of Congress.

1996—Subsec. (e)(1). Pub. L. 104–324 substituted ''2000'' for ''1994''.

1991—Subsec. (e)(1). Pub. L. 102–241 substituted ''1994'' for ''1992''.

1989—Subsec. (b)(2). Pub. L. 101–225 inserted provision that Secretary not seek or use information concerning political affiliation in making appointments.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

INITIAL APPOINTMENTS TO COMMERCIAL FISHING INDUSTRY ADVISORY COMMITTEE

Section 2(b) of Pub. L. 100–424 provided that:

''(1) TERMS OF INITIAL APPOINTMENTS.—Of the members first appointed to the Commercial Fishing Industry Advisory Committee under section 4508 of title 46, United States Code (as amended by this Act)—

''(A) one-third of the members shall serve a term of one year and one-third of the members shall serve a term of two years, to be determined by lot at the first meeting of the Committee; and

''(B) terms may be adjusted to coincide with the Government's fiscal year.

''(2) COMPLETION OF INITIAL APPOINTMENTS.—The Secretary shall complete appointment of members pursuant to this subsection not later than 90 days after the date of the enactment of this Act [Sept. 9, 1988].''

CHAPTER 47—ABANDONMENT OF BARGES

Sec.
4701. Definitions.
4702. Abandonment of barge prohibited.
4703. Penalty for unlawful abandonment of barge.
4704. Removal of abandoned barges.
4705. Liability of barge removal contractors.

§ 4701. Definitions

In this chapter—

(1) ''abandon'' means to moor, strand, wreck, sink, or leave a barge of more than 100 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title unattended for longer than forty-five days.

(2) ''barge removal contractor'' means a person that enters into a contract with the United States to remove an abandoned barge under this chapter.

(3) ''navigable waters of the United States'' means waters of the United States, including the territorial sea.

(4) ''removal'' or ''remove'' means relocation, sale, scrapping, or other method of disposal.

(Added Pub. L. 102–587, title V, § 5302, Nov. 4, 1992, 106 Stat. 5081; amended Pub. L. 104–324, title VII, § 718, Oct. 19, 1996, 110 Stat. 3937.)

AMENDMENTS

1996—Par. (1). Pub. L. 104–324 inserted ''as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' after ''100 gross tons''.

SHORT TITLE

Section 5301 of Pub. L. 102–587 provided that: ''This subtitle [subtitle C (§§ 5301–5305) of title V of Pub. L. 102–587, enacting this chapter, amending section 12301 of this title, and enacting provisions set out below] may be cited as the 'Abandoned Barge Act of 1992'.''

APPLICATION TO CERTAIN BARGES

Section 5303 of title V of Pub. L. 102–587 provided that: ''Chapter 47 of title 46, United States Code, as added by subsection (a) [section 5302], does not apply to a barge abandoned before June 11, 1992, if the barge was removed before the date that is 1 year after the date of enactment of this title [Nov. 4, 1992].''

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.

§ 4702. Abandonment of barge prohibited

(a)[1] An owner or operator of a barge may not abandon it on the navigable waters of the United States. A barge is deemed not to be abandoned if—

(1) it is located at a Federally- or State-approved mooring area;

(2) it is on private property with the permission of the owner of the property; or

(3) the owner or operator notifies the Secretary that the barge is not abandoned and the location of the barge.

[1] So in original. No subsec. (b) has been enacted.

(Added Pub. L. 102–587, title V, § 5302, Nov. 4, 1992, 106 Stat. 5082.)

§ 4703. Penalty for unlawful abandonment of barge

Thirty days after the notification procedures under section 4704(a)(1) are completed, the Secretary may assess a civil penalty of not more than $1,000 for each day of the violation against an owner or operator that violates section 4702. A vessel with respect to which a penalty is assessed under this chapter is liable in rem for the penalty.

(Added Pub. L. 102–587, title V, § 5302, Nov. 4, 1992, 106 Stat. 5082.)

§ 4704. Removal of abandoned barges

(a)(1) The Secretary may remove a barge that is abandoned after complying with the following procedures:

(A) If the identity of the owner or operator can be determined, the Secretary shall notify the owner or operator by certified mail—

(i) that if the barge is not removed it will be removed at the owner's or operator's expense; and

(ii) of the penalty under section 4703.

(B) If the identity of the owner or operator cannot be determined, the Secretary shall publish an announcement in—

(i) a notice to mariners; and

(ii) an official journal of the county in which the barge is located

that if the barge is not removed it will be removed at the owner's or operator's expense.

(2) The United States, and any officer or employee of the United States is not liable to an owner or operator for damages resulting from removal of an abandoned barge under this chapter.

(b) The owner or operator of an abandoned barge is liable, and an abandoned barge is liable in rem, for all expenses that the United States incurs in removing an abandoned barge under this chapter.

(c)(1) The Secretary may, after providing notice under subsection (a)(1), solicit by public advertisement sealed bids for the removal of an abandoned barge.

(2) After solicitation under paragraph (1) the Secretary may award a contract. The contract—

(A) may be subject to the condition that the barge and all property on the barge is the property of the barge removal contractor; and

(B) must require the barge removal contractor to submit to the Secretary a plan for the removal.

(3) Removal of an abandoned barge may begin thirty days after the Secretary completes the procedures under subsection (a)(1).

(Added Pub. L. 102–587, title V, § 5302, Nov. 4, 1992, 106 Stat. 5082.)

§ 4705. Liability of barge removal contractors

(a)(1)[1] A barge removal contractor and its subcontractor[2] not liable for damages that result

[1] So in original. No subsec. (b) has been enacted.

[2] So in original. Probably should be followed by ''are''.

from actions taken or omitted to be taken in the course of removing a barge under this chapter.

(2) Paragraph (1) does not apply—

(A) with respect to personal injury or wrongful death; or

(B) if the contractor or subcontractor is grossly negligent or engages in willful misconduct.

(Added Pub. L. 102–587, title V, § 5302, Nov. 4, 1992, 106 Stat. 5083.)

PART C—LOAD LINES OF VESSELS

HISTORICAL AND REVISION NOTES

Part C contains provisions that apply to load lines. A load line is a mark drawn on a vessel that indicates whether a vessel is overloaded. Load line requirements for international voyages are based not only on domestic law but also the 1966 International Load Line Convention.

CHAPTER 51—LOAD LINES

Sec.
5101. Definitions.
5102. Application.
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5113. Detention of vessels.
5114. Use of Customs Service officers and employees for enforcement.
[5115. Repealed.]
5116. Penalties.

HISTORICAL AND REVISION NOTES

Chapter 51 provides for the assignment of load lines and issuance of load line certificates to vessels, and requires that certain classes of vessels be marked with load lines.

AMENDMENTS

1990—Pub. L. 101–595, title VI, § 603(5)(B), Nov. 16, 1990, 104 Stat. 2993, struck out item 5115 ''Regulations''.

§ 5101. Definitions

In this chapter—

(1) ''domestic voyage'' means movement of a vessel between places in, or subject to the jurisdiction of, the United States, except movement between—

(A) a place in a territory or possession of the United States or the Trust Territory of the Pacific Islands; and

(B) a place outside that territory, possession, or Trust Territory.

(2) ''economic benefit of the overloading'' means the amount obtained by multiplying the weight of the overload (in tons) by the lesser of—

(A) the average freight rate value of a ton of the vessel's cargo for the voyage; or

(B) $50.

(3) ''existing vessel'' means—

(A) a vessel on a domestic voyage, the keel of which was laid, or that was at a similar stage of construction, before January 1, 1986; and

(B) a vessel on a foreign voyage, the keel of which was laid, or that was at a similar stage of construction, before July 21, 1968.

(4) ''freeboard'' means the distance from the mark of the load line assigned under this chapter to the freeboard deck.

(5) ''freeboard deck'' means the deck or other structure the Secretary prescribes by regulation.

(6) ''minimum safe freeboard'' means the freeboard that the Secretary decides cannot be reduced safely without limiting the operation of the vessel.

(7) ''weight of the overload'' means the amount obtained by multiplying the number of inches that the vessel is submerged below the applicable assigned freeboard by the tons-an-inch immersion factor for the vessel at the assigned minimum safe freeboard.

(Pub. L. 99–509, title V, § 5101(2), Oct. 21, 1986, 100 Stat. 1913.)

HISTORICAL AND REVISION NOTES

Revised section 5101

Source: Section (U.S. Code) 46 App. U.S.C. 86a.

Section 5101 contains definitions that are limited to Chapter 51—Load Lines. Existing Section 46 App. U.S.C. 86a (which defines only the terms ''new ship'' and ''existing ship'') will be replaced by section 5101. Definitions of technical terms (''freeboard'', ''freeboard deck'', and ''minimum safe freeboard'') have been added for clarity. The definition of the term ''new ship'' has been deleted because the term is not used in Chapter 51. The definition of ''domestic voyage'' includes the phrase ''places in or subject to the jurisdiction of the United States.'' ''Places subject to the jurisdiction of the United States'' include deep water ports, production platforms, mining sites outside of territorial waters of the United States but within the United States' Exclusive Economic Zone (EEZ) that was established by Presidential Proclamation 5030, dated March 10, 1983, or on the outer continental shelf. The phrases ''economic benefit of overloading'' and ''weight of the overload'' have been defined for purposes of establishing a standard method of determining the value of the cargo with which a vessel is overloaded. The value of the cargo will in turn affect the maximum penalty assessed for overloading the vessel. The definition of ''freeboard deck'' provides the Secretary with the authority to designate as the freeboard deck either the actual deck (on standard vessels) or another structure (on non-standard vessels). Non-standard vessels, for which this regulatory flexibility is necessary, include shelter deck vessels, semi-submersible multi-hull units, container ships, surface effect vessels, and commercial submarines.

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.

§ 5102. Application

(a) Except as provided in subsection (b) of this section, this chapter applies to the following:

(1) a vessel of the United States.

(2) a vessel on the navigable waters of the United States.

(3) a vessel—

(A) owned by a citizen of the United States or a corporation established by or under the laws of the United States or a State; and

(B) not registered in a foreign country.

(4) a public vessel of the United States.

(5) a vessel otherwise subject to the jurisdiction of the United States.

(b) This chapter does not apply to the following:

(1) a vessel of war.

(2) a recreational vessel when operated only for pleasure.

(3) a fishing vessel.

(4) a fish processing vessel of not more than 5,000 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title that—

(A)(i) was constructed as a fish processing vessel before August 16, 1974; or

(ii) was converted for use as a fish processing vessel before January 1, 1983; and

(B) is not on a foreign voyage.

(5) a fish tender vessel of not more than 500 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title that—

(A)(i) was constructed, under construction, or under contract to be constructed as a fish tender vessel before January 1, 1980; or

(ii) was converted for use as a fish tender vessel before January 1, 1983; and

(B)(i) is not on a foreign voyage; or

(ii) is not engaged in the Aleutian trade (except a vessel in that trade assigned a load line at any time before June 1, 1992).

(6) a vessel of the United States on a domestic voyage that does not cross the Boundary Line, except a voyage on the Great Lakes.

(7) a vessel of less than 24 meters (79 feet) overall in length.

(8) a public vessel of the United States on a domestic voyage.

(9) a vessel excluded from the application of this chapter by an international agreement to which the United States Government is a party.

(10) an existing vessel of not more than 150 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title that is on a domestic voyage.

(11) a small passenger vessel on a domestic voyage.

(12) a vessel of the working fleet of the Panama Canal Commission not on a foreign voyage.

(c) On application by the owner and after a survey under section 5105 of this title, the Secretary may assign load lines for a vessel excluded from the application of this chapter under subsection (b) of this section. A vessel assigned load lines under this subsection is subject to this chapter until the surrender of its load line certificate and the removal of its load line marks.

(d) This chapter does not affect an international agreement to which the Government is a party that is not in conflict with the International Convention on Load Lines currently in force for the United States.

(Pub. L. 99–509, title V, § 5101(2), Oct. 21, 1986, 100 Stat. 1914; Pub. L. 101–595, title VI, § 602(d), Nov. 16, 1990, 104 Stat. 2991; Pub. L. 104–324, title VII, § 719, Oct. 19, 1996, 110 Stat. 3938; Pub. L. 107–295, title IV, § 436(a), Nov. 25, 2002, 116 Stat. 2129.)

HISTORICAL AND REVISION NOTES

Revised section 5102

Source: Section (U.S. Code) 46 App. U.S.C. 86b, 86c, 88.

The delineation of the vessels that will be subject to load line requirements is made in section 5102 as follows: subsection (a) is an all-inclusive list of vessels subject to load line requirements, followed by subsection (b) which specifically exempts those vessels to which the requirements do not apply.

Section 5102(a) lists five categories of vessels which are subject to load line requirements. They are as follows:

Clause (1) regarding ''a vessel of the United States'' includes all vessels documented under Chapter 121 of title 46 or numbered under Chapter 123 of title 46.

Clause (2) regarding ''a vessel on the navigable waters of the United States'' includes all domestic or foreign vessels found in or on the navigable waters of the United States.

Clause (3) regarding ''a vessel owned by a citizen of the United States or a corporation established by or under the laws of the United States or a State, and not registered in a foreign country'' includes all vessels owned by citizens of the United States (as defined in 5107(7)) [sic] and not registered under the laws of a foreign country, wherever the vessels may be located.

Clause (4) regarding ''a public vessel of the United States'' includes all United States public vessels.

Clause (5) regarding ''a vessel otherwise subject to the jurisdiction of the United States'' includes foreign vessels that are subject to United States jurisdiction as a result of bilateral agreements, licenses, customary international law or other means, including those using deepwater port or outer continental shelf or EEZ facilities located in areas subject to the jurisdiction of the United States.

Section 5102(b) lists the specific exemptions from load line requirements. The specific exemptions may be grouped as follows:

(a) Vessel type (ships of war, pleasure vessels, fishing vessels, small passenger vessels on domestic voyages);

(b) Area of operation (rivers, harbors, bays, sounds, etc.);

(c) Minimum size (length); and

(d) Treaty exclusions.

Clause (1) exempts vessels of war from load line requirements.

Clause (2) exempts recreational vessels operated only for pleasure from load line requirements.

Clause (3) exempts fishing vessels from load line requirements.

Clauses (4) and (5) exempt certain existing fish processing and fish tender vessels not on a foreign voyage from load line requirements. The exception is limited to those vessels not on international voyages to ensure compliance with United States obligations under the International Load Line Convention.

Clause (6) exempts from load line requirements all U.S. vessels operating on domestic voyages within the Boundary Line, as defined in section 2101 of this title, except vessels operating on the Great Lakes.

Clause (7) exempts all vessels that are less than 24 meters (79 feet) in length from load line requirements whether on international or domestic voyages.

Clause (8) exempts from load line requirements those public vessels that are on domestic voyages.

Clause (9) exempts from load line requirements those vessels which have been excluded from the require-

ments ''by specific action of a treaty of the United States.'' The only current treaty which excludes vessels from load line requirements is the Convention Between the United States of America and the Dominion of Canada Concerning Load Lines (49 Stat. 2685), which entered into force on August 11, 1934.

Clause (10) exempts from load line requirements existing U.S. vessels that are under 150 gross tons while engaged on a domestic voyage. This is a grandfather provision, continuing the existing exemption for these vessels. Vessels built after January 1, 1986 must be marked with a load line, however, if they are over 79 feet long and do not qualify for any other exemption.

Clause (11) exempts small passenger vessels engaged on domestic voyages from load line requirements. Small passenger vessels are inspected under Subchapter T of Title 46 of the Code of Federal Regulations. Under Subchapter T, the Coast Guard regulates these vessels with regard to safety; the requirements are based on the number of passengers, length, and gross tonnage of the vessel. Safety-related requirements in Subchapter T regulations include hull structure and watertightness, stability, weathertight integrity, and safe movement of persons on deck, the principal safety features covered by load line regulations. This specific exemption from load line requirements for small passenger vessels is consistent with existing law and does not alter in any way the Coast Guard's authority to regulate small passenger vessels under Subchapter T.

Clause (12) exempts vessels of the working voyages from the requirement to have load lines.

Section 5102(c) authorizes the Secretary to assign load lines for any vessel exempted from load line requirements by subsection (b) upon the request of the owner. It also provides that any exempted vessel for which load lines are assigned will remain subject to the load line requirements until its load line certificate is surrendered and the load line marks are removed.

Section 5102(d) provides that this chapter shall not be construed as abrogating the provisions of other treaties and conventions to which the United States is a party, which are not in conflict with the International Convention on Load Lines.

AMENDMENTS

2002—Subsec. (b)(5)(B)(ii). Pub. L. 107–295 inserted ''is not'' after ''(ii)''.

1996—Subsec. (b)(4). Pub. L. 104–324, § 719(1), inserted ''as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' after ''5,000 gross tons'' in introductory provisions.

Subsec. (b)(5). Pub. L. 104–324, § 719(2), inserted ''as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' after ''500 gross tons'' in introductory provisions.

Subsec. (b)(10). Pub. L. 104–324, § 719(3), inserted ''as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' after ''150 gross tons''.

1990—Subsec. (b)(5)(B). Pub. L. 101–595 amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''is not on a foreign voyage.''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–595 effective Nov. 16, 1990, with provision that before Jan. 1, 2003, a fish tender vessel is exempt from this chapter when engaged in Aleutian trade if the vessel either operated in that trade before Sept. 8, 1990, or was purchased before that date to be used in such trade and entered into service in that trade before June 1, 1992, did not undergo a major conversion, and did not have a load line assigned at any time before Nov. 16, 1990, see section 602(f) of Pub. L. 101–595, set out as a note under section 4502 of this title.

FISH TENDER VESSELS IN ALEUTIAN TRADE

Pub. L. 107–295, title IV, § 436(b), (c), Nov. 25, 2002, 116 Stat. 2129, provided that:

''(b) IMPLEMENTATION.—Except as provided in subsection (c), a fish tender vessel that before January 1, 2003, transported cargo (not including fishery related products) in the Aleutian trade is subject to chapter 51 of title 46, United States Code (as amended by subsection (a) of this section [amending this section]).

''(c) EXCEPTION.—

''(1) IN GENERAL.—Before December 31, 2006, the BOWFIN (United States official number 604231) is exempt from chapter 51 of title 46, United States Code (as amended by subsection (a) of this section) when engaged in the Aleutian trade, if the vessel does not undergo a major conversion.

''(2) ENSURING SAFETY.—Before the date referred to in paragraph (1), a Coast Guard official who has reason to believe that the vessel referred to in paragraph (1) operating under this subsection is in a condition or is operated in a manner that creates an immediate threat to life or the environment or is operated in a manner that is inconsistent with section 3302 of title 46, United States Code, may direct the master or individual in charge to take immediate and reasonable steps to safeguard life and the environment, including directing the vessel to a port or other refuge.''

[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.]

§ 5103. Load line requirements

(a) A vessel may be operated only if the vessel has been assigned load lines.

(b) The owner, charterer, managing operator, agent, master, and individual in charge of a vessel shall mark and maintain the load lines permanently and conspicuously in the way prescribed by the Secretary.

(Pub. L. 99–509, title V, § 5101(2), Oct. 21, 1986, 100 Stat. 1915.)

HISTORICAL AND REVISION NOTES

Revised section 5103

Source: Section (U.S. Code) 46 App. U.S.C. 86c, 88b.

Section 5103(a) prohibits a vessel that is subject to load line requirements from operating, unless it has load lines assigned by the Secretary.

Section 5103(b) requires that load lines be permanently and conspicuously maintained in the manner prescribed by the Secretary.

§ 5104. Assignment of load lines

(a) The Secretary shall assign load lines for a vessel so that they indicate the minimum safe freeboard to which the vessel may be loaded. However, if the owner requests, the Secretary may assign load lines that result in greater freeboard than the minimum safe freeboard.

(b) In assigning load lines for a vessel, the Secretary shall consider—

(1) the service, type, and character of the vessel;

(2) the geographic area in which the vessel will operate; and

(3) applicable international agreements to which the United States Government is a party.

(c) An existing vessel may retain its load lines assigned before January 1, 1986, unless the Secretary decides that a substantial change in the vessel after those load lines were assigned requires that new load lines be assigned under this chapter.

(d) The minimum freeboard of an existing vessel may be reduced only if the vessel complies with every applicable provision of this chapter.

(e) The Secretary may designate by regulation specific geographic areas that have less severe weather or sea conditions and from which there is adequate time to return to available safe harbors. The Secretary may reduce the minimum freeboard of a vessel operating in these areas.

(Pub. L. 99–509, title V, § 5101(2), Oct. 21, 1986, 100 Stat. 1915.)

HISTORICAL AND REVISION NOTES

Revised section 5104

Source: Section (U.S. Code) 46 App. U.S.C. 86c, 88a.

Section 5104(a) requires the Secretary to assign load lines indicating the minimum safe freeboard to which a vessel may be loaded. It also authorizes the Secretary to assign a load line that results in a freeboard that is greater than the minimum freeboard, if the owner requests.

Section 5104(b) sets forth guidelines that the Secretary must consider when assigning load lines on vessels.

Section 5104(c) allows an existing vessel to retain its load line assigned before January 1, 1986, unless the Secretary decides that a change made in the vessel requires the assignment of a new load line.

Section 5104(d) is a new provision that requires that a vessel comply with all the provisions of this chapter before the Secretary will consider a reduction in its minimum freeboard. This provision is similar to Article 4(4) of the International Convention on Load Lines.

Section 5104(e) is a new provision that authorized the Secretary to designate specific geographic areas having relatively non-severe weather or sea conditions and from which there is adequate time to return to safe harbors. Section 5104(e) also authorizes the Secretary to reduce the minimum freeboard of vessels operating in these areas. Regulations that have been issued under this authority (46 C.F.R. 44) authorize special service load lines for vessels operating not more than 20 nautical miles offshore or between islands in a group.

§ 5105. Load line surveys

(a) The Secretary may provide for annual, renewal, and other load line surveys.

(b) In conducting a load line survey, the Secretary shall consider whether—

(1) the hull and fittings of the vessel—

(A) are adequate to protect the vessel from the sea; and

(B) meet other requirements the Secretary may prescribe by regulation;

(2) the strength of the hull is adequate for all loading conditions;

(3) the stability of the vessel is adequate for all loading conditions;

(4) the topsides of the vessel are arranged and constructed to allow rapid overboard drainage of deck water in heavy weather; and

(5) the topsides of the vessel are adequate in design, arrangement, and equipment to protect crewmembers performing outside tasks necessary for safe operation of the vessel.

(Pub. L. 99–509, title V, § 5101(2), Oct. 21, 1986, 100 Stat. 1916.)

HISTORICAL AND REVISION NOTES

Revised section 5105

Section 5105 authorizes the Secretary of Transportation to provide for load line surveys and requires that while conducting a load line survey, the Secretary must consider various strength, stability, design, and construction features of the vessel.

§ 5106. Load line certificate

(a) On finding that a load line survey of a vessel under this chapter is satisfactory and that the vessel's load lines are marked correctly, the Secretary shall issue the vessel a load line certificate and deliver it to the owner, master, or individual in charge of the vessel.

(b) The certificate shall be maintained as required by the Secretary.

(Pub. L. 99–509, title V, § 5101(2), Oct. 21, 1986, 100 Stat. 1916.)

HISTORICAL AND REVISION NOTES

Revised section 5106

Source: Section (U.S. Code) 46 App. U.S.C. 86c.

Section 5106(a) requires the Secretary to issue a load line certificate upon finding that a vessel has received a satisfactory load line survey and that the vessel's load line is marked correctly.

Section 5106(b) requires that the load line certificate be maintained as required by the Secretary of Transportation. It is expected that the Secretary will require in most cases that the certificate be carried on board the vessel. However, certain types of vessels such as barges do not have facilities for the carriage of certificates. In this case, this provision would give the Secretary the discretion to require that the certificates for the barges be carried on the towing vessels.

§ 5107. Delegation of authority

(a) The Secretary shall delegate to the American Bureau of Shipping or other similarly qualified organizations the authority to assign load lines, survey vessels, determine that load lines are marked correctly, and issue load line certificates under this chapter.

(b) Under regulations prescribed by the Secretary, a decision of an organization delegated authority under subsection (a) of this section related to the assignment of a load line may be appealed to the Secretary.

(c) For a vessel intended to be engaged on a foreign voyage, the Secretary may delegate to another country that is a party to the International Convention on Load Lines, 1966, the authority to assign load lines, survey vessels, determine that the load lines are marked correctly, and issue an International Load Line Certificate (1966).

(d) The Secretary may terminate a delegation made under this section after giving written notice to the organization.

(Pub. L. 99–509, title V, § 5101(2), Oct. 21, 1986, 100 Stat. 1916.)

HISTORICAL AND REVISION NOTES

Revised section 5107

Source: Section (U.S. Code) 46 App. U.S.C. 86d, 88b.

Section 5107(a) requires the Secretary to delegate the performance of various load line functions to the American Bureau of Shipping or other similarly qualified organizations. In providing for the delegation to a "similarly qualified organization," the Committee expects that the Secretary will ensure that that organization

complies with the same stringent standards and requirements for conducting business that apply to the American Bureau of Shipping.

Section 5107(b) permits an appeal to the Secretary of a decision by an organization that has received delegated authority. This ensures that the Secretary has full oversight of the delegated load line functions.

Section 5107(c) permits the Secretary to delegate various load line functions to another country for vessels that are engaged on a foreign voyage, provided that the country is a party to the International Convention on Load Lines, 1966.

Section 5107(d) clarifies the Secretary's authority to revoke a delegation at any time without cause. This authority is given so that no delay occurs administratively in revoking a delegation whenever the Secretary decides a revocation is warranted.

§ 5108. Special exemptions

(a) The Secretary may exempt a vessel from any part of this chapter when—

(1) the vessel is entitled to an exemption under an international agreement to which the United States Government is a party; or

(2) under regulations (including regulations on special operations conditions) prescribed by the Secretary, the Secretary finds that good cause exists for granting an exemption.

(b) When the Secretary grants an exemption under this section, the Secretary may issue a certificate of exemption stating the extent of the exemption.

(c) A certificate of exemption issued under subsection (b) of this section shall be maintained as required by the Secretary.

(Pub. L. 99–509, title V, § 5101(2), Oct. 21, 1986, 100 Stat. 1916.)

HISTORICAL AND REVISION NOTES

Revised section 5108

Source: Section (U.S. Code) 46 App. U.S.C. 86e, 88a.

Section 5108(a) authorizes the Secretary to exempt a vessel from load line requirements if the vessel is entitled to an exemption under an international agreement to which the United States is a party. It also provides the Secretary with the new authority to exempt a vessel from load line requirements if the Secretary finds that there is good reason for granting the exemption. A specific exemption from load line requirements was authorized in Public Law 98–557 for barges operating close to shore between Calumet Harbor, Illinois and Burns Harbor, Indiana, because the geographic area and type of operation in this case did not warrant a requirement for load lines. Additional exemptions currently must be made by an Act of Congress. Section 5108(a) authorizes the Secretary to make such exemptions through regulation, and the Committee expects the Secretary to continue the exemption under this provision for vessels operating close to shore between Calumet Harbor, Illinois and Burns Harbor, Indiana.

Section 5108(b) authorizes the Secretary to issue a certificate of exemption when an exemption is granted.

Section 5108(c) requires that the certificate of exemption be maintained as required by the Secretary in a similar manner as under section 5106(b).

§ 5109. Reciprocity for foreign vessels

(a) When the Secretary finds that the laws and regulations of a foreign country related to load lines are similar to those of this chapter and the regulations prescribed under this chapter, or when a foreign country is a party to an international load line agreement to which the United States Government is a party, the Secretary shall accept the load line marks and certificate of a vessel of that foreign country as complying with this chapter and the regulations prescribed under this chapter. The Secretary may control the vessel as provided for in the applicable international agreement.

(b) Subsection (a) of this section does not apply to a vessel of a foreign country that does not recognize load lines assigned under this chapter.

(Pub. L. 99–509, title V, § 5101(2), Oct. 21, 1986, 100 Stat. 1917.)

HISTORICAL AND REVISION NOTES

Revised section 5109

Source: Section (U.S. Code) 46 App. U.S.C. 86f, 88d.

Section 5109(a) requires the Secretary to accept the load line mark and load line certificate of a vessel of a foreign country if the Secretary finds that the load line laws and regulations of that country are similar to those of this chapter, or if that country is a party to an international load line agreement to which the United States is a party.

§ 5110. Submersible vessels

Notwithstanding sections 5103–5105 of this title, the Secretary may prescribe regulations for submersible vessels to provide a minimum level of safety. In developing the regulations, the Secretary shall consider factors relevant to submersible vessels, including the structure, stability, and watertight integrity of those vessels.

(Pub. L. 99–509, title V, § 5101(2), Oct. 21, 1986, 100 Stat. 1917.)

HISTORICAL AND REVISION NOTES

Revised section 5110

Section 5110 authorizes the Secretary to prescribe regulations for the marking of load lines of submersible vessels. This general authority has been included in anticipation of the commercial development of submersibles.

§ 5111. Providing loading information

The Secretary may prescribe regulations requiring the owner, charterer, managing operator, and agent of a vessel to provide loading information (including information on loading distribution, stability, and margin of strength) to the master or individual in charge of the vessel in a language the master or individual understands.

(Pub. L. 99–509, title V, § 5101(2), Oct. 21, 1986, 100 Stat. 1917.)

HISTORICAL AND REVISION NOTES

Section 5111 authorizes the Secretary to prescribe regulations requiring that the master of a vessel be provided with loading and stability information for the vessel that the master understands.

§ 5112. Loading restrictions

(a) A vessel may not be loaded in a way that submerges the assigned load line or the place at which the load line is required to be marked on the vessel.

(b) If the loading or stability conditions of a vessel change, the master or individual in charge of the vessel, before moving the vessel, shall record in the official logbook or other permanent record of the vessel—

(1) the position of the assigned load line relative to the water surface; and

(2) the draft of the vessel fore and aft.

(c) A vessel may be operated only if the loading distribution, stability, and margin of strength are adequate for the voyage or movement intended.

(d) Subsections (a) and (b) of this section do not apply to a submersible vessel.

(Pub. L. 99–509, title V, § 5101(2), Oct. 21, 1986, 100 Stat. 1917.)

HISTORICAL AND REVISION NOTES

Revised section 5112

Source: Section (U.S. Code) 46 App. U.S.C. 86g, 88c, 88e.

Section 5112(a) prohibits a vessel from being loaded in a manner that submerges its load line.

Section 5112(b) requires that whenever the loading or stability conditions of a vessel change, the master or individual in charge of the vessel must record in the official logbook the position of the load line and the draft of the vessel.

Section 5112(c) is a new provision that provides that a vessel may be operated only if the loading distribution, stability, and margin of strength are adequate for the intended voyage or movement.

Section 5112(d) provides that subsections (a) and (b) do not apply to a submersible vessel.

§ 5113. Detention of vessels

(a) When the Secretary believes that a vessel is about to leave a place in the United States in violation of this chapter or a regulation prescribed under this chapter, the Secretary may detain the vessel by giving notice to the owner, charterer, managing operator, agent, master, or individual in charge of the vessel.

(b) A detained vessel may be cleared under section 4197 of the Revised Statutes (46 App. U.S.C. 91) only after the violation has been corrected. If the vessel was cleared before being detained, the clearance shall be withdrawn.

(c) Under regulations prescribed by the Secretary, the owner, charterer, managing operator, agent, master, or individual in charge of a detained vessel may petition the Secretary to review the detention order.

(d) After reviewing a petition, the Secretary may affirm, withdraw, or change the detention order. Before acting on the petition, the Secretary may require any independent survey that may be necessary to determine the condition of the vessel.

(e) The owner of a vessel is liable for the cost incident to a petition for review and any required survey if the vessel is found to be in violation of this chapter or a regulation prescribed under this chapter.

(Pub. L. 99–509, title V, § 5101(2), Oct. 21, 1986, 100 Stat. 1918.)

HISTORICAL AND REVISION NOTES

Revised section 5113

Source: Section (U.S. Code) 46 App. U.S.C. 86h, 88f.

Section 5113 authorizes the Secretary to detain a vessel if the Secretary believes that the vessel is in violation of the load line requirements, and describes the process through which a vessel may be cleared. It also states that a vessel owner is liable for certain costs resulting from a petition for review and load line survey that is made pursuant to a violation of load line requirements.

§ 5114. Use of Customs Service officers and employees for enforcement

(a) With the approval of the Secretary of the Treasury, the Secretary may use an officer or employee of the United States Customs Service to enforce this chapter and the regulations prescribed under this chapter.

(b) The Secretary shall consult with the Secretary of the Treasury before prescribing a regulation that affects the enforcement responsibilities of an officer or employee of the Customs Service.

(Pub. L. 99–509, title V, § 5101(2), Oct. 21, 1986, 100 Stat. 1918; Pub. L. 101–595, title VI, § 603(4), Nov. 16, 1990, 104 Stat. 2993.)

HISTORICAL AND REVISION NOTES

Revised section 5114

Source: Section (U.S. Code) 46 App. U.S.C. 86

Section 5114(a) authorizes the Secretary to use a Customs Service officer or employee to enforce load line requirements. The expected role of a Customs Service officer or employee in this regard is to ensure that a vessel is carrying a load line certificate and that the load line is not submerged.

Section 5114(b) requires the Secretary to consult with the Secretary of the Treasury before prescribing a regulation that affects the enforcement responsibilities of a Customs Service officer or employee.

AMENDMENTS

1990—Pub. L. 101–595 substituted ''officers and employees'' for ''officers employees'' in section catchline.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 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.

[§ 5115. Repealed. Pub. L. 101–595, title VI, § 603(5)(A), Nov. 16, 1990, 104 Stat. 2993]

Section, Pub. L. 99–509, title V, § 5101(2), Oct. 21, 1986, 100 Stat. 1918, authorized Secretary to prescribe regulations to carry out this chapter.

§ 5116. Penalties

(a) Except as otherwise provided in this section, the owner, charterer, managing operator, agent, master, and individual in charge of a vessel violating this chapter or a regulation prescribed under this chapter are each liable to the United States Government for a civil penalty of not more than $5,000. Each day of a continuing violation is a separate violation. The vessel also is liable in rem for the penalty.

(b) The owner, charterer, managing operator, agent, master, and individual in charge of a vessel allowing, causing, attempting to cause, or failing to take reasonable care to prevent a violation of section 5112(a) of this title are each liable to the Government for a civil penalty of not more than $10,000 plus an additional amount equal to twice the economic benefit of the overloading. The vessel also is liable in rem for the penalty.

(c) The master or individual in charge of a vessel violating section 5112(b) of this title is liable to the Government for a civil penalty of not more than $5,000. The vessel also is liable in rem for the penalty.

(d) A person causing or allowing the departure of a vessel from a place within the jurisdiction of the United States in violation of a detention order issued under section 5113 of this title commits a class A misdemeanor.

(e) A person causing or allowing the alteration, concealment, or removal of a mark placed on a vessel under section 5103(b) of this title and the regulations prescribed under this chapter, except to make a lawful change or to escape enemy capture in time of war, commits a class A misdemeanor.

(Pub. L. 99–509, title V, § 5101(2), Oct. 21, 1986, 100 Stat. 1918; Pub. L. 101–380, title IV, § 4302(d), Aug. 18, 1990, 104 Stat. 538.)

HISTORICAL AND REVISION NOTES

Revised section 5116

Source: Section (U.S. Code) 46 App. U.S.C. 86i, 88g.

Section 5116 provides penalties for violations of load line requirements. The penalties are raised substantially from existing law to provide a sufficient deterrence against violations of the load line requirements and to conform with the level of penalties throughout the subtitle. The monetary penalties have not been changed since the 1930's.

Section 5116(a) raises from $1,000 to $5,000 the maximum penalty for violation of a load line provision under this chapter or a regulation promulgated under this chapter.

Section 5116(b) raises from $1,000 to $10,000 the maximum penalty for loading a vessel in such a way as to submerge the load line. In addition, a violator must pay up to two times the amount of the economic benefit of the overloading.

Section 5116(c) raises from $500 to $5,000 the maximum penalty for a violation of the requirement in section 5112(b) that the load line position and draft of a vessel be noted in the logbook.

Section 5116(a)–(c) also states that the vessel is liable in rem for the penalty.

Section 5116(d) raises from $1,000 to $10,000 the maximum penalty for a violation of a detention order and may also include imprisonment for up to one year.

Section 5116(e) raises from $2,000 to $10,000 the maximum penalty for the alteration, removal, or concealment of a load line mark and may also include imprisonment for two years.

AMENDMENTS

1990—Subsec. (d). Pub. L. 101–380, § 4302(d)(1), substituted ''commits a class A misdemeanor'' for ''shall be fined not more than $10,000, imprisoned for not more than one year, or both''.

Subsec. (e). Pub. L. 101–380, § 4302(d)(2), substituted ''commits a class A misdemeanor'' for ''shall be fined not more than $10,000, imprisoned for not more than 2 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 Title 33, Navigation and Navigable Waters.

PART D—MARINE CASUALTIES

CHAPTER 61—REPORTING MARINE CASUALTIES

Sec.
6101. Marine casualties and reporting.
6102. State marine casualty reporting system.
6103. Penalty.
6104. Commercial fishing industry vessel casualty statistics.

HISTORICAL AND REVISION NOTES

Chapter 61 provides for the reporting of marine casualties and incidents involving all United States flag vessels occurring anywhere in the world and any foreign flag vessel operating on waters subject to the jurisdiction of the United States.

AMENDMENTS

1988—Pub. L. 100–424, § 4(c), Sept. 9, 1988, 102 Stat. 1591, added item 6104.

§ 6101. Marine casualties and reporting

(a) The Secretary shall prescribe regulations on the marine casualties to be reported and the manner of reporting. The regulations shall require reporting the following marine casualties:

(1) death of an individual.

(2) serious injury to an individual.

(3) material loss of property.

(4) material damage affecting the seaworthiness or efficiency of the vessel.

(5) significant harm to the environment.

(b) A marine casualty shall be reported within 5 days as provided in this part and regulations prescribed under this part. Each report filed under this section shall include information as to whether the use of alcohol contributed to the casualty.

[(c) Repealed. Pub. L. 98–498, title II, § 212(b)(1)(B), Oct. 19, 1984, 98 Stat. 2306.]

(d)(1) This part applies to a foreign vessel when involved in a marine casualty on the navigable waters of the United States.

(2) This part applies, to the extent consistent with generally recognized principles of international law, to a foreign vessel constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue involved in a marine casualty described under subsection (a)(4) or (5) in waters subject to the jurisdiction of the United States, including the Exclusive Economic Zone.

(e) A marine casualty not resulting in the death of an individual shall be classified according to the gravity of the casualty, as prescribed by regulation, giving consideration to the extent of injuries to individuals, the extent of property damage, the dangers that the casualty creates, and the size, occupation, and means of propulsion of each vessel involved.

(f)(1) This chapter applies to a marine casualty involving a United States citizen on a foreign passenger vessel operating south of 75 degrees north latitude, west of 35 degrees west longitude, and east of the International Date Line; or operating in the area south of 60 degrees south latitude that—

(A) embarks or disembarks passengers in the United States; or

(B) transports passengers traveling under any form of air and sea ticket package marketed in the United States.

(2) When there is a marine casualty described in paragraph (1) of this subsection and an investigation is conducted, the Secretary shall ensure that the investigation—

(A) is thorough and timely; and

(B) produces findings and recommendations to improve safety on passenger vessels.

(3) When there is a marine casualty described in paragraph (1) of this subsection, the Secretary may—

(A) seek a multinational investigation of the casualty under auspices of the International Maritime Organization; or

(B) conduct an investigation of the casualty under chapter 63 of this title.

(g)[1] To the extent consistent with generally recognized practices and procedures of international law, this part applies to a foreign vessel involved in a marine casualty or incident, as defined in the International Maritime Organization Code for the Investigation of Marine Casualties and Incidents, where the United States is a Substantially Interested State and is, or has the consent of, the Lead Investigating State under the Code.

(g)(1)[1] The Secretary shall publish all major marine casualty reports prepared in accordance with this section in an electronic form, and shall provide information electronically regarding how other marine casualty reports can be obtained.

(2) For purposes of this paragraph, the term ''major marine casualty'' means a casualty involving a vessel, other than a public vessel, that results in—

(A) the loss of 6 or more lives;

(B) the loss of a mechanically propelled vessel of 100 or more gross tons;

(C) property damage initially estimated at $500,000 or more; or

(D) serious threat, as determined by the Commandant of the Coast Guard with concurrence by the Chairman of the National Transportation Safety Board, to life, property, or the environment by hazardous materials.

(h) The Secretary shall, as soon as possible, and no later than January 1, 2005, publish all marine casualty reports prepared in accordance with this section in an electronic form.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 536; Pub. L. 98–498, title II, § 212(b)(1), Oct. 19, 1984, 98 Stat. 2306; Pub. L. 98–557, § 7(b)(1), Oct. 30, 1984, 98 Stat. 2862; Pub. L. 101–380, title IV, § 4106(b), Aug. 18, 1990, 104 Stat. 513; Pub. L. 102–241, § 33, Dec. 19, 1991, 105 Stat. 2222; Pub. L. 107–295, title IV, §§ 423, 442(a), Nov. 25, 2002, 116 Stat. 2125, 2132.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
6101	46:239 46:1486 33:361 33:365
6101(b)	33:362

Section 6101(a) requires the Secretary to prescribe regulations on the types and manner of reporting of marine casualties to be reported under subsection (b) and incidents to be reported under subsection (c). The casualties to be reported must include casualties involving death to an individual, serious injury to an individual, material loss of property, and any damage affecting the seaworthiness or efficiency of the vessel, in addition to the other casualties (if any) the Secretary feels should be reported.

Subsection (b) requires the owner, charterer, agent, master, operator, or individual in charge of a vessel to report within 5 days, any casualty required in subsection (a) or by regulation.

Subsection (c) requires the owner, charterer, managing operator, or agent of a U.S. vessel to immediately determine the status of their vessel if they have not heard from the vessel, if it has not passed a scheduled point, or for any other reason which may indicate the vessel may have been lost or imperiled. If the owner, charterer, managing operator, or agent cannot reach the vessel and determine that it is operating safely, then they shall immediately notify the Coast Guard and provide the Coast Guard with the name and number of the vessel, the names of individuals on board, and any other information that the Coast Guard may request. If communication with the vessel indicates the vessel was involved in a casualty, then the owner, charterer, or agent of the vessel must immediately notify the Coast Guard under subsection (b). Notification to the Coast Guard does not impose or create any additional responsibility for the Coast Guard to take search and rescue action beyond those already existing under title 14, United States Code.

Subsection (d) makes it clear that the reporting requirements under subsection (b) are applicable to foreign vessels involved in a marine casualty when operating on the navigable waters of the United States, whether in innocent passage or not.

Subsection (e) provides for the classification of marine casualties by regulation according to the gravity of the casualty, injuries to individuals, property damage, dangers created, and size, occupation, and means of propulsion of each vessel.

AMENDMENTS

2002—Subsecs. (e), (f). Pub. L. 107–295, § 423(1), redesignated subsec. (e), relating to passenger vessel investigations, as subsec. (f).

Subsec. (g). Pub. L. 107–295, § 442(a), added subsec. (g) relating to electronic publishing of marine casualty reports.

Pub. L. 107–295, § 423(2), added subsec. (g) relating to applicability of this part to a foreign vessel involved in a marine casualty or incident.

Subsec. (h). Pub. L. 107–295, § 442(a), added subsec. (h).

1991—Subsec. (e). Pub. L. 102–241 added subsec. (e) relating to passenger vessel investigations.

1990—Subsec. (a)(5). Pub. L. 101–380, § 4106(b)(1), added par. (5).

Subsec. (d). Pub. L. 101–380, § 4106(b)(2), designated existing provisions as par. (1) and added par. (2).

1984—Subsec. (a). Pub. L. 98–498, § 212(b)(1)(A), struck out ''and incidents'' after ''marine casualties'' in provisions preceding par. (1).

Subsec. (b). Pub. L. 98–557 inserted provisions relating to alcohol as a contributing factor to the casualty.

Subsec. (c). Pub. L. 98–498, § 212(b)(1)(B), struck out subsec. (c) which related to determination of status of a vessel that may be lost or imperiled and notification of the Coast Guard.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–295, title IV, § 442(b), Nov. 25, 2002, 116 Stat. 2132, provided that: ''The amendment made by subsection (a) [amending this section] applies to all marine casualty reports completed after the date of enactment of this Act [Nov. 25, 2002].''

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 Title 33, Navigation and Navigable Waters.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–498 effective 180 days after Oct. 1, 1984, see section 214 of Pub. L. 98–498, set out as an Effective Date note under section 2306 of this title.

[1] So in original. Two subsecs. (g) have been enacted.

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.

§ 6102. State marine casualty reporting system

(a) The Secretary shall prescribe regulations for a uniform State marine casualty reporting system for vessels. Regulations shall prescribe the casualties to be reported and the manner of reporting. A State shall compile and submit to the Secretary reports, information, and statistics on casualties reported to the State, including information and statistics concerning the number of casualties in which the use of alcohol contributed to the casualty.

(b) The Secretary shall collect, analyze, and publish reports, information, and statistics on marine casualties together with findings and recommendations the Secretary considers appropriate. If a State marine casualty reporting system provides that information derived from casualty reports (except statistical information) may not be publicly disclosed, or otherwise prohibits use by the State or any person in any action or proceeding against a person, the Secretary may use the information provided by the State only in the same way that the State may use the information.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 536; Pub. L. 98–557, § 7(b)(2), Oct. 30, 1984, 98 Stat. 2862.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
6102	46:1486

Section 6102(a) requires the Secretary to prescribe regulations for a uniform State marine casualty reporting system for vessels. The Secretary may limit the scope and types of casualties to be investigated and reported by the State. It also requires the State to submit to the Secretary reports, information, and statistics on casualties reported to the State.

Subsection (b) requires the Secretary to analyze the information that is received from the State. It also prohibits the Secretary from disclosing the information, proceeding against any person based on this information, or otherwise using the information, if the State cannot use the information in the same way.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–557 inserted provisions relating to alcohol as a contributing factor to the casualty.

PLAN TO INCREASE MARINE CASUALTY REPORTING

Pub. L. 104–324, title III, § 314(a), Oct. 19, 1996, 110 Stat. 3922, provided that: ''Not later than one year after enactment of this Act [Oct. 19, 1996], the Secretary of Transportation shall, in consultation with appropriate State agencies, submit to the Committee on Resources of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a plan to increase reporting of vessel accidents to appropriate State law enforcement officials.''

§ 6103. Penalty

(a) An owner, charterer, managing operator, agent, master, or individual in charge of a vessel failing to report a casualty as required under section 6101 of this title or a regulation prescribed under section 6101 or 6102 is liable to the United States Government for a civil penalty of not more than $25,000.

(b) A person failing to comply with section 6104 of this title or a regulation prescribed under that section is liable to the Government for a civil penalty of not more than $5,000.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 536; Pub. L. 98–498, title II, § 212(b)(2), Oct. 19, 1984, 98 Stat. 2306; Pub. L. 100–424, § 4(b), Sept. 9, 1988, 102 Stat. 1590; Pub. L. 104–324, title III, §§ 306(a), 314(b), Oct. 19, 1996, 110 Stat. 3918, 3922.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
6103	33:361 33:362

Section 6103 provides for a civil penalty of $1,000 for any owner, charterer, managing operator, agent, master, or individual in charge of a vessel that fails to report a casualty required to be reported under subsection (b) of section 6101 or an incident required to be reported under subsection (c) of section 6101.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–324 inserted ''or 6102'' before ''is liable'' and substituted ''not more than $25,000'' for ''$1,000''.

1988—Pub. L. 100–424 designated existing provisions as subsec. (a) and added subsec. (b).

1984—Pub. L. 98–498 struck out ''or incident'' after ''a casualty''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–498 effective 180 days after Oct. 19, 1984, see section 214 of Pub. L. 98–498, set out as an Effective Date note under section 2306 of this title.

§ 6104. Commercial fishing industry vessel casualty statistics

(a) The Secretary shall compile statistics concerning marine casualties from data compiled from insurers of fishing vessels, fish processing vessels, and fish tender vessels.

(b) A person underwriting primary insurance for a fishing vessel, fish processing vessel, or fish tender vessel shall submit periodically to the Secretary data concerning marine casualties that is required by regulations prescribed by the Secretary.

(c) After consulting with the insurance industry, the Secretary shall prescribe regulations under this section to gather a statistical base for analyzing vessel risks.

(d) The Secretary may delegate to a qualified person that has knowledge and experience in the collection of statistical insurance data the authority of the Secretary under this section to compile statistics from insurers.

(Added Pub. L. 100–424, § 4(a), Sept. 9, 1988, 102 Stat. 1590.)

CHAPTER 63—INVESTIGATING MARINE CASUALTIES

Sec.
6301. Investigation of marine casualties.
6302. Public investigations.
6303. Rights of parties in interest.
6304. Subpena authority.

Sec.
6305. Reports of investigations.
6306. Penalty.
6307. Notifications to Congress.
6308. Information barred in legal proceedings.

HISTORICAL AND REVISION NOTES

Chapter 63 sets forth the scope and procedures for the investigation of marine casualties and incidents that are required to be reported by Chapter 61, as well as the rights of parties involved in a casualty.

AMENDMENTS

1996—Pub. L. 104–324, title III, § 313(b), Oct. 19, 1996, 110 Stat. 3922, added item 6308.

§ 6301. Investigation of marine casualties

The Secretary shall prescribe regulations for the immediate investigation of marine casualties under this part to decide, as closely as possible—

(1) the cause of the casualty, including the cause of any death;

(2) whether an act of misconduct, incompetence, negligence, unskillfulness, or willful violation of law committed by any individual licensed, certificated, or documented under part E of this subtitle has contributed to the cause of the casualty, or to a death involved in the casualty, so that appropriate remedial action under chapter 77 of this title may be taken;

(3) whether an act of misconduct, incompetence, negligence, unskillfulness, or willful violation of law committed by any person, including an officer, employee, or member of the Coast Guard, contributed to the cause of the casualty, or to a death involved in the casualty;

(4) whether there is evidence that an act subjecting the offender to a civil penalty under the laws of the United States has been committed, so that appropriate action may be undertaken to collect the penalty;

(5) whether there is evidence that a criminal act under the laws of the United States has been committed, so that the matter may be referred to appropriate authorities for prosecution; and

(6) whether there is need for new laws or regulations, or amendment or repeal of existing laws or regulations, to prevent the recurrence of the casualty.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 537.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
6301	46:239

Section 6301 requires the Secretary to prescribe regulations for the immediate investigation of marine casualties in order to determine, as closely as possible, the cause of the casualty; whether the actions of individuals licensed, certificated, or documented have contributed to the cause of the casualty, whether the action of an individual in the Coast Guard contributed to the cause of the casualty, whether there is evidence that an act subjecting the offender to civil or criminal penalty has been committed, and whether there is a need for new laws or to amend or repeal existing laws or regulations in order to prevent a recurrence of the casualty.

CONSTRUCTION

Section 2(h) of Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 599, provided that: ''Chapter 63 of title 46 (as enacted by section 1 of this Act) does not supersede section 304(a)(1)(E) of the Independent Safety Board Act of 1974 (49 App. U.S.C. 1903(a)(1)(E)) [see 49 U.S.C. 1131(a)(1)(E), (b)].''

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.

§ 6302. Public investigations

Each investigation conducted under this chapter and regulations prescribed under this chapter shall be open to the public, except when evidence affecting the national security is to be received.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 537.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
6302	

Section 6302 provides that each investigation conducted under this chapter shall be open to the public, except when evidence affecting the national security of the United States is to be received.

§ 6303. Rights of parties in interest

In an investigation conducted under this chapter, the following shall be allowed to be represented by counsel, to cross-examine witnesses, and to call witnesses:

(1) an owner,

(2) any holder of a license or certificate of registry,

(3) any holder of a merchant mariner's document,

(4) any other person whose conduct is under investigation, and

(5) any other party in interest.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 537.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
6303	46:239(d)

Section 6303 provides for the rights of parties in interest to an investigation by allowing them to be represented by counsel, to cross examine witnesses, and to call witnesses. This section merely states the rights of a party in interest but does not necessarily determine who is to be considered a party in interest. Clause (4) states that these rights are to be afforded to ''any *other* person whose conduct is under investigation'' (emphasis added). This implies that clauses (1) through (3) apply to individuals whose conduct is under investigation. If any individual does not qualify for these rights under clauses (1) through (4), that individual can still be entitled to these rights under clause (5), if designated as a party in interest. Since parties in interest are not clearly set out by statute, the Secretary has the authority to do this by regulation under section 6301. Thus the rights of these parties as presently provided for in existing law have been retained.

§ 6304. Subpena authority

(a) In an investigation under this chapter, the attendance and testimony of witnesses, includ-

ing parties in interest, and the production of any evidence may be compelled by subpena. The subpena authority granted by this section is coextensive with that of a district court of the United States, in civil matters, for the district in which the investigation is conducted.

(b) When a person fails to obey a subpena issued under this section, the district court of the United States for the district in which the investigation is conducted or in which the person failing to obey is found, shall on proper application issue an order directing that person to comply with the subpena. The court may punish as contempt any disobedience of its order.

(c) A witness complying with a subpena issued under this section may be paid for actual travel and attendance at the rate provided for witnesses in the district courts of the United States.

(d) An official designated to conduct an investigation under this part may issue subpenas as provided in this section and administer oaths to witnesses.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 538.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
6304	46:239(e) 46:239(f)

Section 6304 provides an officer investigating a marine casualty with the necessary subpena authority to require the attendance and testimony of witnesses and the production of evidence. It also authorizes a district court of the United States to direct compliance with a subpena.

§ 6305. Reports of investigations

(a) The Secretary shall prescribe regulations about the form and manner of reports of investigations conducted under this part.

(b) Reports of investigations conducted under this part shall be made available to the public. This subsection does not require the release of information described by section 552(b) of title 5 or protected from disclosure by another law of the United States.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 538; Pub. L. 105–383, title III, § 305, Nov. 13, 1998, 112 Stat. 3420.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
6305	46:239(g) 46:239(k)

Section 6305 requires the Secretary to prescribe regulations about the form and manner of reports of investigations of marine casualties. It also provides that the reports shall be available to the public, except for any information they contain related to national security.

AMENDMENTS

1998—Subsec. (b). Pub. L. 105–383 substituted ''. This subsection does not require the release of information described by section 552(b) of title 5 or protected from disclosure by another law of the United States.'' for '', except to the extent that they contain information related to the national security.''

§ 6306. Penalty

A person attempting to coerce a witness, or to induce a witness, to testify falsely in connection with a marine casualty, or to induce a witness to leave the jurisdiction of the United States, shall be fined $5,000, imprisoned for one year, or both.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 538.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
6306	46:239(i)

Section 6306 provides for a $5,000 criminal penalty for anyone attempting to coerce or to induce a witness to a marine casualty investigation to testify falsely or to leave the jurisdiction of the United States.

§ 6307. Notifications to Congress

(a) The Secretary shall notify the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives of any hearing, before the hearing occurs, investigating a major marine casualty involving a death under section 6301 of this title.

(b) The Secretary shall submit to a committee referred to in subsection (a) of this section information on a major marine casualty that is requested by that committee or the chairman of the committee if the submission of that information is not prohibited by a law of the United States.

(c) The Secretary shall submit annually to Congress a summary of the marine casualties reported during the prior fiscal year, together with a brief statement of action taken concerning those casualties.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 538; Pub. L. 107–295, title IV, § 408(c)(1), Nov. 25, 2002, 116 Stat. 2117.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
6307	46:239(j) 33:366

Subsection (a) requires the Secretary to notify the Merchant Marine and Fisheries Committee and the Senate Commerce Committee in advance of any hearing concerning a major marine accident (as defined by regulation) where there has been a loss of life.

Subsection (b) requires the Coast Guard to supply the Merchant Marine and Fisheries Committee and the Senate Commerce Committee with any requested marine casualty information, if its release is not specifically prohibited by law.

Subsection (c) requires the Secretary to submit an annual report to Congress summarizing the marine casualties reported during the prior fiscal year, with a brief statement of action taken concerning those casualties.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–295 substituted ''Transportation and Infrastructure'' for ''Merchant Marine and Fisheries''.

§ 6308. Information barred in legal proceedings

(a) Notwithstanding any other provision of law, no part of a report of a marine casualty investigation conducted under section 6301 of this title, including findings of fact, opinions, recommendations, deliberations, or conclusions,

shall be admissible as evidence or subject to discovery in any civil or administrative proceedings, other than an administrative proceeding initiated by the United States. Any employee of the Department of Transportation, and any member of the Coast Guard, investigating a marine casualty pursuant to section 6301 of this title, shall not be subject to deposition or other discovery, or otherwise testify in such proceedings relevant to a marine casualty investigation, without the permission of the Secretary of Transportation. The Secretary shall not withhold permission for such employee or member to testify, either orally or upon written questions, on solely factual matters at a time and place and in a manner acceptable to the Secretary if the information is not available elsewhere or is not obtainable by other means.

(b) Nothing in this section prohibits the United States from calling the employee or member as an expert witness to testify on its behalf. Further, nothing in this section prohibits the employee or member from being called as a fact witness in any case in which the United States is a party. If the employee or member is called as an expert or fact witness, the applicable Federal Rules of Civil Procedure govern discovery. If the employee or member is called as a witness, the report of a marine casualty investigation conducted under section 6301 of this title shall not be admissible, as provided in subsection (a), and shall not be considered the report of an expert under the Federal Rules of Civil Procedure.

(c) The information referred to in subsections (a) and (b) of this section shall not be considered an admission of liability by the United States or by any person referred to in those conclusions and statements.

(Added Pub. L. 104–324, title III, § 313(a), Oct. 19, 1996, 110 Stat. 3921.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (b), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

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.

PART E—MERCHANT SEAMEN LICENSES, CERTIFICATES, AND DOCUMENTS

HISTORICAL AND REVISION NOTES

Part E establishes the authority for the Coast Guard to issue, suspend, and revoke licenses, certificates of registry, and merchant mariner's documents for individuals who are to be engaged on vessels of the United States.

AMENDMENTS

1985—Pub. L. 99–36, § 1(a)(9)(B), May 15, 1985, 99 Stat. 67, substituted ''Merchant Seamen Licenses, Certificates, and'' for ''Licenses, Certificates, and Merchant Mariners' '' in part E heading.

CHAPTER 71—LICENSES AND CERTIFICATES OF REGISTRY

Sec.
7101. Issuing and classifying licenses and certificates of registry.
7102. Citizenship.
7103. Licenses for radio officers.
7104. Certificates for medical doctors and nurses.
7105. Oaths.
7106. Duration of licenses.
7107. Duration of certificates of registry.
7108. Termination of licenses and certificates of registry.
7109. Review of criminal records.
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7111. Oral examinations for licenses.
7112. Licenses of masters or mates as pilots.
7113. Exemption from draft.
7114. Fees.

AMENDMENTS

1990—Pub. L. 101–380, title IV, § 4102(e)(2), Aug. 18, 1990, 104 Stat. 510, substituted ''Review of criminal records'' for ''Renewal of licenses'' in item 7109.

1984—Pub. L. 98–364, title IV, § 402(8)(A), July 17, 1984, 98 Stat. 447, substituted ''Oral examinations for licenses'' for ''Licenses for fishing vessels not subject to inspection'' in item 7111.

§ 7101. Issuing and classifying licenses and certificates of registry

(a) Licenses and certificates of registry are established for individuals who are required to hold licenses or certificates under this subtitle.

(b) Under regulations prescribed by the Secretary, the Secretary—

(1) issues the licenses and certificates of registry; and

(2) may classify the licenses and certificates of registry as provided in subsections (c) and (f) of this section, based on—

(A) the tonnage, means of propulsion, and horsepower of machine-propelled vessels;

(B) the waters on which vessels are to be operated; or

(C) other reasonable standards.

(c) The Secretary may issue licenses in the following classes to applicants found qualified as to age, character, habits of life, experience, professional qualifications, and physical fitness:

(1) masters, mates, and engineers.

(2) pilots.

(3) operators.

(4) radio officers.

(d) In classifying individuals under subsection (c)(1) of this section, the Secretary shall establish, when possible, suitable career patterns and service and other qualifying requirements appropriate to the particular service or industry in which the individuals are engaged.

(e) An individual may be issued a license under subsection (c)(2) of this section only if the applicant—

(1) is at least 21 years of age;

(2) is of sound health and has no physical limitations that would hinder or prevent the performance of a pilot's duties;

(3) has a thorough physical examination each year while holding the license, except that this requirement does not apply to an individual who will serve as a pilot only on a vessel of less than 1,600 gross tons as measured

under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title;

(4) demonstrates, to the satisfaction of the Secretary, that the applicant has the requisite general knowledge and skill to hold the license;

(5) demonstrates proficiency in the use of electronic aids to navigation;

(6) maintains adequate knowledge of the waters to be navigated and knowledge of regulations for the prevention of collisions in those waters;

(7) has sufficient experience, as decided by the Secretary, to evidence ability to handle any vessel of the type and size which the applicant may be authorized to pilot; and

(8) meets any other requirement the Secretary considers reasonable and necessary.

(f) The Secretary may issue certificates of registry in the following classes to applicants found qualified as to character, knowledge, skill, and experience:

(1) pursers.

(2) medical doctors.

(3) professional nurses.

(g) The Secretary may not issue a license or certificate of registry under this section unless an individual applying for the license or certificate makes available to the Secretary, under section 206(b)(7) of the National Driver Register Act of 1982 (23 U.S.C. 401 note), any information contained in the National Driver Register related to an offense described in section 205(a)(3)(A) or (B) of that Act committed by the individual.

(h) The Secretary may review the criminal record of an individual who applies for a license or certificate of registry under this section.

(i) The Secretary shall require the testing of an individual who applies for issuance or renewal of a license or certificate of registry under this chapter for use of a dangerous drug in violation of law or Federal regulation.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 539; Pub. L. 98–557, § 29(a), Oct. 30, 1984, 98 Stat. 2873; Pub. L. 101–380, title IV, § 4101(a), Aug. 18, 1990, 104 Stat. 509; Pub. L. 104–324, title VII, § 720, Oct. 19, 1996, 110 Stat. 3938.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
7101	46:214 46:224 46:226 46:228 46:229 46:229a 46:229b 46:242 46:243 46:244 46:247

Section 7101(a) provides the authority for the establishment of licenses and certificates of registry for officers and individuals operating vessels who are required to hold them under Subtitle II.

Subsection (b) authorizes the Secretary to issue licenses and certificates of registry based on tonnage, means of propulsion, horsepower, vessel operating area, and other reasonable standards.

Subsection (c) authorizes the Secretary to issue licenses to masters, mates, engineers, pilots, operators, and radio officers when found qualified as to age, character, habits of life, experience, professional qualifications, and physical fitness. These qualifying standards must by necessity be reasonable and related to the rigors of the profession.

Subsection (d) requires the Secretary to establish, when possible, suitable career patterns and service for and other qualifying requirements appropriate to the particular service or industry for the individuals so engaged.

Subsection (e) sets forth the requirements that pilots must meet before being issued a license.

Subsection (f) authorizes the Secretary to issue certificates of registry to qualified individuals as pursers, medical doctors, and professional nurses.

REFERENCES IN TEXT

Sections 205(a)(3)(A) or (B) and 206(b)(7) of the National Driver Register Act of 1982, referred to in subsec. (g), are sections 205(a)(3)(A), (B) and 206(b)(7) of Pub. L. 97–364, which are set out as a note under section 401 of Title 23, Highways.

AMENDMENTS

1996—Subsec. (e)(3). Pub. L. 104–324 inserted ''as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' after ''1,600 gross tons''.

1990—Subsecs. (g) to (i). Pub. L. 101–380 added subsecs. (g) to (i).

1984—Subsec. (e)(3). Pub. L. 98–557 inserted exemption for pilots on a vessel of less than 1,600 gross tons.

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 Title 33, Navigation and Navigable Waters.

PLAN FOR LICENSING OPERATORS OF FISHING INDUSTRY VESSELS

Pub. L. 100–424, § 3, Sept. 9, 1988, 102 Stat. 1590, provided that: ''The Secretary of the department in which the Coast Guard is operating shall, within two years after the date of enactment of this Act [Sept. 9, 1988], and in close consultation with the Commercial Fishing Industry Vessel Advisory Committee established under section 4508 of title 46, United States Code (as amended by this Act), prepare and submit to the Congress a plan for the licensing of operators of documented fishing, fish processing, and fish tender vessels. The plan shall take into consideration the nature and variety of the different United States fisheries and of the vessels engaged in those fisheries, the need to license all operators or only those working in certain types of fisheries or vessels, and other relevant factors.''

§ 7102. Citizenship

Licenses and certificates of registry for individuals on documented vessels may be issued only to citizens of the United States.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 540.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
7102	46:242 46:1132(a)

Section 7102 requires that any individual issued a license or certificate of registry allowing the individual to be engaged on a documented vessel must be a U.S. citizen.

§ 7103. Licenses for radio officers

(a) A license as radio officer may be issued only to an applicant who has a first-class or sec-

ond-class radiotelegraph operator license issued by the Federal Communications Commission.

(b) Except as provided in section 7318 of this title, this part does not affect the status of radiotelegraph operators serving on board vessels operating only on the Great Lakes.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 540.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
7103	46:229a 46:229b 46:229g

Section 7103 requires an applicant for a license as a radio officer to have, as a prerequisite, a first-class or second-class radiotelegraph operator license issued by the Federal Communications Commission (FCC). It also excepts radiotelegraph operators that are engaged on Great Lakes vessels from the requirement of having to obtain a radio officer's license.

§ 7104. Certificates for medical doctors and nurses

A certificate of registry as a medical doctor or professional nurse may be issued only to an applicant who has a license as a medical doctor or registered nurse, respectively, issued by a State.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 540.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
7104	46:243

Section 7104 requires an applicant for a certificate of registry as a medical doctor or professional nurse to have, as a prerequisite, a license as a medical doctor or registered nurse issued by a State.

§ 7105. Oaths

An applicant for a license or certificate of registry shall take, before the issuance of the license or certificate, an oath before a designated official, without concealment or reservation, that the applicant will perform faithfully and honestly, according to the best skill and judgment of the applicant, all the duties required by law.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 540.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
7105	46:229e 46:231 46:244

Section 7105 requires all individuals who wish to be issued a license or certificate of registry to take an oath before a government official that they will perform all the duties required by law according to their best skill and judgment.

§ 7106. Duration of licenses

A license issued under this part is valid for 5 years and may be renewed for additional 5-year periods. However, the validity of a license issued to a radio officer is conditioned on the continuous possession by the holder of a first-class or second-class radiotelegraph operator license issued by the Federal Communications Commission.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 540; Pub. L. 101–380, title IV, § 4102(a), Aug. 18, 1990, 104 Stat. 509.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
7106	46:214(c) 46:225 46:226 46:228 46:229 46:229c

Section 7106 sets a 5 year time limit on the validity of a license. It also requires a licensed radio officer to be in continuous possession of an FCC license.

AMENDMENTS

1990—Pub. L. 101–380 inserted ''and may be renewed for additional 5-year periods'' after ''for 5 years''.

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 Title 33, Navigation and Navigable Waters.

TERMINATION OF EXISTING LICENSES, CERTIFICATES, AND DOCUMENTS; APPLICABILITY OF 1990 AMENDMENT

Section 4102(d) of Pub. L. 101–380 provided that: ''A license, certificate of registry, or merchant mariner's document issued before the date of the enactment of this section [Aug. 18, 1990] terminates on the day it would have expired if—

''(1) subsections (a), (b), and (c) [amending this section and sections 7107 and 7302 of this title] were in effect on the date it was issued; and

''(2) it was renewed at the end of each 5-year period under section 7106, 7107, or 7302 of title 46, United States Code.''

§ 7107. Duration of certificates of registry

A certificate of registry issued under this part is valid for 5 years and may be renewed for additional 5-year periods. However, the validity of a certificate issued to a medical doctor or professional nurse is conditioned on the continuous possession by the holder of a license as a medical doctor or registered nurse, respectively, issued by a State.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 540; Pub. L. 101–380, title IV, § 4102(b), Aug. 18, 1990, 104 Stat. 509.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
7107	46:243

Section 7107 specifies that there is no time limit on the validity of a certificate of registry issued to a medical doctor or a professional nurse but is conditioned on the continuous possession of the appropriate license issued by a State.

AMENDMENTS

1990—Pub. L. 101–380 substituted ''is valid for 5 years and may be renewed for additional 5-year periods'' for ''is not limited in duration''.

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 Title 33, Navigation and Navigable Waters.

TERMINATION OF EXISTING LICENSES, CERTIFICATES, AND DOCUMENTS; APPLICABILITY OF 1990 AMENDMENT

For provisions that a certificate of registry issued before Aug. 18, 1990, terminates on the day it would have expired if the amendment to this section by Pub. L. 101–380 were in effect on date it was issued and was renewed at the end of each 5-year period under this section, see section 4102(d) of Pub. L. 101–380, set out as a note under section 7106 of this title.

§ 7108. Termination of licenses and certificates of registry

When the holder of a license or certificate of registry, the duration of which is conditioned under section 7106 or 7107 of this title, fails to hold the license required as a condition, the license or certificate of registry issued under this part is terminated.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 540.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
7108	46:229c 46:243

Section 7108 specifies if any individual issued a license or certificate of registry fails to have the required FCC or appropriate State medical license, the license or certificate is automatically terminated. The suspension and revocation procedures provided in chapter 77 are not applicable in these cases.

§ 7109. Review of criminal records

The Secretary may review the criminal record of each holder of a license or certificate of registry issued under this part who applies for renewal of that license or certificate of registry.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 540; Pub. L. 101–380, title IV, § 4102(e)(1), Aug. 18, 1990, 104 Stat. 510.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
7109	46:225 46:233

Section 7109 authorizes the Secretary to renew licenses and certificates of registry for additional 5 year periods.

AMENDMENTS

1990—Pub. L. 101–380 substituted ''Review of criminal records'' for ''Renewal of licenses'' in section catchline and amended text generally. Prior to amendment, text read as follows: ''A license issued under this part may be renewed for additional 5-year periods.''

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 Title 33, Navigation and Navigable Waters.

§ 7110. Exhibiting licenses

Each holder of a license issued under this part shall display, within 48 hours after employment on a vessel for which that license is required, the license in a conspicuous place on the vessel.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 541.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
7109	46:229f 46:232

Section 7110 requires licensed individuals to display the license in a conspicuous place on the vessel within 48 hours after they are employed.

§ 7111. Oral examinations for licenses

An individual may take an oral examination for a license to serve on a fishing, fish processing, or fish tender vessel not required to be inspected under part B of this subtitle.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 541; Pub. L. 98–364, title IV, § 402(8)(B), July 17, 1984, 98 Stat. 447; Pub. L. 99–307, § 1(10), May 19, 1986, 100 Stat. 445.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
7109	46:224a(2)

Section 7111 provides for oral tests for licenses for individuals on fishing vessels that are not required to be inspected under part B.

AMENDMENTS

1986—Pub. L. 99–307 substituted ''part'' for ''Part''.

1984—Pub. L. 98–364 substituted in section catchline ''Oral examinations for licenses'' for ''Licenses for fishing vessels not subject to inspection'' and in text ''An individual may take an oral examination for a license to serve on a fishing, fish processing, or fish tender vessel not required to be inspected under Part B of this subtitle'' for ''Examinations for licensing individuals on fishing vessels not required to be inspected under part B of this subtitle shall be oral''.

§ 7112. Licenses of masters or mates as pilots

A master or mate licensed under this part who also qualifies as a pilot is not required to hold 2 licenses. Instead, the qualification of the master or mate as pilot shall be endorsed on the master's or mate's license.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 541.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
7112	46:230

Section 7112 provides for the endorsement of a master's or mate's license as a pilot if they meet those specifications. These individuals do not have to hold two separate licenses.

§ 7113. Exemption from draft

A licensed master, mate, pilot, or engineer of a vessel inspected under part B of this subtitle, propelled by machinery or carrying hazardous liquid cargoes in bulk, is not liable to draft in time of war, except for performing duties authorized by the license. When performing those duties in the service of the United States Government, the master, mate, pilot, or engineer is entitled to the highest rate of wages paid in the merchant marine of the United States for similar services. If killed or wounded when performing those duties, the master, mate, pilot, or engineer, or the heirs or legal representatives of

the master, mate, pilot, or engineer, are entitled to all the privileges under the pension laws of the United States provided to members of the Armed Forces.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 541.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
7113	46:225

Section 7113 exempts licensed masters, mates, pilots, and engineers of inspected vessels that are propelled by machinery or carrying hazardous liquid cargo from the Selective Service draft in time of war.

This section also provides that, while serving in that capacity during war, they shall be entitled to the highest rate of pay paid in the U.S. merchant marine for similar services.

If a master, mate, pilot, or engineer is killed or wounded when performing those duties during a war, these individuals, their heirs or legal representatives, are entitled to all the privileges provided to members of the Armed Forces under the pension laws of the United States.

§ 7114. Fees

The Secretary may prescribe by regulation reasonable fees for the inspection of and the issuance of a certificate, license, or permit related to small passenger vessels and sailing school vessels.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 541.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
7114	46:390a(b)

Section 7114 allows the Secretary to prescribe reasonable fees for the issuance of a certificate of inspection, license, or registry, or permits related to small passenger vessels and sailing school vessels.

CHAPTER 73—MERCHANT MARINERS' DOCUMENTS

Sec.
7301. General.
7302. Issuing merchant mariners' documents and continuous discharge books.
7303. Possession and description of merchant mariners' documents.
7304. Citizenship notation on merchant mariners' documents.
7305. Oaths for holders of merchant mariners' documents.
7306. General requirements and classifications for able seamen.
7307. Able seamen—unlimited.
7308. Able seamen—limited.
7309. Able seamen—special.
7310. Able seamen—offshore supply vessels.
7311. Able seamen—sail.
7311a. Able seamen—fishing industry.
7312. Scale of employment.
7313. General requirements for members of engine departments.
7314. Service requirements for qualified members of engine departments.
7315. Training.
7316. Lifeboatmen.
7317. Tankermen.
7318. Radiotelegraph operators on Great Lakes.
7319. Records of merchant mariners' documents.

HISTORICAL AND REVISION NOTES

Chapter 73 establishes the general requirements for the issuance of a merchant mariners' document to those individuals who are required to have a document prior to engagement or employment on certain vessels of the United States.

AMENDMENTS

1984—Pub. L. 98–364, title IV, § 402(9)(A), July 17, 1984, 98 Stat. 448, added item 7311a.

§ 7301. General

(a) In this chapter—

(1) ''service on deck'' means service in the deck department in work related to the work usually performed on board vessels by able seamen and may include service on fishing, fish processing, fish tender vessels and on public vessels of the United States;

(2) 360 days is equal to one year's service; and

(3) a day is equal to 8 hours of labor or duty.

(b) The Secretary may prescribe regulations to carry out this chapter.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 541; Pub. L. 98–364, title IV, § 402(9)(B), July 17, 1984, 98 Stat. 448.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
7301	46:672(c)

Section 7301 defines ''service on deck'', ''one year's service'' and ''day'' with respect to the qualifying time for the issuance of various types of endorsements as able seamen. This section also provides the Secretary with the authority to prescribe regulations to carry out this chapter.

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98–364 substituted ''fishing, fish processing, fish tender vessels'' for ''decked fishing vessels''.

§ 7302. Issuing merchant mariners' documents and continuous discharge books

(a) The Secretary shall issue a merchant mariner's document to an individual required to have that document under part F of this subtitle if the individual satisfies the requirements of this part. The document serves as a certificate of identification and as a certificate of service, specifying each rating in which the holder is qualified to serve on board vessels on which that document is required under part F.

(b) The Secretary also may issue a continuous discharge book to an individual issued a merchant mariner's document if the individual requests.

(c) The Secretary may not issue a merchant mariner's document under this chapter unless the individual applying for the document makes available to the Secretary, under 30305(b)(5)[1] of title 49, any information contained in the National Driver Register related to an offense described in 30304(a)(3)(A)[1] or (B) of title 49 committed by the individual.

(d) The Secretary may review the criminal record of an individual who applies for a merchant mariner's document under this section.

(e) The Secretary shall require the testing of an individual applying for issuance or renewal of

[1] So in original. Probably should be preceded by ''section''.

a merchant mariner's document under this chapter for the use of a dangerous drug in violation of law or Federal regulation.

(f) Except as provided in subsection (g), a merchant mariner's document issued under this chapter is valid for 5 years and may be renewed for additional 5-year periods.

(g)(1) The Secretary may, pending receipt and review of information required under subsections (c) and (d), immediately issue an interim merchant mariner's document valid for a period not to exceed 120 days, to—

(A) an individual to be employed as gaming personnel, entertainment personnel, wait staff, or other service personnel on board a passenger vessel not engaged in foreign service, with no duties, including emergency duties, related to the navigation of the vessel or the safety of the vessel, its crew, cargo or passengers; or

(B) an individual seeking renewal of, or qualifying for a supplemental endorsement to, a valid merchant mariner's document issued under this section.

(2) No more than one interim document may be issued to an individual under paragraph (1)(A) of this subsection.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 542; Pub. L. 101–380, title IV, §§4101(b), 4102(c), Aug. 18, 1990, 104 Stat. 509; Pub. L. 107–295, title III, §324(a), Nov. 25, 2002, 116 Stat. 2104; Pub. L. 108–293, title VI, §609(1), Aug. 9, 2004, 118 Stat. 1058.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
7302	46:239a(c) 46:643(a) 46:643(c) 46:672(i)

Section 7302(a) requires the Secretary to issue a merchant mariner's document to qualified individuals required to have that document as a prerequisite to employment on certain vessels of the United States. The purpose of the document is to serve as positive identification and to specify each rating in which the individual is qualified to serve on vessels.

Subsection (b) allows the Secretary to issue a continuous discharge book to an individual who requests a book.

AMENDMENTS

2004—Subsec. (c). Pub. L. 108–293 substituted ''30305(b)(5) of title 49'' for ''section 206(b)(7) of the National Driver Register Act of 1982 (23 U.S.C. 401 note)'' and ''30304(a)(3)(A) or (B) of title 49'' for ''section 205(a)(3)(A) or (B) of that Act''.

2002—Subsec. (f). Pub. L. 107–295, §324(a)(1), substituted ''Except as provided in subsection (g), a'' for ''A''.

Subsec. (g). Pub. L. 107–295, §324(a)(2), added subsec. (g).

1990—Subsecs. (c) to (e). Pub. L. 101–380, §4101(b), added subsecs. (c) to (e).

Subsec. (f). Pub. L. 101–380, §4102(c), added subsec. (f).

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 Title 33, Navigation and Navigable Waters.

MERCHANT MARINERS' DOCUMENTS PILOT PROGRAM

Pub. L. 108–293, title VI, §611, Aug. 9, 2004, 118 Stat. 1058, provided that: ''The Secretary of the department in which the Coast Guard is operating may conduct a pilot program to demonstrate methods to improve processes and procedures for issuing merchant mariners' documents.''

TERMINATION OF EXISTING LICENSES, CERTIFICATES, AND DOCUMENTS; APPLICABILITY OF 1990 AMENDMENT

For provisions that a merchant mariner's document issued before Aug. 18, 1990, terminates on the day it would have expired if the amendment to this section by section 4102(c) of Pub. L. 101–380 were in effect on date it was issued and was renewed at the end of each 5-year period under this section, see section 4102(d) of Pub. L. 101–380, set out as a note under section 7106 of this title.

§ 7303. Possession and description of merchant mariners' documents

A merchant mariner's document shall be retained by the seaman to whom issued. The document shall contain the signature, notations of nationality, age, and physical description, the photograph, and the home address of the seaman. In addition, the document shall specify the rate or ratings in which the seaman is qualified to serve.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 542; Pub. L. 107–295, title IV, §421, Nov. 25, 2002, 116 Stat. 2125.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
7303	46:643(a)

Section 7303 requires seamen to retain their merchant mariner's documents. It also specifies the information that is to be contained in the document.

AMENDMENTS

2002—Pub. L. 107–295 struck out ''the thumbprint,'' after ''photograph,''.

§ 7304. Citizenship notation on merchant mariners' documents

An individual applying for a merchant mariner's document shall provide satisfactory proof that the individual is a citizen of the United States before that notation is made on the document.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 542.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
7304	46:643(b)

Section 7304 specifies, that before a merchant mariner's document is noted to specify that the individual is a U.S. citizen, the individual must provide satisfactory proof that he is a citizen. This does not impose a requirement of United States citizenship as a condition for issuance of a document.

§ 7305. Oaths for holders of merchant mariners' documents

An applicant for a merchant mariner's document shall take, before issuance of the document, an oath that the applicant will perform faithfully and honestly all the duties required by law, and will carry out the lawful orders of superior officers.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 542.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
7305	

The requirement for an oath, drawn from a clause which had appeared in 46 U.S.C. 672(g), and administered by the Coast Guard to all applicants, was repealed in a 1980 amendment by section 4 of Public Law 96–378 (94 Stat. 1516). Since no specific comment was made regarding the elimination in 1980 and the agency has continued to administer an oath to all applicants, this provision is being reinstated. The Committee believes the oath will contribute to the discipline and order necessary in the merchant marine.

§ 7306. General requirements and classifications for able seamen

(a) To qualify for an endorsement as able seaman authorized by this section, an applicant must provide satisfactory proof that the applicant—

(1) is at least 18 years of age;

(2) has the service required by the applicable section of this part;

(3) is qualified professionally as demonstrated by an applicable examination or educational requirements; and

(4) is qualified as to sight, hearing, and physical condition to perform the seaman's duties.

(b) The classifications authorized for endorsement as able seaman are the following:

(1) able seaman—unlimited.

(2) able seaman—limited.

(3) able seaman—special.

(4) able seaman—offshore supply vessels.

(5) able seaman—sail.

(6) able seaman—fishing industry.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 542; Pub. L. 98–364, title IV, § 402(9)(C), July 17, 1984, 98 Stat. 448.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
7306	46:672(b)

Section 7306(a) establishes the minimum requirements an individual must meet before being issued a merchant mariner's document endorsed for able seamen.

Subsection (b) establishes the classifications of able seamen—unlimited, able seamen—limited, able seamen—special, able seamen—offshore supply vessels, and able seamen—sail.

AMENDMENTS

1984—Subsec. (b)(6). Pub. L. 98–364 added par. (6).

EFFECTIVE DATE

Provisions of this section (related to able seaman—sail) effective Apr. 15, 1984, see section 2(g)(1) of Pub. L. 98–89, set out as a note under section 3101 of this title.

ACCEPTANCE OF CERTAIN SERVICES TOWARD ENDORSEMENT AS ABLE SEAMAN

Pub. L. 101–595, title VI, § 602(e)(3), Nov. 16, 1990, 104 Stat. 2992, provided that: ''For the purposes of chapter 73 of title 46, United States Code, the Secretary of Transportation shall accept the service used by an individual to qualify for an endorsement as able seaman—fishing industry as qualifying service toward an endorsement as an able seaman—

''(A) under sections 7307 and 7309 of that title; or

''(B) if the service is on board a vessel of at least 100 gross tons, under section 7308 of that title.''

§ 7307. Able seamen—unlimited

The required service for the endorsement of able seaman—unlimited, qualified for unlimited service on a vessel on any waters, is at least 3 years' service on deck on board vessels operating at sea or on the Great Lakes.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 543.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
7307	46:672(b)(1)

Section 7307 requires individuals to have at least 3 years service on deck on vessels operating at sea or on the Great Lakes before their merchant mariner's documents can be endorsed as able seamen—unlimited.

ACCEPTANCE OF CERTAIN SERVICES TOWARD ENDORSEMENT AS ABLE SEAMAN

Service used to qualify for endorsement as able seaman—fishing industry to be accepted as qualifying service toward an endorsement under this section, see section 602(e)(3) of Pub. L. 101–595, set out as a note under section 7306 of this title.

§ 7308. Able seamen—limited

The required service for the endorsement of able seaman—limited, qualified for limited service on a vessel on any waters, is at least 18 months' service on deck on board vessels of at least 100 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title operating on the oceans or navigable waters of the United States (including the Great Lakes).

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 543; Pub. L. 104–324, title VII, § 721, Oct. 19, 1996, 110 Stat. 3938.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
7308	46:672(b)(2)

Section 7308 establishes the minimum service requirements for an individual to qualify for an endorsement as able seamen—limited.

AMENDMENTS

1996—Pub. L. 104–324 inserted ''as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' after ''100 gross tons''.

ACCEPTANCE OF CERTAIN SERVICES TOWARD ENDORSEMENT AS ABLE SEAMAN

Service used to qualify for endorsement as able seaman—fishing industry to be accepted as qualifying service toward an endorsement under this section, see section 602(e)(3) of Pub. L. 101–595, set out as a note under section 7306 of this title.

§ 7309. Able seamen—special

The required service for the endorsement of able seaman—special, qualified for special service on a vessel on any waters, is at least 12

months' service on deck on board vessels operating on the oceans or the navigable waters of the United States (including the Great Lakes).

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 543.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
7309	46:672(b)(3)

Section 7309 establishes the minimum service requirements for an individual to qualify as able seamen—special.

ACCEPTANCE OF CERTAIN SERVICES TOWARD ENDORSEMENT AS ABLE SEAMAN

Service used to qualify for endorsement as able seaman—fishing industry to be accepted as qualifying service toward an endorsement under this section, see section 602(e)(3) of Pub. L. 101–595, set out as a note under section 7306 of this title.

§ 7310. Able seamen—offshore supply vessels

For service on a vessel of less than 500 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title engaged in support of exploration, exploitation, or production of offshore mineral or energy resources, an individual may be rated as able seaman—offshore supply vessels if the individual has at least 6 months' service on deck on board vessels operating on the oceans or the navigable waters of the United States (including the Great Lakes).

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 543; Pub. L. 104–324, title VII, § 722, Oct. 19, 1996, 110 Stat. 3938.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
7310	46:672(b)(3)

Section 7310 establishes the minimum service requirements for an individual to serve as able seamen—offshore supply vessels on vessels of less than 500 gross tons engaged in the exploration, exploitation, or production of offshore mineral or energy resources.

AMENDMENTS

1996—Pub. L. 104–324 inserted ''as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' after ''500 gross tons''.

§ 7311. Able seamen—sail

For service on a sailing school vessel on any waters, an individual may be rated as able seaman—sail if the individual has at least 6 months' service on deck on sailing school vessels, oceanographic research vessels powered primarily by sail, or equivalent sailing vessels operating on the oceans or navigable waters of the United States (including the Great Lakes).

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 543.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
7311	46:672(b)(4)

Section 7311 establishes the minimum service requirements for an individual to qualify as able seamen—sail on board sailing vessels.

EFFECTIVE DATE

Section effective Apr. 15, 1984, see section 2(g)(1) of Pub. L. 98–89, set out as a note under section 3101 of this title.

§ 7311a. Able seamen—fishing industry

For service on a fish processing vessel, an individual may be rated as able seaman—fishing industry if the individual has at least 6 months' service on deck on board vessels operating on the oceans or the navigable waters of the United States (including the Great Lakes).

(Added Pub. L. 98–364, title IV, § 402(9)(D), July 17, 1984, 98 Stat. 448.)

§ 7312. Scale of employment

(a) Individuals qualified as able seamen—unlimited under section 7307 of this title may constitute all of the able seamen required on a vessel.

(b) Individuals qualified as able seamen—limited under section 7308 of this title may constitute all of the able seamen required on a vessel of less than 1,600 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title or on a vessel operating on the Great Lakes and the Saint Lawrence River as far east as Sept Iles. Individuals qualified as able seamen—limited may constitute not more than 50 percent of the number of able seamen required on board other vessels.

(c) Individuals qualified as able seamen—special under section 7309 of this title may constitute—

(1) all of the able seamen required on a vessel of not more than 500 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title or on a seagoing barge or towing vessel; and

(2) not more than 50 percent of the number of able seamen required on board other vessels.

(d) Individuals qualified as able seamen—offshore supply vessels under section 7310 of this title may constitute all of the able seamen required on board a vessel of less than 500 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title engaged in support of exploration, exploitation, or production of offshore mineral or energy resources.

(e) When the service of able seamen—limited or able seamen—special is authorized for only a part of the required number of able seamen on board a vessel, the combined percentage of those individuals so qualified may not be greater than 50 percent of the required number.

(f) Individuals qualified as able seamen—fishing industry under section 7311a of this title may constitute—

(1) all of the able seamen required on a fish processing vessel entered into service before January 1, 1988, and of more than 1,600 gross tons but not more than 5,000 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title; and

(2) all of the able seamen required on a fish processing vessel entered into service after December 31, 1987, and having more than 16 individuals on board primarily employed in the preparation of fish or fish products but of not more than 5,000 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 543; Pub. L. 98–364, title IV, § 402(9)(E), July 17, 1984, 98 Stat. 448; Pub. L. 99–307, § 1(11), May 19, 1986, 100 Stat. 445; Pub. L. 104–324, title VII, § 723, Oct. 19, 1996, 110 Stat. 3938.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
7312	46:672(f)

Section 7312(a) provides that able seamen—unlimited may constitute all of the able seamen required on a vessel.

Subsection (b) provides that able seamen—limited may constitute 100 percent of the able seamen required on board vessels of less than 600 gross tons operating on the Great Lakes and 50 percent of the number of able seamen required on the larger vessels.

Subsection (c) provides that able seamen—special may constitute 100 percent of the able seamen required on vessels not more than 500 gross tons, or a seagoing barge or towing vessel. Able seamen—special may only constitute up to 50 percent of the number of able seamen required on other vessels.

Subsection (d) provides that able seamen—offshore supply vessels may constitute 100 percent of the number of able seamen required on vessels of less than 500 gross tons engaged in support of exploration, exploitation, or production of offshore mineral or energy facilities. They may not serve on board other vessels as an able seaman until they have the appropriate required document.

Subsection (e) provides that the total number of able seamen—limited or able seamen—special may not be greater than 50 percent of the required number of able seamen on a vessel.

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–324, § 723(1), inserted ''as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' after ''1,600 gross tons''.

Subsec. (c)(1). Pub. L. 104–324, § 723(2), inserted ''as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' after ''500 gross tons''.

Subsec. (d). Pub. L. 104–324, § 723(3), inserted ''as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' after ''500 gross tons''.

Subsec. (f)(1). Pub. L. 104–324, § 723(4), inserted ''as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' after ''5,000 gross tons''.

Subsec. (f)(2). Pub. L. 104–324, § 723(5), inserted ''as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' after ''5,000 gross tons''.

1986—Subsec. (e). Pub. L. 99–307 substituted ''able seamen—limited'' for ''able seaman—limited''.

1984—Subsec. (f). Pub. L. 98–364 added subsec. (f).

§ 7313. General requirements for members of engine departments

(a) Classes of endorsement as qualified members of the engine department on vessels of at least 100 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title (except vessels operating on rivers or lakes (except the Great Lakes)) may be prescribed by regulation.

(b) The ratings of wiper and coal passer are entry ratings and are not ratings as qualified members of the engine department.

(c) An applicant for an endorsement as qualified member of the engine department must provide satisfactory proof that the applicant—

(1) has the service required by section 7314 of this title;

(2) is qualified professionally as demonstrated by an applicable examination; and

(3) is qualified as to sight, hearing, and physical condition to perform the member's duties.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 544; Pub. L. 104–324, title VII, § 724, Oct. 19, 1996, 110 Stat. 3939.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
7313	46:672(g)

Section 7313(a) authorizes the Secretary to establish classes of endorsement for qualified members of the engine department on vessels of 100 gross tons or more (except on vessels operating on rivers and lakes (except the Great Lakes)).

Subsection (b) establishes the entry ratings of wiper and coal passer, but specifically excludes them as qualified members of the engine department.

Subsection (c) establishes the minimum qualifications individuals must meet in order to have their documents endorsed as a qualified member of engine department.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–324 inserted ''as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' after ''100 gross tons''.

§ 7314. Service requirements for qualified members of engine departments

To qualify for an endorsement as qualified member of the engine department, an applicant must provide proof that the applicant has 6 months' service in the related entry rating as described in section 7313(b) of this title.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 544.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
7314	46:672(g)

Section 7314 requires individuals who wish to have their documents endorsed as a qualified member of the engine department must have at least 6 months service as a wiper or coal passer.

§ 7315. Training

(a) Graduation from a nautical school vessel approved under law and regulation may be substituted for the service requirements under section 7307 or 7314 of this title.

(b) The satisfactory completion of other courses of instruction approved by the Secretary may be substituted for not more than one-third of the required service on deck at sea under sections 7307–7311 of this title.

(c) The satisfactory completion of other courses of instruction approved by the Secretary may be substituted for not more than one-half of the required service at sea under section 7314 of this title.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 544.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
7315	46:672(c)

Section 7315 specifies the training or course work that may be substituted for service requirements for an endorsement as an able seaman or a qualified member of the engine department.

§ 7316. Lifeboatmen

To qualify for an endorsement as lifeboatman, an applicant must provide satisfactory proof that the applicant—

(1) has the service or training required by regulation;

(2) is qualified professionally as demonstrated by examination; and

(3) is qualified professionally by actual demonstration.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 544.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
7316	46:643(*l*)

Section 7316 establishes the minimum standards an individual must meet in order to qualify for an endorsement as lifeboatman.

§ 7317. Tankermen

(a) The Secretary shall prescribe procedures, standards, and qualifications for the issuance of certificates or endorsements as tankerman, stating the types of oil or hazardous material that can be handled with safety to the vessel and the marine environment.

(b) An endorsement as tankerman shall indicate the grades or types of cargo the holder is qualified and authorized to handle with safety on board vessels.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 545.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
7317(a)	46:391a(10)(C)

Section 7317(a) establishes the minimum standards an individual must meet in order to qualify for an endorsement as tankerman for various types of oil or hazardous substances.

Subsection (b) specifies that the tankerman's endorsement must specify the grades or types of cargo the holder is qualified and allowed to handle.

§ 7318. Radiotelegraph operators on Great Lakes

(a) A radiotelegraph operator on the Great Lakes only shall have a first-class or second-class radiotelegraph operator's license issued by the Federal Communications Commission.

(b) An endorsement as radiotelegraph operator on the Great Lakes only ends if the holder ceases to hold the license issued by the Commission.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 545.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
7318	46:229c 46:229g 46:643(a)

Section 7318 specifies that radiotelegraph operators on the Great Lakes shall have a first-class or second-class radiotelegraph operator's license issued by the FCC and need not be licensed as a radio operator by the Coast Guard. However, an endorsement as radio telegraph operator has to be noted on his merchant mariners' document. If the holder ceases to have a valid FCC license, then the endorsement is terminated automatically without recourse to suspension and revocation proceedings.

§ 7319. Records of merchant mariners' documents

The Secretary shall maintain records on each merchant mariner's document issued, including the name and address of the seaman to whom issued and the next of kin of the seaman.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 545; Pub. L. 108–293, title IV, § 403, Aug. 9, 2004, 118 Stat. 1043.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
7319	46:643(f)

Section 7319 requires the Secretary to maintain records on each merchant mariner's document issued and the seaman's next of kin. However, these records are not open for general or public inspection.

AMENDMENTS

2004—Pub. L. 108–293 struck out at end ''The records are not open to general or public inspection.''

CHAPTER 75—GENERAL PROCEDURES FOR LICENSING, CERTIFICATION, AND DOCUMENTATION

Sec.
7501. Duplicates.
7502. Records.
7503. Dangerous drugs as grounds for denial.
7504. Travel and expense reimbursement.
7505. Review of information in National Driver Register.
7506. Convention tonnage for licenses, certificates, and documents.

AMENDMENTS

1996—Pub. L. 104–324, title VII, § 745(b), Oct. 19, 1996, 110 Stat. 3943, added item 7506.

1990—Pub. L. 101–380, title IV, § 4105(c), Aug. 18, 1990, 104 Stat. 513, added item 7505.

1986—Pub. L. 99–640, § 10(b)(2)(B), Nov. 10, 1986, 100 Stat. 3550, added item 7504.

§ 7501. Duplicates

(a) If a license, certificate of registry, or merchant mariner's document issued under this part is lost as a result of a marine casualty, the holder shall be supplied with a duplicate without cost.

(b) For any other loss, the seaman may obtain a duplicate on payment of reasonable costs prescribed by regulation by the Secretary.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 545; Pub. L. 99–36, § 1(a)(9)(C), May 15, 1985, 99 Stat. 68.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
7501	46:643(h)

Section 7501(a) provides that if a license, certificate or document issued to an individual is lost due to a marine casualty, the individual will be supplied with a duplicate without cost.

Subsection (b) provides that if a license, certificate or document is lost for any reason other than a marine casualty, the seaman must pay a reasonable cost for the replacement.

AMENDMENTS

1985—Subsec. (a). Pub. L. 99–36 substituted ''certificate of registry, or merchant mariner's document'' for ''certificate, or document''.

§ 7502. Records

The Secretary shall maintain computerized records on the issuances, denials, suspensions, and revocations of licenses, certificates of registry, merchant mariners' documents, and endorsements on those licenses, certificates, and documents.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 545; Pub. L. 101–380, title IV, § 4114(e), Aug. 18, 1990, 104 Stat. 517.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
7502	46:414 46:643(f)

Section 7502 requires the Secretary to maintain records on the issuances, denials, suspensions, and revocations of licenses, certificates of registry, merchant mariner's documents, and endorsements.

AMENDMENTS

1990—Pub. L. 101–380 substituted ''maintain computerized records'' for ''maintain records''.

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 Title 33, Navigation and Navigable Waters.

§ 7503. Dangerous drugs as grounds for denial

[(a) Repealed. Pub. L. 101–380, title IV, § 4103(a)(2)(B), Aug. 18, 1990, 104 Stat. 511.]

(b) A license, certificate of registry, or merchant mariner's document authorized to be issued under this part may be denied to an individual who—

(1) within 10 years before applying for the license, certificate, or document, has been convicted of violating a dangerous drug law of the United States or of a State; or

(2) when applying, has ever been a user of, or addicted to, a dangerous drug unless the individual provides satisfactory proof that the individual is cured.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 545; Pub. L. 99–36, § 1(a)(9)(D), May 15, 1985, 99 Stat. 68; Pub. L. 101–380, title IV, § 4103(a)(2)(B), Aug. 18, 1990, 104 Stat. 511.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
7503(a)	46:239a(a) 46:239b(a)

Section 7503 provides that the issuance of a license, certificate, or document may be denied by the Secretary to any individual who has been convicted, within 10 years, of violating a dangerous drug law of the United States or to any individual who has been a user of a dangerous drug, unless the individual provides satisfactory proof of being cured. This includes PCP and LSD. See also the note to section 7704. However, the Secretary may deny issuing a license, certificate or document to the individual who has used or been convicted of a ''controlled substance'' such as LSD if that use or conviction occurred before the date of enactment of this Act.

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–380 repealed subsec. (a) which defined ''dangerous drug'' for purpose of this section as narcotic drug, controlled substance, and marihuana.

1985—Subsec. (b). Pub. L. 99–36 substituted ''certificate of registry, or merchant mariner's document'' for first reference to ''certificate, or document''.

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 Title 33, Navigation and Navigable Waters.

§ 7504. Travel and expense reimbursement

When a requirement to qualify for the issuance of, or endorsement on, a certificate, license, or document under this part is administered at a place at the request of an applicant or an applicant's representative, the applicant or representative may reimburse the Secretary for the travel and subsistence expenses incurred by the personnel assigned to perform the administration of the requirement. Amounts received as reimbursement under this section shall be credited to the appropriation for operating expenses of the Coast Guard.

(Added Pub. L. 99–640, § 10(b)(2)(A), Nov. 10, 1986, 100 Stat. 3549.)

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.

§ 7505. Review of information in National Driver Register

The Secretary shall make information received from the National Driver Register under section 206(b)(7) of the National Driver Register Act of 1982 (23 U.S.C. 401 note) available to an individual for review and written comment before denying, suspending, revoking, or taking any other action relating to a license, certificate of registry, or merchant mariner's document authorized to be issued for that individual under this part, based on that information.

(Added Pub. L. 101–380, title IV, § 4105(b)(1), Aug. 18, 1990, 104 Stat. 512.)

EFFECTIVE DATE

Section applicable to incidents occurring after Aug. 18, 1990, see section 1020 of Pub. L. 101–380, set out as a note under section 2701 of Title 33, Navigation and Navigable Waters.

§ 7506. Convention tonnage for licenses, certificates, and documents

Notwithstanding any provision of section 14302(c) or 14305 of this title, the Secretary may—

(1) evaluate the service of an individual who is applying for a license, a certificate of registry, or a merchant mariner's document by using the tonnage as measured under chapter 143 of this title for the vessels on which that service was acquired, and

(2) issue the license, certificate, or document based on that service.

(Added Pub. L. 104–324, title VII, § 745(a), Oct. 19, 1996, 110 Stat. 3942.)

CHAPTER 77—SUSPENSION AND REVOCATION

Sec.
7701. General.
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7703. Bases for suspension or revocation.
7704. Dangerous drugs as grounds for revocation.
7705. Subpenas and oaths.
7706. Drug testing reporting.

AMENDMENTS

2004—Pub. L. 108–293, title IV, § 414(b), Aug. 9, 2004, 118 Stat. 1047, added item 7706.

§ 7701. General

(a) The purpose of suspension and revocation proceedings is to promote safety at sea.

(b) Licenses, certificates of registry, and merchant mariners' documents may be suspended or revoked for acts described in section 7703 of this title.

(c) When a license, certificate of registry, or merchant mariner's document has been revoked under this chapter, the former holder may be issued a new license, certificate of registry, or merchant mariner's document only after—

(1) the Secretary decides, under regulations prescribed by the Secretary, that the issuance is compatible with the requirement of good discipline and safety at sea; and

(2) the former holder provides satisfactory proof that the bases for revocation are no longer valid.

(d) The Secretary may prescribe regulations to carry out this chapter.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 546; Pub. L. 101–380, title IV, § 4103(c), Aug. 18, 1990, 104 Stat. 511.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
7701	46:239(g)

Section 7701 establishes the general purpose of suspension and revocation proceedings, which is to promote safety at sea. This section also provides the Secretary with the authority to suspend or revoke licenses, certificates, and documents, as well as the authority to issue a new license, certificate or document to an individual when the issuance is compatible with the requirements of good discipline and safety at sea. It also provides for necessary regulatory authority to carry out its purposes.

AMENDMENTS

1990—Subsec. (c). Pub. L. 101–380 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: "When a license, certificate of registry, or merchant mariner's document has been revoked under this chapter, the former holder may be issued a new license, certificate, or document only after it has been decided, under regulations prescribed by the Secretary, that the issuance is compatible with the requirements of good discipline and safety at sea."

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 Title 33, Navigation and Navigable Waters.

§ 7702. Administrative procedure

(a) Sections 551–559 of title 5 apply to each hearing under this chapter about suspending or revoking a license, certificate of registry, or merchant mariner's document.

(b) The individual whose license, certificate of registry, or merchant mariner's document has been suspended or revoked under this chapter may appeal, within 30 days, the suspension or revocation to the Secretary.

(c)(1) The Secretary shall request a holder of a license, certificate of registry, or merchant mariner's document to make available to the Secretary, under section 206(b)(4) of the National Driver Register Act of 1982 (23 U.S.C. 401 note),[1] all information contained in the National Driver Register related to an offense described in section 205(a)(3)(A) or (B) of that Act committed by the individual.

(2) The Secretary shall require the testing of the holder of a license, certificate of registry, or merchant mariner's document for use of alcohol and dangerous drugs in violation of law or Federal regulation. The testing may include pre-employment (with respect to dangerous drugs only), periodic, random, and reasonable cause testing, and shall include post-accident testing.

(d)(1) The Secretary may temporarily, for not more than 45 days, suspend and take possession of the license, certificate of registry, or merchant mariner's document held by an individual if—

[1] See References in Text note below.

(A) that individual performs a safety sensitive function on a vessel, as determined by the Secretary; and

(B) there is probable cause to believe that the individual—

(i) has, while acting under the authority of that license, certificate, or document, performed the safety sensitive function in violation of law or Federal regulation regarding use of alcohol or a dangerous drug;

(ii) has been convicted of an offense that would prevent the issuance or renewal of the license, certificate, or document;

(iii) within the 3-year period preceding the initiation of a suspension proceeding, has been convicted of an offense described in section 30304(a)(3)(A) or (B) of title 49; or

(iv) is a security risk that poses a threat to the safety or security of a vessel or a public or commercial structure located within or adjacent to the marine environment.

(2) If a license, certificate, or document is temporarily suspended under this section, an expedited hearing under subsection (a) of this section shall be held within 30 days after the temporary suspension.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 546; Pub. L. 99–36, § 1(a)(3), May 15, 1985, 99 Stat. 67; Pub. L. 101–380, title IV, § 4103(a)(1), Aug. 18, 1990, 104 Stat. 510; Pub. L. 105–383, title III, § 304(a), Nov. 13, 1998, 112 Stat. 3419; Pub. L. 108–293, title IV, § 407, title VI, § 609(2), Aug. 9, 2004, 118 Stat. 1044, 1058.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
7702	.....

Section 7702(a) provides that Sections 551–559 of title 5 of the United States Code shall apply to each involving the suspension or revocation of a license, certificate, or document.

Subsection (b) allows an individual whose license, certificate, or document has been suspended or revoked to appeal it to the Secretary within 30 days.

REFERENCES IN TEXT

Sections 205(a)(3)(A) or (B) and 206(b)(4) of the National Driver Register Act of 1982, referred to in subsec. (c)(1), are sections 205(a)(3)(A), (B) and 206(b)(4) of Pub. L. 97–364, which were set out in a note under section 401 of Title 23, Highways, and were repealed and restated in sections 30304 and 30305 of Title 49, Transportation, by Pub. L. 103–272, §§ 1(e), 7(b), July 5, 1994, 108 Stat. 862, 1379.

AMENDMENTS

2004—Subsec. (d)(1). Pub. L. 108–293, § 407(1), substituted ''if—'' for ''if, when acting under the authority of that license, certificate, or document—'' in introductory provisions.

Subsec.(d)(1)(B)(i). Pub. L. 108–293, § 407(2), inserted '', while acting under the authority of that license, certificate, or document,'' after ''has''.

Subsec. (d)(1)(B)(iii). Pub. L. 108–293, § 609(2), substituted ''section 30304(a)(3)(A) or (B) of title 49'' for ''section 205(a)(3)(A) or (B) of the National Driver Register Act of 1982''.

Subsec. (d)(1)(B)(iv). Pub. L. 108–293, § 407(3)–(5), added cl. (iv).

1998—Subsec. (c)(2). Pub. L. 105–383 inserted second sentence and struck out former second sentence which read as follows: ''The testing may include preemployment (with respect to dangerous drugs only), periodic, random, reasonable cause, and post accident testing.''

1990—Subsecs. (c), (d). Pub. L. 101–380 added subsecs. (c) and (d).

1985—Subsec. (a). Pub. L. 99–36 substituted ''mariner's'' for ''mariners' ''.

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 Title 33, Navigation and Navigable Waters.

§ 7703. Bases for suspension or revocation

A license, certificate of registry, or merchant mariner's document issued by the Secretary may be suspended or revoked if the holder—

(1) when acting under the authority of that license, certificate, or document—

(A) has violated or fails to comply with this subtitle, a regulation prescribed under this subtitle, or any other law or regulation intended to promote marine safety or to protect navigable waters; or

(B) has committed an act of misconduct or negligence;

(2) is convicted of an offense that would prevent the issuance or renewal of a license, certificate of registry, or merchant mariner's document;

(3) within the 3-year period preceding the initiation of the suspension or revocation proceeding is convicted of an offense described in section 30304(a)(3)(A) or (B) of title 49 (23 U.S.C. 401 note);[1]

(4) has committed an act of incompetence relating to the operation of a vessel; or

(5) is a security risk that poses a threat to the safety or security of a vessel or a public or commercial structure located within or adjacent to the marine environment.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 546; Pub. L. 99–36, § 1(a)(9)(E), May 15, 1985, 99 Stat. 68; Pub. L. 101–380, title IV, § 4103(b), Aug. 18, 1990, 104 Stat. 511; Pub. L. 108–293, title IV, § 408, title VI, § 609(3), Aug. 9, 2004, 118 Stat. 1044, 1058.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
7703	46:226 46:239 46:240 46:246(c)

This section provides the bases for suspension and revocation of a license, certificate or document. The individual must have been operating under the authority of the required license, certificate, or document and has violated a law or regulation intended to promote marine safety or to protect the navigable waters or has committed an act of incompetence, misconduct, or negligence.

AMENDMENTS

2004—Par. (1)(B). Pub. L. 108–293, § 408(1), substituted ''misconduct or'' for ''incompetence, misconduct, or''.

Par. (3). Pub. L. 108–293, § 609(3), substituted ''section 30304(a)(3)(A) or (B) of title 49'' for ''section 205(a)(3)(A) or (B) of the National Driver Register Act of 1982''.

Pars. (4), (5). Pub. L. 108–293, § 408(2)–(4), added pars. (4) and (5).

[1] So in original. The parenthetical phrase probably should not appear.

1990—Pub. L. 101–380 amended section generally. Prior to amendment, section read as follows: ''A license, certificate of registry, or merchant mariner's document issued by the Secretary may be suspended or revoked if, when acting under the authority of that license, certificate, or document, the holder—

''(1) has violated or failed to comply with this subtitle, a regulation prescribed under this subtitle, or any other law or regulation intended to promote marine safety or to protect navigable waters.

''(2) has committed an act of incompetence, misconduct, or negligence.''

1985—Pub. L. 99–36 substituted ''certificate of registry,'' for first reference to ''certificate,''.

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 Title 33, Navigation and Navigable Waters.

§ 7704. Dangerous drugs as grounds for revocation

[(a) Repealed. Pub. L. 101–380, title IV, § 4103(a)(2)(B), Aug. 18, 1990, 104 Stat. 511.]

(b) If it is shown at a hearing under this chapter that a holder of a license, certificate of registry, or merchant mariner's document issued under this part, within 10 years before the beginning of the proceedings, has been convicted of violating a dangerous drug law of the United States or of a State, the license, certificate, or document shall be suspended or revoked.

(c) If it is shown that a holder has been a user of, or addicted to, a dangerous drug, the license, certificate of registry, or merchant mariner's document shall be revoked unless the holder provides satisfactory proof that the holder is cured.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 546; Pub. L. 99–36, § 1(a)(9)(F), (G), May 15, 1985, 99 Stat. 68; Pub. L. 101–380, title IV, § 4103(a)(2)(B), Aug. 18, 1990, 104 Stat. 511; Pub. L. 108–293, title IV, § 402, Aug. 9, 2004, 118 Stat. 1043.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
7704(a)	46:239a(a)
7704(b)	46:239b(b)(1)
7704(c)	46:239b(b)(2)

Section 7704 requires the Secretary to revoke the license, certificate, or document of any individual who has been convicted of a dangerous drug law within 10 years before the beginning of the suspension or revocation procedures. This section has expanded current law to incorporate violations involving ''controlled substances'' which are not narcotic. This includes PCP and LSD. Unless it can be done under existing law, the suspension or revocation of an individual's license based on the use of a ''controlled substance'' only applies to the use or conviction after the date of enactment of this Act.

This section also provides that anyone who has been a user of or addicted to a dangerous drug since July 14, 1954, may be subjected to revocation procedures unless the individual provides satisfactory proof of being cured.

In sections 7503(b)(2) and 7704(c), the term ''use'', when applying to ''narcotic drugs'' or ''controlled substances'', is not intended to include the use of ''off the shelf'' drugs or drugs acquired with a prescription lawfully issued by a medical doctor, as long as the drugs are used by the individual in the recommended amounts and the drugs will not impair the individual's ability to perform duties.

AMENDMENTS

2004—Subsec. (b). Pub. L. 108–293 inserted ''suspended or'' after ''shall be''.

1990—Subsec. (a). Pub. L. 101–380 struck out subsec. (a) which defined ''dangerous drug'' for purpose of this section as narcotic drug, controlled substance, and marihuana.

1985—Subsec. (b). Pub. L. 99–36, § 1(a)(9)(F), substituted ''merchant mariner's document'' for first reference to ''document''.

Subsec. (c). Pub. L. 99–36, § 1(a)(9)(G), substituted ''certificate of registry, or merchant mariner's document'' for ''certificate, or document''.

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 Title 33, Navigation and Navigable Waters.

§ 7705. Subpenas and oaths

(a) An official designated to investigate or preside at a hearing on matters that are grounds for suspension or revocation of licenses, certificates of registry, and merchant mariners' documents may administer oaths and issue subpenas to compel the attendance and testimony of witnesses and the production of records or other evidence during investigations and at hearings.

(b) The jurisdictional limits of a subpena issued under this section are the same as, and are enforceable in the same manner as, subpenas issued under chapter 63 of this title.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 547; Pub. L. 99–36, § 1(a)(9)(H), May 15, 1985, 99 Stat. 68.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
7705	46:239(e)

Section 7705 allows officials designated to investigate or preside at hearings on matters that are grounds for suspension and revocation proceedings to administer oaths and issue subpenas.

AMENDMENTS

1985—Subsec. (a). Pub. L. 99–36 substituted ''certificates of registry, and merchant mariners' documents'' for ''certificates, and documents''.

§ 7706. Drug testing reporting

(a) RELEASE OF DRUG TEST RESULTS TO COAST GUARD.—Not later than 2 weeks after receiving from a Medical Review Officer a report of a verified positive drug test or verified test violation by a civilian employee of a Federal agency, an officer in the Public Health Services, or an officer in the National Oceanic and Atmospheric Administration Commissioned Officer Corps, who is employed in any capacity on board a vessel operated by the agency, the head of the agency shall release to the Commandant of the Coast Guard the report.

(b) STANDARDS, PROCEDURES, AND REGULATIONS.—The head of a Federal agency shall carry out a release under subsection (a) in accordance with the standards, procedures, and regulations applicable to the disclosure and reporting to the Coast Guard of drug tests results and drug test records of individuals employed on vessels documented under the laws of the United States.

(c) WAIVER.—Notwithstanding section 503(e) of the Supplemental Appropriations Act, 1987 (5

U.S.C. 7301 note), the report of a drug test of an employee may be released under this section without the prior written consent of the employee.

(Added Pub. L. 108–293, title IV, § 414(a), Aug. 9, 2004, 118 Stat. 1046.)

REFERENCES IN TEXT

Section 503(e) of the Supplemental Appropriations Act, 1987, referred to in subsec. (c), is section 503(e) of Pub. L. 100–71, which is set out as a note under section 7301 of Title 5, Government Organization and Employees.

PART F—MANNING OF VESSELS

HISTORICAL AND REVISION NOTES

Part F provides for the manning of vessels including requirements generally for the number of individuals required, qualifications and conditions of employment, and duties; for masters and other licenses and registered individuals; for pilots; for unlicensed personnel; for small vessels; for tank vessels; and for pilotage on the Great Lakes. The Committee intends that all manning provisions throughout this subtitle will be interpreted to be consistent with one another.

CHAPTER 81—GENERAL

Sec.
8101. Complement of inspected vessels.
8102. Watchmen.
8103. Citizenship and Navy Reserve requirements.
8104. Watches.
8105. Fishing vessel exemption.

HISTORICAL AND REVISION NOTES

Chapter 81 provides for the composition, citizenship, working hours, and other limitations affecting the complement of licensed individuals and crew on certain vessels, a safety watch onboard passenger vessels, membership in the Naval Reserve for certain deck and engineer officers, and penalties for violating, and regulatory authority for implementing its provisions.

AMENDMENTS

2006—Pub. L. 109–163, div. A, title V, § 515(f)(3)(C), Jan. 6, 2006, 119 Stat. 3236, substituted ''Citizenship and Navy Reserve requirements'' for ''Citizenship and Naval Reserve requirements'' in item 8103.

1996—Pub. L. 104–324, title XI, § 1146(b), Oct. 19, 1996, 110 Stat. 3993, added item 8105.

1990—Pub. L. 101–595, title VI, § 603(7)(B), Nov. 16, 1990, 104 Stat. 2993, struck out item 8105 ''Regulations''.

§ 8101. Complement of inspected vessels

(a) The certificate of inspection issued to a vessel under part B of this subtitle shall state the complement of licensed individuals and crew (including lifeboatmen) considered by the Secretary to be necessary for safe operation. A manning requirement imposed on—

(1) a sailing school vessel shall consider the participation of sailing school instructors and sailing school students in the operation of that vessel;

(2) a mobile offshore drilling unit shall consider the specialized nature of the unit; and

(3) a tank vessel shall consider the navigation, cargo handling, and maintenance functions of that vessel for protection of life, property, and the environment.

(b) The Secretary may modify the complement, by endorsement on the certificate, for reasons of changed conditions or employment.

(c) A requirement made under this section by an authorized official may be appealed to the Secretary under prescribed regulations.

(d) A vessel to which this section applies may not be operated without having in its service the complement required in the certificate of inspection.

(e) When a vessel is deprived of the service of a member of its complement without the consent, fault, or collusion of the owner, charterer, managing operator, agent, master, or individual in charge of the vessel, the master shall engage, if obtainable, a number of members equal to the number of those of whose services the master has been deprived. The replacements must be of the same or a higher grade or rating than those whose places they fill. If the master finds the vessel is sufficiently manned for the voyage, and replacements are not available to fill all the vacancies, the vessel may proceed on its voyage. Within 12 hours after the vessel arrives at its destination, the master shall report in writing to the Secretary the cause of each deficiency in the complement. A master failing to make the report is liable to the United States Government for a civil penalty of $1,000 for each deficiency.

(f) The owner, charterer, or managing operator of a vessel not manned as required by this section is liable to the Government for a civil penalty of $10,000.

(g) A person may not employ an individual as, and an individual may not serve as, a master, mate, engineer, radio officer, or pilot of a vessel to which this part applies or which is subject to inspection under chapter 33 of this title if the individual is not licensed by the Secretary. A person (including an individual) violating this subsection is liable to the Government for a civil penalty of not more than $10,000. Each day of a continuing violation is a separate offense.

(h) The owner, charterer, or managing operator of a freight vessel of less than 100 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title, a small passenger vessel, or a sailing school vessel not manned as required by this section is liable to the Government for a civil penalty of $1,000. The vessel also is liable in rem for the penalty.

(i) When the 2 next most senior licensed officers on a vessel reasonably believe that the master or individual in charge of the vessel is under the influence of alcohol or a dangerous drug and is incapable of commanding the vessel, the next most senior master, mate, or operator licensed under section 7101(c)(1) or (3) of this title shall—

(1) temporarily relieve the master or individual in charge;

(2) temporarily take command of the vessel;

(3) in the case of a vessel required to have a log under chapter 113 of this title, immediately enter the details of the incident in the log; and

(4) report those details to the Secretary—

(A) by the most expeditious means available; and

(B) in written form transmitted within 12 hours after the vessel arrives at its next port.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 547; Pub. L. 98–557, § 29(b), Oct. 30, 1984, 98 Stat. 2873; Pub. L.

99–640, § 11(b), Nov. 10, 1986, 100 Stat. 3550; Pub. L. 101–380, title IV, §§ 4104, 4114(c), 4302(e), Aug. 18, 1990, 104 Stat. 511, 517, 538; Pub. L. 104–324, title VII, § 725, Oct. 19, 1996, 110 Stat. 3939.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
8101	46:222 46:224 46:446d

Section 8101 provides for the required composition of the complement of licensed individuals and crew of an inspected vessel when being operated.

Subsection (a) requires that the certificate of inspection for a vessel state the manning necessary for safe navigation. Manning means the complement of licensed officers and crew (including lifeboatmen). Any manning requirements for sailing school vessels shall take into account the participation of sailing school instructors and sailing school students in the operation of those vessels.

Subsection (b) permits the Secretary to modify the manning requirements for reasons of changed conditions or employment.

Subsection (c) permits an appeal to the Secretary of any manning requirements made by an authorized official.

Subsection (d) prohibits the operation of a vessel without the manning required in the vessel's certificate of inspection.

When a vessel has a vacancy in the manning required by its certificate of inspection without the consent, fault, or collusion of anyone responsible for the management or operation of the vessel, subsection (e) requires that the master hire replacements, if possible, in the same or higher grade or rating. However, if the master finds the vessel sufficiently manned and replacements are not available, the vessel may proceed on its voyage. Within 12 hours of arrival at its destination, the master is required to file a written report with the Secretary stating the cause of each deficiency or be liable for a civil penalty. The report of deficiency should include both the reason for the vacancy in the first instance and the reason for the unavailability of a qualified replacement.

Subsections (f), (g) and (h) prescribe civil penalties for noncompliance with manning requirements. Subsection (g) also prohibits the employment or service of an individual in a licensed capacity who is not licensed by the Secretary.

AMENDMENTS

1996—Subsec. (h). Pub. L. 104–324 inserted ''as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' after ''100 gross tons''.

1990—Subsec. (a)(3). Pub. L. 101–380, § 4114(c), added par. (3).

Subsec. (e). Pub. L. 101–380, § 4302(e)(1), substituted ''$1,000'' for ''$50''.

Subsec. (f). Pub. L. 101–380, § 4302(e)(2), substituted ''$10,000'' for ''$100, or, for a deficiency of a licensed individual, a penalty of $500''.

Subsec. (g). Pub. L. 101–380, § 4302(e)(3), substituted ''$10,000'' for ''$500''.

Subsec. (i). Pub. L. 101–380, § 4104, added subsec. (i).

1986—Subsec. (a). Pub. L. 99–640 amended subsec. (a) generally, inserting cl. (1) designation before ''a sailing school'' and adding cl. (2).

1984—Subsec. (g). Pub. L. 98–557 substituted provisions relating to inspection under chapter 33 of this title, for provisions relating to applicability of part B of this subtitle.

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 Title 33, Navigation and Navigable Waters.

§ 8102. Watchmen

(a) The owner, charterer, or managing operator of a vessel carrying passengers during the nighttime shall keep a suitable number of watchmen in the vicinity of the cabins or staterooms and on each deck to guard against and give alarm in case of a fire or other danger. An owner, charterer, or managing operator failing to provide watchmen required by this section is liable to the United States Government for a civil penalty of $1,000.

(b) The owner, charterer, managing operator, agent, master, or individual in charge of a fish processing vessel of more than 100 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title shall keep a suitable number of watchmen trained in firefighting on board when hotwork is being done to guard against and give alarm in case of a fire.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 548; Pub. L. 98–364, title IV, § 402(10), July 17, 1984, 98 Stat. 448; Pub. L. 104–324, title VII, § 726, Oct. 19, 1996, 110 Stat. 3939.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
8102	46:470 46:471

Section 8102 requires the person responsible for the management of a vessel carrying passengers to have a suitable watch at night to guard against, and to sound an alarm in case of fire or other danger, or be liable for a civil penalty.

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–324 inserted ''as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' after ''100 gross tons''.

1984—Pub. L. 98–364 designated existing provisions as subsec. (a) and added subsec. (b).

§ 8103. Citizenship and Navy Reserve requirements

(a) Only a citizen of the United States may serve as master, chief engineer, radio officer, or officer in charge of a deck watch or engineering watch on a documented vessel.

(b)(1) Except as otherwise provided in this section, on a documented vessel—

(A) each unlicensed seaman must be—

(i) a citizen of the United States;

(ii) an alien lawfully admitted to the United States for permanent residence; or

(iii) a foreign national who is enrolled in the United States Merchant Marine Academy.[1]

(B) not more than 25 percent of the total number of unlicensed seamen on the vessel may be aliens lawfully admitted to the United States for permanent residence.

(2) Paragraph (1) of this subsection does not apply to—

[1] So in original. The period probably should be ''; and''.

(A) a yacht;

(B) a fishing vessel fishing exclusively for highly migratory species (as that term is defined in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802)); and

(C) a fishing vessel fishing outside of the exclusive economic zone.

(3) The Secretary may waive a citizenship requirement under this section, other than a requirement that applies to the master of a documented vessel, with respect to—

(A) an offshore supply vessel or other similarly engaged vessel of less than 1,600 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title that operates from a foreign port;

(B) a mobile offshore drilling unit or other vessel engaged in support of exploration, exploitation, or production of offshore mineral energy resources operating beyond the water above the outer Continental Shelf (as that term is defined in section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a)); and

(C) any other vessel if the Secretary determines, after an investigation, that qualified seamen who are citizens of the United States are not available.

(c) On each departure of a vessel (except a passenger vessel) for which a construction or operating differential subsidy has been granted, all of the seamen of the vessel must be citizens of the United States.

(d)(1) On each departure of a passenger vessel for which a construction or operating differential subsidy has been granted, at least 90 percent of the entire complement (including licensed individuals) must be citizens of the United States.

(2) An individual not required by this subsection to be a citizen of the United States may be engaged only if the individual has a declaration of intention to become a citizen of the United States or other evidence of admission to the United States for permanent residence. An alien may be employed only in the steward's department of the passenger vessel.

(e) If a documented vessel is deprived for any reason of the services of an individual (except the master and the radio officer) when on a foreign voyage and a vacancy consequently occurs, until the vessel's return to a port at which in the most expeditious manner a replacement who is a citizen of the United States can be obtained, an individual not a citizen of the United States may serve in—

(1) the vacancy; or

(2) a vacancy resulting from the promotion of another individual to fill the original vacancy.

(f) A person employing an individual in violation of this section or a regulation prescribed under this section is liable to the United States Government for a civil penalty of $500 for each individual so employed.

(g) A deck or engineer officer employed on a vessel on which an operating differential subsidy is paid, or employed on a vessel (except a vessel of the Coast Guard or Saint Lawrence Seaway Development Corporation) owned or operated by the Department of Transportation or by a corporation organized or controlled by the Department, if eligible, shall be a member of the Navy Reserve.

(h) The President may—

(1) suspend any part of this section during a proclaimed national emergency; and

(2) when the needs of commerce require, suspend as far and for a period the President considers desirable, subsection (a) of this section for crews of vessels of the United States documented for foreign trade.

(i)(1) Except as provided in paragraph (3) of this subsection, each unlicensed seaman on a fishing, fish processing, or fish tender vessel that is engaged in the fisheries in the navigable waters of the United States or the exclusive economic zone must be—

(A) a citizen of the United States;

(B) an alien lawfully admitted to the United States for permanent residence;

(C) any other alien allowed to be employed under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.); or

(D) an alien allowed to be employed under the immigration laws of the Commonwealth of the Northern Mariana Islands if the vessel is permanently stationed at a port within the Commonwealth and the vessel is engaged in the fisheries within the exclusive economic zone surrounding the Commonwealth or another United States territory or possession.

(2) Not more than 25 percent of the unlicensed seamen on a vessel subject to paragraph (1) of this subsection may be aliens referred to in clause (C) of that paragraph.

(3) This subsection does not apply to a fishing vessel fishing exclusively for highly migratory species (as that term is defined in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802)).

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 548; Pub. L. 100–239, §§5(a)(1), (2), (b)–(d)(1), Jan. 11, 1988, 101 Stat. 1780; Pub. L. 100–255, Mar. 4, 1988, 102 Stat. 23; Pub. L. 101–595, title VI, §603(6), title VII, §711, Nov. 16, 1990, 104 Stat. 2993, 2997; Pub. L. 104–208, div. A, title I, §101(a) [title II, §211(b)], Sept. 30, 1996, 110 Stat. 3009, 3009–41; Pub. L. 104–324, title VII, §727, title XI, §1123, Oct. 19, 1996, 110 Stat. 3939, 3980; Pub. L. 108–293, title IV, §412, Aug. 9, 2004, 118 Stat. 1046; Pub. L. 109–163, div. A, title V, §515(f)(3)(A), (B), Jan. 6, 2006, 119 Stat. 3236.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
8103	46:221 46:236 46:672(h) 46:672a 46:690 46:1132

Section 8103 sets forth the requirements for citizenship and Naval Reserve membership for the complement on a vessel documented under the laws of the United States.

Subsection (a) requires that the master, chief engineer, or officer in charge of a deck or engineering watch on a United States documented vessel be a United States citizen.

Subsection (b) requires that 75 percent of the seamen, excluding licensed individuals, on a United States documented vessel be United States citizens, except for a fishing or whaling vessel or yacht. The Secretary may reduce the percentage if the Secretary decides on investigation that United States seamen are not available. This investigation and percentage reduction authority is the sole responsibility of the Secretary of Transportation and accordingly the Secretary is to make these decisions expeditiously, promptly, and independently so as not to be dependent on any other agency to make this reduction. The Committee believes the Secretary is capable of this decision and need not delay or fail to make the decision because some other agency does not have the information or would require an extended period to acquire that information. The phrase ''for any reason'' is used merely to emphasize the complete discretion of the Secretary in making this decision. In addition, because this decision is based on an investigation, formal procedures of the Administrative Procedure Act do not apply.

Subsections (c) and (d) provide that a vessel, except a passenger vessel, on departure from the United States that has been granted a construction or operating differential subsidy have a higher percentage citizenship requirement. Subsection (c) requires all of the crew and employees of a cargo vessel be United States citizens. Subsection (d) requires at least 90 percent of the entire complement of a passenger vessel be United States citizens. The phrase ''including all licensed individuals'' emphasizes that all licensed individuals are required to be United States citizens as required by subsection (a) and that they compose part of the 90 percent requirement under this subsection. Further, under subsection (d), the balance of the complement must be individuals who have a declaration of intention to become a United States citizen or evidence of admission to the United States as a permanent resident and may only be employed in the steward's department of the passenger vessel.

Except for the master, subsection (e) permits a non-United States citizen to fill a vacancy that occurs for any reason on a United States documented vessel during a foreign voyage until the vessel returns to a United States port where a United States citizen replacement can be obtained. The phrase ''for any reason'' is used merely for emphasis.

Subsection (f) provides for the penalty for violation of this section.

Subsection (g) requires a deck or engineer officer on a vessel that has been granted an operating differential subsidy or is under the control by the Department of Transportation to be, if eligible, a member of the Naval Reserve. This section does not apply to a vessel of the Coast Guard or the Saint Lawrence Seaway Development Corporation.

Subsection (h) permits the President to suspend the requirements of this section during a proclaimed national emergency or the requirement of subsection (a) for United States vessels documented for foreign trade when the needs of commerce require.

References in Text

The Immigration and Nationality Act, referred to in subsec. (i)(1)(C), is act June 27, 1952, ch. 477, 66 Stat. 163, as amended, and is classified principally to chapter 12 (§ 1101 et seq.) of Title 8, Aliens and Nationality. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of Title 8 and Tables.

Amendments

2006—Pub. L. 109–163, § 515(f)(3)(B), substituted ''Citizenship and Navy Reserve requirements'' for ''Citizenship and Naval Reserve requirements'' in section catchline.

Subsec. (g). Pub. L. 109–163, § 515(f)(3)(A), substituted ''Navy Reserve'' for ''Naval Reserve''.

2004—Subsec. (b)(1)(A). Pub. L. 108–293 amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''each unlicensed seaman must be a citizen of the United States or an alien lawfully admitted to the United States for permanent residence; and''.

1996—Subsec. (b)(2)(B). Pub. L. 104–208 substituted ''Magnuson-Stevens Fishery'' for ''Magnuson Fishery''.

Subsec. (b)(3)(A). Pub. L. 104–324, § 727, inserted ''as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' after ''1,600 gross tons''.

Subsec. (i)(1)(D). Pub. L. 104–324, § 1123, added subpar. (D).

Subsec. (i)(3). Pub. L. 104–208 substituted ''Magnuson-Stevens Fishery'' for ''Magnuson Fishery''.

1990—Subsec. (i)(3)(C). Pub. L. 101–595, §§ 603(6) and 711, amended subpar. (C) identically, substituting ''Nationality'' for ''Naturalization''.

1988—Subsec. (a). Pub. L. 100–239, § 5(a)(1), inserted ''radio officer,'' after ''chief engineer,''.

Subsec. (b). Pub. L. 100–255 substituted ''section,'' for ''subsection,'' in par. (3).

Pub. L. 100–239, § 5(a)(2), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''On each departure of a documented vessel (except a fishing or whaling vessel or yacht) from a port of the United States, 75 percent of the seamen (excluding licensed individuals) must be citizens of the United States. If the Secretary decides, on investigation, that qualified citizen seamen are not available, the Secretary may reduce the percentage.''

Subsecs. (c), (d)(1). Pub. L. 100–239, § 5(b), struck out ''from the United States'' after ''On each departure''.

Subsec. (e). Pub. L. 100–239, § 5(c), inserted ''and the radio officer'' after ''the master'' and substituted ''until the vessel's return to a port at which in the most expeditious manner'' for ''until the vessel's first return to a United States port at which''.

Subsec. (i). Pub. L. 100–239, § 5(d)(1), added subsec. (i).

Effective Date of 1996 Amendment

Section 101(a) [title II, § 211(b)] of div. A of Pub. L. 104–208 provided that the amendment made by that section is effective 15 days after Oct. 11, 1996.

Effective Date of 1988 Amendment

Section 5(a)(3) of Pub. L. 100–239 provided that: ''Paragraph (2) of this subsection [amending this section] is effective 30 days after the date of enactment of this Act [Jan. 11, 1988].''

Section 5(d)(2) of Pub. L. 100–239 provided that: ''This subsection [amending this section] is effective 360 days after the day of the enactment of this Act [Jan. 11, 1988].''

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.

Application of Section to Fishing Vessels in California

Section 317 of Pub. L. 101–595, as amended by Pub. L. 104–324, title III, § 301(d)(2)(B), Oct. 19, 1996, 110 Stat. 3916, provided that:

''(a) Definition.—For purposes of the application of sections 8103(a), 12102, 12110, 12111, and 12122(b) of title 46, United States Code, to a fishing vessel operating in waters subject to the jurisdiction of the United States off the coast of the State of California, the term 'citizen of the United States' includes an alien lawfully admitted to the United States for permanent residence.

''(b) Termination.—This section shall terminate on October 1, 2000.''

§ 8104. Watches

(a) An owner, charterer, managing operator, master, individual in charge, or other person having authority may permit an officer to take charge of the deck watch on a vessel when leaving or immediately after leaving port only if the officer has been off duty for at least 6 hours within the 12 hours immediately before the time of leaving.

(b) On an oceangoing or coastwise vessel of not more than 100 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title (except a fishing, fish processing, or fish tender vessel), a licensed individual may not be required to work more than 9 of 24 hours when in port, including the date of arrival, or more than 12 of 24 hours at sea, except in an emergency when life or property are endangered.

(c) On a towing vessel (except a towing vessel operated only for fishing, fish processing, fish tender, or engaged in salvage operations) operating on the Great Lakes, harbors of the Great Lakes, and connecting or tributary waters between Gary, Indiana, Duluth, Minnesota, Niagara Falls, New York, and Ogdensburg, New York, a licensed individual or seaman in the deck or engine department may not be required to work more than 8 hours in one day or permitted to work more than 15 hours in any 24-hour period, or more than 36 hours in any 72-hour period, except in an emergency when life or property are endangered.

(d) On a merchant vessel of more than 100 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title (except a vessel only operating on rivers, harbors, lakes (except the Great Lakes), bays, sounds, bayous, and canals, a fishing, fish tender, or whaling vessel, a fish processing vessel of not more than 5,000 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title, yacht, or vessel engaged in salvage operations), the licensed individuals, sailors, coal passers, firemen, oilers, and water tenders shall be divided, when at sea, into at least 3 watches, and shall be kept on duty successively to perform ordinary work incident to the operation and management of the vessel. The requirement of this subsection applies to radio officers only when at least 3 radio officers are employed. A licensed individual or seaman in the deck or engine department may not be required to work more than 8 hours in one day.

(e) On a vessel designated by subsection (d) of this section—

(1) a seaman may not be—

(A) engaged to work alternately in the deck and engine departments; or

(B) required to work in the engine department if engaged for deck department duty or required to work in the deck department if engaged for engine department duty;

(2) a seaman may not be required to do unnecessary work on Sundays, New Year's Day, July 4th, Labor Day, Thanksgiving Day, or Christmas Day, when the vessel is in a safe harbor, but this clause does not prevent dispatch of a vessel on a voyage; and

(3) when the vessel is in a safe harbor, 8 hours (including anchor watch) is a day's work.

(f) Subsections (d) and (e) of this section do not limit the authority of the master or other officer or the obedience of the seamen when, in the judgment of the master or other officer, any part of the crew is needed for—

(1) maneuvering, shifting the berth of, mooring, or unmooring, the vessel;

(2) performing work necessary for the safety of the vessel, or the vessel's passengers, crew, or cargo;

(3) saving life on board another vessel in jeopardy; or

(4) performing fire, lifeboat, or other drills in port or at sea.

(g) On a towing vessel, an offshore supply vessel, or a barge to which this section applies, that is engaged on a voyage of less than 600 miles, the licensed individuals and crewmembers (except the coal passers, firemen, oilers, and water tenders) may be divided, when at sea, into at least 2 watches.

(h) On a vessel to which section 8904 of this title applies, an individual licensed to operate a towing vessel may not work for more than 12 hours in a consecutive 24-hour period except in an emergency.

(i) A person violating subsection (a) or (b) of this section is liable to the United States Government for a civil penalty of $10,000.

(j) The owner, charterer, or managing operator of a vessel on which a violation of subsection (c), (d), (e), or (h) of this section occurs is liable to the Government for a civil penalty of $10,000. The seaman is entitled to discharge from the vessel and receipt of wages earned.

(k) On a fish processing vessel subject to inspection under part B of this subtitle, the licensed individuals and deck crew shall be divided, when at sea, into at least 3 watches.

(*l*) Except as provided in subsection (k) of this section, on a fish processing vessel, the licensed individuals and deck crew shall be divided, when at sea, into at least 2 watches if the vessel—

(1) entered into service before January 1, 1988, and is more than 1,600 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title; or

(2) entered into service after December 31, 1987, and has more than 16 individuals on board primarily employed in the preparation of fish or fish products.

(m) This section does not apply to a fish processing vessel—

(1) entered into service before January 1, 1988, and not more than 1,600 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title; or

(2) entered into service after December 31, 1987, and having not more than 16 individuals

on board primarily employed in the preparation of fish or fish products.

(n) On a tanker, a licensed individual or seaman may not be permitted to work more than 15 hours in any 24-hour period, or more than 36 hours in any 72-hour period, except in an emergency or a drill. In this subsection, ''work'' includes any administrative duties associated with the vessel whether performed on board the vessel or onshore.

(*o*)(1) Except as provided in paragraph (2) of this subsection, on a fish tender vessel of not more than 500 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title engaged in the Aleutian trade, the licensed individuals and crewmembers shall be divided, when at sea, into at least 3 watches.

(2) On a fish tender vessel of not more than 500 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title engaged in the Aleutian trade, the licensed individuals and crewmembers shall be divided, when at sea, into at least 2 watches, if the vessel—

(A) before September 8, 1990, operated in that trade; or

(B)(i) before September 8, 1990, was purchased to be used in that trade; and

(ii) before June 1, 1992, entered into service in that trade.

(p) The Secretary may prescribe the watchstanding and work hours requirements for an oil spill response vessel.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 549; Pub. L. 98–364, title IV, § 402(11), July 17, 1984, 98 Stat. 448; Pub. L. 98–557, § 33(c), Oct. 30, 1984, 98 Stat. 2876; Pub. L. 99–307, § 1(12), May 19, 1986, 100 Stat. 445; Pub. L. 101–380, title IV, §§ 4114(b), 4302(f), Aug. 18, 1990, 104 Stat. 517, 538; Pub. L. 101–595, title VI, § 602(e)(1), Nov. 16, 1990, 104 Stat. 2991; Pub. L. 102–587, title V, § 5212, Nov. 4, 1992, 106 Stat. 5077; Pub. L. 103–206, title III, § 322(a), Dec. 20, 1993, 107 Stat. 2428; Pub. L. 104–324, title VII, § 728, title XI, §§ 1104(c), 1114, Oct. 19, 1996, 110 Stat. 3939, 3967, 3971.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
8104	46:235 46:405(b) 46:673

Section 8104 prescribes certain working hours and conditions under which working hours are set. The Committee intends that these sections be interpreted in a manner consistent with one another.

Subsection (a) permits an individual to take charge of the deck watch on leaving port and immediately thereafter only if the individual has been off duty for 6 of the 12 hours immediately prior to departure.

Subsection (b) prohibits a licensed individual from being required to work more than 9 of 24 hours in port or more than 12 of 24 hours at sea on an oceangoing or coastwise vessel of not more than 100 gross tons, except in an emergency.

Subsection (c) prescribes a maximum 8-hour day for licensed individuals and seamen on towing vessels operating on the Great Lakes and certain connecting or tributary waters.

Subsection (d) requires certain members of the complement of certain merchant vessels of more than 100 gross tons to be divided into at least 3 successive watches when at sea. This requirement applies to radio officers only when at least 3 radio officers are employed. Subsection (d) also prescribes a maximum 8-hour work day for licensed individuals and seamen on these vessels.

For the Great Lakes towing vessels and merchant vessels in subsections (c) and (d(, subsection (e) requires that seamen be hired only for work in either the deck or the engine department. When in a safe harbor, seamen may be required to do only necessary work on Sundays and certain holidays, unless the vessel is getting underway on a voyage. Further, when in a safe harbor, this subsection restates the maximum 8-hour work day which applies even for anchor watch.

Subsection (f) states that the limitations in subsections (d) and (e) do not apply if the master or other officer decides the crew is needed for certain routine, safety, or rescue activities.

Subsection (g) provides that for a towing vessel (except a Great Lakes towing vessel under subsection (c)), offshore supply vessel, or barge on a voyage of less than 600 miles, the licensed officers and certain crewmembers may be divided into not less than two watches when at sea.

Subsection (h) provides that the licensed operator for a towing vessel at least 26 feet long may not be required to work more than 12 of 24 hours, except in an emergency.

Subsections (i) and (j) prescribe penalties for violations of the provisions of this section and, in certain instances, entitles the seaman to discharge and payment of wages.

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–324, § 728(1), inserted ''as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' after ''100 gross tons''.

Subsec. (c). Pub. L. 104–324, § 1114(a), struck out ''or permitted'' after ''required'' and inserted ''or permitted to work more than 15 hours in any 24-hour period, or more than 36 hours in any 72-hour period'' after ''day''.

Subsec. (d). Pub. L. 104–324, § 728(2), inserted ''as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' after ''100 gross tons'' and after ''5,000 gross tons''.

Subsec. (e). Pub. L. 104–324, § 1114(b), substituted ''subsection (d)'' for ''subsections (c) and (d)'' in introductory provisions.

Subsec. (g). Pub. L. 104–324, § 1114(c), struck out ''(except a vessel to which subsection (c) of this section applies)'' after ''On a towing vessel''.

Subsec. (*l*)(1). Pub. L. 104–324, § 728(3), inserted ''as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' after ''1,600 gross tons''.

Subsec. (m)(1). Pub. L. 104–324, § 728(4), inserted ''as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' after ''1,600 gross tons''.

Subsec. (*o*)(1). Pub. L. 104–324, § 728(5), inserted ''as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' after ''500 gross tons''.

Subsec. (*o*)(2). Pub. L. 104–324, § 728(6), inserted ''as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' after ''500 gross tons''.

Subsec. (p). Pub. L. 104–324, § 1104(c), amended subsec. (p) generally. Prior to amendment, subsec. (p) read as

follows: ''On a vessel used only to respond to a discharge of oil or a hazardous substance, the licensed individuals and crewmembers may be divided into at least two watches when the vessel is engaged in an operation less than 12 hours in duration.''

1993—Subsec. (g). Pub. L. 103–206, § 322(a)(1), struck out ''a vessel used only to respond to a discharge of oil or a hazardous substance,'' after ''an offshore supply vessel,''.

Subsec. (p). Pub. L. 103–206, § 322(a)(2), added subsec. (p).

1992—Subsec. (g). Pub. L. 102–587, § 5212(1), inserted ''a vessel used only to respond to a discharge of oil or a hazardous substance,'' after ''an offshore supply vessel,''.

Subsecs. (n), (*o*). Pub. L. 102–587, § 5212(2), redesignated subsec. (n), relating to fish tender vessels of not more than 500 gross tons engaged in Aleutian trade, as (*o*).

1990—Subsecs. (i), (j). Pub. L. 101–380, § 4302(f), substituted ''$10,000'' for ''$100'' in subsec. (i) and for ''$500'' in subsec. (j).

Subsec. (n). Pub. L. 101–595 added subsec. (n) relating to fish tender vessels of not more than 500 gross tons engaged in Aleutian trade.

Pub. L. 101–380, § 4114(b), added subsec. (n) relating to tankers.

1986—Subsec. (k). Pub. L. 99–307 substituted ''watches'' for ''watchers''.

1984—Subsec. (b). Pub. L. 98–364, § 402(11)(A), substituted ''100 gross tons (except a fishing, fish processing, or fish tender vessel)'' for ''100 gross tons''.

Subsec. (c). Pub. L. 98–364, § 402(11)(B), substituted ''fishing, fish processing, fish tender,'' for ''fishing''.

Subsec. (d). Pub. L. 98–364, § 402(11)(C), substituted ''a fishing, fish tender, or whaling vessel, a fish processing vessel of not more than 5,000 gross tons'' for ''a fishing or whaling vessel''.

Subsec. (k). Pub. L. 98–557 substituted ''shall'' for ''may''.

Pub. L. 98–364, § 402(11)(D), added subsec. (k).

Subsec. (*l*). Pub. L. 98–557 substituted ''shall'' for ''may'' in provisions preceding par. (1).

Pub. L. 98–364, § 402(11)(D), added subsec. (*l*).

Subsec. (m). Pub. L. 98–364, § 402(11)(D), added subsec. (m).

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 Title 33, Navigation and Navigable Waters.

§ 8105. Fishing vessel exemption

Notwithstanding any other provision of law, neither the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, nor any amendment to such convention, shall apply to a fishing vessel, including a fishing vessel used as a fish tender vessel.

(Added Pub. L. 104–324, title XI, § 1146(a), Oct. 19, 1996, 110 Stat. 3992.)

PRIOR PROVISIONS

A prior section 8105, Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 550, authorized Secretary to prescribe regulations to carry out this part prior to repeal by Pub. L. 101–595, title VI, § 603(7)(A), Nov. 16, 1990, 104 Stat. 2993.

CHAPTER 83—MASTERS AND OFFICERS

Sec.
8301. Minimum number of licensed individuals.
8302. Staff department.
8303. Service under licenses issued without examination.
8304. Implementing the Officers' Competency Certificates Convention, 1936.

HISTORICAL AND REVISION NOTES

For certain vessels of the United States, chapter 83 prescribes the minimum number of licensed individuals (including masters), establishes the staff department consisting of medical and clerical personnel, restricts service under certain licenses issued without examination, and implements the Officers' Competency Certificates Convention of 1936.

§ 8301. Minimum number of licensed individuals

(a) Except as provided in chapter 89 of this title and except for a vessel operating only on rivers, harbors, lakes (except the Great Lakes), bays, sounds, bayous, and canals, a vessel subject to inspection under chapter 33 of this title shall engage a minimum of licensed individuals as follows:

(1) Each of those vessels propelled by machinery or carrying passengers shall have a licensed master.

(2) A vessel of at least 1,000 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title and propelled by machinery shall have 3 licensed mates, except—

(A) in the case of a vessel other than a mobile offshore drilling unit, if on a voyage of less than 400 miles from port of departure to port of final destination, the vessel shall have 2 licensed mates; and

(B) in the case of a mobile offshore drilling unit, the vessel shall have licensed individuals as provided by regulations prescribed by the Secretary under section 8101 of this title.

(3) A vessel of at least 200 gross tons but less than 1,000 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title and propelled by machinery shall have 2 licensed mates.

(4) A vessel of at least 100 gross tons but less than 200 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title and propelled by machinery shall have one licensed mate. However, if the vessel is on a voyage of more than 24 hours, it shall have 2 licensed mates.

(5) A freight vessel or a passenger vessel of at least 300 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title and propelled by machinery shall have a licensed engineer.

(b) An offshore supply vessel on a voyage of less than 600 miles shall have a licensed mate. However, if the vessel is on a voyage of at least 600 miles, the vessel shall have 2 licensed mates. An offshore supply vessel of more than 200 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title may not be operated without a licensed engineer.

(c) Subsection (a) of this section does not apply to a fishing or whaling vessel, a mobile offshore drilling unit when on location, or a yacht.

(d) The Secretary may—

(1) suspend any part of this chapter during a national emergency proclaimed by the President; and

(2) increase the number of licensed individuals on a vessel to which this chapter applies if, in the Secretary's judgment, the vessel is not sufficiently manned for safe operation.

(e) The Secretary may prescribe the minimum number of licensed individuals for an oil spill response vessel.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 550; Pub. L. 98–557, § 29(c), (d), Oct. 30, 1984, 98 Stat. 2873, 2874; Pub. L. 99–640, § 11(d), Nov. 10, 1986, 100 Stat. 3550; Pub. L. 100–448, § 7, Sept. 28, 1988, 102 Stat. 1842; Pub. L. 103–206, title III, § 322(b), Dec. 20, 1993, 107 Stat. 2428; Pub. L. 104–324, title VII, § 729, title XI, § 1104(d), Oct. 19, 1996, 110 Stat. 3940, 3967.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
8301	46:223 46:404–1(8)

Section 8301 prescribes the minimum number of licensed individuals on board certain vessels based on the vessel's size or propulsion, length of voyage by distance or time, or any combination of these factors.

Subsection (a) applies to certain merchant and passenger carrying vessels of the United States, each of which must have a licensed master regardless of the factors listed above. Subsection (b) applies to offshore supply vessels. Subsection (c) exempts fishing or whaling vessels or yachts from these requirements.

Subsection (d) permits the Secretary to suspend any part of this chapter during a declared national emergency or to increase the number of licensed individuals required by this chapter if required for safe operation of a vessel.

AMENDMENTS

1996—Subsec. (a)(2). Pub. L. 104–324, § 729(1), inserted ''as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' after ''1,000 gross tons''.

Subsec. (a)(3). Pub. L. 104–324, § 729(2), inserted ''as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' after ''1,000 gross tons''.

Subsec. (a)(4). Pub. L. 104–324, § 729(3), inserted ''as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' after ''200 gross tons''.

Subsec. (a)(5). Pub. L. 104–324, § 729(4), inserted ''as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' after ''300 gross tons''.

Subsec. (b). Pub. L. 104–324, § 729(5), inserted ''as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' after ''200 gross tons''.

Subsec. (e). Pub. L. 104–324, § 1104(d), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: ''A vessel used only to respond to a discharge of oil or a hazardous substance shall have—

''(1) two licensed mates when the vessel is engaged in an operation over 12 hours in duration;

''(2) one licensed mate when the vessel is engaged in an operation less than 12 hours in duration; and

''(3) if the vessel is more than 200 gross tons, a licensed engineer when the vessel is operating.''

1993—Subsec. (e). Pub. L. 103–206 added subsec. (e).

1988—Subsec. (a)(2). Pub. L. 100–448 amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''A vessel of at least 1,000 gross tons and propelled by machinery shall have 3 licensed mates. However, if the vessel is on a voyage of less than 400 miles from port of departure to port of final destination, it shall have 2 licensed mates.''

1986—Subsec. (c). Pub. L. 99–640 inserted '', a mobile offshore drilling unit when on location,''.

1984—Subsec. (a). Pub. L. 98–557, § 29(c), in provisions preceding par. (1) inserted exception for the Great Lakes and substituted provisions relating to inspection under chapter 33 of this title for provisions relating to applicability of part B of this subtitle.

Subsec. (a)(1). Pub. L. 98–557, § 29(d), inserted ''propelled by machinery or carrying passengers''.

§ 8302. Staff department

(a) This section applies to a vessel of the United States except—

(1) a fishing or whaling vessel or a yacht;

(2) a vessel operated only on bays, sounds, inland waters, and lakes (except the Great Lakes); and

(3) a vessel ferrying passengers and cars on the Great Lakes.

(b) The staff department on a vessel is a separate and independent department. It consists of individuals registered under section 7101 of this title, clerks, and individuals assigned to the senior registered medical doctor.

(c) The staff department is composed of a medical division and a purser's division. The officer in charge of each division is responsible only to the master. The senior registered medical doctor is in charge of the medical division. The senior registered purser is in charge of the purser's division.

(d) The officer in charge of the purser's division of the staff department on an oceangoing passenger vessel licensed to carry more than 100 passengers shall be a registered chief purser. When more than 3 persons are employed in the purser's division of that vessel, there also shall be at least one registered senior assistant purser and one registered junior assistant purser.

(e) A person may not employ an individual to serve in, and an individual may not serve in, a grade of staff officer on a vessel, when that staff officer is required by this section to be registered, if the individual does not have a certificate of registry as staff officer in that grade. A person (including an individual) violating this subsection is liable to the United States Government for a civil penalty of $100. However, if a registered staff officer is not available at the time of sailing, the vessel may sail with an unregistered staff officer or without a staff officer.

(f) A staff officer may not be included in a vessel's certificate of inspection.

(g) A registered staff officer serving under this section who is a member of the Navy Reserve may wear on the officer's uniform special distinguishing insignia prescribed by the Secretary of the Navy.

(h) The uniform stripes, decoration, or other insignia worn by a staff officer shall be of gold braid or woven gold or silver material. A crew-

member (except a staff officer) may not wear any uniform with a staff officer's identifying insignia.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 551; Pub. L. 99–36, § 1(a)(4), May 15, 1985, 99 Stat. 67; Pub. L. 109–163, div. A, title V, § 515(f)(3)(A), Jan. 6, 2006, 119 Stat. 3236.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
8302(a)–(d)	46:242 46:248
8302(e), (f)	46:246(a)
8302(g)	46:245(a)
8302(h)	46:245(b)

Section 8302 sets forth the organization and manning requirements of the staff department of a vessel. The staff department has medical and clerical responsibilities.

Subsection (a) applies this section to every United States vessel except a yacht, a fishing, whaling, or certain types of inland waterway vessel, and a ferry carrying passengers or cars on the Great Lakes. A ferry is a vessel that primarily carries passengers, cars, or trains from shore to shore as a means to connect existing points on a transportation route so that the same type of transportation mode may continue to be used upon arrival at either point. Vessels carrying cars as cargo would not be included in this type of vessel.

Subsection (b) establishes the staff department as a separate one consisting of registered individuals (pursers, medical doctors, and professional nurses), clerks, and medical assistants. Subsection (c) divides the department into a medical division and a purser's division and designates the individual in charge of each division. Subsection (d) prescribes particular requirements of the purser's division based on size of the vessel or number of individuals employed in the division.

Subsection (e) prohibits the employment or service of an individual who is not registered or of the grade as required under this section and prescribes a penalty for violation of the subsection. This penalty applies to both the employer and the individual employed. If a registered staff officer is unavailable at the time of departure for a voyage, the vessel may proceed on its voyage with either an unregistered staff officer or without a staff officer.

Subsection (f) prohibits including a staff officer on a vessel's certificate of inspection.

Subsections (g) and (h) prescribe the type and restrictions for the uniform accouterments of a staff officer.

AMENDMENTS

2006—Subsec. (g). Pub. L. 109–163 substituted ''Navy Reserve'' for ''Naval Reserve''.

1985—Subsec. (b). Pub. L. 99–36 inserted a comma after ''clerks''.

§ 8303. Service under licenses issued without examination

An individual issued a license without examination before October 29, 1941, to serve as master, mate, or engineer on a vessel not subject to inspection under part B of this subtitle, may not serve under authority of that license on a vessel that is subject to inspection under part B.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 552.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
8303	46:224a

Section 8303 prohibits an individual licensed without an examination on an uninspected vessel prior to October 29, 1941, from serving as a master, mate, or engineer on an inspected vessel.

§ 8304. Implementing the Officers' Competency Certificates Convention, 1936

(a) In this section, ''high seas'' means waters seaward of the Boundary Line.

(b) The Officers' Competency Certificates Convention, 1936 (International Labor Organization Draft Convention Numbered 53, on the minimum requirement of professional capacity for masters and officers on board merchant vessels), as ratified by the President on September 1, 1938, with understandings appended, and this section apply to a documented vessel operating on the high seas except—

(1) a public vessel;

(2) a wooden vessel of primitive build, such as a dhow or junk;

(3) a barge; and

(4) a vessel of less than 200 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title.

(c) A person may not engage or employ an individual to serve as, and an individual may not serve as, a master, mate, or engineer on a vessel to which this section applies, if the individual does not have a license issued under section 7101 of this title authorizing service in the capacity in which the individual is to be engaged or employed.

(d) A person (including an individual) violating this section is liable to the United States Government for a civil penalty of $100.

(e) A license issued to an individual to whom this section applies is a certificate of competency.

(f) A designated official may detain a vessel to which this section applies (by written order served on the owner, charterer, managing operator, agent, master, or individual in charge of the vessel) when there is reason to believe that the vessel is about to proceed from a port of the United States to the high seas in violation of this section or a provision of the convention described in subsection (b) of this section. The vessel may be detained until the vessel complies with this section. Clearance may not be granted to a vessel ordered detained under this section.

(g) A foreign vessel to which the convention described in subsection (b) of this section applies, on the navigable waters of the United States, is subject to detention under subsection (f) of this section, and to an examination that may be necessary to decide if there is compliance with the convention.

(h) The owner, charterer, managing operator, agent, master, or individual in charge of a vessel detained under subsection (f) or (g) of this section may appeal the order within 5 days as provided by regulation.

(i) An officer or employee of the Customs Service may be designated to enforce this section.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 552; Pub. L. 104–324, title VII, § 730, Oct. 19, 1996, 110 Stat. 3940.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
8304	46:224a 46:241

Section 8304 implements the Officers' Competency Certificates Convention, 1936, as ratified by the President on September 1, 1938, with understandings appended.

Subsection (a) defines ''high seas'' for this section. Subsection (b) implements the Convention, applies the Convention to United States vessels on the high seas, and exempts certain vessels.

Subsection (c) prohibits the employment or service of an individual as a master, mate, or engineer on a vessel under this section unless the individual has a license issued under section 7101 for the particular capacity in which the individual is employed.

Subsection (d) prescribes a civil penalty for violating this section.

Subsection (e) states that the license referred to in subsection (c) is a certificate of competency for purposes of the Convention.

Subsection (f) provides for the detention of a vessel in violation of this section or the Convention.

Subsection (g) applies the detention provision to a foreign vessel on the navigable waters of the United States and subjects it to an examination for compliance with the Convention.

Subsection (h) provides for an appeal of the detention order.

Subsection (i) permits the designation of a Customs Service officer or employee to enforce this section.

REFERENCES IN TEXT

The Officers' Competency Certificates Convention, 1936, referred to in subsec. (b), is set out in 54 Stat. Pt. 2, p. 1683.

AMENDMENTS

1996—Subsec. (b)(4). Pub. L. 104–324 inserted ''as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' after ''200 gross tons''.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 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.

CHAPTER 85—PILOTS

Sec.
8501. State regulation of pilots.
8502. Federal pilots required.
8503. Federal pilots authorized.

HISTORICAL AND REVISION NOTES

Chapter 85 provides for State pilotage to be regulated by the States and only in conformity with the laws of the States. It clearly spells out the preeminence of the State's role in regulating pilots for vessels operating on the bays, rivers, harbors, and ports of the United States. However, those vessels that are required to have a Federally licensed pilot, those that operate on waters outside the territorial sea of the United States, and those that operate on waters of the Great Lakes are not subject to State pilotage laws or requirements. In essence this chapter, with minor changes, confirms the State and Federal relationship with respect to pilotage that has evolved since the founding of the Nation.

This chapter permits the continuation of Federal pilotage requirements for vessels that are not required to obtain compulsory State pilotage. It confirms the practice of allowing anyone with a Federal pilotage endorsement for the waters in which the vessel is operating to be in control of a vessel when engaged in the coastwide trade. It also confirms the practice of using Federal pilots that are often organized into groups or working organizations who offer their expertise and services to vessels that are not required to obtain compulsory State pilotage.

AMENDMENTS

1984—Pub. L. 98–557, § 29(f)(3)(B), Oct. 30, 1984, 98 Stat. 2874, added item 8503.

§ 8501. State regulation of pilots

(a) Except as otherwise provided in this subtitle, pilots in the bays, rivers, harbors, and ports of the United States shall be regulated only in conformity with the laws of the States.

(b) The master of a vessel entering or leaving a port on waters that are a boundary between 2 States, and that is required to have a pilot under this section, may employ a pilot licensed or authorized by the laws of either of the 2 States.

(c) A State may not adopt a regulation or provision that discriminates in the rate of pilotage or half-pilotage between vessels sailing between the ports of one State and vessels sailing between the ports of different States, or against vessels because of their means of propulsion, or against public vessels of the United States.

(d) A State may not adopt a regulation or provision that requires a coastwise vessel to take a pilot licensed or authorized by the laws of a State if the vessel—

(1) is propelled by machinery and subject to inspection under part B of this subtitle; or

(2) is subject to inspection under chapter 37 of this title.

(e) Any regulation or provision violating this section is void.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 553; Pub. L. 98–557, § 29(e), Oct. 30, 1984, 98 Stat. 2874.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
8501(a)	46:211
8501(b)	46:212
8501(c), (e)	46:213
8501(d)	46:215

Section 8501 establishes the general proposition that the States regulate pilots in the bays, rivers, harbors, and ports of the United States, unless otherwise specifically provided by law.

Subsection (a) states this general proposition and uses the word ''only'' for emphasis on this point. Further, except as specifically provided in law, the Committee intends that this chapter not be construed to annul or affect any regulation established by the laws of a State requiring a vessel entering or leaving a port in that State to employ a pilot licensed or authorized by the laws of that State. In at least two places in current law, this general proposition is stated in both a positive and negative manner. The Committee intends to consolidate those separate statements into one provision to avoid ambiguity and redundancy.

Subsections (b) and (c) contain provisions regarding pilotage in waters between two States.

Subsection (d) prohibits a State from requiring a State licensed pilot on certain coastwise vessels.

Subsection (e) voids any regulation or provision violating this section.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–557 substituted ''subtitle'' for ''part''.

§ 8502. Federal pilots required

(a) Except as provided in subsections (g) and (i) of this section, a coastwise seagoing vessel shall be under the direction and control of a pilot licensed under section 7101 of this title if the vessel is—

(1) not sailing on register;

(2) underway;

(3) not beyond 3 nautical miles from the baselines from which the territorial sea of the United States is measured; and

(4)(A) propelled by machinery and subject to inspection under part B of this subtitle; or

(B) subject to inspection under chapter 37 of this title.

(b) The fees charged for pilotage by pilots required under this section may not be more than the customary or legally established rates in the States in which the pilotage is performed.

(c) A State or political subdivision of a State may not impose on a pilot licensed under this subtitle an obligation to procure a State or other license, or adopt any other regulation that will impede the pilot in the performance of the pilot's duties under the laws of the United States.

(d) A State or political subdivision of a State may not levy pilot charges on a vessel lawfully piloted by a pilot required under this section.

(e) The owner, charterer, managing operator, agent, master, or individual in charge of a vessel operated in violation of this section or a regulation prescribed under this section is liable to the United States Government for a civil penalty of $10,000. The vessel also is liable in rem for the penalty.

(f) An individual serving as a pilot without having a license required by this section or a regulation prescribed under this section is liable to the Government for a civil penalty of $10,000.

(g)(1) The Secretary shall designate by regulation the areas of the approaches to and waters of Prince William Sound, Alaska, if any, on which a vessel subject to this section is not required to be under the direction and control of a pilot licensed under section 7101 of this title.

(2) In any area of Prince William Sound, Alaska, where a vessel subject to this section is required to be under the direction and control of a pilot licensed under section 7101 of this title, the pilot may not be a member of the crew of that vessel and shall be a pilot licensed by the State of Alaska who is operating under a Federal license, when the vessel is navigating waters between 60°49′ North latitude and the Port of Valdez, Alaska.

(h) The Secretary shall designate waters on which tankers over 1,600 gross tons subject to this section shall have on the bridge a master or mate licensed to direct and control the vessel under section 7101(c)(1) of this title who is separate and distinct from the pilot required under subsection (a) of this section.

(i)(1) Except as provided in paragraph (2), a dredge to which this section would otherwise apply is exempt from the requirements of this section.

(2) If the Secretary determines, after notice and comment, that the exemption under paragraph (1) creates a hazard to navigational safety in a specified area, the Secretary may require that a dredge exempted by paragraph (1) which is operating in that area shall comply with this section.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 553; Pub. L. 98–557, § 29(f)(1), (2), Oct. 30, 1984, 98 Stat. 2874; Pub. L. 99–307, § 1(13), May 19, 1986, 100 Stat. 446; Pub. L. 101–380, title IV, §§ 4116(a), (b), 4302(g), Aug. 18, 1990, 104 Stat. 522, 539; Pub. L. 101–595, title III, § 307, Nov. 16, 1990, 104 Stat. 2985; Pub. L. 105–383, title III, § 301(b)(7), Nov. 13, 1998, 112 Stat. 3417.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
8502	46:215 46:364 46:391a 46:497

Section 8502 sets forth the provisions and requirements for pilots licensed under section 7101. It is an exception provided by law envisioned under section 8501(a).

Subsection (a) applies the requirement for a Federal pilot to coastwise seagoing vessels if propelled by machinery and inspected under part B or if inspected under chapter 37, including a tank barge. The section has been carefully worded to clearly set out those vessels that are required at times to have a Federal pilot.

Subsection (b) prohibits Federal pilot fees from being higher than those required for State pilots. Subsections (c) and (d) prohibit States from imposing impediments to the proper performance of, or levying charges related to, Federal pilotage.

Subsections (e) and (f) prescribe civil penalties for violation of this section.

AMENDMENTS

1998—Subsec. (a)(3). Pub. L. 105–383 substituted ''not beyond 3 nautical miles from the baselines from which the territorial sea of the United States is measured'' for ''not on the high seas''.

1990—Subsec. (a). Pub. L. 101–595, § 307(1), substituted ''subsections (g) and (i)'' for ''subsection (g)'' in introductory provisions.

Subsecs. (e), (f). Pub. L. 101–380, § 4302(g), substituted ''$10,000'' for ''$500''.

Subsec. (g). Pub. L. 101–380, § 4116(a), amended subsec. (g) generally. Prior to amendment, subsec. (g) read as follows: ''The Secretary shall designate by regulation the areas of the approaches to and waters of Prince William Sound, Alaska, on which a vessel subject to this section is not required to be under the direction and control of a pilot licensed under section 7101 of this title.''

Subsec. (h). Pub. L. 101–380, § 4116(b), added subsec. (h).

Subsec. (i). Pub. L. 101–595, § 307(2), added subsec. (i).

1986—Subsec. (a)(4)(A). Pub. L. 99–307 substituted ''part'' for ''Part''.

1984—Subsec. (a). Pub. L. 98–557, § 29(f)(1), amended subsec. (a) generally, which prior to amendment read as follows: ''A coastwise seagoing vessel, when not sailing on register and when underway (except on the high seas), shall be under the direction and control of a pilot licensed under section 7101 of this title if the vessel is—

''(1) propelled by machinery and subject to inspection under part B of this subtitle; or

''(2) subject to inspection under chapter 37 of this title.''

Subsec. (g). Pub. L. 98–557, § 29(f)(2), added subsec. (g).

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 Title 33, Navigation and Navigable Waters.

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.

§ 8503. Federal pilots authorized

(a) The Secretary may require a pilot licensed under section 7101 of this title on a self-propelled vessel when a pilot is not required by State law and the vessel is—

(1) engaged in foreign commerce; and

(2) operating—

(A) in internal waters of the United States; or

(B) within 3 nautical miles from the baselines from which the territorial sea of the United States is measured.

(b) A requirement prescribed under subsection (a) of this section is terminated when the State having jurisdiction over the area involved—

(1) establishes a requirement for a State licensed pilot; and

(2) notifies the Secretary of that fact.

(c) For the Saint Lawrence Seaway, the Secretary may not delegate the authority under this section to an agency except the Saint Lawrence Seaway Development Corporation.

(d) A person violating this section or a regulation prescribed under this section is liable to the United States Government for a civil penalty of not more than $25,000. Each day of a continuing violation is a separate violation. The vessel also is liable in rem for the penalty.

(e) A person that knowingly violates this section or a regulation prescribed under this section commits a class D felony.

(Added Pub. L. 98–557, § 29(f)(3)(A), Oct. 30, 1984, 98 Stat. 2874; amended Pub. L. 101–380, title IV, § 4302(h), Aug. 18, 1990, 104 Stat. 539; Pub. L. 105–383, title III, § 301(b)(8), Nov. 13, 1998, 112 Stat. 3417.)

AMENDMENTS

1998—Subsec. (a)(2). Pub. L. 105–383 added par. (2) and struck out former par. (2) which read as follows: ''operating on the navigable waters of the United States.''

1990—Subsec. (e). Pub. L. 101–380 substituted ''commits a class D felony'' for ''shall be fined not more than $50,000, imprisoned for not more than five 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 Title 33, Navigation and Navigable Waters.

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.

CHAPTER 87—UNLICENSED PERSONNEL

Sec.
8701. Merchant mariners' documents required.
8702. Certain crew requirements.
8703. Tankermen on tank vessels.
8704. Alien deemed to be employed in the United States.

HISTORICAL AND REVISION NOTES

Chapter 87 prescribes certain requirements for unlicensed personnel on vessels of at least 100 gross tons and on certain tank vessels.

AMENDMENTS

1988—Pub. L. 100–239, § 5(f)(2), Jan. 11, 1988, 101 Stat. 1781, added item 8704.

§ 8701. Merchant mariners' documents required

(a) This section applies to a merchant vessel of at least 100 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title except—

(1) a vessel operating only on rivers and lakes (except the Great Lakes);

(2) a barge (except a seagoing barge or a barge to which chapter 37 of this title applies);

(3) a fishing, fish tender, or whaling vessel or a yacht;

(4) a sailing school vessel with respect to sailing school instructors and sailing school students;

(5) an oceanographic research vessel with respect to scientific personnel;

(6) a fish processing vessel entered into service before January 1, 1988, and not more than 1,600 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title or entered into service after December 31, 1987, and having not more than 16 individuals on board primarily employed in the preparation of fish or fish products;

(7) a fish processing vessel (except a vessel to which clause (6) of this subsection applies) with respect to individuals on board primarily employed in the preparation of fish or fish products or in a support position not related to navigation;

(8) a mobile offshore drilling unit with respect to individuals, other than crew members required by the certificate of inspection, engaged on board the unit for the sole purpose of carrying out the industrial business or function of the unit;

(9) a passenger vessel not engaged in a foreign voyage with respect to individuals on board employed for a period of not more than 30 service days within a 12 month period as entertainment personnel, with no duties, including emergency duties, related to the navigation of the vessel or the safety of the vessel, its crew, cargo or passengers; and

(10) the Secretary may prescribe the individuals required to hold a merchant mariner's document serving onboard an oil spill response vessel.

(b) A person may not engage or employ an individual, and an individual may not serve, on board a vessel to which this section applies if the individual does not have a merchant mari-

ner's document issued to the individual under section 7302 of this title. Except for an individual required to be licensed or registered under this part, the document must authorize service in the capacity for which the holder of the document is engaged or employed.

(c) On a vessel to which section 10306 or 10503 of this title does not apply, an individual required by this section to hold a merchant mariner's document must exhibit it to the master of the vessel before the individual may be employed.

(d) A person (including an individual) violating this section is liable to the United States Government for a civil penalty of $500.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 554; Pub. L. 98–364, title IV, § 402(12)(A), July 17, 1984, 98 Stat. 449; Pub. L. 99–640, § 11(c), Nov. 10, 1986, 100 Stat. 3550; Pub. L. 104–324, title VII, § 731, title XI, § 1104(e), Oct. 19, 1996, 110 Stat. 3940, 3967; Pub. L. 107–295, title III, § 324(b), Nov. 25, 2002, 116 Stat. 2104.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
8701	46:444 46:643 46:643a 46:672

Section 8701 requires an individual to have a merchant mariner's document before that individual can be engaged or employed on certain vessels.

Subsection (a) makes this documentation requirement applicable to United States merchant vessels of at least 100 gross tons except for certain inland vessels and barges, fishing or whaling vessels, yachts, and, in certain circumstances, to sailing school vessels or oceanographic research vessels.

Subsection (b) prohibits the engagement or employment of an individual required to have a document prescribed under section 7302 if the individual does not have one. Except for licensed or registered individuals, the document must specify the capacity in which the individual is engaged or employed.

Subsection (c) requires an individual to exhibit the required document to the master, if not otherwise required to do so in some other manner before that individual may be employed.

Subsection (d) prescribes the penalty for violation of this section.

AMENDMENTS

2002—Subsec. (a)(9), (10). Pub. L. 107–295 added par. (9) and redesignated former par. (9) as (10).

1996—Subsec. (a). Pub. L. 104–324, § 731(1), inserted "as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title" after "100 gross tons" in introductory provisions.

Subsec. (a)(6). Pub. L. 104–324, § 731(2), inserted "as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title" after "1,600 gross tons".

Subsec. (a)(9). Pub. L. 104–324, § 1104(e), added par. (9).

1986—Subsec. (a)(8). Pub. L. 99–640 added par. (8).

1984—Subsec. (a)(3). Pub. L. 98–364, § 402(12)(A)(i), substituted "fishing, fish tender, or whaling" for "fishing or whaling".

Subsec. (a)(6), (7). Pub. L. 98–364, § 402(12)(A)(ii)– (iv), added pars. (6) and (7).

§ 8702. Certain crew requirements

(a) This section applies to a vessel of at least 100 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title except—

(1) a vessel operating only on rivers and lakes (except the Great Lakes);

(2) a barge (except a seagoing barge or a barge to which chapter 37 of this title applies);

(3) a fishing, fish tender, or whaling vessel (except a fish tender vessel engaged in the Aleutian trade) or a yacht;

(4) a sailing school vessel with respect to sailing school instructors and sailing school students;

(5) an oceanographic research vessel with respect to scientific personnel;

(6) a fish processing vessel entered into service before January 1, 1988, and not more than 1,600 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title or entered into service after December 31, 1987, and having not more than 16 individuals on board primarily employed in the preparation of fish or fish products; and

(7) a fish processing vessel (except a vessel to which clause (6) of this subsection applies) with respect to individuals on board primarily employed in the preparation of fish or fish products or in a support position not related to navigation.

(b) A vessel may operate only if at least—

(1) 75 percent of the crew in each department on board is able to understand any order spoken by the officers, and

(2) 65 percent of the deck crew (excluding licensed individuals) have merchant mariners' documents endorsed for a rating of at least able seaman, except that this percentage may be reduced to 50 percent—

(i) on a vessel permitted under section 8104 of this title to maintain a 2-watch system; or

(ii) on a fish tender vessel engaged in the Aleutian trade.

(c) An able seaman is not required on a towing vessel operating on bays and sounds connected directly with the seas.

(d) An individual having a rating of less than able seaman may not be permitted at the wheel in ports, harbors, and other waters subject to congested vessel traffic, or under conditions of reduced visibility, adverse weather, or other hazardous circumstances.

(e) The owner, charterer, managing operator, agent, master, or individual in charge of a vessel operated in violation of this section or a regulation prescribed under this section is liable to the United States Government for a civil penalty of $10,000.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 554; Pub. L. 98–364, title IV, § 402(12)(B), July 17, 1984, 98 Stat. 449; Pub. L. 100–239, § 5(e), Jan. 11, 1988, 101 Stat. 1781; Pub. L. 101–380, title IV, § 4302(i), Aug. 18, 1990, 104 Stat. 539; Pub. L. 101–595, title VI, § 602(e)(2), Nov. 16, 1990, 104 Stat. 2992; Pub. L. 104–324, title VII, § 732, Oct. 19, 1996, 110 Stat. 3941.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
8702	46:643 46:672

Section 8702 specifies certain crew requirements.

Subsection (a) applies this section to the same vessels to which section 8701 applies.

Subsection (b) requires that 75 percent of the crew in each department on board a vessel understand any order spoken by the officers and that 65 percent of the deck crew be at least able seamen, except for the licensed officers. For 2-watch system vessels under section 8104, the 65-percent deck crew requirement may be reduced to 50 percent.

Subsection (c) exempts certain inland towing vessels from the able seaman requirement.

Subsection (d) prohibits anyone having a rating of less than able seamen from serving as a helmsman in congested vessel traffic or under hazardous conditions.

Subsection (e) prescribes the penalty for violation of this section.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–324, § 732(1), inserted ''as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' after ''100 gross tons'' in introductory provisions.

Subsec. (a)(6). Pub. L. 104–324, § 732(2), inserted ''as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' after ''1,600 gross tons''.

1990—Subsec. (a)(3). Pub. L. 101–595, § 602(e)(2)(A), substituted ''vessel (except a fish tender vessel engaged in the Aleutian trade)'' for ''vessel''.

Subsec. (b)(2). Pub. L. 101–595, § 602(e)(2)(B), inserted provisions authorizing reduction to 50 percent of the deck crew in the case of a fish tender vessel engaged in the Aleutian trade.

Subsec. (e). Pub. L. 101–380 substituted ''$10,000'' for ''$500''.

1988—Subsec. (b). Pub. L. 100–239 substituted ''operate'' for ''depart from a port of the United States''.

1984—Subsec. (a)(3). Pub. L. 98–364, § 402(12)(B)(i), substituted ''fishing, fish tender, or whaling'' for ''fishing or whaling''.

Subsec. (a)(6), (7). Pub. L. 98–364, § 402(12)(B)(ii)– (iv), added pars. (6) and (7).

EFFECTIVE DATE OF 1990 AMENDMENTS

Amendment by section 602(e)(2)(A) of Pub. L. 101–595 effective Nov. 16, 1990, and requirements imposed by subsec. (b)(2), as amended by section 602(e)(2)(B) of Pub. L. 101–595, effective 1 year after Nov. 16, 1990, see section 602(f) of Pub. L. 101–595, set out as a note under section 4502 of this title.

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 Title 33, Navigation and Navigable Waters.

EXEMPTION OF CERTAIN FISH PROCESSING VESSELS

Certain fish processing vessels exempt from crew requirements of subsec. (b) of this section, see section 403(b) of Pub. L. 98–364, as amended, set out as a note under section 3302 of this title.

§ 8703. Tankermen on tank vessels

(a) A vessel of the United States to which chapter 37 of this title applies, that has on board oil or hazardous material in bulk as cargo or cargo residue, shall have a specified number of the crew certified as tankermen as required by the Secretary. This requirement shall be noted on the certificate of inspection issued to the vessel.

[(b) Repealed. Pub. L. 98–557, § 18, Oct. 30, 1984, 98 Stat. 2869.]

(c) A vessel to which section 3702(b) of this title applies shall have on board as a crewmember in charge of the transfer operation an individual certified as a tankerman (qualified for the grade of fuel transferred), unless a master, mate, pilot, engineer, or operator licensed under section 7101 of this title is present in charge of the transfer. If the vessel does not have that individual on board, chapter 37 of this title applies to the vessel.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 555; Pub. L. 98–557, § 18, Oct. 30, 1984, 98 Stat. 2869.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
8703(a)	46:391a(10)(A)
8703(b)	46:391a(10)(C)
8703(c)	46:391a(4)(B)

Section 8703 sets requirements for tankermen on board vessels carrying oil or hazardous material in bulk as cargo or cargo residue.

Subsection (a) requires a specified number of the crew certified as tankermen on board these vessels and a notation be made to that effect on the vessel's certificate of inspection. A tankerman is an individual who is experienced and trained in the procedures for transferring oil or hazardous material to or from a vessel and is responsible for carrying out these duties and responsibilities.

Subsection (b) authorizes the Secretary to regulate tankermen and restrict the types of oil or hazardous materials on the basis of safety to the vessel and the marine environment.

Subsection (c) requires a tankerman or licensed master, pilot, engineer, or operator to be present and in charge of a transfer of oil or hazardous material on certain vessels in the service of oil exploitation. If this individual is not on board, then the tank vessel requirements of chapter 37 apply to the vessel.

AMENDMENTS

1984—Subsec. (b). Pub. L. 98–557 repealed subsec. (b) which contained duplicate tankerman manning requirements. See section 7317(a) of this title.

§ 8704. Alien deemed to be employed in the United States

An alien is deemed to be employed in the United States for purposes of section 274A of the Immigration and Nationality Act (8 U.S.C. 1324a) if the alien is an unlicensed individual employed on a fishing, fish processing, or fish tender vessel that—

(1) is a vessel of the United States engaged in the fisheries in the navigable waters of the United States or the exclusive economic zone; and

(2) is not engaged in fishing exclusively for highly migratory species (as that term is defined in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802).

(Added Pub. L. 100–239, § 5(f)(1), Jan. 11, 1988, 101 Stat. 1781; amended Pub. L. 104–208, div. A, title I, § 101(a) [title II, § 211(b)], Sept. 30, 1996, 110 Stat. 3009, 3009–41.)

AMENDMENTS

1996—Par. (2). Pub. L. 104–208 substituted ''Magnuson-Stevens Fishery'' for ''Magnuson Fishery''.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 101(a) [title II, § 211(b)] of div. A of Pub. L. 104–208 provided that the amendment made by that section is effective 15 days after Oct. 11, 1996.

CONSTRUCTION

Section 5(f)(3) of Pub. L. 100–239 provided that: ''With respect to an alien who is deemed to be employed in the United States under section 8704 of title 46, United States Code (as amended by this subsection), the term 'date of the enactment of this section' [translated as 'November 6, 1986'] as used in section 274A(i) of the Immigration and Nationality Act [former 8 U.S.C. 1324a(i)] means the date 180 days after the enactment of this section [Jan. 11, 1988].''

CHAPTER 89—SMALL VESSEL MANNING

Sec.
8901. Freight vessels.
8902. Small passenger vessels.
8903. Self-propelled, uninspected passenger vessels.
8904. Towing vessels.
8905. Exemptions.
8906. Penalty.

HISTORICAL AND REVISION NOTES

Chapter 89 provides for the manning of freight vessels, small passenger vessels, uninspected passenger vessels, and towing vessels. It permits a licensed operator to be in charge of a vessel in lieu of a licensed master or pilot. It also sets forth exemption and civil penalties.

AMENDMENTS

1986—Pub. L. 99–307, § 1(14)(A), May 19, 1986, 100 Stat. 446, substituted ''Self-propelled, uninspected'' for ''Uninspected'' in item 8903.

§ 8901. Freight vessels

A freight vessel of less than 100 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title shall be operated by an individual licensed by the Secretary to operate that type of vessel in the particular geographic area, under prescribed regulations.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 555; Pub. L. 104–324, title VII, § 733, Oct. 19, 1996, 110 Stat. 3941.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
8901	46:390b

Section 8901 requires that a freight vessel of less than 100 gross tons be operated by a licensed individual for that type vessel and for a particular geographic area.

AMENDMENTS

1996—Pub. L. 104–324 inserted ''as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' after ''100 gross tons''.

§ 8902. Small passenger vessels

A small passenger vessel shall be operated by an individual licensed by the Secretary to operate that type of vessel in the particular geographic area, under prescribed regulations.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 555.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
8902	46:390b

Section 8902 requires that a small passenger vessel of less than 100 gross tons be operated by a licensed individual for that type vessel and for a particular geographic area.

§ 8903. Self-propelled, uninspected passenger vessels

A self-propelled, uninspected passenger vessel shall be operated by an individual licensed by the Secretary to operate that type of vessel, under prescribed regulations.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 555; Pub. L. 99–307, § 1(14)(B), (C), May 19, 1986, 100 Stat. 446.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
8903	46:1461(e), (f)

Section 8903 requires that an uninspected passenger vessel be operated by a licensed individual for that type of vessel.

AMENDMENTS

1986—Pub. L. 99–307 substituted ''Self-propelled, uninspected'' for ''Uninspected'' in section catchline and ''A self-propelled,'' for ''An'' in text.

§ 8904. Towing vessels

(a) A towing vessel that is at least 26 feet in length measured from end to end over the deck (excluding sheer), shall be operated by an individual licensed by the Secretary to operate that type of vessel in the particular geographic area, under prescribed regulations.

(b) A vessel that tows a disabled vessel for consideration shall be operated by an individual licensed by the Secretary to operate that type of vessel in the particular geographic area, under prescribed regulations.

(c) The Secretary may prescribe by regulation requirements for maximum hours of service (including recording and recordkeeping of that service) of individuals engaged on a towing vessel that is at least 26 feet in length measured from end to end over the deck (excluding the sheer).

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 555; Pub. L. 99–640, § 12(a), Nov. 10, 1986, 100 Stat. 3550; Pub. L. 108–293, title IV, § 409(a), Aug. 9, 2004, 118 Stat. 1044.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
8904	46:405(b)(2)

Section 8904 requires that a 26-foot or larger towing vessel be operated by a licensed individual for that type of vessel and for a particular geographic area.

AMENDMENTS

2004—Subsec. (c). Pub. L. 108–293 added subsec. (c).
1986—Pub. L. 99–640 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1986 AMENDMENT

Section 12(b) of Pub. L. 99–640 provided that: ''The amendments made by subsection (a) of this section

[amending this section] shall take effect on January 1, 1988.''

DEMONSTRATION PROJECT

Pub. L. 108–293, title IV, § 409(b), Aug. 9, 2004, 118 Stat. 1045, provided that: ''Prior to prescribing regulations under this section [amending this section] the Secretary shall conduct and report to the Congress on the results of a demonstration project involving the implementation of Crew Endurance Management Systems on towing vessels. The report shall include a description of the public and private sector resources needed to enable implementation of Crew Endurance Management Systems on all United States-flag towing vessels.''

§ 8905. Exemptions

(a) Section 8903 of this title applies to a recreational vessel operated in dealer demonstrations only if the Secretary decides that the application of section 8903 is necessary for recreational vessel safety under section 4302(d) of this title.

(b) Section 8904 of this title does not apply to a vessel of less than 200 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title engaged in the offshore mineral and oil industry if the vessel has offshore mineral and oil industry sites or equipment as its ultimate destination or place of departure.

(c) Section 8904 of this title does not apply to an oil spill response vessel while engaged in oil spill response or training activities.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 556; Pub. L. 104–324, title VII, § 734, title XI, § 1104(f), Oct. 19, 1996, 110 Stat. 3941, 3967.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
8905(a)	46:1461(f)
8905(b)	46:405(b)(3)

Section 8905 provides for certain exemptions from the requirements of this chapter.

Subsection (a) exempts dealer demonstration recreational vessels from the licensed operator requirement in section 8903 unless the Secretary decides that safety considerations require the application of that section.

Subsection (b) exempts an offshore supply vessel of less than 200 gross tons from the licensed operator requirement under section 8904 when used in the offshore mineral and oil industry.

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–324, § 734, inserted ''as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' after ''200 gross tons''.

Subsec. (c). Pub. L. 104–324, § 1104(f), added subsec. (c).

§ 8906. Penalty

An owner, charterer, managing operator, agent, master, or individual in charge of a vessel operated in violation of this chapter or a regulation prescribed under this chapter is liable to the United States Government for a civil penalty of not more than $25,000. The vessel also is liable in rem for the penalty.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 556; Pub. L. 104–324, title III, § 306(b), Oct. 19, 1996, 110 Stat. 3918.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
8906	46:390d

Section 8906 prescribes the penalties for violations of this chapter.

AMENDMENTS

1996—Pub. L. 104–324 substituted ''not more than $25,000'' for ''$1,000''.

CHAPTER 91—TANK VESSEL MANNING STANDARDS

Sec.
9101. Standards for foreign tank vessels.
9102. Standards for tank vessels of the United States.

HISTORICAL AND REVISION NOTES

Chapter 91 prescribes manning standards for certain foreign and United States tank vessels carrying oil or hazardous materials.

§ 9101. Standards for foreign tank vessels

(a)(1) The Secretary shall evaluate the manning, training, qualification, and watchkeeping standards of a foreign country that issues documentation for any vessel to which chapter 37 of this title applies—

(A) on a periodic basis; and

(B) when the vessel is involved in a marine casualty required to be reported under section 6101(a)(4) or (5) of this title.

(2) After each evaluation made under paragraph (1) of this subsection, the Secretary shall determine whether—

(A) the foreign country has standards for licensing and certification of seamen that are at least equivalent to United States law or international standards accepted by the United States; and

(B) those standards are being enforced.

(3) If the Secretary determines under this subsection that a country has failed to maintain or enforce standards at least equivalent to United States law or international standards accepted by the United States, the Secretary shall prohibit vessels issued documentation by that country from entering the United States until the Secretary determines those standards have been established and are being enforced.

(4) The Secretary may allow provisional entry of a vessel prohibited from entering the United States under paragraph (3) of this subsection if—

(A) the owner or operator of the vessel establishes, to the satisfaction of the Secretary, that the vessel is not unsafe or a threat to the marine environment; or

(B) the entry is necessary for the safety of the vessel or individuals on the vessel.

(b) A foreign vessel to which chapter 37 of this title applies that has on board oil or hazardous material in bulk as cargo or cargo residue shall have a specified number of personnel certified as tankerman or equivalent, as required by the Secretary, when the vessel transfers oil or hazardous material in a port or place subject to the jurisdiction of the United States. The requirement of this subsection shall be noted in appli-

cable terminal operating procedures. A transfer operation may take place only if the crewmember in charge is capable of clearly understanding instructions in English.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 556; Pub. L. 101–380, title IV, § 4106(a), Aug. 18, 1990, 104 Stat. 513.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
9101(a)	46:391a(11)
9101(b)	46:391a(10)(B)

Section 9101 requires monitoring of manning standards for foreign tank vessels operating on the navigable waters of the United States and transferring oil or hazardous material in the United States.

Subsection (a) requires the Secretary of Transportation to evaluate the manning, training, qualification, and watchkeeping standards of foreign countries whose tank vessels operate on United States waters, or use transfer facilities, and to decide if the standards are equivalent or more stringent than United States standards.

Subsection (b) authorizes the Secretary to specify the number of tankermen required on a foreign tank vessel and to have certified tankermen who can understand English when transferring oil or hazardous material in the United States. This requirement is to be made part of the terminal operating procedures.

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–380 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''The Secretary shall—

''(1) periodically evaluate the manning, training, qualification, and watchkeeping standards prescribed by the certificating country of a foreign vessel to which chapter 37 of this title applies, that operates on the navigable waters of the United States and transfers oil or hazardous material in a port or place under the jurisdiction of the United States; and

''(2) after each evaluation made under clause (1) of this subsection, decide whether the foreign country, whose system for licensing and certification of seamen was evaluated, has standards that are equivalent to or more stringent than United States standards or international standards accepted by the United States.''

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 Title 33, Navigation and Navigable Waters.

§ 9102. Standards for tank vessels of the United States

(a) The Secretary shall prescribe standards for the manning of each vessel of the United States to which chapter 37 of this title applies, related to the duties, qualifications, and training of the officers and crew of the vessel, including standards related to—

(1) instruction in vessel and cargo handling and vessel navigation under normal operating conditions in coastal and confined waters and on the high seas;

(2) instruction in vessel and cargo handling and vessel navigation in emergency situations and under marine casualty or potential casualty conditions;

(3) qualifications for licenses by specific type and size of vessels;

(4) qualifications for licenses by use of simulators for the practice or demonstration of marine-oriented skills;

(5) minimum health and physical fitness criteria for various grades of licenses and certificates;

(6) periodic retraining and special training for upgrading positions, changing vessel type or size, or assuming new responsibilities;

(7) decisions about licenses and certificates, conditions of licensing or certification, and periods of licensing or certification by reference to experience, amount of training completed, and regular performance testing; and

(8) instruction in vessel maintenance functions.

(b) The Secretary shall waive the application of criteria required by subsection (a)(5) of this section for an individual having a license or certificate (including a renewal of the license or certificate) in effect on October 17, 1978. When the waiver is granted, the Secretary may prescribe conditions for the license or certificate and its renewal, as the Secretary decides are reasonable and necessary for the safety of a vessel on which the individual may be employed.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 556; Pub. L. 101–380, title IV, § 4114(d), Aug. 18, 1990, 104 Stat. 517.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
9102	46:391a(9)

Section 9102 prescribes manning standards for United States tank vessels.

Subsection (a) requires the Secretary of Transportation to prescribe certain standards for the duties, qualifications, and training of the officers and crew of United States tank vessels.

Subsection (b) provides for a waiver of any health and physical fitness criteria prescribed under subsection (a).

AMENDMENTS

1990—Par. (8). Pub. L. 101–380 added par. (8).

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 Title 33, Navigation and Navigable Waters.

CHAPTER 93—GREAT LAKES PILOTAGE

Sec.
9301. Definitions.
9302. Great Lakes pilots required.
9303. United States registered pilot service.
9304. Pilotage pools.
9305. Agreements with Canada.
9306. State regulation prohibited.
9307. Great Lakes Pilotage Advisory Committee.
9308. Penalties.

HISTORICAL AND REVISION NOTES

Chapter 93 contains the pilotage requirements for United States vessels sailing under register and foreign flag vessels operating on the Great Lakes, qualifications for a registered pilot for the Great Lakes, authority for agreements with Canada, prohibition of State regulation, establishment of an advisory committee, and imposition of civil penalties.

§ 9301. Definitions

In this chapter—

(1) ''Canadian registered pilot'' means an individual (except a regular crewmember of a vessel) who is registered by Canada on the same basis as an individual registered under section 9303 of this title.

(2) ''Great Lakes'' means Lakes Superior, Michigan, Huron, Erie, and Ontario, their connecting and tributary waters, the Saint Lawrence River as far east as Saint Regis, and adjacent port areas.

(3) ''United States registered pilot'' means an individual (except a regular crewmember of a vessel) who is registered under section 9303 of this title.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 557.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
9301(1)	46:216(d)
9301(2)	46:216(a)
9301(3)	46:216(c)

Section 9301 contains definitions which pertain to this chapter only.

Clause (1) defines ''Canadian registered pilot'' as an individual registered as a pilot in Canada on the same basis as the United States.

Clause (2) defines ''Great Lakes'' as the five lakes plus their connecting and tributary waters, a certain part of the Saint Lawrence River, and adjacent ports.

Clause (3) defines ''United States registered pilot'' as an individual registered under regulations for competency under section 9303.

§ 9302. Great Lakes pilots required

(a)(1) Except as provided in subsections (d), (e), and (f) of this section, each vessel of the United States operating on register and each foreign vessel shall engage a United States or Canadian registered pilot for the route being navigated who shall—

(A) in waters of the Great Lakes designated by the President, direct the navigation of the vessel subject to the customary authority of the master; and

(B) in waters of the Great Lakes not designated by the President, be on board and available to direct the navigation of the vessel at the discretion of and subject to the customary authority of the master.

(2) The President shall make water designations under this subsection with regard to the public interest, the effective use of navigable waters, marine safety, and the foreign relations of the United States.

(b) A member of the complement of a vessel of the United States operating on register or of a vessel of Canada may serve as the pilot required on waters not designated by the President if the member is licensed under section 7101 of this title, or under equivalent provisions of Canadian law, to direct the navigation of the vessel on the waters being navigated.

(c) The authority extended under subsections (a) and (b) of this section to a Canadian registered pilot or other Canadian licensed officer to serve on certain vessels in United States waters of the Great Lakes shall continue as long as Canada extends reciprocity to United States registered pilots and other individuals licensed by the United States for pilotage service in Canadian waters of the Great Lakes.

(d) A vessel may be operated on the United States waters of the Great Lakes without a United States or Canadian registered pilot when—

(1) the Secretary notifies the master that a registered pilot is not available; or

(2) the vessel or its cargo is in distress or jeopardy.

(e) A Canadian vessel regularly operating on the Great Lakes or between ports on the Great Lakes and the Saint Lawrence River, with only an occasional voyage to ports in the maritime provinces of Canada in the Canadian coastal trade, is exempt from subsection (a) of this section as long as Canada permits enrolled vessels of the United States to be operated on Canadian waters of the Great Lakes under the direction of individuals licensed under section 7101 of this title.

(f) A documented vessel regularly operating on the Great Lakes or between ports on the Great Lakes and the St. Lawrence River is exempt from the requirements of subsection (a) of this section.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 557; Pub. L. 101–380, title IV, § 4108(a), Aug. 18, 1990, 104 Stat. 514; Pub. L. 104–324, title XI, § 1115(b)(5)–(7), Oct. 19, 1996, 110 Stat. 3972.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
9302(a), (b), (d)	46:216a
9302(c)	46:216f

Section 9302 sets forth the requirements for pilots on the waters of the Great Lakes under the jurisdiction of the United States or Canada.

Subsection (a) requires each United States vessel sailing on register and each foreign vessel to engage a United States or Canadian registered pilot who shall direct the navigation of the vessel in designated waters of the Great Lakes or be available to direct the navigation of the vessel in undesignated waters of the Great Lakes. The President must make the designation with regard to public interest, effective use of navigable waters, marine safety, and United States foreign relations. The direction of the vessel by an authorized pilot is subject to the customary authority of the master.

Subsection (b) provides that a crewmember licensed for Great Lakes navigation under section 7101 or equivalent Canadian law may serve as the pilot on undesignated waters.

Subsection (c) provides for reciprocity of recognizing United States and Canadian pilots.

Subsections (d) and (e) are exceptions to subsection (a). Subsection (d) permits operation of a vessel on the Great Lakes without a registered pilot if notice is given that one is not available or if the vessel or cargo is in distress or jeopardy. Subsection (e) exempts a Canadian vessel in the coastwise or Great Lakes trade from the requirement of having a registered pilot if similar United States vessels are extended the same exemption by Canada.

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104–324, § 1115(b)(5), substituted ''subsections (d), (e), and (f)'' for ''subsections (d) and (e)''.

Subsec. (e). Pub. L. 104–324, § 1115(b)(6), substituted ''subsection (a)'' for ''subsections (a) and (b)''.

Subsec. (f). Pub. L. 104–324, § 1115(b)(7), added subsec. (f).

1990—Subsec. (b). Pub. L. 101–380 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as fol-

lows: ''An individual of a vessel licensed for navigation on the Great Lakes under section 7101 of this title, or equivalent provisions of Canadian law, and qualified for the route being navigated, may serve as the pilot required on waters not designated by the President.''

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 Title 33, Navigation and Navigable Waters.

PROC. NO. 3385. DESIGNATION OF RESTRICTED WATERS

Proc. No. 3385, Dec. 22, 1960, 25 F.R. 13681, as amended by Proc. No. 3855, June 10, 1968, 33 F.R. 8535, provided:

WHEREAS, pursuant to section 3(a) of the Great Lakes Pilotage Act of 1960 (Public Law 86–555; 74 Stat. 259) [46 U.S.C. 9302(a)], the President is directed to designate and by proclamation announce those United States waters of the Great Lakes in which registered vessels of the United States and foreign vessels shall be required to have in their service a United States registered pilot or a Canadian registered pilot for the waters concerned; and

WHEREAS the aforesaid section 3(a) [46 U.S.C. 9302(a)] provides that these designations shall be made with due regard to the public interest, the effective utilization of navigable waters, marine safety, and the foreign relations of the United States:

NOW, THEREFORE, I, DWIGHT D. EISENHOWER, President of the United States of America, acting under and by virtue of the authority vested in me by section 3(a) of the Great Lakes Pilotage Act of 1960 [46 U.S.C. 9302(a)], do hereby designate and proclaim the following areas in which registered vessels of the United States and foreign vessels shall be required to have in their service a United States registered pilot or a Canadian registered pilot for the waters concerned, on and after the effective date of regulations issued by the Secretary of Transportation pursuant to the Act:

(1) *District 1.* All United States waters of the St. Lawrence River between the international boundary at St. Regis and a line at the head of the river running (at approximately 127° true) between Carruthers Point Light and South Side Light extended to the New York shore.

(2) *District 2.* All United States waters of Lake Erie westward of a line running (at approximately 026° true) from Sandusky Pierhead Light at Cedar Point to Southeast Shoal Light; all waters contained within the arc of a circle of one mile radius eastward of Sandusky Pierhead Light; the Detroit River; Lake St. Clair; the St. Clair River, and northern approaches thereto south of latitude 43°0530N.

(3) *District 3.* All United States waters of the St. Marys River, Sault Sainte Marie Locks and approaches thereto between latitude 45°59N. at the southern approach and longitude 84°33W. at the northern approach.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the United States of America to be affixed.

DONE at the City of Washington this twenty-second day of December in the year of our Lord nineteen hundred and sixty, and of the Independence of the United States of America the one hundred and eighty-fifth.

[SEAL]

DWIGHT D. EISENHOWER.

§ 9303. United States registered pilot service

(a) The Secretary shall prescribe by regulation standards of competency to be met by each applicant for registration under this chapter. An applicant must—

(1) have a license as master, mate, or pilot issued under section 7101 of this title;

(2) have acquired at least 24 months licensed service or equivalent experience on vessels or integrated towing vessels and tows of at least 4,000 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title, operating on the Great Lakes or oceans, with a minimum of 6 months of that service or experience having been on the Great Lakes; and

(3) agree that, if appointed as a United States registered pilot, the applicant will be available for service when required.

(b) The Secretary shall issue to each registered pilot under this chapter a certificate of registration describing the areas within which the pilot may serve. The pilot shall carry the certificate when in the service of a vessel.

(c) The Secretary shall prescribe by regulation the duration of validity of registration.

(d) The Secretary may prescribe by regulation the conditions for service by United States registered pilots, including availability for service.

(e) Subject to sections 551–559 of title 5, the Secretary may suspend or revoke a certificate of registration issued under this section if the holder fails to comply with a regulation prescribed under this chapter. Suspension or revocation of the holder's license under chapter 77 of this title includes the holder's certificate of registration.

(f) The Secretary shall prescribe by regulation rates and charges for pilotage services, giving consideration to the public interest and the costs of providing the services.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 558; Pub. L. 104–324, title VII, § 735, Oct. 19, 1996, 110 Stat. 3941.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
9303(a)	46:216b(a)
9303(b)	46:216b(b)
9303(c)	46:216b(c)
9303(e)	46:216b(c)
9303(f)	46:216c

Section 9303 authorizes the Secretary to prescribe regulatory standards of competency for registered pilots.

Subsection (a) requires an applicant for registration as a pilot to have a master's, mate's, or pilot's license, 24 months of licensed service, or equivalent, on vessels on the oceans or Great Lakes, with a minimum of 6 months on the Great Lakes, and agree to be available for service as a United States registered pilot if appointed.

Subsection (b) requires the Secretary to issue a certificate of registration describing the areas of service of a registered pilot who must carry the certificate when in a vessel's service.

Subsection (c) authorizes the Secretary to prescribe the duration of the validity of registration, while subsection (d) authorizes the Secretary to prescribe conditions for service by United States registered pilots.

Subsection (e) provides for the suspension or revocation of a certificate or registration by the Secretary.

Subsection (f) provides for setting the rates and charges for pilotage services.

AMENDMENTS

1996—Subsec. (a)(2). Pub. L. 104–324 inserted ''as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' after ''4,000 gross tons''.

§ 9304. Pilotage pools

(a) The Secretary may authorize the formation of a pool by a voluntary association of United States registered pilots to provide for efficient dispatching of vessels and rendering of pilotage services.

(b) For pilotage pools, the Secretary may—

(1) limit the number of the pools;

(2) prescribe regulations for their operation and administration;

(3) prescribe a uniform system of accounts;

(4) perform audits and inspections; and

(5) require coordination on a reciprocal basis with similar pool arrangements authorized by the appropriate agency of Canada.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 559.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
9304	46:216b(e)

Section 9304 provides for the formation of a pool by a voluntary association of United States registered pilots to provide for efficient pilotage services.

Subsection (a) permits the Secretary to authorize formation of United States pilotage pools.

Subsection (b) sets forth the restrictions and conditions that the Secretary may prescribe for these pools.

§ 9305. Agreements with Canada

To provide for a coordinated system of pilotage service on the Great Lakes, the Secretary, subject to the concurrence of the Secretary of State, may make agreements with the appropriate agency of Canada to—

(1) fix the number of pilots to be registered in each country;

(2) provide for participation on an equitable basis;

(3) prescribe joint or identical rates and charges;

(4) coordinate pool operations; and

(5) establish conditions for services by registered pilots.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 559.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
9305	46:216b(d) 46:216d

Section 9305 authorizes the Secretary of Transportation, subject to the concurrence of the Secretary of State, to make agreements with Canada for a coordinated system of pilotage service on the Great Lakes. The agreements may fix the number of registered pilots, provide for equitable participation, prescribe rates and charges, coordinate pool operations, and establish conditions for service.

§ 9306. State regulation prohibited

A State or political subdivision of a State may not regulate or impose any requirement on pilotage on the Great Lakes.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 559.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
9306	46:216g

Section 9306 prohibits State or local regulations of pilotage on the Great Lakes and is part of the exception provided by law envisioned under section 8501(a).

§ 9307. Great Lakes Pilotage Advisory Committee

(a) The Secretary shall establish a Great Lakes Pilotage Advisory Committee. The Committee—

(1) may review proposed Great Lakes pilotage regulations and policies and make recommendations to the Secretary that the Committee considers appropriate;

(2) may advise, consult with, report to, and make recommendations to the Secretary on matters relating to Great Lakes pilotage;

(3) may make available to the Congress recommendations that the Committee makes to the Secretary; and

(4) shall meet at the call of—

(A) the Secretary, who shall call such a meeting at least once during each calendar year; or

(B) a majority of the Committee.

(b)(1) The Committee shall consist of seven members appointed by the Secretary in accordance with this subsection, each of whom has at least 5 years practical experience in maritime operations. The term of each member is for a period of not more than 5 years, specified by the Secretary. Before filling a position on the Committee, the Secretary shall publish a notice in the Federal Register soliciting nominations for membership on the Committee.

(2) The membership of the Committee shall include—

(A) The[1] President of each of the 3 Great Lakes pilotage districts, or the President's representative;

(B) one member representing the interests of vessel operators that contract for Great Lakes pilotage services;

(C) one member representing the interests of Great Lakes ports;

(D) one member representing the interests of shippers whose cargoes are transported through Great Lakes ports; and

(E) a member with a background in finance or accounting, who—

(i) must have been recommended to the Secretary by a unanimous vote of the other members of the Committee, and

(ii) may be appointed without regard to requirement in paragraph (1) that each member have 5 years of practical experience in maritime operations.

(c)(1) The Committee shall elect one of its members as the Chairman and one of its members as the Vice Chairman. The Vice Chairman shall act as Chairman in the absence or incapacity of the Chairman, or in the event of a vacancy in the office of the Chairman.

(2) The Secretary shall, and any other interested agency may, designate a representative to participate as an observer with the Committee. The Secretary's designated representative shall act as the executive secretary of the Committee and shall perform the duties set forth in section 10(c) of the Federal Advisory Committee Act (5 U.S.C. App.).

[1] So in original. Probably should not be capitalized.

(d)(1) The Secretary shall, whenever practicable, consult with the Committee before taking any significant action relating to Great Lakes pilotage.

(2) The Secretary shall consider the information, advice, and recommendations of the Committee in formulating policy regarding matters affecting Great Lakes pilotage.

(3) Any recommendations to the Secretary under subsection (a)(2) must have been approved by at least all but one of the members then serving on the committee.

(e)(1) A member of the Committee, when attending meetings of the Committee or when otherwise engaged in the business of the Committee, is entitled to receive—

(A) compensation at a rate fixed by the Secretary, not exceeding the daily equivalent of the current rate of basic pay in effect for GS–18 of the General Schedule under section 5332 of title 5 including travel time; and

(B) travel or transportation expenses under section 5703 of title 5, United States Code.

(2) A member of the Committee shall not be considered to be an officer or employee of the United States for any purpose based on their receipt of any payment under this subsection.

(f)(1) The Federal Advisory Committee Act (5 U.S.C. App.) applies to the Committee, except that the Committee terminates on September 30, 2010.

(2) 2 years before the termination date set forth in paragraph (1) of this subsection, the Committee shall submit to the Congress its recommendation regarding whether the Committee should be renewed and continued beyond the termination date.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 559; Pub. L. 105–383, title III, § 303, Nov. 13, 1998, 112 Stat. 3418; Pub. L. 106–554, § 1(a)(4) [div. A, § 1118], Dec. 21, 2000, 114 Stat. 2763, 2763A–209; Pub. L. 108–293, title IV, § 418(d), Aug. 9, 2004, 118 Stat. 1049.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
9307	46:216h

Section 9307 permits the Secretary to establish a Great Lakes Pilotage Advisory Committee. This Committee is to be established consistent with the Federal Advisory Committee Act (P.L. 92–463; 5 App. U.S.C.) and with the requirements imposed by section 19 [118(e)] of P.L. 97–322 (14 U.S.C. 631 note).

Subsection (a) authorizes the Committee to review and make recommendations on Great Lakes pilotage regulation and policies and to make the recommendations available to Congress and requires the Committee to meet at the call of the Secretary.

Subsection (b) establishes the membership of the Committee as 3 members with 5 years of practical maritime experience appointed by the Secretary for a term of not more than 5 years. A Federal Register notice of solicitation for membership nominations for filling a position is required.

Subsection (c) provides for pay and travel expenses, including per diem, for the members.

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsecs. (c)(2) and (f)(1), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

2004—Subsec. (f)(1). Pub. L. 108–293 substituted ''September 30, 2010'' for ''September 30, 2005''.

2000—Subsec. (b)(2)(A). Pub. L. 106–554, § 1(a)(4) [div. A, § 1118(1)], amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''three members who are practicing Great Lakes pilots and who reflect a regional balance;''.

Subsec. (b)(2)(E). Pub. L. 106–554, § 1(a)(4) [div. A, § 1118(2)], amended subpar. (E) generally. Prior to amendment, subpar. (E) read as follows: ''one member representing the interests of the general public, who is an independent expert on the Great Lakes maritime industry.''

Subsec. (c)(2). Pub. L. 106–554, § 1(a)(4) [div. A, § 1118(3)], which directed the striking out of second sentence in subsec. (C)(2), was executed by striking out the second sentence in subsec. (c)(2), ''The representatives shall, as appropriate, report to and advise the Committee on matters relating to Great Lakes pilotage.'', to reflect the probable intent of Congress.

Subsec. (d)(3). Pub. L. 106–554, § 1(a)(4) [div. A, § 1118(4)], added par. (3).

Subsec. (f)(1). Pub. L. 106–554, § 1(a)(4) [div. A, § 1118(5)], substituted ''September 30, 2005'' for ''September 30, 2003''.

1998—Pub. L. 105–383 amended section generally, substituting provisions consisting of subsecs. (a) to (f) for former provisions consisting of subsecs. (a) to (c).

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 9308. Penalties

(a) An owner, charterer, managing operator, agent, master, or individual in charge of a vessel knowingly allowing the vessel to be operated in violation of section 9302 of this title is liable to the United States Government for a civil penalty of no more than $10,000 for each day during which the vessel is in violation. The vessel also is liable in rem for the penalty.

(b) An individual who directs the navigation of a vessel in violation of section 9302 of this title is liable to the Government for a civil penalty of no more than $10,000 for each day during which the violation occurs.

(c) A person violating a regulation prescribed under section 9303 of this title is liable to the Government for a civil penalty of no more than $10,000.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 560; Pub. L. 101–380, title IV, § 4108(b), Aug. 18, 1990, 104 Stat. 515.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
9308	46:216e(a)–(c)

Section 9308 prescribes the penalties for violations of sections 9302 and 9303.

AMENDMENTS

1990—Subsecs. (a) to (c). Pub. L. 101–380 substituted ''no more than $10,000'' for ''$500''.

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 Title 33, Navigation and Navigable Waters.

PART G—MERCHANT SEAMEN PROTECTION AND RELIEF

HISTORICAL AND REVISION NOTES

Part G provides for a number of measures for the protection and relief of merchant seamen by requiring certain contractual obligations between the master who represents the vessel owner's interest and the seamen who are engaged or employed on board a vessel, by requiring certain proceedings when a seaman dies or a vessel is suspected of being unseaworthy, by requiring certain standards for accommodations, medicine, clothing, miscellaneous merchandise, and for the handling of special and unique problems of seamen. It also provides for a method of imposing disciplinary controls through the logging of offenses and provides penalties for specified offenses, and certain related disciplinary procedures. The provisions of this part generally do not apply to fishing vessels, whaling vessels, or yachts.

CHAPTER 101—GENERAL

Sec.
10101. Definitions.
[10102. Repealed.]
10103. Reports.
10104. Requirement to report sexual offenses.

AMENDMENTS

1993—Pub. L. 103–206, title IV, § 422(c)(2), Dec. 20, 1993, 107 Stat. 2439, struck out item 10102 ''Designations and duties of shipping commissioners''.

1989—Pub. L. 101–225, title II, § 214(b), Dec. 12, 1989, 103 Stat. 1914, substituted ''Requirement to report sexual offenses'' for ''Regulations'' in item 10104.

§ 10101. Definitions

In this part—

(1) ''master'' means the individual having command of a vessel.

(2) ''owner'' means the person to whom the vessel belongs.

(3) ''seaman'' means an individual (except scientific personnel, a sailing school instructor, or a sailing school student) engaged or employed in any capacity on board a vessel.

(4) ''fishing vessel'' includes—

(A) a fish tender vessel; or

(B) a fish processing vessel entered into service before January 1, 1988, and not more than 1,600 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title or entered into service after December 31, 1987, and having not more than 16 individuals on board primarily employed in the preparation of fish or fish products.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 560; Pub. L. 98–364, title IV, § 402(13), July 17, 1984, 98 Stat. 449; Pub. L. 98–557, § 33(d), Oct. 30, 1984, 98 Stat. 2876; Pub. L. 99–640, § 10(b)(3), Nov. 10, 1986, 100 Stat. 3550; Pub. L. 104–324, title VII, § 736, Oct. 19, 1996, 110 Stat. 3941.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
10101	46:713

Section 10101 defines the terms master, seaman, and owner as they apply to merchant seamen's protection and relief.

AMENDMENTS

1996—Par. (4)(B). Pub. L. 104–324 inserted ''as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' after ''1,600 gross tons''.

1986—Pars. (1), (3). Pub. L. 99–640 struck out ''owned by a citizen of the United States'' after ''vessel''.

1984—Par. (4). Pub. L. 98–364, as amended Pub. L. 98–557, added par. (4).

[§ 10102. Repealed. Pub. L. 103–206, title IV, § 422(c)(1), Dec. 20, 1993, 107 Stat. 2439]

Section, Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 560, related to designations and duties of shipping commissioners.

§ 10103. Reports

(a) A master of a vessel to which section 8701(a) of this title applies, who engages or discharges a seaman, shall submit reports to the vessel owner in the form, content, and manner of filing as prescribed by regulation, to ensure compliance with laws related to manning and the engagement and discharge of seamen.

(b) This section does not apply to a ferry or towing vessel operated in connection with a ferry operation, employed only in trades other than with foreign ports, lakes, bays, sounds, bayous, canals, or harbors.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 560; Pub. L. 103–206, title IV, § 417, Dec. 20, 1993, 107 Stat. 2438.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
10103	46:643(*l*)

Section 10103 requires that masters who engage or discharge seamen submit to the Coast Guard reports of the manning of the vessel, and reports of shipping agreements which are not supervised by a shipping commissioner. It also contains a number of exceptions for specified vessels.

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–206 struck out ''without a shipping commissioner being present'' after ''discharges a seaman'' and inserted ''to the vessel owner'' after ''shall submit reports''.

§ 10104. Requirement to report sexual offenses

(a) A master or other individual in charge of a documented vessel shall report to the Secretary a complaint of a sexual offense prohibited under chapter 109A of title 18, United States Code.

(b) A master or other individual in charge of a documented vessel who knowingly fails to report in compliance with this section is liable to the United States Government for a civil penalty of not more than $5,000.

(Added Pub. L. 101–225, title II, § 214(a)(2), Dec. 12, 1989, 103 Stat. 1914.)

PRIOR PROVISIONS

A prior section 10104, Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 561, related to regulations, prior to repeal by Pub. L. 101–225, § 214(a)(1).

CHAPTER 103—FOREIGN AND INTERCOASTAL VOYAGES

Sec.
10301. Application.

Sec.
10302. Shipping articles agreements.
10303. Provisions.
10304. Form of agreement.
10305. Manner of signing agreement.
10306. Exhibiting merchant mariners' documents.
10307. Posting agreements.
10308. Foreign engagements.
10309. Engaging seamen to replace those lost by desertion or casualty.
10310. Discharge.
10311. Certificates of discharge.
10312. Settlements on discharge.
10313. Wages.
10314. Advances.
10315. Allotments.
10316. Trusts.
10317. Loss of lien and right to wages.
10318. Wages on discharge in foreign ports.
10319. Costs of a criminal conviction.
10320. Records of seamen.
10321. General penalty.

§ 10301. Application

(a) Except as otherwise specifically provided, this chapter applies to a vessel of the United States—

(1) on a voyage between a port in the United States and a port in a foreign country (except a port in Canada, Mexico, or the West Indies); or

(2) of at least 75 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title on a voyage between a port of the United States on the Atlantic Ocean and a port of the United States on the Pacific Ocean.

(b) This chapter does not apply to a vessel on which the seamen are entitled by custom or agreement to share in the profit or result of a voyage.

(c) Unless otherwise provided, this chapter does not apply to a foreign vessel.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 561; Pub. L. 104–324, title VII, § 737, Oct. 19, 1996, 110 Stat. 3941.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
10301	46:564 46:566 46:574

Section 10301 specifies that vessels on foreign and intercoastal voyages (except for fishing vessels and foreign vessels) are subject to the seamen protection and relief provisions contained in chapter 103.

AMENDMENTS

1996—Subsec. (a)(2). Pub. L. 104–324 inserted ''as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' after ''75 gross tons''.

§ 10302. Shipping articles agreements

(a) The owner, charterer, managing operator, master, or individual in charge shall make a shipping agreement in writing with each seaman before the seaman commences employment.

(b) The agreement shall contain the following:

(1) the nature, and, as far as practicable, the duration of the intended voyage, and the port or country in which the voyage is to end.

(2) the number and description of the crew and the capacity in which each seaman is to be engaged.

(3) the time at which each seaman is to be on board to begin work.

(4) the amount of wages each seaman is to receive.

(5) regulations about conduct on board, and information on fines, short allowance of provisions, and other punishment for misconduct provided by law.

(6) a scale of the provisions that are to be provided each seaman.

(7) any stipulation in reference to advances and allotments of wages.

(8) other matters not contrary to law.

(c) Each shipping agreement must be signed by the master or individual in charge or a representative of the owner, charterer, or managing operator, and by each seaman employed.

(d) The owner, charterer, managing operator, master, or individual in charge shall maintain the shipping agreement and make the shipping agreement available to the seaman.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 561; Pub. L. 103–206, title IV, § 401, Dec. 20, 1993, 107 Stat. 2435.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
10302	46:564

Section 10302 requires the master to make a shipping agreement with each crew member and lists the information that must be included in the agreement.

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–206, § 401(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''Before proceeding on a voyage, the master of a vessel to which this chapter applies shall make a shipping articles agreement in writing with each seaman in the crew.''

Subsecs. (c), (d). Pub. L. 103–206, § 401(2), added subsecs. (c) and (d).

§ 10303. Provisions

(a) A seaman shall be served at least 3 meals a day that total at least 3,100 calories, including adequate water and adequate protein, vitamins, and minerals in accordance with the United States Recommended Daily Allowances.

(b) The text of subsection (a) of this section shall be included in the agreement required by section 10302 of this title. A copy of the text also shall be posted in a conspicuous place in the galley and forecastle of each vessel.

(c) This section does not apply to a fishing or whaling vessel or a yacht.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 562.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
10303	46:713

Section 10303 requires that seamen be served adequate food and water and that the text of this require-

ment be posted in the galley. The provisions do not apply to fishing vessels, whaling vessels, or yachts.

§ 10304. Form of agreement

The form of the agreement required by section 10302 of this title shall be in substance as follows:

UNITED STATES OF AMERICA

(Date and place of first signature of agreement):

It is agreed between the master and seamen of the , of which is at present master, or whoever shall go for master, now bound from the port of to (here the voyage is to be described, and the places named at which the vessel is to touch, or if that cannot be done, the general nature and probable length of the voyage is to be stated).

The seamen agree to conduct themselves in an orderly, faithful, honest, and sober manner, and to be at all times diligent in their respective duties, and to be obedient to the lawful commands of the master, or of an individual who lawfully succeeds the master, and of their superior officers in everything related to the vessel, and the stores and cargo of the vessel, whether on board, in boats, or on shore. In consideration of this service by the seamen to be performed, the master agrees to pay the crew, as wages, the amounts beside their names respectively expressed, and to supply them with provisions according to the annexed scale.

It is agreed that any embezzlement, or willful or negligent destruction of any part of the vessel's cargo or stores, shall be made good to the owner out of the wages of the person guilty of the embezzlement or destruction.

If an individual holds himself or herself out as qualified for a duty which the individual proves incompetent to perform, the individual's wages shall be reduced in proportion to the incompetency.

It also is agreed that if a seaman considers himself or herself to be aggrieved by any breach of this agreement or otherwise, the seaman shall present the complaint to the master or officer in charge of the vessel, in a quiet and orderly manner, who shall take steps that the case requires.

It also is agreed that (here any other stipulations may be inserted to which the parties agree, and that are not contrary to law).

In witness whereof, the parties have subscribed their names to this agreement, on the dates beside their respective signatures.

Signed by , master, on the day of , nineteen hundred and .

Signature of seaman	Time of service:
Birthplace	Months
Age	Days
Height:	Hospital money
Feet	Whole wages
Inches	Wages due
Description:	Place and time of entry
Complexion	Time at which seaman is to be on board
Hair	In what capacity
Wages each month	Allotment payable to
Wages each voyage	Conduct qualifications
Advance wages	
Amount of monthly allotment	

NOTE.—In the place for signature and descriptions of individuals engaged after the first departure of the vessel, the entries are to be made as above, except that the signature of the consul or vice consul, customs officer, or witness before whom the individual is engaged, is to be entered.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 562; Pub. L. 103–206, title IV, § 402, Dec. 20, 1993, 107 Stat. 2436.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
10304	46:713

Section 10304 provides the form of the shipping articles of agreement. While the exact format need not be followed, the form that is used must contain all the pertinent elements.

AMENDMENTS

1993—Pub. L. 103–206 struck out ''Shipping commissioner's signature or initials'' immediately below ''In what capacity'' in the form.

§ 10305. Manner of signing agreement

The agreement required by section 10302 of this title shall be signed—

(1) first by the master and dated at that time, after which each seaman shall sign; and

(2) in the presence of the master or individual in charge.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 563; Pub. L. 103–206, title IV, § 403, Dec. 20, 1993, 107 Stat. 2436.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
10305	46:565

Section 10305 describes the procedures for signing the shipping agreement, and for keeping official records of the agreement. It also requires that the agreement include a statement that the seaman understand its provisions, and did so while sober.

AMENDMENTS

1993—Pub. L. 103–206 struck out ''(a)'' before ''The agreement'', substituted ''the master or individual in charge'' for ''a shipping commissioner'' in par. (2), and struck out subsecs. (b) and (c) which read as follows:

''(b) When the crew is first engaged, the agreement shall be signed in duplicate. One of the copies shall be retained by the shipping commissioner. The other copy shall contain space for the description and signatures of seamen engaged subsequent to the first making of the agreement, and shall be delivered to the master.

''(c) An agreement signed before a shipping commissioner shall be acknowledged and signed by the commissioner on the agreement in the manner and form prescribed by regulation. The acknowledgment and certification shall include a statement by the commissioner that the seaman—

''(1) has read the agreement;

''(2) is acquainted with and understands its conditions; and

''(3) has signed it freely and voluntarily when sober.''

§ 10306. Exhibiting merchant mariners' documents

Before signing the agreement required by section 10302 of this title, each individual required

by section 8701 of this title to have a merchant mariner's document shall exhibit to the master or individual in charge a document issued to the individual, appropriately endorsed for the capacity in which the individual is to serve.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 564; Pub. L. 103–206, title IV, § 404, Dec. 20, 1993, 107 Stat. 2436.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
10306	46:643(c)

Section 10306 requires a seaman to exhibit an appropriately endorsed merchant mariner's document to the shipping commissioner before signing a shipping agreement. When a master acts as a shipping commissioner, the same procedure applies.

AMENDMENTS

1993—Pub. L. 103–206 substituted ''master or individual in charge'' for ''shipping commissioner''.

§ 10307. Posting agreements

At the beginning of a voyage, the master shall have a legible copy of the agreement required by section 10302 of this title, omitting signatures, exhibited in a part of the vessel accessible to the crew.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 564; Pub. L. 103–206, title IV, § 405, Dec. 20, 1993, 107 Stat. 2436.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
10307	46:577

Section 10307 requires the master to post a copy of the shipping agreement in a part of the vessel accessible to the crew prior to the commencement of a voyage. The posting must be done in a manner that gives seamen adequate notice of the particulars of the pending voyage.

AMENDMENTS

1993—Pub. L. 103–206 struck out at end ''A master violating this section is liable to the United States Government for a civil penalty of $100.''

§ 10308. Foreign engagements

When a seaman is engaged outside the United States, the agreement required by section 10302 of this title shall be signed in the presence of a consular officer. If a consular officer is not available at the port of engagement, the seaman may be engaged, and the agreement shall be signed in the next port at which a consular officer is available.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 564; Pub. L. 103–206, title IV, § 406, Dec. 20, 1993, 107 Stat. 2436.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
10308	46:570

Section 10308 requires that shipping agreements made in foreign ports be signed in the presence of a consular officer. The penalty for violation of this section is $100.

AMENDMENTS

1993—Pub. L. 103–206 struck out ''(a)'' before ''When a seaman'' and struck out subsec. (b) which read as follows: ''A master engaging a seaman in violation of this section is liable to the United States Government for a civil penalty of $100. The vessel also is liable in rem for the penalty.''

§ 10309. Engaging seamen to replace those lost by desertion or casualty

(a) If a desertion or casualty results in the loss of at least one seaman, the master shall engage, if obtainable, a number equal to the number of seamen of whose services the master has been deprived. The new seaman must have at least the same grade or rating as the seaman whose place the new seaman fills. The master shall report the loss and replacement to a consular officer at the first port at which the master arrives.

(b) This section does not apply to a fishing or whaling vessel or a yacht.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 564; Pub. L. 103–206, title IV, § 407, Dec. 20, 1993, 107 Stat. 2436.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
10309	46:569

Section 10309 provides for the replacement of seamen lost by desertion or casualty. It does not apply to fishing vessels, whaling vessels, or yachts.

AMENDMENTS

1993—Subsecs. (b), (c). Pub. L. 103–206 redesignated subsec. (c) as (b) and struck out former subsec. (b) which read as follows: ''The master is liable to the United States Government for a civil penalty of $200 for each report not made. The vessel also is liable in rem for the penalty.''

§ 10310. Discharge

A master shall deliver to a seaman a full and true account of the seaman's wages and all deductions at least 48 hours before paying off or discharging the seaman.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 564; Pub. L. 103–206, title IV, § 408, Dec. 20, 1993, 107 Stat. 2436.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
10310	46:641 46:642

Section 10310 requires the master of a vessel to give each seaman a full account of the seaman's wages 48 hours before discharge. The penalty for violation is $50.

AMENDMENTS

1993—Pub. L. 103–206 struck out ''or a shipping commissioner'' after ''to a seaman'' and struck out at end ''A master failing to deliver the account is liable to the United States Government for a civil penalty of $50.''

§ 10311. Certificates of discharge

(a) On discharging a seaman and paying the seaman's wages, the master or individual in charge shall provide the seaman with a certificate of discharge. The form of the certificate shall be prescribed by regulation. It shall contain—

(1) the name of the seaman;

(2) the citizenship or nationality of the seaman;

(3) the number of the seaman's merchant mariner's document;

(4) the name and official number of the vessel;

(5) the nature of the voyage (foreign, intercoastal, or coastwise);

(6) the propulsion class of the vessel;

(7) the date and place of engagement;

(8) the date and place of discharge; and

(9) the seaman's capacity on the voyage.

(b) The certificate of discharge may not contain a reference about the character or ability of the seaman. The certificate shall be signed by the master and the seaman.

(c) A certificate of discharge may not be issued if the seaman holds a continuous discharge book. The entries shall be made in the discharge book in the same manner as the entries required by subsection (a) of this section.

(d)(1) A record of each discharge shall be maintained by the owner, charterer, managing operator, master, or individual in charge in the manner and location prescribed by regulation. The records may not be open for general or public use or inspection.

(2) A duplicate of a record of discharge shall be issued to a seaman at the request of the seaman.

(e) This section does not apply to a fishing or whaling vessel or a yacht.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 564; Pub. L. 103–206, title IV, § 409, Dec. 20, 1993, 107 Stat. 2436.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
10311	46:643

Section 10311 requires a shipping commissioner, when discharging a seaman, either to provide the seaman with a certificate of discharge or to make an entry in the seaman's continuous discharge book. It requires that certain facts be included in the certificate or in the entry, prohibits other information from being included, and requires the Secretary to keep records of all discharges, copies of which must be furnished to seamen at cost upon request. These discharges are used to substantiate the nature and duration of the seaman's employment on a particular vessel. This section does not apply to fishing vessels, whaling vessels, or yachts.

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–206, § 409(1), substituted ''master or individual in charge'' for ''shipping commissioner''.

Subsec. (b). Pub. L. 103–206, § 409(2), substituted ''by the master and the seaman'' for ''by the master, the seaman, and the shipping commissioner as witness''.

Subsec. (d)(1). Pub. L. 103–206, § 409(3), substituted ''owner, charterer, managing operator, master, or individual in charge'' for ''Secretary''.

Subsec. (d)(2). Pub. L. 103–206, § 409(4), substituted ''at the request of the seaman'' for ''at a cost prescribed by regulation''.

§ 10312. Settlements on discharge

When discharge and settlement are completed, the master, individual in charge, or owner and each seaman shall sign the agreement required by section 10302 of this title.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 565; Pub. L. 103–206, title IV, § 410, Dec. 20, 1993, 107 Stat. 2437.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
10312(a), (b), (d)–(f)	46:644
10312(c)	46:652

Section 10312 outlines the procedures for settlements upon discharge and for settling disputes over seamen's wages and discharges.

AMENDMENTS

1993—Pub. L. 103–206 amended heading and text of section generally, substituting text consisting of sentence relating to signing agreements on discharge and settlement for former subsecs. (a) to (f) relating to such agreements, proceedings before shipping commissioners to settle disputes, certified copies of agreements, evidence of release of claims, and statements of wages paid.

§ 10313. Wages

(a) A seaman's entitlement to wages and provisions begins when the seaman begins work or when specified in the agreement required by section 10302 of this title for the seaman to begin work or be present on board, whichever is earlier.

(b) Wages are not dependent on the earning of freight by the vessel. When the loss or wreck of the vessel ends the service of a seaman before the end of the period contemplated in the agreement, the seaman is entitled to wages for the period of time actually served. The seaman shall be deemed a destitute seaman under section 11104 of this title. This subsection applies to a fishing or whaling vessel but not a yacht.

(c) When a seaman who has signed an agreement is discharged improperly before the beginning of the voyage or before one month's wages are earned, without the seaman's consent and without the seaman's fault justifying discharge, the seaman is entitled to receive from the master or owner, in addition to wages earned, one month's wages as compensation.

(d) A seaman is not entitled to wages for a period during which the seaman—

(1) unlawfully failed to work when required, after the time fixed by the agreement for the seaman to begin work; or

(2) lawfully was imprisoned for an offense, unless a court hearing the case otherwise directs.

(e) After the beginning of the voyage, a seaman is entitled to receive from the master, on demand, one-half of the balance of wages earned and unpaid at each port at which the vessel loads or delivers cargo during the voyage. A demand may not be made before the expiration of 5 days from the beginning of the voyage, not more than once in 5 days, and not more than once in the same port on the same entry. If a master does not comply with this subsection, the seaman is released from the agreement and is entitled to payment of all wages earned. Notwithstanding a release signed by a seaman under section 10312 of this title, a court having jurisdiction may set aside, for good cause shown, the release and take action that justice requires.

This subsection does not apply to a fishing or whaling vessel or a yacht.

(f) At the end of a voyage, the master shall pay each seaman the balance of wages due the seaman within 24 hours after the cargo has been discharged or within 4 days after the seaman is discharged, whichever is earlier. When a seaman is discharged and final payment of wages is delayed for the period permitted by this subsection, the seaman is entitled at the time of discharge to one-third of the wages due the seaman.

(g) When payment is not made as provided under subsection (f) of this section without sufficient cause, the master or owner shall pay to the seaman 2 days' wages for each day payment is delayed.

(h) Subsections (f) and (g) of this section do not apply to a fishing or whaling vessel or a yacht.

(i) This section applies to a seaman on a foreign vessel when in a harbor of the United States. The courts are available to the seaman for the enforcement of this section.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 566; Pub. L. 99–640, § 10(b)(4), Nov. 10, 1986, 100 Stat. 3550.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
10313(a)	46:591
10313(b)	46:592
	46:593
10313(c)	46:594
10313(d)	46:595
10313(e)–(i)	46:596
	46:597
	46:598

Section 10313 provides that a seaman's entitlement to wages begins when the seaman begins work, or as specified in the shipping agreement. This section also qualifies a seaman's entitlement to wages if the vessel is lost or wrecked, if the seaman is discharged improperly, or if the seaman unlawfully failed to work or was imprisoned. It also establishes procedures for the payment of wages at each port the vessel loads or unloads cargo, and at the end of the voyage. This section applies to seamen on foreign vessels in United States harbors, but not to fishing vessels, whaling vessels or yachts.

AMENDMENTS

1986—Subsec. (e). Pub. L. 99–640 struck out last sentence which read as follows: ''However, this subsection applies to a vessel taking oysters.''

Subsec. (h). Pub. L. 99–640 struck out last sentence which read as follows: ''However, subsections (f) and (g) apply to a vessel taking oysters.''

§ 10314. Advances

(a)(1) A person may not—

(A) pay a seaman wages in advance of the time when the seaman has earned the wages;

(B) pay advance wages of the seaman to another person; or

(C) make to another person an order, note, or other evidence of indebtedness of the wages, or pay another person, for the engagement of seamen when payment is deducted or to be deducted from the seaman's wage.

(2) A person violating this subsection is liable to the United States Government for a civil penalty of not more than $500. A payment made in violation of this subsection does not relieve the vessel or the master from the duty to pay all wages after they have been earned.

(b) A person demanding or receiving from a seaman or an individual seeking employment as a seaman, remuneration for providing the seaman or individual with employment, is liable to the Government for a civil penalty of not more than $500.

(c) This section applies to a foreign vessel when in waters of the United States. An owner, charterer, managing operator, agent, or master of a foreign vessel violating this section is liable to the Government for the same penalty as an owner, charterer, managing operator, agent, or master of a vessel of the United States for the same violation.

(d) The owner, charterer, managing operator, agent, or master of a vessel seeking clearance from a port of the United States shall present the agreement required by section 10302 of this title at the office of clearance. Clearance may be granted to a vessel only if this section has been complied with.

(e) This section does not apply to a fishing or whaling vessel or a yacht.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 567; Pub. L. 99–640, § 10(b)(4), Nov. 10, 1986, 100 Stat. 3550.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
10314	46:599

Section 10314 forbids advance payment of wages to seamen prior to the commencement of the seaman's employment. It provides a civil penalty of $500 for any person making such a payment, and for any person demanding or receiving remuneration for providing a seaman with employment. This means that the use of employment agencies for hiring seamen is prohibited. It also requires compliance with section 10302 regarding the signing of articles of agreement before a vessel can be cleared from a United States port. This section applies to foreign vessels in United States waters but not to fishing vessels, whaling vessels or yachts.

AMENDMENTS

1986—Subsec. (e). Pub. L. 99–640 struck out last sentence which read as follows: ''However, this section applies to a vessel taking oysters.''

§ 10315. Allotments

(a) Under prescribed regulations, a seaman may stipulate as follows in the agreement required by section 10302 of this title for an allotment of any part of the wages the seaman may earn:

(1) to the seaman's grandparents, parents, spouse, sister, brother, or children;

(2) to an agency designated by the Secretary of the Treasury to handle applications for United States savings bonds, to purchase bonds for the seaman; and

(3) for deposits to be made in an account for savings or investment opened by the seaman and maintained in the seaman's name at a savings bank or a savings institution in which the accounts are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

(b) An allotment is valid only if made in writing and signed by and approved by a shipping

commissioner. The shipping commissioner shall examine allotments and the parties to them to enforce compliance with the law. Stipulations for allotments made at the beginning of a voyage shall be included in the agreement and shall state the amounts and times of payment and the person to whom payments are to be made.

(c) Only an allotment complying with this section is lawful. A person falsely claiming qualification as an allottee under this section is liable to the United States Government for a civil penalty of not more than $500.

(d) The owner, charterer, managing operator, agent, or master of a vessel seeking clearance from a port of the United States shall present the agreement at the office of clearance. Clearance may be granted to a vessel only if this section has been complied with.

(e) This section applies to a foreign vessel when in waters of the United States. An owner, charterer, managing operator, agent, or master of a foreign vessel violating this section is liable to the Government for the same penalty as an owner, charterer, managing operator, agent, or master of a vessel of the United States for the same violation.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 567.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
10315	46:599

Section 10315 lists the persons to whom a seaman may allot wages, specifies the conditions which make an allotment valid, and provides a civil penalty of $500 for falsely claiming qualification as an allottee. It also requires that this section be complied with before a vessel can be cleared from a United States port. This section applies to foreign vessels.

TRANSFER OF FUNCTIONS

Federal Savings and Loan Insurance Corporation abolished and functions transferred, see sections 401 to 406 of Pub. L. 101–73, set out as a note under section 1437 of Title 12, Banks and Banking.

§ 10316. Trusts

Sections 10314 and 10315 of this title do not prevent an employer from making deductions from the wages of a seaman, with the written consent of the seaman, if—

(1) the deductions are paid into a trust fund established only for the benefit of seamen employed by that employer, and the families and dependents of those seamen (or of those seamen, families, and dependents jointly with other seamen employed by other employers, and the families and dependents of the other seamen); and

(2) the payments are held in trust to provide, from principal or interest, or both, any of the following benefits for those seamen and their families and dependents:

(A) medical or hospital care, or both.

(B) pensions on retirement or death of the seaman.

(C) life insurance.

(D) unemployment benefits.

(E) compensation for illness or injuries resulting from occupational activity.

(F) sickness, accident, and disability compensation.

(G) purchasing insurance to provide any of the benefits specified in this section.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 568.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
10316	46:599(g)

Section 10316 qualifies the two previous sections by allowing an employer to make deductions from seamen's wages for the purpose of placing the wages into a trust fund or holding them in trust to provide for the seamen's benefit.

§ 10317. Loss of lien and right to wages

A master or seaman by any agreement other than one provided for in this chapter may not forfeit the master's or seaman's lien on the vessel or be deprived of a remedy to which the master or seaman otherwise would be entitled for the recovery of wages. A stipulation in an agreement inconsistent with this chapter, or a stipulation by which a seaman consents to abandon a right to wages if the vessel is lost, or to abandon a right the seaman may have or obtain in the nature of salvage, is void.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 568.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
10317	46:600

Section 10317 prohibits a master or seaman from entering into an agreement which forfeits his or her lien on the vessel or other remedy for recovery of wages, and renders such agreements void.

§ 10318. Wages on discharge in foreign ports

(a) When a master or seaman applies to a consular officer for the discharge of the seaman, the consular officer shall require the master to pay the seaman's wages if it appears that the seaman has carried out the agreement required by section 10302 of this title or otherwise is entitled to be discharged. Then the consular officer shall discharge the seaman. A consular officer shall require the payment of extra wages only as provided in this section or in chapter 109 of this title.

(b) When discharging a seaman, a consular officer who fails to require the payment of the wages due a seaman at the time, and of the extra wages due under subsection (a) of this section, is accountable to the United States Government for the total amount.

(c) A seaman discharged under this section with the consent of the seaman is entitled to wages up to the time of discharge, but not for any additional period.

(d) If the seaman is discharged involuntarily, and it appears that the discharge was not because of neglect of duty, incompetency, or injury incurred on the vessel, the master shall provide the seaman with employment on a vessel agreed to by the seaman or shall provide the seaman with one month's extra wages.

(e) Expenses for the maintenance and return of an ill or injured seaman to the United States shall be paid by the Secretary of State. If a seaman is incapacitated by illness or injury and

prompt discharge is necessary, but a personal appearance of the master before a consular officer is impracticable, the master may provide transportation to the seaman to the nearest consular officer for discharge.

(f) A deduction from wages of the seaman is permitted only if the deduction appears in the account of the seaman required to be delivered under section 10310 of this title, except for matters arising after delivery of the account, in which case a supplementary account is required. During a voyage, the master shall record in the official logbook the matters about which deductions are to be made with the amounts of the deductions. The entries shall be made as the matters occur. The master shall produce the official logbook at the time of payment of wages, and also before a competent authority on the hearing of any complaint or question about the payment of wages.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 568.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
10318	46:682 46:683

Section 10318 establishes consular officers' responsibilities in discharging seamen and the seamen's right to wages when discharged and when incapacitated by illness or injury. It also requires a master to record in the official logbook all matters for which deductions are to be made from seamen's wages.

§ 10319. Costs of a criminal conviction

In a proceeding about a seaman's wages, if it is shown that the seaman was convicted during the voyage of an offense by a competent tribunal and sentenced by the tribunal, the court hearing the case may direct that a part of the wages due the seaman, but not more than $15, be applied to reimburse the master for costs properly incurred in procuring the conviction and sentence.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 569.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
10319	46:707

Section 10319 provides that if a seaman was convicted during a voyage by a tribunal, that the court may direct that up to $15 of the seaman's wages be used to reimburse the master for the costs incurred.

§ 10320. Records of seamen

The Secretary shall prescribe regulations requiring vessel owners to maintain records of seamen on matters of engagement, discharge, and service. A vessel owner shall make these records available to the seaman and the Coast Guard on request.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 569; Pub. L. 103–206, title IV, § 411, Dec. 20, 1993, 107 Stat. 2437.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
10320	.....

Section 10320 authorizes the Secretary to provide for the maintenance of records of the engagement, discharge, or service of seamen.

AMENDMENTS

1993—Pub. L. 103–206 amended heading and text of section generally. Prior to amendment, text read as follows: ''The Secretary may prescribe regulations for reporting by a master of matters about the engagement, discharge, or service of seamen that may be needed in keeping central records of seamen.''

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.

§ 10321. General penalty

(a) A person violating any provision of this chapter or a regulation prescribed under this chapter is liable to the United States Government for a civil penalty of not more than $5,000.

(b) The vessel is liable in rem for any penalty assessed under this section.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 569; Pub. L. 103–206, title IV, § 412, Dec. 20, 1993, 107 Stat. 2437.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
10321	46:567 46:568 46:571 46:661 46:665

Section 10321 makes a vessel on which a seaman is carried to sea in violation of this chapter or regulation prescribed under this chapter liable in rem to the United States Government for a civil penalty of $200 for each seaman carried in violation.

AMENDMENTS

1993—Pub. L. 103–206 amended heading and text of section generally. Prior to amendment, text read as follows: ''The owner, charterer, managing operator, agent, or master of a vessel on which a seaman is carried in violation of this chapter or a regulation prescribed under this chapter is liable to the United States Government for a civil penalty of $200 for each seaman carried in violation. The vessel also is liable in rem for the penalty.''

CHAPTER 105—COASTWISE VOYAGES

Sec.
10501. Application.
10502. Shipping articles agreements.
10503. Exhibiting merchant mariners' documents.
10504. Wages.
10505. Advances.
10506. Trusts.
[10507. Repealed.]
10508. General penalties.
10509. Penalty for failing to begin voyage.

AMENDMENTS

1993—Pub. L. 103–206, title IV, § 415(b), Dec. 20, 1993, 107 Stat. 2438, struck out item 10507 ''Duties of shipping commissioners''.

§ 10501. Application

(a) Except for a vessel to which chapter 103 of this title applies, this chapter applies to a vessel of at least 50 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title on a voyage between a port in one State and a port in another State (except an adjoining State).

(b) This chapter does not apply to a vessel on which the seamen are entitled by custom or agreement to share in the profit or result of a voyage.

(c) Unless otherwise provided, this chapter does not apply to a foreign vessel.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 570; Pub. L. 104–324, title VII, § 738, Oct. 19, 1996, 110 Stat. 3941.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
10501	46:574

Section 10501 specifies that vessels over 50 gross tons that are not subject to chapter 103 and are engaged on voyages between two states (except for adjoining states) are subject to the provisions of this chapter. Specifically excluded are foreign vessels and vessels on which seamen share the profits.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–324 inserted ''as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' after ''50 gross tons''.

§ 10502. Shipping articles agreements

(a) The owner, charterer, managing operator, master, or individual in charge shall make a shipping agreement in writing with each seaman before the seaman commences employment.

(b) The agreement shall include the date and hour on which the seaman must be on board to begin the voyage.

(c) The agreement may not contain a provision on the allotment of wages or a scale of provisions.

(d) Each shipping agreement must be signed by the master or individual in charge or a representative of the owner, charterer, or managing operator, and by each seaman employed.

(e) The owner, charterer, managing operator, master, or individual in charge shall maintain the shipping agreement and make the shipping agreement available to the seaman.

(f) The Secretary shall prescribe regulations requiring shipping companies to maintain records of seamen on matters of engagement, discharge, and service. The shipping companies shall make these records available to the seaman and the Coast Guard on request.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 570; Pub. L. 103–206, title IV, § 413, Dec. 20, 1993, 107 Stat. 2437.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
10502	46:574

Section 10502 requires the master on a vessel engaged on a coastwise voyage to sign a shipping agreement with each member of the crew and lists provisions which must be and provisions which may not be included in the agreement.

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–206, § 413(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''Before proceeding on a voyage, the master of a vessel to which this chapter applies shall make a shipping articles agreement in writing with each seaman on board, declaring the nature of the voyage or the period of time for which the seaman is engaged.''

Subsecs. (d) to (f). Pub. L. 103–206, § 413(2), added subsecs. (d) to (f).

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.

§ 10503. Exhibiting merchant mariners' documents

Before signing the agreement required by section 10502 of this title, a seaman required by section 8701 of this title to have a merchant mariner's document shall exhibit to the master a document issued to the seaman and appropriately endorsed for the capacity in which the seaman is to serve.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 570.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
10503	46:643

Under section 10503 seamen who are required to have a merchant mariner's document must exhibit it before signing a shipping agreement on a coastwise voyage.

§ 10504. Wages

(a) After the beginning of a voyage, a seaman is entitled to receive from the master, on demand, one-half of the balance of wages earned and unpaid at each port at which the vessel loads or delivers cargo during the voyage. A demand may not be made before the expiration of 5 days from the beginning of the voyage, not more than once in 5 days, and not more than once in the same port on the same entry. If a master does not comply with this subsection, the seaman is released from the agreement required by section 10502 of this title and is entitled to payment of all wages earned. Notwithstanding a release signed by a seaman under section 10312 of this title, a court having jurisdiction may set aside, for good cause shown, the release and take action that justice requires. This subsection does not apply to a fishing or whaling vessel or a yacht.

(b) The master shall pay a seaman the balance of wages due the seaman within 2 days after the termination of the agreement required by section 10502 of this title or when the seaman is discharged, whichever is earlier.

(c) When payment is not made as provided under subsection (b) of this section without sufficient cause, the master or owner shall pay to the seaman 2 days' wages for each day payment is delayed.

(d) Subsections (b) and (c) of this section do not apply to:

(1) a vessel engaged in coastwise commerce.

(2) a yacht.

(3) a fishing vessel.

(4) a whaling vessel.

(e) This section applies to a seaman on a foreign vessel when in harbor of the United States. The courts are available to the seaman for the enforcement of this section.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 570; Pub. L. 99–36, § 1(a)(5), May 15, 1985, 99 Stat. 67; Pub. L. 99–640, § 10(b)(4), (5), Nov. 10, 1986, 100 Stat. 3550.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
10504	46:596 46:597 46:598

Section 10504 specifies when seamen on coastwise voyages may obtain portions of their wages. The section does not apply to fishing vessels, whaling vessels or yachts, and portions of it do not apply to vessels taking oysters. It does apply to foreign vessels while in United States ports.

AMENDMENTS

1986—Subsec. (a). Pub. L. 99–640, § 10(b)(4), struck out last sentence which read as follows: ''However, this subsection applies to a vessel taking oysters.''

Subsec. (d)(3). Pub. L. 99–640, § 10(b)(5), struck out ''(except a vessel taking oysters)'' after ''vessel''.

1985—Subsec. (d). Pub. L. 99–36 amended subsec. (d) generally, thereby including reference to a vessel engaged in coastwise commerce.

EFFECTIVE DATE OF 1985 AMENDMENT

Section 1(b) of Pub. L. 99–36 provided that: ''The effective date of subsection (a)(5) of this section [amending this section] is August 26, 1983.''

§ 10505. Advances

(a)(1) A person may not—

(A) pay a seaman wages in advance of the time when the seaman has earned the wages;

(B) pay advance wages of the seaman to another person; or

(C) make to another person an order, note, or other evidence of indebtedness of the wages, or pay another person, for the engagement of seamen when payment is deducted or to be deducted from the seaman's wage.

(2) A person violating this subsection is liable to the United States Government for a civil penalty of not more than $5,000. A payment made in violation of this subsection does not relieve the vessel or the master from the duty to pay all wages after they have been earned.

(b) A person demanding or receiving from a seaman or an individual seeking employment as a seaman, remuneration for providing the seaman or individual with employment, is liable to the Government for a civil penalty of not more than $5,000.

(c) The owner, charterer, managing operator, agent, or master of a vessel seeking clearance from a port of the United States shall present the agreement required by section 10502 of this title at the office of clearance. Clearance may be granted to a vessel only if this section has been complied with.

(d) This section does not apply to a fishing or whaling vessel or a yacht.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 571; Pub. L. 99–640, § 10(b)(4), Nov. 10, 1986, 100 Stat. 3550; Pub. L. 103–206, title IV, § 414, Dec. 20, 1993, 107 Stat. 2437.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
10505	46:598 46:599

Section 10505 prohibits any person from paying a seaman on a coastwise voyage advance wages, or to pay to another person any form of a seaman's wages prior to the commencement of the seaman's employment. It also prohibits a person from seeking or receiving remuneration for providing a seaman with employment. This section also requires that a vessel comply with this section before clearing port. It provides penalties for offenses of its provisions. The section does not apply to fishing vessels, whaling vessels, or yachts, but does apply to vessels taking oysters.

AMENDMENTS

1993—Subsec. (a)(2). Pub. L. 103–206, § 414(1), substituted ''$5,000'' for ''$100''.

Subsec. (b). Pub. L. 103–206, § 414(2), substituted ''$5,000'' for ''$500''.

1986—Subsec. (d). Pub. L. 99–640 struck out last sentence which read as follows: ''However, this section applies to a vessel taking oysters.''

§ 10506. Trusts

Section 10505 of this title does not prevent an employer from making deductions from the wages of a seaman, with the written consent of the seaman, if—

(1) the deductions are paid into a trust fund established only for the benefit of seamen employed by that employer, and the families and dependents of those seamen (or of those seamen, families, and dependents jointly with other seamen employed by other employers, and the families and dependents of the other seamen); and

(2) the payments are held in trust to provide, from principal or interest, or both, any of the following benefits for those seamen and their families and dependents:

(A) medical or hospital care, or both.

(B) pensions on retirement or death of the seaman.

(C) life insurance.

(D) unemployment benefits.

(E) compensation for illness or injuries resulting from occupational activity.

(F) sickness, accident, and disability compensation.

(G) purchasing insurance to provide any of the benefits specified in this section.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 571.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
10506	46:599

Section 10506 permits deductions to be made from wages of seamen on coastwise voyages if the deductions are to be used for the benefit of the seamen or their families.

[§ 10507. Repealed. Pub. L. 103–206, title IV, § 415(a), Dec. 20, 1993, 107 Stat. 2438]

Section, Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 571, related to duties of shipping commissioners.

§ 10508. General penalties

(a) A master who carries a seaman on a voyage without first making the agreement required by section 10502 of this title shall pay to the seaman the highest wage that was paid for a similar voyage within the 3 months before the time of engagement at the port or place at which the seaman was engaged. A seaman who has not signed an agreement is not bound by the applicable regulations, penalties, or forfeitures.

(b) A master engaging a seaman in violation of this chapter or a regulation prescribed under this chapter is liable to the United States Government for a civil penalty of not more than $5,000. The vessel also is liable in rem for the penalty.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 572; Pub. L. 103–206, title IV, § 416, Dec. 20, 1993, 107 Stat. 2438.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
10508	46:575

Section 10508 provides for a fair wage to be paid to a seaman who was engaged without a shipping agreement, and also exempts the seaman under certain conditions from applicable regulations, penalties or forfeitures. It also provides a penalty for violation of its provisions.

AMENDMENTS

1993—Subsec. (b). Pub. L. 103–206 substituted ''not more than $5,000'' for ''$20''.

§ 10509. Penalty for failing to begin voyage

(a) A seaman who fails to be on board at the time contained in the agreement required by section 10502 of this title, without having given 24 hours' notice of inability to do so, shall forfeit, for each hour's lateness, one-half of one day's pay to be deducted from the seaman's wages if the lateness is recorded in the official logbook on the date of the violation.

(b) A seaman who does not report at all or subsequently deserts forfeits all wages.

(c) This section does not apply to a fishing or whaling vessel or a yacht.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 572.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
10509	46:576

This section provides for a reduction in the wages of seamen who arrive late for voyages, if their late arrival is noted in the official logbook. It does not apply to fishing vessels, whaling vessels or yachts.

CHAPTER 106—FISHING VOYAGES

Sec.
10601. Fishing agreements.
10602. Recovery of wages and shares of fish under agreement.
10603. Seaman's duty to notify employer regarding illness, disability, and injury.

§ 10601. Fishing agreements

(a) Before proceeding on a voyage, the owner, charterer, or managing operator, or a representative thereof, including the master or individual in charge, of a fishing vessel, fish processing vessel, or fish tender vessel shall make a fishing agreement in writing with each seaman employed on board if the vessel is—

(1) at least 20 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title; and

(2) on a voyage from a port in the United States.

(b) The agreement shall—

(1) state the period of effectiveness of the agreement;

(2) include the terms of any wage, share, or other compensation arrangement peculiar to the fishery in which the vessel will be engaged during the period of the agreement; and

(3) include other agreed terms.

(Pub. L. 100–424, § 6(a), Sept. 9, 1988, 102 Stat. 1591; Pub. L. 104–324, title VII, § 739, Oct. 19, 1996, 110 Stat. 3942; Pub. L. 107–295, title IV, § 441(a), (b), Nov. 25, 2002, 116 Stat. 2131.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
10601	46:531

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–295, § 441(a), (b)(1), in introductory provisions, inserted ''owner, charterer, or managing operator, or a representative thereof, including the'' after ''on a voyage, the'' and comma after ''individual in charge'' and substituted ''employed'' for ''enployed''.

Subsecs. (b), (c). Pub. L. 107–295, § 441(b)(2), (3), redesignated subsec. (c) as (b) and struck out former subsec. (b) which read as follows: ''The agreement shall be signed also by the owner of the vessel.''

1996—Subsec. (a)(1). Pub. L. 104–324 inserted ''as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' after ''20 gross tons''.

AGREEMENTS DEEMED COMPLIANT

Pub. L. 107–295, title IV, § 441(c), Nov. 25, 2002, 116 Stat. 2131, as amended by Pub. L. 108–199, div. H, § 137(a), Jan. 23, 2004, 118 Stat. 442, provided that: ''An agreement that complies with the requirements of section 10601(a) of title 46, United States Code, as herein amended, is hereby deemed to have been in compliance with subsections (a) and (b) of section 10601 of title 46, United States Code, as in effect prior to November 25, 2002.''

[Pub. L. 108–199, div. H, § 137(b), Jan. 23, 2004, 118 Stat. 442, provided that: ''The amendments made by subsection (a) [amending section 441(c) of Pub. L. 107–295, set out above] apply to all proceedings pending on or commenced after the date of enactment of this Act [Jan. 23, 2004].''']

§ 10602. Recovery of wages and shares of fish under agreement

(a) When fish caught under an agreement under section 10601 of this title are delivered to the owner of the vessel for processing and are sold, the vessel is liable in rem for the wages and shares of the proceeds of the seamen. An action under this section must be brought within six months after the sale of the fish.

(b)(1) In an action under this section, the owner shall produce an accounting of the sale and division of proceeds under the agreement. If the owner fails to produce the accounting, the vessel is liable for the highest value alleged for the shares.

(2) The owner may offset the value of general supplies provided for the voyage and other supplies provided the seaman bringing the action.

(c) This section does not affect a common law right of a seaman to bring an action to recover the seaman's share of the fish or proceeds.

(Pub. L. 100–424, § 6(a), Sept. 9, 1988, 102 Stat. 1592.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
10602	46:533, 534

§ 10603. Seaman's duty to notify employer regarding illness, disability, and injury

(a) A seaman on a fishing vessel, fish processing vessel, or fish tender vessel shall notify the master or individual in charge of the vessel or other agent of the employer regarding any illness, disability, or injury suffered by the seaman when in service to the vessel not later than seven days after the date on which the illness, disability, or injury arose.

(b) The Secretary shall prescribe regulations requiring that each fishing vessel, fish processing vessel, and fish tender vessel shall have on board a placard displayed in a prominent location accessible to the crew describing the seaman's duty under subsection (a) of this section.

(Pub. L. 100–424, § 6(a), Sept. 9, 1988, 102 Stat. 1592.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
10603	New

CHAPTER 107—EFFECTS OF DECEASED SEAMEN

Sec.
10701. Application.
10702. Duties of masters.
10703. Procedures of masters.
10704. Duties of consular officers.
10705. Disposition of money, property, and wages by consular officers.
10706. Seamen dying in the United States.
[10707. Repealed.]
10708. Sale of property.
10709. Distribution.
10710. Unclaimed money, property, and wages.
10711. Penalties.

AMENDMENTS

1993—Pub. L. 103–206, title IV, § 420(b), Dec. 20, 1993, 107 Stat. 2438, struck out item 10707 ''Delivery to district court''.

§ 10701. Application

(a) Except as otherwise specifically provided, this chapter applies to a vessel on a voyage between—

(1) a port of the United States and a port in a foreign country (except a port in Canada, Mexico, and the West Indies); and

(2) a port of the United States on the Atlantic Ocean and a port of the United States on the Pacific Ocean.

(b) This chapter does not apply to a vessel on which a seaman by custom or agreement is entitled to share in the profit or result of a voyage.

(c) This chapter does not apply to a foreign vessel.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 572.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
10701	46:621

Section 10701 provides that the provisions in chapter 107 apply to vessels on voyages between U.S. ports and foreign countries (except Canada, Mexico, or the West Indies) and between United States ports on the Atlantic and United States ports on the Pacific. It does not apply to foreign vessels or vessels on which the seamen share the profits.

§ 10702. Duties of masters

(a) When a seaman dies during a voyage, the master shall take charge of the seaman's money and property. An entry shall be made in the official logbook, signed by the master, the chief mate, and an unlicensed crewmember containing an inventory of the money and property and a statement of the wages due the seaman, with the total of the deductions to be made.

(b) On compliance with this chapter, the master shall obtain a written certificate of compliance from the consular officer or court clerk. Clearance may be granted to a foreign-bound vessel only when the certificate is received at the office of customs.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 572; Pub. L. 103–206, title IV, § 422(a), Dec. 20, 1993, 107 Stat. 2438.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
10702	46:621

Section 10702 requires a master to take charge of the property of a deceased seaman, make note in the official logbook that the property was taken and obtain a certificate of compliance from a shipping commissioner which must be exhibited for port clearance of foreign bound vessels.

AMENDMENTS

1993—Subsec. (b). Pub. L. 103–206 substituted ''the consular officer or court clerk'' for ''a shipping commissioner''.

§ 10703. Procedures of masters

(a) If the vessel is proceeding to the United States when a seaman dies, the master shall deliver the seaman's money, property, and wages when the agreement required by this part is ended, as provided in section 10706 of this title.

(b) If the vessel touches at a foreign port after the death of the seaman, the master shall report to the first available consular officer. The consular officer may require the master to deliver to the officer the money, property, and wages of the seaman. The consular officer shall give the master a receipt for the matters delivered and certify on the agreement the particulars of the delivery. When the agreement ends, the master shall deliver the receipt to a district court of the United States.

(c) If the consular officer does not require the master to deliver the seaman's money, property, and wages, the officer shall so certify on the agreement, and the master shall dispose of the money, property, and wages as provided under section 10706 of this title.

(d) A deduction from the account of a deceased seaman is valid only if certified by a proper entry in the official logbook.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 573; Pub. L. 103–206, title IV, § 418, Dec. 20, 1993, 107 Stat. 2438.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
10703	46:622

Section 10703 provides for the disposal by the master of the property and wages of deceased seamen who have died outside the United States.

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–206, § 418(1), substituted ''in section 10706 of this title'' for ''by regulations prescribed by the Secretary''.

Subsec. (b). Pub. L. 103–206, § 418(2), substituted ''to a district court of the United States'' for ''as prescribed by regulations''.

Subsec. (c). Pub. L. 103–206, § 418(3), substituted ''section 10706 of this title'' for ''subsection (a) of this section''.

§ 10704. Duties of consular officers

When a seaman dies outside the United States leaving money or property not on board a vessel, the consular officer nearest the place at which the money and property is located shall claim and take charge of it.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 573.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
10704	46:624

Section 10704 requires consular officers to take charge of the property (not left on board a vessel) of deceased seamen who have died outside the United States.

§ 10705. Disposition of money, property, and wages by consular officers

When money, property, or wages of a deceased seaman comes into possession of a consular officer, the officer may—

(1) sell the property and remit the proceeds and other money or wages of the seaman the officer has received, to the district court of the United States for the district in which the voyage begins or ends; or

(2) deliver the money, property, and wages to the district court.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 573.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
10705	46:624

Section 10705 instructs consular officers on the disposal of the property and wages of deceased seamen who have died outside the United States.

§ 10706. Seamen dying in the United States

When a seaman dies in the United States and is entitled at death to claim money, property, or wages from the master or owner of a vessel on which the seaman served, the master or owner shall deliver the money, property, and wages to a district court of the United States within one week of the seaman's death. If the seaman's death occurs at sea, such money, property, or wages shall be delivered to a district court or a consular officer within one week of the vessel's arrival at the first port call after the seaman's death.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 573; Pub. L. 103–206, title IV, § 419, Dec. 20, 1993, 107 Stat. 2438.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
10706	46:625

Section 10706 provides for the disposal by the master of the property and wages of deceased seamen who have died in the United States.

AMENDMENTS

1993—Pub. L. 103–206 substituted ''to a district court of the United States within one week of the seaman's death. If the seaman's death occurs at sea, such money, property, or wages shall be delivered to a district court or a consular officer within one week of the vessel's arrival at the first port call after the seaman's death.'' for ''as provided by regulations prescribed by the Secretary.''.

[§ 10707. Repealed. Pub. L. 103–206, title IV, § 420(a), Dec. 20, 1993, 107 Stat. 2438]

Section, Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 573, related to delivery to district court of money, property, and wages of a deceased seaman.

§ 10708. Sale of property

A district court of the United States may direct the sale of any part of the property of a deceased seaman. Proceeds of the sale shall be held as wages of the seaman are held.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 574.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
10708	46:628

Section 10708 permits a district court to sell a deceased seaman's property and treat the proceeds as wages.

§ 10709. Distribution

(a)(1) If the money, property, and wages of a seaman, including proceeds from the sale of

property, are not more than $1,500 in value, the court, subject to deductions it allows for expenses and at least 60 days after receiving the money, property, and wages, may deliver the money, property, and wages to a claimant proving to be—

(A) the seaman's surviving spouse or child;

(B) entitled to the money, property, and wages under the seaman's will or under a law or at common law; or

(C) entitled to secure probate, or take out letters of administration, although no probate or letters of administration have been issued.

(2) The court is released from further liability for the money, property, and wages distributed under paragraph (1) of this subsection.

(3) Instead of acting under paragraphs (1) and (2) of this subsection, the court may require probate or letters of administration to be taken out, and then deliver the money, property, and wages to the legal representative of the seaman.

(b) If the money, property, and wages are more than $1,500 in value, the court, subject to deductions for expenses, shall deliver the money, property, and wages to the legal representative of the seaman.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 574; Pub. L. 99–307, § 1(15), May 19, 1986, 100 Stat. 446.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
10709	46:627

Section 10709 instructs a district court to deliver a deceased seaman's property and wages to the proper claimant or legal representative. It also discharges the court from liability.

AMENDMENTS

1986—Subsec. (a)(1). Pub. L. 99–307, in text preceding cl. (A), substituted ''than $1,500 in value, the court,'' for ''then $1,500 in value, and'' and ''wages, may'' for ''wages, the court may''.

§ 10710. Unclaimed money, property, and wages

(a) When a claim for the money, property, or wages of a deceased seaman held by a district court of the United States has not been substantiated within 6 years after their receipt by the court, the court, if a subsequent claim is made, may allow or refuse the claim.

(b) If, after money, property, and wages have been held by the court for 6 years, it appears to the court that no claim will have to be satisfied, the property shall be sold. The money and wages and the proceeds from the sale shall be deposited in the Treasury trust fund receipt account ''Unclaimed Moneys of Individuals Whose Whereabouts are Unknown''.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 574.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
10710	46:628

Section 10710 provides that if no claim is made to a deceased seaman's property and wages within six years, the court shall sell the property and deposit the proceeds into the Treasury trust fund receipt account ''Unclaimed Moneys of Individuals Whose Whereabouts are Unknown''.

§ 10711. Penalties

An owner or master violating this chapter are each liable to the United States Government for a civil penalty of 3 times the value of the seaman's money, property, and wages involved or, if the value is not determined, of $200.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 574.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
10711	46:623

Section 10711 provides penalties for masters and owners violating this chapter.

CHAPTER 109—PROCEEDINGS ON UNSEAWORTHINESS

Sec.
10901. Application.
10902. Complaints of unfitness.
10903. Proceedings on examination of vessel.
10904. Refusal to proceed.
10905. Complaints in foreign ports.
10906. Discharge of crew for unsuitability.
10907. Permission to make complaint.
10908. Penalty for sending unseaworthy vessel to sea.

§ 10901. Application

This chapter applies to a vessel of the United States except a fishing or whaling vessel or a yacht.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 575.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
10901	46:653 46:654 46:655 46:656 46:658

Section 10901 provides that chapter 109 applies to all vessels of the United States except fishing vessels, whaling vessels or yachts.

§ 10902. Complaints of unfitness

(a)(1) If the chief and second mates or a majority of the crew of a vessel ready to begin a voyage discover, before the vessel leaves harbor, that the vessel is unfit as to crew, hull, equipment, tackle, machinery, apparel, furniture, provisions of food or water, or stores to proceed on the intended voyage and require the unfitness to be inquired into, the master immediately shall apply to the district court of the United States at the place at which the vessel is located, or, if no court is being held at the place at which the vessel is located, to a judge or justice of the peace, for the appointment of surveyors. At least 2 complaining seamen shall accompany the master to the judge or justice of the peace.

(2) A master failing to comply with this subsection is liable to the United States Government for a civil penalty of $500.

(b)(1) Any 3 seamen of a vessel may complain that the provisions of food or water for the crew are, at any time, of bad quality, unfit for use, or deficient in quantity. The complaint may be made to the Secretary, commanding officer of a

United States naval vessel, consular officer, or chief official of the Customs Service.

(2) The Secretary, officer, or official shall examine, or have examined, the provisions of food or water. If the provisions are found to be of bad quality, unfit for use, or deficient in quantity, the person making the findings shall certify to the master of the vessel which provisions are of bad quality, unfit for use, or deficient.

(3) The Secretary, officer, or official to whom the complaint was made shall—

(A) make an entry in the official logbook of the vessel on the results of the examination; and

(B) submit a report on the examination to the district court of the United States at which the vessel is to arrive, with the report being admissible into evidence in any legal proceeding.

(4) The master is liable to the Government for a civil penalty of not more than $100 each time the master, on receiving the certification referred to in paragraph (2) of this subsection—

(A) does not provide other proper provisions of food or water, when available, in place of the provisions certified as of bad quality or unfit for use;

(B) does not obtain sufficient provisions when the certification includes a finding of a deficiency in quantity; or

(C) uses provisions certified to be of bad quality or unfit for use.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 575; Pub. L. 103–206, title IV, § 422(b), Dec. 20, 1993, 107 Stat. 2439.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
10902(a)	46:653
10902(b)	46:662

Section 10902 instructs the crew on making complaints of unfitness of vessel with regard to equipment and provisions, and instructs the master on responding to those complaints, and provides a penalty for violations.

AMENDMENTS

1993—Subsec. (b)(1). Pub. L. 103–206, § 422(b)(1), inserted ''Secretary,'' after ''The complaint may be made to the'' and struck out ''Coast Guard shipping commissioner,'' after ''consular officer,''.

Subsec. (b)(2), (3). Pub. L. 103–206, § 422(b)(2), substituted ''The Secretary, officer,'' for ''The officer, commissioner,''.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 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.

§ 10903. Proceedings on examination of vessel

(a) On application made under section 10902(a) of this title, the judge or justice of the peace shall appoint 3 experienced and skilled marine surveyors to examine the vessel for the defects or insufficiencies complained of. The surveyors have the authority to receive and consider evidence necessary to evaluate the complaint. When the complaint involves provisions of food or water, one of the surveyors shall be a medical officer of the Public Health Service, if available. The surveyors shall make a report in writing, signed by at least 2 of them, stating whether the vessel is fit to proceed to sea or, if not, in what respect it is unfit, making appropriate recommendations about additional seamen, provisions, or stores, or about physical repairs, alterations, or additions necessary to make the vessel fit.

(b) On receiving the report, the judge or justice of the peace shall endorse on the report the judgment of the judge or justice on whether the vessel is fit to proceed on the voyage, and, if not, whether the vessel may proceed to another port at which the deficiencies can be corrected. The master and the crew shall comply with the judgment.

(c) The master shall pay all costs of the survey, report, and judgment. However, if the complaint of the crew appears in the report and judgment to have been without foundation, or if the complaint involved provisions of food or water, without reasonable grounds, the master or owner may deduct the amount of the costs and reasonable damages for the detention of the vessel, as determined by the judge or justice of the peace, from the wages of the complaining seamen.

(d) A master of a vessel violating this section who refuses to pay the costs and wages is liable to the United States Government for a civil penalty of $100 and is liable in damages to each person injured by the refusal.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 575.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
10903(a), (b)	46:654
10903(c)	46:659
10903(d)	46:660

Section 10903 provides for marine surveyors appointed by a judge or justice of the peace to inspect a vessel on which a complaint of unfitness was made, for a judge or justice of the peace to judge the fitness based on the findings, and for the payment of costs of the inspection by the master or the crew. It also includes a penalty for noncompliance.

§ 10904. Refusal to proceed

After a judgment under section 10903 of this title that a vessel is fit to proceed on the intended voyage, or after the order of a judgment to make up deficiencies is complied with, if a seaman does not proceed on the voyage, the unpaid wages of the seaman are forfeited.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 576.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
10904	46:655

Section 10904 provides that if a vessel is found fit to proceed by a judge or justice of the peace and a seaman refuses to proceed, the seaman shall forfeit any unpaid wages.

§ 10905. Complaints in foreign ports

(a) When a complaint under section 10902(a) of this title is made in a foreign port, the procedures of this chapter shall be followed, with a consular officer performing the duties of the judge or justice of the peace.

(b) On review of the marine surveyors' report, the consular officer may approve and must certify any part of the report with which the officer agrees. If the consular officer dissents from any part of the report, the officer shall certify reasons for dissenting from that part.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 576.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
10905	46:656 46:657

Section 10905 provides that if a complaint of unfitness is made in a foreign port, a consular officer shall perform the duties of a judge or justice of the peace.

§ 10906. Discharge of crew for unsuitability

When a survey is made at a foreign port, the surveyors shall state in the report whether, in their opinion, the vessel had been sent to sea unsuitably provided in any important particular, by neglect or design or through mistake or accident. If by neglect or design, and the consular officer approves the finding, the officer shall discharge a seaman requesting discharge and shall require the master to pay one month's wages to that seaman in addition to wages then due, or sufficient money for the return of the seaman to the nearest and most convenient port of the United States, whichever is the greater amount.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 576.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
10906	46:658

Section 10906 provides that if a consular officer finds that a vessel has been sent to sea in an unsuitable state, a crew member requesting discharge must be paid one month's additional wages and passage to the United States.

§ 10907. Permission to make complaint

(a) A master may not refuse to permit, deny the opportunity to, or hinder a seaman who wishes to make a complaint authorized by this chapter.

(b) A master violating this section is liable to the United States Government for civil penalty of $500.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 577.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
10907	46:653 46:664

Section 10907 prohibits a master from hindering a seaman from making a complaint authorized by this chapter and subjects the master to a fine for violation of this section.

§ 10908. Penalty for sending unseaworthy vessel to sea

A person that knowingly sends or attempts to send, or that is a party to sending or attempting to send, a vessel of the United States to sea, in an unseaworthy state that is likely to endanger the life of an individual, shall be fined not more than $1,000, imprisoned for not more than 5 years, or both.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 577.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
10908	46:658

Section 10908 provides a penalty for a person knowingly sending or attempting to send an unseaworthy vessel to sea.

CHAPTER 111—PROTECTION AND RELIEF

Sec.
11101. Accommodations for seamen.
11102. Medicine chests.
11103. Slop chests.
11104. Destitute seamen.
11105. Wages on discharge when vessel sold.
11106. Wages on justifiable complaint of seamen.
11107. Unlawful engagements void.
11108. Taxes.
11109. Attachment of wages.
11110. Seamen's clothing.
11111. Limit on amount recoverable on voyage.
11112. Master's lien for wages.

AMENDMENTS

1986—Pub. L. 99–307, §1(19)(A), May 19, 1986, 100 Stat. 446, added item 11112.

§ 11101. Accommodations for seamen

(a) On a merchant vessel of the United States the construction of which began after March 4, 1915 (except a yacht, pilot vessel, or vessel of less than 100 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title)—

(1) each place appropriated to the crew of the vessel shall have a space of at least 120 cubic feet and at least 16 square feet, measured on the floor or deck of that place, for each seaman or apprentice lodged in the vessel;

(2) each seaman shall have a separate berth and not more than one berth shall be placed one above another;

(3) the place or berth shall be securely constructed, properly lighted, drained, heated, and ventilated, properly protected from weather and sea, and, as far as practicable, properly shut off and protected from the effluvium of cargo or bilge water; and

(4) crew space shall be kept free from goods or stores that are not the personal property of the crew occupying the place in use during the voyage.

(b) In addition to the requirements of subsection (a) of this section, a merchant vessel of the United States that in the ordinary course of trade makes a voyage of more than 3 days' dura-

tion between ports and carries a crew of at least 12 seamen shall have a hospital compartment, suitably separated from other spaces. The compartment shall have at least one bunk for each 12 seamen constituting the crew (but not more than 6 bunks may be required).

(c) A steam vessel of the United States operating on the Mississippi River or its tributaries shall provide, under the direction and approval of the Secretary, an appropriate place for the crew that shall conform to the requirements of this section, as far as they apply to the steam vessel, by providing a properly heated sleeping room in the engineroom of the steam vessel properly protected from the cold, wind, and rain by means of suitable awnings or screens on either side of the guards or sides and forward, reaching from the boiler deck to the lower or main deck.

(d) A merchant vessel of the United States, the construction of which began after March 4, 1915, having more than 10 seamen on deck, shall have at least one lighted, clean, and properly heated and ventilated washing place. There shall be provided at least one washing outfit for each 2 seamen of the watch. A separate washing place shall be provided for the fireroom and engineroom seamen, if their number is more than 10, that shall be large enough to accommodate at least one-sixth of them at the same time, and have a hot and cold water supply and a sufficient number of washbasins, sinks, and shower baths.

(e) Forecastles shall be fumigated at intervals provided by regulations prescribed by the Secretary of Health and Human Services, with the approval of the Secretary, and shall have at least 2 exits, one of which may be used in emergencies.

(f) The owner, charterer, managing operator, agent, master, or licensed individual of a vessel not complying with this section is liable to the United States Government for a civil penalty of at least $50 but not more than $500.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 577; Pub. L. 99–36, § 1(a)(6), May 15, 1985, 99 Stat. 67; Pub. L. 104–324, title VII, § 740, Oct. 19, 1996, 110 Stat. 3942.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
11101	46:660–1

Section 11101 provides mandatory standards for crew accommodations and a penalty for noncompliance with those standards.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–324 inserted ''as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' after ''100 gross tons'' in introductory provisions.

1985—Subsec. (d). Pub. L. 99–36 substituted ''lighted'' for ''light''.

§ 11102. Medicine chests

(a) A vessel of the United States on a voyage from a port in the United States to a foreign port (except to a Canadian port), and a vessel of the United States of at least 75 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title on a voyage between a port of the United States on the Atlantic Ocean and Pacific Ocean, shall be provided with a medicine chest.

(b) The owner and master of a vessel not equipped as required by subsection (a) of this section or a regulation prescribed under subsection (a) are liable to the United States Government for a civil penalty of $500. If the offense was due to the fault of the owner, a master penalized under this section has the right to recover the penalty and costs from the owner.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 578; Pub. L. 104–324, title VII, § 741, Oct. 19, 1996, 110 Stat. 3942.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
11102(a)	46:666
11102(b)	46:667

Section 11102 requires that a United States vessel on a foreign or intercoastal domestic voyage be equipped with a medicine chest, and provides a penalty for noncompliance. The Committee intends that regulation will provide for a well stocked medicine chest adequate for the crew of a vessel.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–324 inserted ''as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' after ''75 gross tons''.

§ 11103. Slop chests

(a) A vessel to which section 11102 of this title applies shall be provided with a slop chest containing sufficient clothing for the intended voyage for each seaman, including—

(1) boots or shoes;
(2) hats or caps;
(3) underclothing;
(4) outer clothing;
(5) foul weather clothing;
(6) everything necessary for the wear of a seaman; and
(7) a complete supply of tobacco and blankets.

(b) Merchandise in the slop chest shall be sold to a seaman desiring it, for the use of the seaman, at a profit of not more than 10 percent of the reasonable wholesale value of the merchandise at the port at which the voyage began.

(c) This section does not apply to a vessel on a voyage to Canada, Bermuda, the West Indies, Mexico, or Central America, or a fishing or whaling vessel.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 578.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
11103	46:670 46:671

Section 11103 requires that a United States vessel on a foreign or intercoastal domestic voyage be equipped with a slop chest and lists the items the slop chest must contain.

§ 11104. Destitute seamen

(a) A consular officer shall provide, for a destitute seaman of the United States, subsistence and passage to a port of the United States in the most reasonable manner, at the expense of the United States Government and subject to regulations prescribed by the Secretary of State. A seaman, if able, shall be required to perform duties on the vessel giving the seaman passage, in accordance with the seaman's rating.

(b) A master of a vessel of the United States bound to a port of the United States shall take a destitute seaman on board at the request of a consular officer and transport the seaman to the United States. A master refusing to transport a destitute seaman when requested is liable to the United States Government for a civil penalty of $100. The certificate signed and sealed by a consular officer is prima facie evidence of refusal. A master is not required to carry a destitute seaman if the seaman's presence would cause the number of individuals on board to exceed the number permitted in the certificate of inspection or if the seaman has a contagious disease.

(c) Compensation for the transportation of destitute seamen to the United States who are unable to work shall be agreed on by the master and the consular officer, under regulations prescribed by the Secretary of State. However, the compensation may be not more than the lowest passenger rate of the vessel, or 2 cents a mile, whichever is less.

(d) When a master of a vessel of the United States takes on board a destitute seaman unable to work, from a port or place not having a consular officer, for transportation to the United States or to a port at which there is a consular officer, the master or owner of the vessel shall be compensated reasonably under regulations prescribed by the Secretary of State.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 578.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
11104(a)	46:678
11104(b)–(d)	46:679

Section 11104 provides for the return to the United States of destitute seamen of the United States at the expense of the United States Government.

§ 11105. Wages on discharge when vessel sold

(a) When a vessel of the United States is sold in a foreign country, the master shall deliver to the consular officer a certified crew list and the agreement required by this part. The master shall pay each seaman the wages due the seaman and provide the seaman with employment on board another vessel of the United States bound for the port of original engagement of the seaman or to another port agreed on. If employment cannot be provided, the master shall—

(1) provide the seaman with the means to return to the port of original engagement;

(2) provide the seaman passage to the port of original engagement; or

(3) deposit with the consular officer an amount of money considered sufficient by the officer to provide the seaman with maintenance and passage home.

(b) The consular officer shall endorse on the agreement the particulars of the payment, provision, or deposit made under this section.

(c) An owner of a vessel is liable to the United States Government for a civil penalty of $500 if the master does not comply with this section.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 579.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
11105	46:684

Section 11105 provides that when a United States vessel is sold in a foreign port, the seamen must be provided employment on another vessel, or passage to the port of original shipment.

§ 11106. Wages on justifiable complaint of seamen

(a) Before a seaman on a vessel of the United States is discharged in a foreign country by a consular officer on the seaman's complaint that the agreement required by this part has been breached because the vessel is badly provisioned or unseaworthy, or against the officers for cruel treatment, the officer shall inquire about the complaint. If satisfied of the justice of the complaint, the consular officer shall require the master to pay the wages due the seaman plus one month's additional wages and shall discharge the seaman. The master shall provide the seaman with employment on another vessel or provide the seaman with passage on another vessel to the port of original engagement, to the most convenient port of the United States, or to some port agreeable to the seaman.

(b) When a vessel does not have sufficient provisions for the intended voyage, and the seaman has been forced to accept a reduced ration or provisions that are bad in quality or unfit for use, the seaman is entitled to recover from the master or owner an allowance, as additional wages, that the court hearing the case considers reasonable.

(c) Subsection (b) of this section does not apply when the reduction in rations was for a period during which the seaman willfully and without sufficient cause failed to perform duties or was lawfully under confinement on board or on shore for misconduct, unless that reduction can be shown to have been unreasonable.

(d) Subsection (b) of this section does not apply to a fishing or whaling vessel or a yacht.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 579.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
11106(a)	46:685
11106(b)–(d)	46:665

Section 11106 provides compensation to seamen on United States vessels when a shipping agreement is breached. It does not apply to fishing vessels, whaling vessels or yachts.

§ 11107. Unlawful engagements void

An engagement of a seaman contrary to a law of the United States is void. A seaman so engaged may leave the service of the vessel at any time and is entitled to recover the highest rate of wages at the port from which the seaman was

engaged or the amount agreed to be given the seaman at the time of engagement, whichever is higher.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 580.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
11107	46:578

Section 11107 entitles seamen engaged contrary to any United States law to leave the service of the vessel without loss of wages.

§ 11108. Taxes

(a) WITHHOLDING.—Wages due or accruing to a master or seaman on a vessel in the foreign, coastwise, intercoastal, interstate, or noncontiguous trade or an individual employed on a fishing vessel or any fish processing vessel may not be withheld under the tax laws of a State or a political subdivision of a State. However, this section does not prohibit withholding wages of a seaman on a vessel in the coastwise trade between ports in the same State if the withholding is under a voluntary agreement between the seaman and the employer of the seaman.

(b) LIABILITY.—

(1) LIMITATION ON JURISDICTION TO TAX.—An individual to whom this subsection applies is not subject to the income tax laws of a State or political subdivision of a State, other than the State and political subdivision in which the individual resides, with respect to compensation for the performance of duties described in paragraph (2).

(2) APPLICATION.—This subsection applies to an individual—

(A) engaged on a vessel to perform assigned duties in more than one State as a pilot licensed under section 7101 of this title or licensed or authorized under the laws of a State; or

(B) who performs regularly-assigned duties while engaged as a master, officer, or crewman on a vessel operating on the navigable waters of more than one State.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 580; Pub. L. 98–364, title IV, § 402(14), July 17, 1984, 98 Stat. 450; Pub. L. 106–489, § 1, Nov. 9, 2000, 114 Stat. 2207.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
11108	46:601

Section 11108 prohibits the mandatory withholding of state or local taxes from crewmembers on certain specified vessels. It permits, however, voluntary withholding agreements.

AMENDMENTS

2000—Pub. L. 106–489 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

1984—Pub. L. 98–364 substituted ''an individual employed on a fishing vessel or any fish processing vessel'' for ''a fisherman employed on a fishing vessel''.

§ 11109. Attachment of wages

(a) Wages due or accruing to a master or seaman are not subject to attachment or arrestment from any court, except for an order of a court about the payment by a master or seaman of any part of the master's or seaman's wages for the support and maintenance of the spouse or minor children of the master or seaman, or both. A payment of wages to a master or seaman is valid, notwithstanding any prior sale or assignment of wages or any attachment, encumbrance, or arrestment of the wages.

(b) An assignment or sale of wages or salvage made before the payment of wages does not bind the party making it, except allotments authorized by section 10315 of this title.

(c) This section applies to an individual employed on a fishing vessel or any fish processing vessel.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 580; Pub. L. 98–364, title IV, § 402(15), July 17, 1984, 98 Stat. 450.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
11109	46:601

Section 11109 limits the attachment of a seaman's wages and establishes certain rules for the assignment of a seaman's wages. It also applies to fishermen on fishing vessels.

AMENDMENTS

1984—Subsec. (c). Pub. L. 98–364 substituted ''an individual employed on a fishing vessel or any fish processing vessel'' for ''a fisherman on a fishing vessel''.

§ 11110. Seamen's clothing

The clothing of a seaman is exempt from attachments and liens. A person detaining a seaman's clothing shall be fined not more than $500, imprisoned for not more than 6 months, or both.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 580.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
11110	46:563

Section 11110 exempts seamen's clothing from attachments and liens. It also provides a penalty for violations.

§ 11111. Limit on amount recoverable on voyage

When a seaman is on a voyage on which a written agreement is required under this part, not more than $1 is recoverable from the seaman by a person for a debt incurred by the seaman during the voyage for which the seaman is signed on until the voyage is ended.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 581.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
11111	46:602

Section 11111 limits the amount of money recoverable from a seaman for a debt incurred while on a voyage on which a shipping agreement is required.

§ 11112. Master's lien for wages

The master of a documented vessel has the same lien against the vessel for the master's

wages and the same priority as any other seaman serving on the vessel.

(Added Pub. L. 99–307, § 1(19)(B), May 19, 1986, 100 Stat. 446.)

CHAPTER 112—MERCHANT MARINER BENEFITS

Sec.
11201. Eligibility for veterans' burial and cemetery benefits.
11202. Qualified service.
11203. Documentation of qualified service.
11204. Processing fees.

§ 11201. Eligibility for veterans' burial and cemetery benefits

(a) ELIGIBILITY.—

(1) IN GENERAL.—The qualified service of a person referred to in paragraph (2) shall be considered to be active duty in the Armed Forces during a period of war for purposes of eligibility for benefits under the following provisions of title 38:

(A) Chapter 23 (relating to burial benefits).

(B) Chapter 24 (relating to interment in national cemeteries).

(2) COVERED INDIVIDUALS.—Paragraph (1) applies to a person who—

(A) receives an honorable service certificate under section 11203 of this title; and

(B) is not eligible under any other provision of law for benefits under laws administered by the Secretary of Veterans Affairs.

(b) REIMBURSEMENT FOR BENEFITS PROVIDED.—The Secretary shall reimburse the Secretary of Veterans Affairs for the value of benefits that the Secretary of Veterans Affairs provides for a person by reason of eligibility under this section.

(c) APPLICABILITY.—

(1) GENERAL RULE.—Benefits may be provided under the provisions of law referred to in subsection (a)(1) by reason of this chapter only for deaths occurring after the date of the enactment of this chapter.

(2) BURIALS, ETC. IN NATIONAL CEMETERIES.—Notwithstanding paragraph (1), in the case of an initial burial or columbarium placement after the date of the enactment of this chapter, benefits may be provided under chapter 24 of title 38 by reason of this chapter (regardless of the date of death), and in such a case benefits may be provided under section 2306 of such title.

(Added Pub. L. 105–368, title IV, § 402(a), Nov. 11, 1998, 112 Stat. 3336.)

REFERENCES IN TEXT

The date of the enactment of this chapter, referred to in subsec. (c), is the date of enactment of Pub. L. 105–368, which was approved Nov. 11, 1998.

§ 11202. Qualified service

For purposes of this chapter, a person shall be considered to have engaged in qualified service if, between August 16, 1945, and December 31, 1946, the person—

(1) was a member of the United States merchant marine (including the Army Transport Service and the Naval Transport Service) serving as a crewmember of a vessel that was—

(A) operated by the War Shipping Administration or the Office of Defense Transportation (or an agent of the Administration or Office);

(B) operated in waters other than inland waters, the Great Lakes, and other lakes, bays, and harbors of the United States;

(C) under contract or charter to, or property of, the Government of the United States; and

(D) serving the Armed Forces; and

(2) while so serving, was licensed or otherwise documented for service as a crewmember of such a vessel by an officer or employee of the United States authorized to license or document the person for such service.

(Added Pub. L. 105–368, title IV, § 402(a), Nov. 11, 1998, 112 Stat. 3336.)

§ 11203. Documentation of qualified service

(a) RECORD OF SERVICE.—The Secretary, or in the case of personnel of the Army Transport Service or the Naval Transport Service, the Secretary of Defense, shall, upon application—

(1) issue a certificate of honorable service to a person who, as determined by that Secretary, engaged in qualified service of a nature and duration that warrants issuance of the certificate; and

(2) correct, or request the appropriate official of the Federal Government to correct, the service records of that person to the extent necessary to reflect the qualified service and the issuance of the certificate of honorable service.

(b) TIMING OF DOCUMENTATION.—A Secretary receiving an application under subsection (a) shall act on the application not later than 1 year after the date of that receipt.

(c) STANDARDS RELATING TO SERVICE.—In making a determination under subsection (a)(1), the Secretary acting on the application shall apply the same standards relating to the nature and duration of service that apply to the issuance of honorable discharges under section 401(a)(1)(B) of the GI Bill Improvement Act of 1977 (38 U.S.C. 106 note).

(d) CORRECTION OF RECORDS.—An official who is requested under subsection (a)(2) to correct the service records of a person shall make such correction.

(Added Pub. L. 105–368, title IV, § 402(a), Nov. 11, 1998, 112 Stat. 3337.)

REFERENCES IN TEXT

Section 401(a)(1)(B) of the GI Bill Improvement Act of 1977, referred to in subsec. (c), is section 401(a)(1)(B) of Pub. L. 95–202, which is set out as a note under section 106 of Title 38, Veterans' Benefits.

§ 11204. Processing fees

(a) COLLECTION OF FEES.—The Secretary, or in the case of personnel of the Army Transport Service or the Naval Transport Service, the Secretary of Defense, shall collect a fee of $30 from each applicant for processing an application submitted under section 11203(a) of this title.

(b) TREATMENT OF FEES COLLECTED.—Amounts received by the Secretary under this section shall be deposited in the General Fund of the Treasury as offsetting receipts of the department in which the Coast Guard is operating and ascribed to Coast Guard activities. Amounts received by the Secretary of Defense under this section shall be deposited in the General Fund of the Treasury as offsetting receipts of the Department of Defense. In either case, such amounts shall be available, subject to appropriation, for the administrative costs of processing applications under section 11203 of this title.

(Added Pub. L. 105–368, title IV, § 402(a), Nov. 11, 1998, 112 Stat. 3337.)

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.

CHAPTER 113—OFFICIAL LOGBOOKS

Sec.
11301. Logbook and entry requirements.
11302. Manner of making entries.
11303. Penalties.

§ 11301. Logbook and entry requirements

(a) Except a vessel on a voyage from a port in the United States to a port in Canada, a vessel of the United States shall have an official logbook if the vessel is—

(1) on a voyage from a port in the United States to a foreign port; or

(2) of at least 100 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title and is on a voyage between a port of the United States on the Atlantic Ocean and on the Pacific Ocean.

(b) The master of the vessel shall make or have made in the official logbook the following entries:

(1) each legal conviction of a seaman of the vessel and the punishment inflicted.

(2) each offense committed by a seaman of the vessel for which it is intended to prosecute or to enforce under a forfeiture, together with statements about reading the entry and the reply made to the charge as required by section 11502 of this title.

(3) each offense for which punishment is inflicted on board and the punishment inflicted.

(4) a statement of the conduct, character, and qualifications of each seaman of the vessel or a statement that the master declines to give an opinion about that conduct, character, and qualifications.

(5) each illness of or injury to a seaman of the vessel, the nature of the illness or injury, and the medical treatment.

(6) each death on board, with the cause of death, and if a seaman, the information required by section 10702 of this title.

(7) each birth on board, with the sex of the infant and name of the parents.

(8) each marriage on board, with the names and ages of the parties.

(9) the name of each seaman who ceases to be a crewmember (except by death), with the place, time, manner, and the cause why the seaman ceased to be a crewmember.

(10) the wages due to a seaman who dies during the voyage and the gross amount of all deductions to be made from the wages.

(11) the sale of the property of a seaman who dies during the voyage, including a statement of each article sold and the amount received for the property.

(12) when a marine casualty occurs, a statement about the casualty and the circumstances under which it occurred, made immediately after the casualty when practicable to do so.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 581; Pub. L. 98–557, § 30, Oct. 30, 1984, 98 Stat. 2875; Pub. L. 104–324, title VII, § 742, Oct. 19, 1996, 110 Stat. 3942.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
11301	46:201

Section 11301 requires United States vessels on certain types of voyages to have an official logbook and lists the types of entries that must be made in the logbook.

AMENDMENTS

1996—Subsec. (a)(2). Pub. L. 104–324 inserted ''as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' after ''100 gross tons''.

1984—Subsec. (a). Pub. L. 98–557 amended subsec. (a) generally, which prior to amendment read as follows: ''A vessel of the United States on a voyage between a port in the United States and a port in a foreign country, and a vessel of the United States of at least 75 gross tons on a voyage between a port of the United States on the Atlantic Ocean and a port of the United States on the Pacific Ocean, shall have an official logbook.''

§ 11302. Manner of making entries

Each entry made in the official logbook—

(1) shall be made as soon as possible after the occurrence;

(2) if not made on the day of the occurrence, shall be dated and state the date of the occurrence;

(3) if the entry is about an occurrence happening before the vessel's arrival at the final port of discharge, shall be made not later than 24 hours after the arrival;

(4) shall be signed by the master; and

(5) shall be signed by the chief mate or another seaman.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 581.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
11302	46:202

Section 11302 describes the manner in which entries shall be made in the logbook, specifying when they

shall be made, who shall sign them, and requiring that they shall be dated.

§ 11303. Penalties

(a) A master failing to maintain an official logbook as required by this part is liable to the United States Government for a civil penalty of $200.

(b) A master failing to make an entry in the vessel's official logbook as required by this part is liable to the Government for a civil penalty of $200.

(c) A person is liable to the Government for a civil penalty of $150 when the person makes, procures to be made, or assists in making, an entry in the vessel's official logbook—

(1) later than 24 hours after the vessel's arrival at the final port of discharge; and

(2) that is about an occurrence that happened before that arrival.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 582.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
11303	46:203

Section 11303 provides a penalty for violation of the provisions about logbooks in this part.

CHAPTER 115—OFFENSES AND PENALTIES

Sec.
11501. Penalties for specified offenses.
11502. Entry of offenses in logbook.
11503. Duties of consular officers related to insubordination.
11504. Enforcement of forfeitures.
11505. Disposal of forfeitures.
11506. Carrying sheath knives.
11507. Surrender of offending officers.

§ 11501. Penalties for specified offenses

When a seaman lawfully engaged commits any of the following offenses, the seaman shall be punished as specified:

(1) For desertion, the seaman forfeits any part of the money or property the seaman leaves on board and any part of earned wages.

(2) For neglecting or refusing without reasonable cause to join the seaman's vessel or to proceed to sea in the vessel, for absence without leave within 24 hours of the vessel's sailing from a port (at the beginning or during the voyage), or for absence without leave from duties and without sufficient reason, the seaman forfeits from the seaman's wages not more than 2 days' pay or a sufficient amount to defray expenses incurred in hiring a substitute.

(3) For quitting the vessel without leave after the vessel's arrival at the port of delivery and before the vessel is placed in security, the seaman forfeits from the seaman's wages not more than one month's pay.

(4) For willful disobedience to a lawful command at sea, the seaman, at the discretion of the master, may be confined until the disobedience ends, and on arrival in port forfeits from the seaman's wages not more than 4 days' pay or, at the discretion of the court, may be imprisoned for not more than one month.

(5) For continued willful disobedience to lawful command or continued willful neglect of duty at sea, the seaman, at the discretion of the master, may be confined, on water and 1,000 calories, with full rations every 5th day, until the disobedience ends, and on arrival in port forfeits, for each 24 hours' continuance of the disobedience or neglect, not more than 12 days' pay or, at the discretion of the court, may be imprisoned for not more than 3 months.

(6) For assaulting a master, mate, pilot, engineer, or staff officer, the seaman shall be imprisoned for not more than 2 years.

(7) For willfully damaging the vessel, or embezzling or willfully damaging any of the stores or cargo, the seaman forfeits from the seaman's wages the amount of the loss sustained and, at the discretion of the court, may be imprisoned for not more than 12 months.

(8) For smuggling for which a seaman is convicted causing loss or damage to the owner or master, the seaman is liable to the owner or master for the loss or damage, and any part of the seaman's wages may be retained to satisfy the liability. The seaman also may be imprisoned for not more than 12 months.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 582.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
11501	46:701

Section 11501 provides penalties for specific offenses committed by seamen.

§ 11502. Entry of offenses in logbook

(a) When an offense listed in section 11501 of this title is committed, an entry shall be made in the vessel's official logbook—

(1) on the day of the offense;

(2) stating the details;

(3) signed by the master; and

(4) signed by the chief mate or another seaman.

(b) Before arrival in port if the offense was committed at sea, or before departure if the offense was committed in port and the offender is still on the vessel—

(1) the entry shall be read to the offender;

(2) the offender shall be given a copy; and

(3) the offender shall be given the opportunity to reply.

(c) After subsection (b) of this section has been complied with, an entry shall be made in the official logbook—

(1) stating that the entry about the offense was read and a copy provided to the offender;

(2) stating the offender's reply;

(3) signed by the master; and

(4) signed by the chief mate or another seaman.

(d) In a subsequent legal proceeding, if the entries required by this section are not produced or proved, the court may refuse to receive evidence of the offense.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 583.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
11502	46:702

Section 11502 describes the manner in which offenses must be recorded in the official logbook, and the use of the records by the court.

§ 11503. Duties of consular officers related to insubordination

(a) A consular officer shall use every means to discountenance insubordination on vessels of the United States, including employing the aid of local authorities.

(b) When a seaman is accused of insubordination, a consular officer shall inquire into the facts and proceed as provided in section 11106 of this title. If the consular officer discharges the seaman, the officer shall endorse the agreement required by this part and enter in the vessel's official logbook the cause and particulars of the discharge.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 583.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
11503	46:703

Section 11503 delegates to consular officers certain responsibilities related to insubordination of seamen on United States vessels.

§ 11504. Enforcement of forfeitures

When an offense by a seaman also is a criminal violation, it is not necessary that a criminal proceeding be brought to enforce a forfeiture.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 584.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
11504	46:705

Section 11504 provides that when a seaman has committed a criminal offense, a forfeiture may be enforced through civil proceedings.

§ 11505. Disposal of forfeitures

(a) Money, property, and wages forfeited under this chapter for desertion may be applied to compensate the owner or master of the vessel for expenses caused by the desertion. The balance shall be transferred to the appropriate district court of the United States when the voyage is completed.

(b) If it appears to the district court that the forfeiture was imposed properly, the property transferred may be sold in the same manner prescribed for the disposition of the property of deceased seamen. The court shall deposit in the Treasury as miscellaneous receipts the proceeds of the sale and any money and wages transferred to the court.

(c) When an owner or master fails to transfer the balance as required under subsection (a) of this section, the owner or master is liable to the United States Government for a civil penalty of 2 times the amount of the balance, recoverable by the Secretary in the same manner that seaman's wages are recovered.

(d) In all other cases of forfeiture of wages, the forfeiture shall be for the benefit of the owner of the vessel.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 584; Pub. L. 103–206, title IV, § 421, Dec. 20, 1993, 107 Stat. 2438.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
11505	46:706

Section 11505 provides for the disposal of wages forfeited by deserting seamen.

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–206, § 421(1), substituted "The balance shall be transferred to the appropriate district court of the United States when the voyage is completed." for "The balance shall be transferred to the Secretary when the voyage is completed, as prescribed by the Secretary."

Subsec. (b). Pub. L. 103–206, § 421(2), struck out at beginning "Within one month of receiving the balance under subsection (a) of this section, the Secretary shall transfer the balance to the appropriate district court of the United States."

§ 11506. Carrying sheath knives

A seaman in the merchant marine may not wear a sheath knife on board a vessel without the consent of the master. The master of a vessel of the United States shall inform each seaman of this prohibition before engagement. A master failing to advise a seaman is liable to the United States Government for a civil penalty of $50.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 584.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
11506	46:710

Section 11506 prohibits a merchant seaman from carrying a sheath knife without permission of the master, and penalizes a master who does not advise a seaman of this provision.

§ 11507. Surrender of offending officers

When an officer of a vessel of the United States (except the master) has violated section 2191 of title 18, and the master has actual knowledge of the offense or if complaint is made within 3 days after reaching port, the master shall surrender the offending officer to the proper authorities. If the master fails to use diligence to comply with this section and the offender escapes, the owner, the master, and the vessel are liable for damages to the individual unlawfully punished.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 584.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
11507	46:712

Section 11507 requires a master of a vessel of the United States to surrender to the proper authorities any officer who has violated section 2191 of title 18 (which provides a penalty for cruelty to seamen by officers), and penalizes the master for noncompliance.

PART H—IDENTIFICATION OF VESSELS

CHAPTER 121—DOCUMENTATION OF VESSELS

Sec.
12101. Definitions and related terms in other laws.

Sec.
12102. Vessels eligible for documentation.
12103. Certificates of documentation.
12103a. Issuance of temporary certificate of documentation by third parties.
12104. Effect of documentation.
12105. Registry endorsements.
12106. Coastwise endorsements.
[12107. Repealed.]
12108. Fishery endorsements.
12109. Recreational endorsements.
12110. Limitations on operations authorized by certificates.
12111. Surrender and invalidation of certificates of documentation.
12112. Vessels procured outside the United States.
[12113 to 12116. Repealed.]
12117. Recording of United States built vessels.
[12118. Repealed.]
12119. List of documented vessels.
12120. Reports.
[12121. Repealed.]
12122. Penalties.
12123. Denial and revocation of endorsements.
12124. Surrender of title and number.

AMENDMENTS

2002—Pub. L. 107–295, title IV, § 422(b)(2), Nov. 25, 2002, 116 Stat. 2125, added item 12103a.

1998—Pub. L. 105–383, title IV, § 401(b), Nov. 13, 1998, 112 Stat. 3425, added item 12124.

1996—Pub. L. 104–324, title VII, § 746(a)(2), title XI, § 1115(b)(1), Oct. 19, 1996, 110 Stat. 3943, 3972, struck out item 12107 ''Great Lakes endorsements'' and struck out item 12123 ''Denial and revocation of endorsements'' appearing first.

1992—Pub. L. 102–587, title V, § 5213(b), Nov. 4, 1992, 106 Stat. 5077, added item 12123.

Pub. L. 102–388, title III, § 348(c)(2), Oct. 6, 1992, 106 Stat. 1554, added item 12123.

1990—Pub. L. 101–595, title VI, § 603(8), Nov. 16, 1990, 104 Stat. 2993, which directed the amendment of the chapter analysis of title 46 was executed to the chapter analysis of this chapter to reflect the probable intent of Congress by striking out items 12113 ''Ports of documentation'', 12114 ''Home ports'', 12115 ''Names of vessels'', 12116 ''Numbers, signal letters, and identification markings'', 12118 ''Registration of funnel marks and house flags'', and 12121 ''Regulations''.

1989—Pub. L. 101–225, title III, § 301(a)(12), Dec. 12, 1989, 103 Stat. 1922, inserted ''endorsements'' in item 12105, substituted ''endorsements'' for ''licenses and registry'' in items 12106, 12107, and 12108, and substituted ''endorsements'' for ''vessel licenses'' in item 12109.

1988—Pub. L. 100–710, title I, § 103(b), Nov. 23, 1988, 102 Stat. 4749, substituted ''Surrender and invalidation'' for ''Invalidation'' in item 12111.

Pub. L. 100–239, § 3(1), Jan. 11, 1988, 101 Stat. 1778, substituted ''Definitions and related'' for ''Related'' in item 12101.

1985—Pub. L. 99–36, § 1(a)(7)(A), May 15, 1985, 99 Stat. 67, substituted ''Recreational'' for ''Pleasure'' in item 12109.

§ 12101. Definitions and related terms in other laws

(a) In this chapter—

(1) ''fisheries'' includes processing, storing, transporting (except in foreign commerce), planting, cultivating, catching, taking, or harvesting fish, shellfish, marine animals, pearls, shells, or marine vegetation in the navigable waters of the United States or in the exclusive economic zone.

(2) ''rebuilt'' has the same meaning as in the second proviso of section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883).

(b) When used in a law, regulation, document, ruling, or other official act referring to the documentation of a vessel—

(1) ''certificate of registry'', ''register'', and ''registry'' mean a registry endorsement as provided in section 12105 of this title.

(2) ''license'', ''enrollment and license'', ''license for the coastwise (or coasting) trade'', and ''enrollment and license for the coastwise (or coasting) trade'' mean a coastwise endorsement as provided in section 12106 of this title.

[(3) Repealed. Pub. L. 104–324, title XI, § 1115(b)(2), Oct. 19, 1996, 110 Stat. 3972.]

(4) ''yacht'' means a recreational vessel even if not documented.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 585; Pub. L. 98–364, title IV, § 402(16), July 17, 1984, 98 Stat. 450; Pub. L. 99–36, § 1(a)(7)(B), May 15, 1985, 99 Stat. 67; Pub. L. 100–239, § 3(2), (3), Jan. 11, 1988, 101 Stat. 1778; Pub. L. 101–225, title III, § 301(a)(1), Dec. 12, 1989, 103 Stat. 1920; Pub. L. 104–324, title XI, § 1115(b)(2), Oct. 19, 1996, 110 Stat. 3972.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
12101	46:65w

Section 12101 defines the types of certificates of documentation that are used in this chapter, and in other laws, regulations, document rulings or other official acts referring to the documentation of a vessel.

AMENDMENTS

1996—Subsec. (b)(3). Pub. L. 104–324 struck out par. (3) which read as follows: '' 'enrollment and license to engage in the foreign and coastwise (or coasting) trade on the northern, northeastern, and northwestern frontiers, otherwise than by sea' means a Great Lakes endorsement as provided in section 12107 of this title.''

1989—Subsec. (b)(1). Pub. L. 101–225, § 301(a)(1)(A), substituted ''registry endorsement as'' for ''registry as''.

Subsec. (b)(2). Pub. L. 101–225, § 301(a)(1)(B), substituted ''coastwise endorsement'' for ''coastwise license''.

Subsec. (b)(3). Pub. L. 101–225, § 301(a)(1)(C), substituted ''Great Lakes endorsement'' for ''Great Lakes license''.

Subsec. (b)(4), (5). Pub. L. 101–225, § 301(a)(1)(D), (E), redesignated par. (5) as (4) and struck out former par. (4) which defined ''license for the fisheries'' and ''enrollment and license for the fisheries'' as meaning a fishery license as provided in section 12108 of this title.

1988—Pub. L. 100–239 substituted ''Definitions and related'' for ''Related'' in section catchline, added subsec. (a), designated existing provisions as subsec. (b), and struck out par. (6) which read as follows: '' 'fisheries' includes planting, cultivating, catching, taking, or harvesting fish, shellfish, marine animals, pearls, shells, or marine vegetation in the navigable waters of the United States or in the fishery conservation zone established by section 101 of the Magnuson Fishery Conservation and Management Act of 1976 (16 U.S.C. 1811).''

1985—Par. (5). Pub. L. 99–36 substituted ''recreational'' for ''pleasure''.

1984—Par. (6). Pub. L. 98–364 added par. (6).

EFFECTIVE DATE OF 1989 AMENDMENT

Section 309 of Pub. L. 101–225 provided that:

''(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this Act [see Tables for classification] take effect on the date of the enactment of this Act [Dec. 12, 1989].

''(b) EXCEPTIONS.—

''(1) The amendments made by section 1(a)(2) [probably means section 301(a)(2) of Pub. L. 101–225, which

amended section 12102 of this title] take effect January 1, 1989, except that the amendment made by subparagraph (A) of such section does not apply to a vessel titled in a State until one year after the Secretary of Transportation prescribes guidelines for a titling system under section 13106(b)(8) of title 46, United States Code.

''(2) The amendments made by section 1(a)(3) [probably means section 301(a)(3) of Pub. L. 101–225, which amended section 12103 of this title] take effect on the 180th day after the date of the enactment of this Act.''

USE OF FOREIGN REGISTRY OIL SPILL RESPONSE VESSELS

Section 1117 of Pub. L. 104–324 provided that: ''Notwithstanding any other provision of law, an oil spill response vessel documented under the laws of a foreign country may operate in waters of the United States on an emergency and temporary basis, for the purpose of recovering, transporting, and unloading in a United States port oil discharged as a result of an oil spill in or near those waters, if—

''(1) an adequate number and type of oil spill response vessels documented under the laws of the United States cannot be engaged to recover oil from an oil spill in or near those waters in a timely manner, as determined by the Federal On-Scene Coordinator for a discharge or threat of a discharge of oil; and

''(2) that foreign country has by its laws accorded to vessels of the United States the same privileges accorded to vessels of that foreign country under this section.''

§ 12102. Vessels eligible for documentation

(a) A vessel of at least 5 net tons that is not registered under the laws of a foreign country is eligible for documentation if the vessel is owned by—

(1) an individual who is a citizen of the United States;

(2) an association, trust, joint venture, or other entity—

(A) all of whose members are citizens of the United States; and

(B) that is capable of holding title to a vessel under the laws of the United States or of a State;

(3) a partnership whose general partners are citizens of the United States, and the controlling interest in the partnership is owned by citizens of the United States;

(4) a corporation established under the laws of the United States or of a State, whose chief executive officer, by whatever title, and chairman of its board of directors are citizens of the United States and no more of its directors are noncitizens than a minority of the number necessary to constitute a quorum;

(5) the United States Government; or

(6) the government of a State.

(b) A vessel is eligible for documentation only if it has been measured under part J of this subtitle. However, the Secretary of Transportation may issue a temporary certificate of documentation for a vessel before it is measured.

(c)(1) A vessel owned by a corporation, partnership, association, trust, joint venture, limited liability company, limited liability partnership, or any other entity is not eligible for a fishery endorsement under section 12108 of this title unless at least 75 per centum of the interest in such entity, at each tier of ownership of such entity and in the aggregate, is owned and controlled by citizens of the United States.

(2) The Secretary shall apply section 2(c) of the Shipping Act, 1916 (46 App. U.S.C. 802(c)) in determining under this subsection whether at least 75 per centum of the interest in a corporation, partnership, association, trust, joint venture, limited liability company, limited liability partnership, or any other entity is owned and controlled by citizens of the United States. For the purposes of this subsection and of applying the restrictions on controlling interest in section 2(c) of such Act, the terms ''control'' or ''controlled''—

(A) shall include—

(i) the right to direct the business of the entity which owns the vessel;

(ii) the right to limit the actions of or replace the chief executive officer, a majority of the board of directors, any general partner, or any person serving in a management capacity of the entity which owns the vessel; or

(iii) the right to direct the transfer, operation or manning of a vessel with a fishery endorsement; and

(B) shall not include the right to simply participate in the activities under subparagraph (A), or the exercise of rights under loan or mortgage covenants by a mortgagee eligible to be a preferred mortgagee under section 31322(a) of this title, provided that a mortgagee not eligible to own a vessel with a fishery endorsement may only operate such a vessel to the extent necessary for the immediate safety of the vessel or for repairs, drydocking or berthing changes.

(3) A fishery endorsement for a vessel that is chartered or leased to an individual who is not a citizen of the United States or to an entity that is not eligible to own a vessel with a fishery endorsement and used as a fishing vessel shall be invalid immediately upon such use.

(4) The requirements of this subsection shall not apply to a vessel when it is engaged in fisheries in the exclusive economic zone under the authority of the Western Pacific Fishery Management Council established under section 302(a)(1)(H) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(a)(1)(H)) or to a purse seine vessel when it is engaged in tuna fishing in the Pacific Ocean outside the exclusive economic zone of the United States or pursuant to the South Pacific Regional Fisheries Treaty, provided that the owner of the vessel continues to comply with the eligibility requirements for a fishery endorsement under the federal[1] law that was in effect on October 1, 1998. A fishery endorsement issued by the Secretary pursuant to this paragraph shall be valid for engaging only in fisheries in the exclusive economic zone under the authority of such Council, in such tuna fishing in the Pacific Ocean, or pursuant to such Treaty.

(5) A vessel greater than 165 feet in registered length, of more than 750 gross registered tons (as

[1] So in original. Probably should be capitalized.

measured under chapter 145 of title 46) or 1,900 gross registered tons as[2] measured under chapter 143 of that title), or that has an engine or engines capable of producing a total of more than 3,000 shaft horsepower is not eligible for a fishery endorsement under section 12108 of this title unless—

(A)(i) a certificate of documentation was issued for the vessel and endorsed with a fishery endorsement that was effective on September 25, 1997;

(ii) the vessel is not placed under foreign registry after the date of the enactment of the American Fisheries Act; and

(iii) in the event of the invalidation of the fishery endorsement after the date of the enactment of the American Fisheries Act, application is made for a new fishery endorsement within fifteen (15) business days of such invalidation; or

(B) the owner of such vessel demonstrates to the Secretary that the regional fishery management council of jurisdiction established under section 302(a)(1) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(a)(1)) has recommended after the date of the enactment of the American Fisheries Act, and the Secretary of Commerce has approved, conservation and management measures in accordance with such Act to allow such vessel to be used in fisheries under such council's authority.

(d)(1) For the issuance of a certificate of documentation with only a registry endorsement, subsection (a)(2)(A) of this section does not apply to a beneficiary of a trust that is qualified under paragraph (2) of this subsection if the vessel is subject to a charter to a citizen of the United States.

(2)(A) Subject to subparagraph (B) of this paragraph, a trust is qualified under this paragraph with respect to a vessel only if—

(i) each of the trustees is a citizen of the United States; and

(ii) the application for documentation of the vessel includes the affidavit of each trustee stating that the trustee is not aware of any reason involving a beneficiary of the trust that is not a citizen of the United States, or involving any other person that is not a citizen of the United States, as a result of which the beneficiary or other person would hold more than 25 percent of the aggregate power to influence or limit the exercise of the authority of the trustee with respect to matters involving any ownership or operation of the vessel that may adversely affect the interests of the United States.

(B) If any person that is not a citizen of the United States has authority to direct or participate in directing a trustee for a trust in matters involving any ownership or operation of the vessel that may adversely affect the interests of the United States or in removing a trustee for a trust without cause, either directly or indirectly through the control of another person, the trust is not qualified under this paragraph unless the trust instrument provides that persons who are not citizens of the United States may not hold more than 25 percent of the aggregate authority to so direct or remove a trustee.

(3) Paragraph (2) of this subsection shall not be considered to prohibit a person who is not a citizen of the United States from holding more than 25 percent of the beneficial interest in a trust.

(4) If a person chartering a vessel from a trust that is qualified under paragraph (2) of this subsection is a citizen of the United States under section 2 of the Shipping Act, 1916 (46 App. U.S.C. 802), then the vessel is deemed to be owned by a citizen of the United States for purposes of that section and related laws, except for subtitle B of title VI of the Merchant Marine Act, 1936 or chapter 531 of title 46, United States Code.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 585; Pub. L. 99–509, title V, § 5102(b)(6), Oct. 21, 1986, 100 Stat. 1927; Pub. L. 100–239, § 7(a), Jan. 11, 1988, 101 Stat. 1782; Pub. L. 100–710, title I, § 104(a)(4), (5), Nov. 23, 1988, 102 Stat. 4750; Pub. L. 101–225, title III, § 301(a)(2), Dec. 12, 1989, 103 Stat. 1920; Pub. L. 104–324, title XI, § 1136(a), Oct. 19, 1996, 110 Stat. 3986; Pub. L. 105–277, div. C, title II, § 202(a), Oct. 21, 1998, 112 Stat. 2681–617; Pub. L. 105–383, title IV, §§ 401(a)(1), 421, Nov. 13, 1998, 112 Stat. 3424, 3439; Pub. L. 107–20, title II, § 2202(a), July 24, 2001, 115 Stat. 168; Pub. L. 107–206, title I, § 1103, Aug. 2, 2002, 116 Stat. 884; Pub. L. 108–136, div. C, title XXXV, § 3534(b)(1), Nov. 24, 2003, 117 Stat. 1818.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
12102	46:65b

Section 12102 provides that vessels of at least five net tons, not registered under the laws of a foreign nation, are eligible for documentation if certain ownership requirements are met, and lists the ownership requirements.

REFERENCES IN TEXT

The date of the enactment of the American Fisheries Act, referred to in subsec. (c)(5), is the date of enactment of title II of div. C of Pub. L. 105–277, which was approved Oct. 21, 1998.

Such Act, referred to in subsec. (c)(5)(B), probably means the Magnuson-Stevens Fishery Conservation and Management Act, Pub. L. 94–265, Apr. 13, 1976, 90 Stat. 331, as amended, which is classified principally to chapter 38 (§ 1801 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of Title 16 and Tables.

Section 2 of the Shipping Act, 1916, referred to in subsec. (d)(4), is classified to sections 802 and 803 of the Appendix to this title.

The Merchant Marine Act, 1936, referred to in subsec. (d)(4), is act June 29, 1936, ch. 858, 49 Stat. 1985, as amended. Subtitle B of title VI of the Act is classified generally to part B (§ 1187 et seq.) of subchapter VI of chapter 27 of Title 46, Appendix, Shipping. For complete classification of this Act to the Code, see section 1245 of Title 46, Appendix, and Tables.

AMENDMENTS

2003—Subsec. (d)(4). Pub. L. 108–136 inserted ''or chapter 531 of title 46, United States Code'' after ''Merchant Marine Act, 1936''.

2002—Subsec. (c)(5). Pub. L. 107–206, which directed amendment of title II of division C of Public Law

[2] So in original. Probably should be ''(as''.

105–277 by substituting ''of more than 750 gross registered tons (as measured under chapter 145 of title 46) or 1,900 gross registered tons as measured under chapter 143 of that title)'' for ''of more than 750 gross registered tons'' each place appearing, was executed by amending subsec. (c)(5) of this section, to reflect the probable intent of Congress. See 1998 Amendment note below.

2001—Subsec. (c)(2)(B). Pub. L. 107–20, § 2202(a)(1), substituted ''or the exercise of rights under loan or mortgage covenants by a mortgagee eligible to be a preferred mortgagee under section 31322(a) of this title, provided that a mortgagee not eligible to own a vessel with a fishery endorsement may only operate such a vessel to the extent necessary for the immediate safety of the vessel or for repairs, drydocking or berthing changes'' for ''or the use by a mortgagee under paragraph (4) of loan covenants approved by the Secretary''.

Subsec. (c)(4) to (6). Pub. L. 107–20, § 2202(a)(2), which directed amendment of subsec. (c) ''by striking paragraph (4) and renumbering the remaining paragraph accordingly'', was executed by striking par. (4) and redesignating pars. (5) and (6) as (4) and (5), respectively, to reflect the probable intent of Congress. Prior to amendment, par. (4) read as follows:

''(4)(A) An individual or entity that is otherwise eligible to own a vessel with a fishery endorsement shall be ineligible by reason of an instrument or evidence of indebtedness, secured by a mortgage of the vessel to a trustee eligible to own a vessel with a fishery endorsement that is issued, assigned, transferred or held in trust for a person not eligible to own a vessel with a fishery endorsement, unless the Secretary determines that the issuance, assignment, transfer, or trust arrangement does not result in an impermissible transfer of control of the vessel and that the trustee—

''(i) is organized as a corporation, and is doing business, under the laws of the United States or of a State;

''(ii) is authorized under those laws to exercise corporate trust powers;

''(iii) is subject to supervision or examination by an official of the United States Government or a State;

''(iv) has a combined capital and surplus (as stated in its most recent published report of condition) of at least $3,000,000; and

''(v) meets any other requirements prescribed by the Secretary.

''(B) A vessel with a fishery endorsement may be operated by a trustee only with the approval of the Secretary.

''(C) A right under a mortgage of a vessel with a fishery endorsement may be issued, assigned, or transferred to a person not eligible to be a mortgagee of that vessel under section 31322(a)(4) of this title only with the approval of the Secretary.

''(D) The issuance, assignment, or transfer of an instrument or evidence of indebtedness contrary to this paragraph is voidable by the Secretary.''

1998—Subsec. (a). Pub. L. 105–383, § 401(a)(1), struck out ''or is not titled in a State'' after ''a foreign country'' in introductory provisions.

Subsec. (a)(4). Pub. L. 105–383, § 421, struck out ''president or other'' after ''a State, whose'' and inserted '', by whatever title,'' after ''chief executive officer''.

Subsec. (c). Pub. L. 105–277, § 202(a), as amended by Pub. L. 107–206, amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows:

''(c)(1) A vessel owned by a corporation is not eligible for a fishery endorsement under section 12108 of this title unless the controlling interest (as measured by a majority of voting shares in that corporation) is owned by individuals who are citizens of the United States. However, if the corporation is owned in whole or in part by other United States corporations, the controlling interest in those corporations, in the aggregate, must be owned by individuals who are citizens of the United States.

''(2) The Secretary shall apply the restrictions on controlling interest in section 2(b) of the Shipping Act, 1916 (46 App. U.S.C. 802(b)) when applying this subsection.''

1996—Subsec. (d). Pub. L. 104–324 added subsec. (d).

1989—Subsec. (a). Pub. L. 101–225, § 301(a)(2)(A), inserted ''that is'' before ''not'' and ''or is not titled in a State'' after ''foreign country''.

Subsecs. (b), (c). Pub. L. 101–225, § 301(a)(2)(B)–(D), redesignated former subsec. (b), relating to eligibility of a vessel owned by a corporation for a fishery license, as (c), substituted ''fishery endorsement'' for ''fishery license'' in par. (1), and struck out former subsec. (c) which provided that a vessel titled in a State was eligible for documentation only if the State certificate of title was surrendered.

1988—Pub. L. 100–710 directed insertion of ''of Transportation'' after ''Secretary'' in subsec. (b), which was executed by making insertion in subsec. (b) relating to eligibility of a vessel for documentation after having been measured under part J, as probable intent of Congress, and added subsec. (c).

Pub. L. 100–239, § 7(a), directed that ''(a)'' be inserted before ''A vessel'', which was not executed because of a similar amendment by Pub. L. 99–509, and added at end subsec. (b) relating to eligibility of a vessel owned by a corporation for a fishery license under section 12108 of this title.

1986—Pub. L. 99–509 designated existing provisions as subsec. (a) and added subsec. (b) relating to eligibility of a vessel for documentation after having been measured under part J.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–136 effective Oct. 1, 2005, see section 3537(b) of Pub. L. 108–136, set out in an Effective Date note under section 53101 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–20, title II, § 2202(d), July 24, 2001, 115 Stat. 170, provided that: ''Section 31322 of title 46, United States Code as amended in this section, and as amended by section 202(b) of the American Fisheries Act (Public Law 105–277, division C, title II) shall not take effect until April 1, 2003, nor shall the Secretary of Transportation, in determining whether a vessel owner complies with the requirements of section 12102(c) of title 46, United States Code, consider the citizenship status of a lender, in its capacity as a lender with respect to that vessel owner, until after April 1, 2003.''

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–277, div. C, title II, § 203(a), Oct. 21, 1998, 112 Stat. 2681–619, provided that: ''The amendments made by section 202 [amending this section and section 31322 of this title] shall take effect on October 1, 2001.''

EFFECTIVE DATE OF 1989 AMENDMENT

Amendments by section 301(a)(2) of Pub. L. 101–225 effective Jan. 1, 1989, except that amendment by section 301(a)(2)(A) inapplicable to a vessel titled in a State until one year after the Secretary of Transportation prescribes guidelines for a titling system under section 13106(b)(8) of this title, see section 309(b)(1) of Pub. L. 101–225, set out as a note under section 12101 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–710 effective Jan. 1, 1989, with certain exceptions and qualifications, see section 107 of Pub. L. 100–710, set out as an Effective Date note under section 30101 of this title.

REGULATIONS; ENFORCEMENT OF STANDARD

Pub. L. 105–277, div. C, title II, § 203(b)–(e), Oct. 21, 1998, 112 Stat. 2681–619, provided that:

''(b) REGULATIONS.—Final regulations to implement this subtitle [subtitle I (§§ 201–204) of title II of div. C of Pub. L. 105–277, amending this section and sections 12122 and 31322 of this title, enacting provisions set out

as notes under this section and section 2101 of this title, and repealing provisions set out as a note under this section] shall be published in the Federal Register by April 1, 2000. Letter rulings and other interim interpretations about the effect of this subtitle and amendments made by this subtitle on specific vessels may not be issued prior to the publication of such final regulations. The regulations to implement this subtitle shall prohibit impermissible transfers of ownership or control, specify any transactions which require prior approval of an implementing agency, identify transactions which do not require prior agency approval, and to the extent practicable, minimize disruptions to the commercial fishing industry, to the traditional financing arrangements of such industry, and to the opportunity to form fishery cooperatives.

''(c) VESSELS MEASURING 100 FEET AND GREATER.—(1) The Administrator of the Maritime Administration shall administer section 12102(c) of title 46, United States Code, as amended by this subtitle, with respect to vessels 100 feet or greater in registered length. The owner of each such vessel shall file a statement of citizenship setting forth all relevant facts regarding vessel ownership and control with the Administrator of the Maritime Administration on an annual basis to demonstrate compliance with such section. Regulations to implement this subsection shall conform to the extent practicable with the regulations establishing the form of citizenship affidavit set forth in part 355 of title 46, Code of Federal Regulations, as in effect on September 25, 1997, except that the form of the statement under this paragraph shall be written in a manner to allow the owner of each such vessel to satisfy any annual renewal requirements for a certificate of documentation for such vessel and to comply with this subsection and section 12102(c) of title 46, United States Code, as amended by this Act, and shall not be required to be notarized.

''(2) After October 1, 2001, transfers of ownership and control of vessels subject to section 12102(c) of title 46, United States Code, as amended by this Act, which are 100 feet or greater in registered length, shall be rigorously scrutinized for violations of such section, with particular attention given to leases, charters, mortgages, financing, and similar arrangements, to the control of persons not eligible to own a vessel with a fishery endorsement under section 12102(c) of title 46, United States Code, as amended by this Act, over the management, sales, financing, or other operations of an entity, and to contracts involving the purchase over extended periods of time of all, or substantially all, of the living marine resources harvested by a fishing vessel.

''(d) VESSELS MEASURING LESS THAN 100 FEET.—The Secretary of Transportation shall establish such requirements as are reasonable and necessary to demonstrate compliance with section 12102(c) of title 46, United States Code, as amended by this Act, with respect to vessels measuring less than 100 feet in registered length, and shall seek to minimize the administrative burden on individuals who own and operate such vessels.

''(e) ENDORSEMENTS REVOKED.—The Secretary of Transportation shall revoke the fishery endorsement of any vessel subject to section 12102(c) of title 46, United States Code, as amended by this Act, whose owner does not comply with such section.''

INAPPLICABILITY OF SUBSECTION (c)(5) TO CERTAIN MENHADEN FISHERIES

Pub. L. 106–31, title III, § 3027(c), May 21, 1999, 113 Stat. 102, provided that: ''The limitation on registered length contained in section 12102(c)(6) [now section 12102(c)(5)] of title 46, United States Code, shall not apply to a vessel used solely in any menhaden fishery which is located in the Gulf of Mexico or along the Atlantic coast south of the area under the authority of the New England Fishery Management Council for so long as such vessel is used in such fishery.''

APPLICATION OF SECTION TO FISHING VESSELS IN CALIFORNIA

Citizen of the United States to include an alien lawfully admitted for permanent residence, for purposes of applying this section to vessels operating in waters off the coast of California, subject to United States jurisdiction, see section 317 of Pub. L. 101–595, set out as a note under section 8103 of this title.

APPLICABILITY OF SUBSECTION (b)

Section 7(b) of Pub. L. 100–239 provided that subsec. (b) of this section applied to vessels issued a fishery license after July 28, 1987, with exceptions for certain vessels documented under this chapter or contracted for purchase for use as fishing or fish processing vessels, prior to repeal by Pub. L. 105–277, div. C, title II, § 204, Oct. 21, 1998, 112 Stat. 2681–620, effective Oct. 1, 2001.

TEMPORARY RESTRICTION ON DOCUMENTATION OF FOREIGN-BUILT FISH PROCESSING VESSELS

Pub. L. 100–111, Aug. 20, 1987, 101 Stat. 733, as amended by Pub. L. 100–151, § 2, Nov. 3, 1987, 101 Stat. 884, provided: ''That notwithstanding chapter 121 of title 46 of the United States Code, the Secretary of the department in which the Coast Guard is operating may not document a foreign-built vessel for which an application for documentation was submitted after July 20, 1987, for use as a fish processing vessel as defined in section 2101(11b) of title 46, United States Code. This prohibition is effective until November 15, 1987. The Secretary may issue regulations to obtain information about the intended use of a vessel for which an application for documentation has been submitted to prevent the documentation of a foreign-built fish processing vessel.''

§ 12103. Certificates of documentation

(a) Except as provided in section 12123 of this title, on application by the owner of a vessel eligible for documentation, the Secretary of Transportation shall issue a certificate of documentation, or a temporary certificate of documentation, endorsed with one or more of the endorsements specified in sections 12105–12109 of this title.

(b)(1) The Secretary may prescribe the form of, the manner of filing, and the information to be contained in, applications for certificates of documentation.

(2) The Secretary shall require each person applying to document a vessel to provide—

(A) the person's social security number; or

(B) for a person other than an individual—

(i) the person's taxpayer identification number; or

(ii) if the person does not have a taxpayer identification number, the social security number of an individual who is a corporate officer, general partner, or individual trustee of the person and who signs the application for documentation for the vessels.

(c) Each certificate of documentation shall—

(1) identify and describe the vessel;

(2) identify the owner of the vessel; and

(3) contain additional information prescribed by the Secretary.

(d) The Secretary shall prescribe procedures to ensure the integrity of, and the accuracy of information contained in, certificates of documentation.

(e) The owner and master of a documented vessel shall make the vessel's certificate of docu-

mentation available for examination as the law or Secretary may require.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 585; Pub. L. 100–710, title I, § 104(a)(4), (6), Nov. 23, 1988, 102 Stat. 4750; Pub. L. 101–225, title III, § 301(a)(3), Dec. 12, 1989, 103 Stat. 1920; Pub. L. 102–388, title III, § 348(c)(1), Oct. 6, 1992, 106 Stat. 1554; Pub. L. 102–587, title V, § 5213(a)(1), Nov. 4, 1992, 106 Stat. 5077; Pub. L. 107–295, title IV, § 422(a), Nov. 25, 2002, 116 Stat. 2125.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
12103	46:65e

Section 12103 provides that a certificate of documentation shall be issued upon application by the owner of any vessel eligible for documentation on the form and in the manner prescribed by the Secretary and that it shall be available for examination. This section also provides that each certificate of documentation shall contain the name, the home port, the description of the vessel, identity of its owner, and be in the form and contain the additional information that the Secretary prescribes. The Secretary shall, by regulation, prescribe procedures to ensure the integrity of, and the accuracy of, information contained in, certificates of documentation.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–295 inserted ‘‘, or a temporary certificate of documentation,’’ after ‘‘certificate of documentation’’.

1992—Subsec. (a). Pub. L. 102–388 and Pub. L. 102–587 amended subsec. (a) identically, substituting ‘‘Except as provided in section 12123 of this title, on’’ for ‘‘On’’.

1989—Subsec. (a). Pub. L. 101–225, § 301(a)(3)(A), substituted ‘‘endorsed with one or more of the endorsements’’ for ‘‘of one of the types’’.

Subsec. (b). Pub. L. 101–225, § 301(a)(3)(B), designated existing provisions as par. (1) and added par. (2).

1988—Subsec. (a). Pub. L. 100–710, § 104(a)(4), inserted ‘‘of Transportation’’ after ‘‘Secretary’’.

Subsec. (c)(1). Pub. L. 100–710, § 104(a)(6), in amending par. (1) generally, substituted ‘‘identify and describe the vessel’’ for ‘‘contain the name, the home port, and a description of the vessel’’.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–225 effective on the 180th day after Dec. 12, 1989, see section 309(b)(2) of Pub. L. 101–225, set out as a note under section 12101 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–710 effective Jan. 1, 1989, with certain exceptions and qualifications, see section 107 of Pub. L. 100–710, set out as an Effective Date note under section 30101 of this title.

§ 12103a. Issuance of temporary certificate of documentation by third parties

(a) The Secretary of the department in which the Coast Guard is operating may delegate, subject to the supervision and control of the Secretary and under terms set out by regulation, to private entities determined and certified by the Secretary to be qualified, the authority to issue a temporary certificate of documentation for a recreational vessel if the applicant for the certificate of documentation meets the requirements set out in sections 12102 and 12103 of this chapter.

(b) A temporary certificate of documentation issued under section 12103(a) and subsection (a) of this section is valid for up to 30 days from issuance.

(Added Pub. L. 107–295, title IV, § 422(b)(1), Nov. 25, 2002, 116 Stat. 2125.)

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.

§ 12104. Effect of documentation

A certificate of documentation is—

(1) conclusive evidence of nationality for international purposes, but not in a proceeding conducted under the laws of the United States;

(2) except for a recreational endorsement, conclusive evidence of qualification to be employed in a specified trade; and

(3) not conclusive evidence of ownership in a proceeding in which ownership is in issue.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 586; Pub. L. 99–36, § 1(a)(7)(B), May 15, 1985, 99 Stat. 67; Pub. L. 101–225, title III, § 301(a)(4), Dec. 12, 1989, 103 Stat. 1920.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
12104	46:65g

Section 12104 provides that a certificate of documentation is conclusive evidence of nationality but not conclusive evidence of ownership in any proceeding in which ownership is an issue.

AMENDMENTS

1989—Par. (2). Pub. L. 101–225 substituted ‘‘endorsement’’ for ‘‘vessel license’’.

1985—Par. (2). Pub. L. 99–36 substituted ‘‘recreational’’ for ‘‘pleasure’’.

§ 12105. Registry endorsements

(a) A certificate of documentation may be endorsed with a registry endorsement.

(b) A vessel for which a registry endorsement is issued may be employed in foreign trade or trade with Guam, American Samoa, Wake, Midway, or Kingman Reef.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 586; Pub. L. 100–710, title I, § 104(a)(4), Nov. 23, 1988, 102 Stat. 4750; Pub. L. 101–225, title III, § 301(a)(5), Dec. 12, 1989, 103 Stat. 1920.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
12105	46:65h

Section 12105 authorizes the Secretary to issue a vessel a registry entitling it to be employed in the foreign trade, and to issue special endorsements for the coastwise trade, the Great Lakes trade or the fisheries. It also prohibits foreign built vessels from engaging in United States domestic trades.

AMENDMENTS

1989—Pub. L. 101–225, § 301(a)(5)(D), inserted ‘‘endorsements’’ after ‘‘Registry’’ in section catchline.

Subsec. (a). Pub. L. 101–225, § 301(a)(5)(A), amended subsec. (a) generally, substituting ''certificate of documentation may be endorsed with a registry endorsement'' for ''registry may be issued for a vessel eligible for documentation''.

Subsec. (b). Pub. L. 101–225, § 301(a)(5)(B), inserted ''endorsement'' after ''registry''.

Subsecs. (c), (d). Pub. L. 101–225, § 301(a)(5)(C), struck out subsecs. (c) and (d) which read as follows:

''(c) On application of the owner of a vessel that qualifies for a coastwise license under section 12106 of this title, a Great Lakes license under section 12107 of this title, or a fishery license under section 12108 of this title, the Secretary of Transportation may issue a registry appropriately endorsed authorizing the vessel to be employed in the coastwise trade, the Great Lakes trade, or the fisheries, as the case may be.

''(d) Except as provided in sections 12106–12108 of this title, a foreign built vessel registered under this section may not engage in the coastwise trade, the Great Lakes trade, or the fisheries.''

1988—Subsec. (c). Pub. L. 100–710 inserted ''of Transportation'' after ''Secretary''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–710 effective Jan. 1, 1989, with certain exceptions and qualifications, see section 107 of Pub. L. 100–710, set out as an Effective Date note under section 30101 of this title.

SAVINGS PROVISION

Pub. L. 100–239, § 6(b), Jan. 11, 1988, 101 Stat. 1782, provided that: ''Notwithstanding the requirements of chapter 121 of title 46, United States Code, a vessel for which a coastwise, Great Lakes, or fishery license, or an appropriately endorsed registry, was issued before July 28, 1987, may continue to be employed in the specified trades for which it was qualified at the time the license or registry was issued for one year from date of enactment [Jan. 11, 1988] or until the certificate of documentation is renewed, whichever comes later. On renewal, the owner or master of a documented vessel shall make the vessel's certificate of documentation available as the law or Secretary may require for replacement with an appropriately endorsed certificate.''

§ 12106. Coastwise endorsements

(a) A certificate of documentation may be endorsed with a coastwise endorsement for a vessel that—

(1) is eligible for documentation;

(2)(A) was built in the United States; or

(B) if not built in the United States, was captured in war by citizens of the United States and lawfully condemned as prize, was adjudged to be forfeited for a breach of the laws of the United States, or qualified for documentation under section 4136 of the Revised Statutes (46 App. U.S.C. 14); and

(3) otherwise qualifies under laws of the United States to be employed in the coastwise trade.

(b) Subject to the laws of the United States regulating the coastwise trade, only a vessel for which a certificate of documentation with a coastwise endorsement is issued may be employed in the coastwise trade.

(c) A coastwise endorsement to engage in the coastwise trade of fisheries products between places in Guam, American Samoa, and the Northern Mariana Islands may be issued for a vessel that—

(1) is less than 200 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title;

(2) was not built in the United States;

(3) is eligible for documentation; and

(4) otherwise qualifies under the laws of the United States to be employed in the coastwide trade.

(d)(1) A vessel may be issued a certificate of documentation with a coastwise endorsement if—

(A) the vessel is owned by a not-for-profit oil spill response cooperative or by members of such a cooperative who dedicate the vessel to use by the cooperative;

(B) the vessel is at least 50 percent owned by persons or entities described in section 12102(a) of this title;

(C) the vessel otherwise qualifies under section 12106 to be employed in the coastwise trade; and

(D) use of the vessel is restricted to—

(i) the deployment of equipment, supplies, and personnel to recover, contain, or transport oil discharged into the navigable waters of the United States, or within the Exclusive Economic Zone, or

(ii) for training exercises to prepare to respond to such a discharge.

(2) For purposes of the first proviso of section 27 of the Merchant Marine Act, 1920, section 2 of the Shipping Act of[1] 1916, and section 12102(a) of this title, a vessel meeting the criteria of this subsection shall be considered to be owned exclusively by citizens of the United States.

(e)(1) A certificate of documentation for a vessel may be endorsed with a coastwise endorsement if—

(A) the vessel is eligible for documentation;

(B) the person that owns the vessel (or, if the vessel is owned by a trust or similar arrangement, the beneficiary of the trust or similar arrangement) meets the requirements of subsection (f);

(C) the vessel is under a demise charter to a person that certifies to the Secretary that the person is a citizen of the United States for engaging in the coastwise trade under section 2 of the Shipping Act, 1916;

(D) the demise charter is for a period of at least 3 years or a shorter period as may be prescribed by the Secretary; and

(E) the vessel is otherwise eligible for documentation under this section.

(2) The demise charter and any amendments to that charter shall be filed with the certificate required by this subsection, or within 10 days following the filing of an amendment to the charter, and such charter and amendments shall be made available to the public.

(3) Upon termination by a demise charterer required under paragraph (1)(C), the coastwise endorsement of the vessel may, in the sole discretion of the Secretary, be continued after the termination for default of the demise charter for a period not to exceed 6 months on such terms and conditions as the Secretary may prescribe.

(4) For purposes of section 2 of the Shipping Act, 1916, and section 12102(a) of this title, a ves-

[1] So in original. The word ''of'' probably should be a comma.

sel meeting the criteria of this subsection is deemed to be owned exclusively by citizens of the United States.

(f) OWNERSHIP CERTIFICATION REQUIREMENT.—

(1) IN GENERAL.—A person meets the requirements of this subsection if that person transmits to the Secretary each year the certification required by paragraph (2) or (3) with respect to a vessel.

(2) INVESTMENT CERTIFICATION.—To meet the certification requirement of this paragraph, a person shall certify that it—

(A) is a leasing company, bank, or financial institution;

(B) owns, or holds the beneficial interest in, the vessel solely as a passive investment;

(C) does not operate any vessel for hire and is not an affiliate of any person who operates any vessel for hire; and

(D) is independent from, and not an affiliate of, any charterer of the vessel or any other person who has the right, directly or indirectly, to control or direct the movement or use of the vessel.

(3) CERTAIN TANK VESSELS.—

(A) IN GENERAL.—To meet the certification requirement of this paragraph, a person shall certify that—

(i) the aggregate book value of the vessels owned by such person and United States affiliates of such person does not exceed 10 percent of the aggregate book value of all assets owned by such person and its United States affiliates;

(ii) not more than 10 percent of the aggregate revenues of such person and its United States affiliates is derived from the ownership, operation, or management of vessels;

(iii) at least 70 percent of the aggregate tonnage of all cargo carried by all vessels owned by such person and its United States affiliates and documented under this section is qualified proprietary cargo;

(iv) any cargo other than qualified proprietary cargo carried by all vessels owned by such person and its United States affiliates and documented under this section consists of oil, petroleum products, petrochemicals, or liquified natural gas;

(v) no vessel owned by such person or any of its United States affiliates and documented under this section carries molten sulphur; and

(vi) such person owned 1 or more vessels documented under subsection (e) of this section as of the date of enactment of the Coast Guard and Maritime Transportation Act of 2004.

(B) APPLICATION ONLY TO CERTAIN VESSELS.—A person may make a certification under this paragraph only with respect to—

(i) a tank vessel having a tonnage of not less than 6,000 gross tons, as measured under section 14502 of this title (or an alternative tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title); or

(ii) a towing vessel associated with a non-self-propelled tank vessel that meets the requirements of clause (i), where the 2 vessels function as a single self-propelled vessel.

(4) DEFINITIONS.—In this subsection:

(A) AFFILIATE.—The term ''affiliate'' means, with respect to any person, any other person that is—

(i) directly or indirectly controlled by, under common control with, or controlling such person; or

(ii) named as being part of the same consolidated group in any report or other document submitted to the United States Securities and Exchange Commission or the Internal Revenue Service.

(B) CARGO.—The term ''cargo'' does not include cargo to which title is held for noncommercial reasons and primarily for the purpose of evading the requirements of paragraph (3).

(C) OIL.—The term ''oil'' has the meaning given that term in section 2101(20) of this title.

(D) PASSIVE INVESTMENT.—The term ''passive investment'' means an investment in which neither the investor nor any affiliate of such investor is involved in, or has the power to be involved in, the formulation, determination, or direction of any activity or function concerning the management, use, or operation of the asset that is the subject of the investment.

(E) QUALIFIED PROPRIETARY CARGO.—The term ''qualified proprietary cargo'' means—

(i) oil, petroleum products, petrochemicals, or liquefied natural gas cargo that is beneficially owned by the person who submits to the Secretary an application or annual certification under paragraph (3), or by an affiliate of such person, immediately before, during, or immediately after such cargo is carried in coastwise trade on a vessel owned by such person;

(ii) oil, petroleum products, petrochemicals, or liquefied natural gas cargo not beneficially owned by the person who submits to the Secretary an application or an annual certification under paragraph (3), or by an affiliate of such person, but that is carried in coastwise trade by a vessel owned by such person and which is part of an arrangement in which vessels owned by such person and at least one other person are operated collectively as one fleet, to the extent that an equal amount of oil, petroleum products, petrochemicals, or liquefied natural gas cargo beneficially owned by such person, or an affiliate of such person, is carried in coastwise trade on 1 or more other vessels, not owned by such person, or an affiliate of such person, if such other vessel or vessels are also part of the same arrangement;

(iii) in the case of a towing vessel associated with a non-self-propelled tank vessel where the 2 vessels function as a single self-propelled vessel, oil, petroleum products, petrochemicals, or liquefied natural gas cargo that is beneficially owned by the person who owns both such towing vessel

and the non-self-propelled tank vessel, or any United States affiliate of such person, immediately before, during, or immediately after such cargo is carried in coastwise trade on either of the 2 vessels; or

(iv) any oil, petroleum products, petrochemicals, or liquefied natural gas cargo carried on any vessel that is either a self-propelled tank vessel having a length of at least 210 meters or a tank vessel that is a liquefied natural gas carrier that—

(I) was delivered by the builder of such vessel to the owner of such vessel after December 31, 1999; and

(II) was purchased by a person for the purpose, and with the reasonable expectation, of transporting on such vessel liquefied natural gas or unrefined petroleum beneficially owned by the owner of such vessel, or an affiliate of such owner, from Alaska to the continental United States.

(F) UNITED STATES AFFILIATE.—The term ''United States affiliate'' means, with respect to any person, an affiliate the principal place of business of which is located in the United States.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 586; Pub. L. 98–454, title III, § 301(b), Oct. 5, 1984, 98 Stat. 1734; Pub. L. 100–239, § 6(a)(2), (3), Jan. 11, 1988, 101 Stat. 1781; Pub. L. 101–225, title III, § 301(a)(6), Dec. 12, 1989, 103 Stat. 1921; Pub. L. 101–380, title IV, § 4205, Aug. 18, 1990, 104 Stat. 533; Pub. L. 104–324, title VII, § 743, title XI, § 1113(d), Oct. 19, 1996, 110 Stat. 3942, 3971; Pub. L. 108–293, title VI, § 608(a), Aug. 9, 2004, 118 Stat. 1054.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
12106	46:65i

Section 12106 provides for the issuance of a certificate of documentation in the form of a coastwise license or an appropriately endorsed registry for any vessel that is eligible for documentation, is built in the United States, and qualifies under the laws of the United States to be employed in the coastwise trade. It also provides for the documentation of certain vessels captured during war that have not been built in the United States.

REFERENCES IN TEXT

Section 27 of the Merchant Marine Act, 1920, referred to in subsec. (d)(2), is classified to section 883 of the Appendix to this title.

Section 2 of the Shipping Act, 1916, referred to in subsecs. (d)(2) and (e)(1)(C), (4), is classified to sections 802 and 803 of the Appendix to this title.

The date of enactment of the Coast Guard and Maritime Transportation Act of 2004, referred to in subsec. (f)(3)(A)(vi), is the date of enactment of Pub. L. 108–293, which was approved Aug. 9, 2004.

AMENDMENTS

2004—Subsec. (e)(1)(B). Pub. L. 108–293, § 608(a)(1), added subpar. (B) and struck out former subpar. (B) which read as follows: ''the person that owns the vessel, a parent entity of that person, or a subsidiary of a parent entity of that person, is primarily engaged in leasing or other financing transactions;''.

Subsec. (f). Pub. L. 108–293, § 608(a)(2), added subsec. (f).

1996—Subsec. (c)(1). Pub. L. 104–324, § 743, substituted ''200 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' for ''two hundred gross tons''.

Subsec. (e). Pub. L. 104–324, § 1113(d), added subsec. (e).

1990—Subsec. (d). Pub. L. 101–380 added subsec. (d).

1989—Pub. L. 101–225, § 301(a)(6)(E), substituted ''endorsements'' for ''licenses and registry'' in section catchline.

Subsec. (a). Pub. L. 101–225, § 301(a)(6)(A), substituted ''certificate of documentation may be endorsed with a coastwise endorsement'' for ''coastwise license or, as provided in section 12105(c) of this title, an appropriately endorsed registry, may be issued''.

Subsec. (b). Pub. L. 101–225, § 301(a)(6)(B), substituted ''certificate of documentation with a coastwise endorsement'' for ''coastwise license or an appropriately endorsed registry''.

Subsec. (c). Pub. L. 101–225, § 301(a)(6)(C), substituted ''endorsement'' for ''license''.

Subsec. (d). Pub. L. 101–225, § 301(a)(6)(D), struck out subsec. (d) which read as follows: ''On application of the owner of a vessel that qualifies for a Great Lakes license under section 12107 or a fishery license under section 12108 of this title, the Secretary may issue an endorsement authorizing the vessel to be employed in the Great Lakes trade or fisheries, as the case may be.''

1988—Subsec. (b). Pub. L. 100–239, § 6(a)(2), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''Subject to the laws of the United States regulating the coastwise trade and the fisheries, only a vessel for which a coastwise license or an appropriately endorsed registry is issued may be employed in—

''(1) the coastwise trade; and

''(2) the fisheries.''

Subsec. (d). Pub. L. 100–239, § 6(a)(3), added subsec. (d).

1984—Subsec. (c). Pub. L. 98–454 added subsec. (c).

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 Title 33, Navigation and Navigable Waters.

REGULATIONS

Pub. L. 108–293, title VI, § 608(e), Aug. 9, 2004, 118 Stat. 1058, provided that: ''No later than one year 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 prescribe final regulations to carry out this section [amending this section and enacting provisions set out as notes under this section], including amendments made by this section to section 12106 of title 46, United States Code.''

TREATMENT OF OWNER OF CERTAIN VESSELS

Pub. L. 108–293, title VI, § 608(b), Aug. 9, 2004, 118 Stat. 1056, provided that:

''(1) IN GENERAL.—Notwithstanding any other provision of law, a person shall be treated as a citizen of the United States under section 12102(a) of title 46, United States Code, section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802) [46 App. U.S.C. 802, 803], and section 27 of the Merchant Marine Act, 1920 (46 U.S.C. App. 883), for purposes of issuance of a coastwise endorsement under section 12106(e) of title 46, United States Code (as that section was in effect on the day before the date of enactment of this Act [Aug. 9, 2004]), for a vessel owned by the person on the date of enactment of this Act, or any replacement vessel of a similar size and function, if the person—

''(A) owned a vessel before January 1, 2001, that had a coastwise endorsement under section 12106(e) of title 46, United States Code; and

''(B) as of the date of the enactment of this Act [Aug. 9, 2004], derives substantially all of its revenue from leasing vessels engaged in the transportation or distribution of petroleum products and other cargo in Alaska.

''(2) LIMITATION ON COASTWISE TRADE.—A vessel owned by a person described in paragraph (1) for which a coastwise endorsement is issued under section 12106(e) of title 46, United States Code, may be employed in the coastwise trade only within Alaska and in the coastwise trade to and from Alaska.

''(3) TERMINATION.—The application of this subsection to a person described in paragraph (1) shall terminate if all of that person's vessels described in paragraph (1) are sold to a person eligible to document vessels under section 12106(a) of title 46, United States Code.''

APPLICATION TO CERTAIN CERTIFICATES

Pub. L. 108–293, title VI, § 608(c), Aug. 9, 2004, 118 Stat. 1057, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section], and any regulations published after February 4, 2004, with respect to coastwise endorsements, shall not apply to a certificate of documentation, or renewal thereof, endorsed with a coastwise endorsement for a vessel under section 12106(e) of title 46, United States Code, or a replacement vessel of a similar size and function, that was issued prior to the date of enactment of this Act [Aug. 9, 2004] as long as the vessel is owned by the person named therein, or by a subsidiary or affiliate of that person, and the controlling interest in such owner has not been transferred to a person that was not an affiliate of such owner as of the date of enactment of this Act. Notwithstanding the preceding sentence, however, the amendments made by this section shall apply, beginning 3 years after the date of enactment of this Act, with respect to offshore supply vessels (as defined in section 2101(19) of title 46, United States Code, as that section was in effect on the date of enactment of this Act) with a certificate of documentation endorsed with a coastwise endorsement as of the date of enactment of this Act, and the Secretary of the Department in which the Coast Guard is operating shall revoke any such certificate if the vessel does not by then meet the requirements of section 12106(e) of title 46, United States Code, as amended by this section.

''(2) REPLACEMENT VESSEL.—For the purposes of this subsection, 'replacement vessel' means—

''(A) a temporary replacement vessel for a period of not to exceed 180 days if the vessel described in paragraph (1) is unavailable due to an act of God or a marine casualty; or

''(B) a permanent replacement vessel if—

''(i) the vessel described in paragraph (1) is unavailable for more than 180 days due to an act of God or a marine casualty; or

''(ii) a contract to purchase or construct such replacement vessel is executed not later than December 31, 2004.''

WAIVER OF QUALIFIED PROPRIETARY CARGO REQUIREMENT

Pub. L. 108–293, title VI, § 608(d), Aug. 9, 2004, 118 Stat. 1057, provided that: ''The Secretary of Transportation shall waive or reduce the qualified proprietary cargo requirement of section 12106(f)(3)(A)(iii) of title 46, United States Code, for a vessel if the person that owns the vessel (or, if the vessel is owned by a trust or similar arrangement, the beneficiary of the trust or similar arrangement) notifies the Secretary that circumstances beyond the direct control of such person or its affiliates prevent, or reasonably threaten to prevent, such person from satisfying such requirement, and the Secretary does not, with good cause, determine otherwise. The waiver or reduction shall apply during the period of time that such circumstances exist.''

ADMINISTRATIVE PROCESS FOR JONES ACT WAIVERS

Pub. L. 105–383, title V, Nov. 13, 1998, 112 Stat. 3445, as amended by Pub. L. 107–295, title II, § 207(c), Nov. 25, 2002, 116 Stat. 2097, provided that:

''SEC. 501. FINDINGS.

''The Congress finds that—

''(1) current coastwise trade laws provide no administrative authority to waive the United-States-built requirement of those laws for the limited carriage of passengers for hire on vessels built or rebuilt outside the United States;

''(2) requests for such waivers require the enactment of legislation by the Congress;

''(3) each Congress routinely approves numerous such requests for waiver and rarely rejects any such request; and

''(4) the review and approval of such waiver requests is a ministerial function which properly should be executed by an administrative agency with appropriate expertise.

''SEC. 502. ADMINISTRATIVE WAIVER OF COASTWISE TRADE LAWS.

''Notwithstanding sections 12106 and 12108 of title 46, United States Code, section 8 of the Act of June 19, 1886 (46 U.S.C. App. 289), and section 27 of the Merchant Marine Act, 1920 (46 U.S.C. App. 883), the Secretary of Transportation may issue a certificate of documentation with appropriate endorsement for employment in the coastwise trade as a small passenger vessel or an uninspected passenger vessel for an eligible vessel authorized to carry no more than 12 passengers for hire if the Secretary, after notice and an opportunity for public comment, determines that the employment of the vessel in the coastwise trade will not adversely affect—

''(1) United States vessel builders; or

''(2) the coastwise trade business of any person who employs vessels built in the United States in that business.

''SEC. 503. REVOCATION.

''(a) REVOCATION FOR FRAUD.—The Secretary shall revoke a certificate or an endorsement issued under section 502, after notice and an opportunity for a hearing, if the Secretary determines that the certificate or endorsement was obtained by fraud.

''(b) APPLICATION WITH CRIMINAL PENALTIES.—Nothing in this section affects—

''(1) the criminal prohibition on fraud and false statements provided by section 1001 of title 18, United States Code; or

''(2) any other authority of the Secretary to revoke a certificate or endorsement issued under section 502 of this Act.

''SEC. 504. DEFINITIONS.

''In this title:

''(1) SECRETARY.—The term 'Secretary' means the Secretary of Transportation.

''(2) ELIGIBLE VESSEL.—The term 'eligible vessel' means a vessel that—

''(A) was not built in the United States and is at least 3 years of age; or

''(B) if rebuilt, was rebuilt outside the United States at least 3 years before the certification requested under section 502, if granted, would take effect.

''(3) SMALL PASSENGER VESSEL; UNINSPECTED PASSENGER VESSEL; PASSENGER FOR HIRE.—The terms 'small passenger vessel', 'uninspected passenger vessel', and 'passenger for hire' have the meaning given such terms by section 2101 of title 46, United States Code.

''SEC. 505. SUNSET.

[Repealed. Pub. L. 107–295, title II, § 207(c)(1), Nov. 25, 2002, 116 Stat. 2097.]''

[Pub. L. 107–295, title II, § 207(c)(1), Nov. 25, 2002, 116 Stat. 2097, provided that: ''Section 505 of the Coast Guard Authorization Act of 1998 [Pub. L. 105–383] ([formerly] 46 U.S.C. 12106 note) is repealed. The repeal of section 505 shall have no effect on the validity of any certificate or endorsement issued under section 502 of that Act [set out above].''']

STUDY AND REPORT ON FINANCING METHODS

Section 1113(f) of Pub. L. 104–324 provided that:

''(1) STUDY.—The Secretary of Transportation shall conduct a study of the methods for leasing, demise chartering, and financing of vessels operating in the coastal trades of other countries and whether the laws of other countries provide reciprocity for United States banks, leasing companies, or other financial institutions with respect to the rights granted under the amendment made by subsection (d) [amending this section]. The study shall develop recommendations whether additional laws requiring reciprocity should be considered for non-United States banks, leasing companies, or other financial institutions.

''(2) REPORT.—The Secretary shall submit to the Congress a report 1 year after the date of enactment of this Act [Oct. 19, 1996] of the results of the study required under paragraph (1), including recommendations developed in the study.''

APPLICATION OF WEIGHT LIMITATIONS TO NORTHERN MARIANA ISLANDS

Section 303 of Pub. L. 98–454 provided that: ''The weight limitations contained in subsections (b) and (c) of section 301 above [amending sections 12106 and 12108 of this title] shall not apply to the Northern Mariana Islands until the termination of the Trusteeship Agreement for the Trust Territory of the Pacific Islands (61 Stat. 3301).'' [For termination of Trusteeship Agreement for Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.]

[§ 12107. Repealed. Pub. L. 104–324, title XI, § 1115(a), Oct. 19, 1996, 110 Stat. 3972]

Section, Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 587; Pub. L. 100–239, § 6(a)(4), (5), Jan. 11, 1988, 101 Stat. 1782; Pub. L. 101–225, title III, § 301(a)(7), Dec. 12, 1989, 103 Stat. 1921, related to requirements for Great Lakes endorsement and significance of certificate of documentation with Great Lakes endorsement.

§ 12108. Fishery endorsements

(a) A certificate of documentation may be endorsed with a fishery endorsement for a vessel that—

(1) is eligible for documentation;

(2) was built in the United States;

(3) if rebuilt, was rebuilt in the United States;

(4) was not forfeited to the United States Government after July 1, 2001, for a breach of the laws of the United States; and

(5) otherwise qualifies under the laws of the United States to be employed in the fisheries.

(b) Subject to the laws of the United States regulating the fisheries, only a vessel for which a certificate of documentation with a fishery endorsement is issued may be employed in the fisheries.

(c) A fishery endorsement to engage in fishing in the territorial sea and fishery conservation zone adjacent to Guam, American Samoa, and the Northern Mariana Islands may be issued to a vessel that—

(1) is less than 200 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title;

(2) was not built or rebuilt in the United States;

(3) is eligible for documentation; and

(4) otherwise qualifies under the laws of the United States to be employed in the fisheries.

(d) A vessel purchased by the Secretary of Commerce through a fishing capacity reduction program under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) or section 308 of the Interjurisdictional Fisheries Act[1] (16 U.S.C. 4107) is not eligible for a fishery endorsement, and any fishery endorsement issued for that vessel is invalid.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 587; Pub. L. 98–454, title III, § 301(c), Oct. 5, 1984, 98 Stat. 1734; Pub. L. 100–239, §§ 3(4), (5), 6(a)(6), Jan. 11, 1988, 101 Stat. 1779, 1782; Pub. L. 101–225, title III, § 301(a)(8), Dec. 12, 1989, 103 Stat. 1921; Pub. L. 104–208, div. A, title I, § 101(a) [title II, § 211(b)], Sept. 30, 1996, 110 Stat. 3009, 3009–41; Pub. L. 104–324, title III, § 301(e), title VII, § 744, Oct. 19, 1996, 110 Stat. 3917, 3942; Pub. L. 107–295, title IV, § 409, Nov. 25, 2002, 116 Stat. 2117.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
12108	46:65k

Section 12108 provides that a certificate of documentation in the form of a fishery license or an appropriately endorsed registry may be issued for any vessel that is eligible for documentation, was built in the United States, and qualifies under the laws of the United States to be employed in the fisheries. It also provides for the documentation of certain vessels captured in war that have not been built in the United States.

REFERENCES IN TEXT

The Magnuson-Stevens Fishery Conservation and Management Act, referred to in subsec. (d), is Pub. L. 94–265, Apr. 13, 1976, 90 Stat. 331, as amended, which is classified principally to chapter 38 (§ 1801 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of Title 16 and Tables.

AMENDMENTS

2002—Subsec. (a)(2). Pub. L. 107–295, § 409(1), added par. (2) and struck out former par. (2) which read as follows: ''(2)(A) was built in the United States; or

''(B) if not built in the United States, was captured in war by citizens of the United States and lawfully condemned as prize, was adjudged to be forfeited for a breach of the laws of the United States, or qualified for documentation under section 4136 of the Revised Statutes (46 App. U.S.C. 14);''.

Subsec. (a)(4), (5). Pub. L. 107–295, § 409(2)–(4), added par. (4) and redesignated former par. (4) as (5).

1996—Subsec. (c)(1). Pub. L. 104–324, § 744, substituted ''200 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' for ''two hundred gross tons''.

Subsec. (d). Pub. L. 104–208, which directed the substitution of ''Magnuson-Stevens Fishery Conservation and Management Act'' for ''Magnuson Fishery Conservation and Management Act'', was executed by making the substitution for ''Magnuson Fishery Conservation Management Act'' to reflect the probable intent of Congress.

Pub. L. 104–324, § 301(e), added subsec. (d).

1989—Pub. L. 101–225, § 301(a)(8)(F), substituted ''endorsements'' for ''licenses and registry'' in section catchline.

Subsec. (a). Pub. L. 101–225, § 301(a)(8)(A), (B), in introductory provisions substituted ''certificate of documentation may be endorsed with a fishery endorsement'' for ''fishery license or, as provided in section

[1] So in original. Probably should be ''Act of 1986''.

12105(c) of this title, an appropriately endorsed registry, may be issued'' and in par. (1) struck out ''and'' after semicolon.

Subsec. (b). Pub. L. 101–225, § 301(a)(8)(C), substituted ''certificate of documentation with a fishery endorsement'' for ''fishery license or an appropriately endorsed registry''.

Subsec. (c). Pub. L. 101–225, § 301(a)(8)(D), which directed substitution of ''endorsement'' for ''license'' in subsec. (C), was executed by making substitution in subsec. (c) as the probable intent of Congress.

Subsec. (d). Pub. L. 101–225, § 301(a)(8)(E), struck out subsec. (d) which read as follows: ''On application of the owner of a vessel that qualifies for a coastwise license under section 12106 or a Great Lakes license under section 12107 of this title, the Secretary may issue an endorsement authorizing the vessel to be employed in the coastwise trade or the Great Lakes trade, as the case may be.''

1988—Subsec. (a)(3), (4). Pub. L. 100–239, § 3(4), added par. (3) and redesignated former par. (3) as (4).

Subsec. (c)(2). Pub. L. 100–239, § 3(5), substituted ''built or rebuilt'' for ''built''.

Subsec. (d). Pub. L. 100–239, § 6(a)(6), added subsec. (d).

1984—Subsec. (c). Pub. L. 98–454 added subsec. (c).

EFFECTIVE DATE OF 1996 AMENDMENT

Section 101(a) [title II, § 211(b)] of div. A of Pub. L. 104–208 provided that the amendment made by that section is effective 15 days after Oct. 11, 1996.

SAVINGS PROVISION

Section 4 of Pub. L. 100–239, as amended by Pub. L. 101–225, title III, § 310, Dec. 12, 1989, 103 Stat. 1926, provided that:

''(a) Notwithstanding the requirements of section 12108(a)(2) and (3) of title 46, United States Code, a fishery license may be issued to a vessel that before July 28, 1987—

''(1)(A) was documented under chapter 121 of that title; and

''(B) was operated as a fish processing or fish tender vessel in the navigable waters of the United States or the exclusive economic zone;

''(2) was a fish tender or fish processing vessel contracted to be purchased by a citizen of the United States, if the purchase is shown by contract or similarly reliable evidence acceptable to the Secretary to have been made for the purpose of using the vessel as a fish tender or fish processing vessel in the fisheries;

''(3) was documented under chapter 121 of that title and—

''(A) was rebuilt in a foreign country; or

''(B) is subsequently rebuilt in the United States for use as a fish processing vessel; or

''(4) was built in the United States and—

''(A) is rebuilt in a foreign country under a contract entered into before 6 months after the date of enactment of this Act [Jan. 11, 1988], and was purchased or contracted to be purchased before July 28, 1987 with the intent that the vessel be used in the fisheries, if that intent is evidenced by—

''(i) the contract itself; or

''(ii) a ruling letter by the Coast Guard before July 29, 1987 under 46 C.F.R. § 67.21–1 or § 67.27–3 pursuant to a ruling request evidencing that intent; or

''(B) is purchased for use as a fish processing vessel under a contract entered into after July 27, 1987, if—

''(i) a contract to rebuild the vessel for use as a fish processing vessel was entered into before September 1, 1987; and

''(ii) that vessel is part of a specific business plan involving the conversion in foreign shipyards of a series of three vessels and rebuilding work on at least one of the vessels had begun before July 28, 1987.

''(b) A vessel rebuilt under subsection (a)(3)(B) or (4) of this section must be redelivered to the owner before July 28, 1990. However, the Secretary may, on proof of circumstances beyond the control of the owner of a vessel affected by this section, extend the period for rebuilding in a foreign country permitted by this section.

''(c)(1) Any fishery license or registry issued to a vessel built in a foreign country under this section shall be endorsed to restrict the vessel from catching, taking, or harvesting.

''(2) Before being issued a fishery license, any vessel described in subsection (a)(2) of this section must be documented under an application for documentation acceptable to the Secretary filed before July 28, 1987, except that an alternative vessel of no greater tonnage than the vessel in the application may be substituted, if that substitution is made by the original applicant.''

EXTENSION OF PERIOD FOR REBUILDING VESSELS IN FOREIGN COUNTRIES

Section 6(c)(3) of Pub. L. 100–239 provided that: ''The Secretary, on proof of circumstances beyond the control of the owner of a vessel affected by this section [amending sections 2101, 12106, 12107, and 12108 of this title and section 883 of the Appendix to this title, and enacting notes set out under sections 12105 and 12108 of this title and section 883 of the Appendix to this title], may extend the period for rebuilding in a foreign country permitted by this section.''

DEFINITIONS

Section 6(d) of Pub. L. 100–239 provided that: ''The terms in this Act [see Short Title of 1988 Amendment note set out under section 2101 of this title] have the same meaning as in subtitle II of title 46, United States Code (as amended by this Act).''

APPLICATION OF WEIGHT LIMITATIONS TO NORTHERN MARIANA ISLANDS

For provisions directing that weight limitations contained in subsec. (c) of this section shall not apply to the Northern Mariana Islands until the termination of the Trusteeship Agreement for the Trust Territory of the Pacific Islands, see section 303 of Pub. L. 98–454, set out as a note under section 12106 of this title.

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.

§ 12109. Recreational endorsements

(a) A certificate of documentation with a recreational endorsement may be issued for a vessel that is eligible for documentation.

(b) A documented vessel with a recreational endorsement may proceed between a port of the United States and a port of a foreign country without entering or clearing with the Customs Service. A recreational vessel must, however, comply with all customs requirements for reporting arrival under section 433 of the Tariff Act of 1930 (19 U.S.C. 1433) and all persons on board that recreational vessel shall be subject to all applicable customs regulations.

(c) A documented vessel operating under a recreational endorsement may be operated only for pleasure.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 587; Pub. L. 99–36, § 1(a)(7)(C), May 15, 1985, 99 Stat. 67; Pub. L. 99–570, title III, § 3151, Oct. 27, 1986, 100 Stat. 3207–94; Pub. L. 100–710, title I, § 106(b)(5), Nov. 23, 1988, 102 Stat. 4752; Pub. L. 101–225, title III, § 301(a)(9), Dec. 12, 1989, 103 Stat. 1921; Pub. L. 101–595, title VI, § 603(9), Nov. 16, 1990, 104 Stat. 2993.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
12109	46:65*l*

Section 12109 provides that a certificate of documentation in the form of a pleasure vessel license may be issued for any vessel that is eligible for documentation and is to be used exclusively for pleasure. This section also authorizes the Secretary to charge a reasonable fee for issuing, reviewing, or replacing a pleasure vessel license or for providing any other related service.

AMENDMENTS

1990—Subsec. (b). Pub. L. 101–595 substituted ''on board that recreational vessel'' for ''aboard such a pleasure vessel''.

1989—Pub. L. 101–225, § 301(a)(9)(D), substituted ''endorsements'' for ''vessel licenses'' in section catchline.

Subsec. (a). Pub. L. 101–225, § 301(a)(9)(A), added subsec. (a) and struck out former subsec. (a) which read as follows: ''A recreational vessel license may be issued for a vessel that is—

''(1) eligible for documentation; and

''(2) to be operated only for pleasure.''

Subsec. (b). Pub. L. 101–225, § 301(a)(9)(B), substituted ''documented vessel with a recreational endorsement'' for ''licensed recreational vessel'' and ''A recreational'' for ''Such''.

Subsec. (c). Pub. L. 101–225, § 301(a)(9)(C), added subsec. (c).

1988—Subsec. (c). Pub. L. 100–710 struck out subsec. (c) which read as follows: ''The Secretary may prescribe by regulation reasonable fees for issuing, renewing, or replacing a recreational vessel license, or for providing any other service related to a recreational vessel license. The fees shall be based on the costs of the service provided.''

1986—Subsec. (b). Pub. L. 99–570 inserted ''Such vessel must, however, comply with all customs requirements for reporting arrival under section 433 of the Tariff Act of 1930 (19 U.S.C. 1433) and all persons aboard such a pleasure vessel shall be subject to all applicable customs regulations.''

1985—Pub. L. 99–36 substituted ''Recreational'' and ''recreational vessel'' for ''Pleasure'' and ''pleasure vessel'', respectively, in section catchline and wherever appearing in text.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–710 effective Jan. 1, 1989, with certain exceptions and qualifications, see section 107 of Pub. L. 100–710, set out as an Effective Date note under section 30101 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 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.

§ 12110. Limitations on operations authorized by certificates

(a) A vessel may not be employed in a trade except a trade covered by the endorsement issued for that vessel.

(b) A barge qualified to be employed in the coastwise trade may be employed, without being documented, in that trade on rivers, harbors, lakes (except the Great Lakes), canals, and inland waters.

(c) A vessel with only a recreational endorsement may not be operated other than for pleasure.

(d) A documented vessel, other than a vessel with only a recreational endorsement, or an unmanned barge operating outside of the territorial waters of the United States, may be placed under the command only of a citizen of the United States.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 588; Pub. L. 99–36, § 1(a)(7)(D), May 15, 1985, 99 Stat. 67; Pub. L. 100–710, title I, § 104(a)(4), Nov. 23, 1988, 102 Stat. 4750; Pub. L. 101–225, title III, § 301(a)(10), Dec. 12, 1989, 103 Stat. 1922; Pub. L. 102–388, title III, § 348(b), Oct. 6, 1992, 106 Stat. 1554; Pub. L. 102–587, title V, § 5213(a)(2), Nov. 4, 1992, 106 Stat. 5077; Pub. L. 104–324, title III, § 301(c), (d)(1), Oct. 19, 1996, 110 Stat. 3916; Pub. L. 108–293, title IV, § 404(a), Aug. 9, 2004, 118 Stat. 1043.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
12110	46:65m

Section 12110 provides that a vessel is limited to the trade covered by its certificate of documentation; exempts certain barges from documentation; requires that the person in charge be a citizen of the United States; and provides for a penalty for violation.

AMENDMENTS

2004—Subsec. (d). Pub. L. 108–293 inserted ''or an unmanned barge operating outside of the territorial waters of the United States,'' after ''recreational endorsement,''.

1996—Subsec. (c). Pub. L. 104–324, § 301(c), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''A vessel and its equipment are liable to seizure by and forfeiture to the United States Government—

''(1) when a vessel is operated after its endorsement has been denied or revoked under section 12123 of this title;

''(2) when a vessel is employed in a trade without an appropriate trade endorsement; or

''(3) when a documented vessel with a recreational endorsement is operated other than for pleasure.''

Subsec. (d). Pub. L. 104–324, § 301(d)(1), inserted '', other than a vessel with only a recreational endorsement,'' after ''A documented vessel''.

1992—Subsec. (c). Pub. L. 102–587 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''When a vessel is operated after the Secretary has denied issuance or renewal of an endorsement or revoked the endorsement under section 12123 of this title and before the endorsement is reinstituted, or is employed in a trade for which an endorsement is required, without a certificate of documentation with an appropriate endorsement for that trade, or a documented vessel with a recreational endorsement is operated other than for pleasure, the vessel and its equipment are liable to seizure by and forfeiture to the United States Government.''

Pub. L. 102–388 substituted ''When a vessel is operated after the Secretary has denied issuance or renewal of an endorsement or revoked the endorsement under section 12123 of this title and before the endorsement is reinstituted, or is employed in a trade for which an endorsement is required, without a certificate of documentation with an appropriate endorsement for that trade,'' for ''When a vessel is employed in a trade not covered by the endorsement issued for that vessel,''.

1989—Subsec.(a). Pub. L. 101–225, § 301(a)(10)(A), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''A vessel may not be employed in a trade except a trade covered by the certifi-

cate of documentation issued for that vessel. A documented recreational vessel may be operated only for pleasure. However, a certificate of documentation may be exchanged, under regulations prescribed by the Secretary of Transportation, for another type of certificate of documentation or endorsed appropriately for a trade for which the vessel qualifies.''

Subsec. (c). Pub. L. 101–225, § 301(a)(10)(B), substituted ''endorsement'' for ''certificate of documentation'', ''vessel with a recreational endorsement'' for ''recreational vessel'', and ''other than'' for ''except''.

1988—Subsec. (a). Pub. L. 100–710 inserted ''of Transportation'' after ''Secretary''.

1985—Subsecs. (a), (c). Pub. L. 99–36 substituted ''documented recreational'' for ''documented pleasure''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–710 effective Jan. 1, 1989, with certain exceptions and qualifications, see section 107 of Pub. L. 100–710, set out as an Effective Date note under section 30101 of this title.

APPLICATION OF SECTION TO FISHING VESSELS IN CALIFORNIA

Citizen of the United States to include an alien lawfully admitted for permanent residence, for purposes of applying this section to vessels operating in waters off the coast of California, subject to United States jurisdiction, see section 317 of Pub. L. 101–595, set out as a note under section 8103 of this title.

§ 12111. Surrender and invalidation of certificates of documentation

(a) A certificate of documentation is invalid if the vessel for which it is issued—

(1) no longer meets the requirements of this chapter and regulations prescribed under this chapter applicable to that certificate of documentation; or

(2) is placed under the command of a person not a citizen of the United States in violation of section 12110(d) of this title.

(b) An invalid certificate of documentation must be surrendered as provided by regulations prescribed by the Secretary of Transportation.

(c)(1) Notwithstanding subsection (a) of this section, until the certificate of documentation is surrendered with the approval of the Secretary, a documented vessel is deemed to continue to be documented under this chapter for purposes of—

(A) chapter 313 of this title for an instrument filed or recorded before the date of invalidation and an assignment after that date;

(B) sections 9 and 37(b) of the Shipping Act, 1916 (46 App. U.S.C. 808, 835(b));

(C) section 902 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1242); and

(D) any other law of the United States identified by the Secretary by regulation as a law to which the Secretary applies this subsection.

(2) This subsection does not apply when a vessel is forfeited or sold by order of a district court of the United States.

(3) The Secretary may approve the surrender of the certificate of documentation of a documented vessel covered by a mortgage filed or recorded under section 31321 of this title only if the mortgagee consents.

(d)(1) The Secretary shall not refuse to approve the surrender of the certificate of documentation for a vessel solely on the basis that a notice of a claim of a lien on the vessel has been recorded under section 31343(a) of this title.

(2) The Secretary may condition approval of the surrender of the certificate of documentation for a vessel over 1,000 gross tons.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 588; Pub. L. 100–710, title I, § 103(a), Nov. 23, 1988, 102 Stat. 4749; Pub. L. 104–324, title III, § 301(d)(2)(A), Oct. 19, 1996, 110 Stat. 3916; Pub. L. 107–295, title II, § 205(c), Nov. 25, 2002, 116 Stat. 2096.)

HISTORICAL AND REVISION NOTES

1983 ACT

Revised section	*Source section (U.S. Code)*
12111	46:65*o*

Under section 12111, a certificate of documentation becomes invalid if the vessel for which it is issued no longer meets the requirements for issuance of the certificate or is placed under the command of a person who is not a citizen of the United States. It also requires the surrender of invalid certificates but gives protection to preferred mortgages.

1988 ACT

This amends section 12111 of title 46, United States Code, concerning surrendering and invalidation of certificates of documentation. This section clarifies the requirement that an invalid certificate of documentation must be surrendered to the Secretary. However, until the surrender is approved by the Secretary, the vessel is still a documented vessel for certain purposes such as for commercial instruments that have been recorded, foreign transfer restrictions, and requisitioning in time of war or national emergency. It also requires the Secretary to obtain the mortgagee's approval of the surrender if there is a mortgage on the vessel that has been filed or recorded with the Secretary.

HOUSE FLOOR STATEMENT

Section 12111(c)(3) is changed to prohibit the approval of the surrendering of a certificate of documentation for any vessel with a mortgage filed or recorded with the Secretary, not just a vessel with a preferred mortgage.

AMENDMENTS

2002—Subsec. (d). Pub. L. 107–295 added subsec. (d).

1996—Subsec. (a)(2). Pub. L. 104–324 inserted ''in violation of section 12110(d) of this title'' before period at end.

1988—Pub. L. 100–710 substituted ''Surrender and invalidation'' for ''Invalidation'' in section catchline, added subsecs. (b) and (c), and struck out former subsec. (b) which read as follows: ''Except as provided by section 30(O) of the Merchant Marine Act, 1920 (46 App. U.S.C. 961(a)), an invalid certificate of documentation shall be surrendered as provided by regulations prescribed by the Secretary.''

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–295, title II, § 205(e), Nov. 25, 2002, 116 Stat. 2096, provided that: ''This section [amending this section, sections 31325 and 31343 of this title, and section 808 of the Appendix to this title] shall take effect January 1, 2003.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–710 effective Jan. 1, 1989, with certain exceptions and qualifications, see section 107 of Pub. L. 100–710, set out as an Effective Date note under section 30101 of this title.

APPLICATION OF SECTION TO FISHING VESSELS IN CALIFORNIA

Citizen of the United States to include an alien lawfully admitted for permanent residence, for purposes of applying this section to vessels operating in waters off

the coast of California, subject to United States jurisdiction, see section 317 of Pub. L. 101–595, set out as a note under section 8103 of this title.

DOCUMENTATION SURRENDER AND INVALIDATION

Pub. L. 101–225, title III, § 301(b), Dec. 12, 1989, 103 Stat. 1922, provided that: ''Section 12111(c)(3) of title 46, United States Code, does not apply to a mortgage that—

''(1) was filed or recorded before January 1, 1989; and

''(2) was not a preferred mortgage (as that term is defined in section 31301(6) of that title) on that date.''

§ 12112. Vessels procured outside the United States

(a) The Secretary of Transportation and the Secretary of State, acting jointly, may provide for the issuance of a certificate of documentation with an appropriate endorsement for a vessel procured outside the United States meeting the ownership requirements of section 12102 of this title.

(b) Subject to limitations the Secretary of Transportation may prescribe, a vessel for which a document is issued under this section may proceed to the United States and engage en route in the foreign trade or trade with Guam, American Samoa, Wake, Midway, or Kingman Reef. On the vessel's arrival in the United States, the document shall be surrendered as provided by regulations prescribed by the Secretary.

(c) A vessel for which a document is issued under this section is subject to the jursidiction[1] and laws of the United States. However, the Secretary of Transportation may suspend for a period of not more than 6 months, the application of a vessel inspection law carried out by the Secretary or regulations prescribed under that law if the Secretary considers the suspension to be in the public interest.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 588; Pub. L. 100–710, title I, § 104(a)(4), Nov. 23, 1988, 102 Stat. 4750; Pub. L. 101–225, title III, § 301(a)(11), Dec. 12, 1989, 103 Stat. 1922.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
12112	46:65p

Section 12112 authorizes the Secretary and the Secretary of State to provide for the issuance of an appropriate document for a vessel procured outside of the United States by a United States citizen. This enables the vessel to proceed directly to the United States and to trade en route, with the requirement that the document be surrendered upon the vessel's arrival in the United States. It also authorizes the Secretary to temporarily suspend application of those vessel inspection and measurement laws if the suspension is deemed to be in the public interest.

AMENDMENTS

1989—Subsec. (a). Pub. L. 101–225, § 301(a)(11)(A), substituted ''a certificate of documentation with an appropriate endorsement'' for ''an appropriate document''.

Subsec. (b). Pub. L. 101–225, § 301(a)(11)(B), substituted ''a document'' for ''an appropriate document''.

1988—Pub. L. 100–710 inserted ''of Transportation'' after first reference to ''Secretary'' in subsecs. (a) to (c).

[1] So in original. Probably should be ''jurisdiction''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–710 effective Jan. 1, 1989, with certain exceptions and qualifications, see section 107 of Pub. L. 100–710, set out as an Effective Date note under section 30101 of this title.

[§§ 12113 to 12116. Repealed. Pub. L. 100–710, title I, § 106(b)(5), Nov. 23, 1988, 102 Stat. 4752]

Section 12113, Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 588, related to ports of documentation.

Section 12114, Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 589; Pub. L. 99–36, § 1(a)(8), May 15, 1985, 99 Stat. 67, related to home ports.

Section 12115, Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 589, related to names of vessels.

Section 12116, Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 589, related to numbers, signal letters, and identification markings.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 1989, with certain exceptions and qualifications, see section 106 of Pub. L. 100–710, set out as a Repeals and Savings Provisions note preceding section 2101 of this title and section 107 of Pub. L. 100–710, set out as an Effective Date note under section 30101 of this title.

§ 12117. Recording of United States built vessels

The Secretary of Transportation may provide for the recording and certifying of information about vessels built in the United States that the Secretary considers to be in the public interest.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 589; Pub. L. 100–710, title I, § 104(a)(4), Nov. 23, 1988, 102 Stat. 4750.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
12117	46:65q

Section 12117 authorizes the Secretary to provide for the recording and certifying of that information pertaining to vessels built in the United States that is considered to be in the public interest.

AMENDMENTS

1988—Pub. L. 100–710 inserted ''of Transportation'' after first reference to ''Secretary''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–710 effective Jan. 1, 1989, with certain exceptions and qualifications, see section 107 of Pub. L. 100–710, set out as an Effective Date note under section 30101 of this title.

[§ 12118. Repealed. Pub. L. 100–710, title I, § 106(b)(5), Nov. 23, 1988, 102 Stat. 4752]

Section, Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 589, related to registration of funnel marks and house flags.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 1989, with certain exceptions and qualifications, see section 106 of Pub. L. 100–710, set out as a Repeals and Savings Provisions note preceding section 2101 of this title and section 107 of Pub. L. 100–710, set out as an Effective Date note under section 30101 of this title.

§ 12119. List of documented vessels

The Secretary of Transportation shall publish periodically a list of all documented vessels and information about those vessels that the Secretary considers pertinent or useful. The list

shall contain a notation clearly indicating all vessels classed by the American Bureau of Shipping.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 589; Pub. L. 100–710, title I, § 104(a)(4), Nov. 23, 1988, 102 Stat. 4750.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
12119	46:65s 46:881

Section 12119 requires the Secretary to publish a list of all documented vessels and pertinent and useful information about the vessels, including a notation of which vessels are classed by the American Bureau of Shipping.

AMENDMENTS

1988—Pub. L. 100–710 inserted ''of Transportation'' after first reference to ''Secretary''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–710 effective Jan. 1, 1989, with certain exceptions and qualifications, see section 107 of Pub. L. 100–710, set out as an Effective Date note under section 30101 of this title.

INVENTORY OF VESSELS FOR CABLE LAYING, MAINTENANCE, AND REPAIR

Pub. L. 107–295, title IV, § 403, Nov. 25, 2002, 116 Stat. 2114, provided that:

''(a) INVENTORY.—The Secretary of Transportation shall develop, maintain, and periodically update an inventory of vessels that are documented under chapter 121 of title 46, United States Code, are 200 feet or more in length, and have the capability to lay, maintain, or repair a submarine cable, without regard to whether a particular vessel is classified as a cable ship or cable vessel.

''(b) VESSEL INFORMATION.—For each vessel listed in the inventory, the Secretary shall include in the inventory—

''(1) the name, length, beam, depth, and other distinguishing characteristics of the vessel;

''(2) the abilities and limitations of the vessel with respect to the laying, maintaining, and repairing of a submarine cable; and

''(3) the name and address of the person to whom inquiries regarding the vessel may be made.

''(c) PUBLICATION.—The Secretary shall—

''(1) not later than 60 days after the date of enactment of this Act [Nov. 25, 2002], publish in the Federal Register a current inventory developed under subsection (a); and

''(2) every 6 months thereafter, publish in the Federal Register an updated inventory.''

§ 12120. Reports

To ensure compliance with this chapter and laws governing the qualifications of vessels to engage in the coastwise trade and the fisheries, the Secretary of Transportation may require owners, masters, and charterers of documented vessels to submit reports in any reasonable form and manner the Secretary may prescribe.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 589; Pub. L. 100–710, title I, § 104(a)(4), Nov. 23, 1988, 102 Stat. 4750; Pub. L. 108–293, title IV, § 401, Aug. 9, 2004, 118 Stat. 1042.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
12120	46:65t

Section 12120 authorizes the Secretary to require masters and owners of documented vessels to submit reports to ensure compliance with this chapter and with the laws governing the qualifications required of vessels engaging in the coastwise trade and fisheries. These reports are for keeping the vessel data current and certificates of documentation up to date.

AMENDMENTS

2004—Pub. L. 108–293 substituted ''owners, masters, and charterers'' for ''owners and masters''.

1988—Pub. L. 100–710 inserted ''of Transportation'' after first reference to ''Secretary''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–710 effective Jan. 1, 1989, with certain exceptions and qualifications, see section 107 of Pub. L. 100–710, set out as an Effective Date note under section 30101 of this title.

[§ 12121. Repealed. Pub. L. 100–710, title I, § 106(b)(5), Nov. 23, 1988, 102 Stat. 4752]

Section, Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 589, authorized the Secretary to prescribe regulations to carry out this chapter.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 1989, with certain exceptions and qualifications, see section 106 of Pub. L. 100–710, set out as a Repeals and Savings Provisions note preceding section 2101 of this title and section 107 of Pub. L. 100–710, set out as an Effective Date note under section 30101 of this title.

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
12121	46:65v(2)

Section 12121 gives the Secretary authority to prescribe regulations to carry out this chapter.

§ 12122. Penalties

(a) A person that violates this chapter or a regulation prescribed under this chapter is liable to the United States Government for a civil penalty of not more than $10,000. Each day of continuing violation is a separate violation.

(b) A vessel and its equipment are liable to seizure by and forfeiture to the United States Government—

(1) when the owner of a vessel or the representative or agent of the owner knowingly falsifies or conceals a material fact, or knowingly makes a false statement or representation about the documentation or when applying for documentation of the vessel;

(2) when a certificate of documentation is knowingly and fraudulently used for a vessel;

(3) when a vessel is operated after its endorsement has been denied or revoked under section 12123 of this title;

(4) when a vessel is employed in a trade without an appropriate trade endorsement;

(5) when a documented vessel with only a recreational endorsement is operated other than for pleasure; or

(6) when a documented vessel, other than a vessel with only a recreational endorsement, or an unmanned barge operating outside of the territorial waters of the United States, is placed under the command of a person not a citizen of the United States.

(c) In addition to penalties under subsections (a) and (b), the owner of a documented vessel for

which a fishery endorsement has been issued is liable to the United States Government for a civil penalty of up to $100,000 for each day in which such vessel has engaged in fishing (as such term is defined in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802)) within the exclusive economic zone of the United States, if the owner or the representative or agent of the owner knowingly falsified or concealed a material fact, or knowingly made a false statement or representation, with respect to the eligibility of the vessel under section 12102(c) of this title in applying for or applying to renew such fishery endorsement.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 590; Pub. L. 99–307, § 1(16), May 19, 1986, 100 Stat. 446; Pub. L. 104–324, title III, § 301(a), (b), Oct. 19, 1996, 110 Stat. 3916; Pub. L. 105–277, div. C, title II, § 203(f), Oct. 21, 1998, 112 Stat. 2681–620; Pub. L. 106–31, title III, § 3027(b), May 21, 1999, 113 Stat. 101; Pub. L. 108–293, title IV, § 404(b), Aug. 9, 2004, 118 Stat. 1043.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
12122(a)	46:65u(a)
12122(b)	46:65n(a)
12122(c)	46:65n(b)

Section 12122 provides a civil penalty of not more than $500 for each violation of this chapter. It also provides for seizure and forfeiture of a vessel for false statements or representations in connection with the documentation of vessels and for fraudulent use of a certificate of documentation.

AMENDMENTS

2004—Subsec. (b)(6). Pub. L. 108–293 inserted ''or an unmanned barge operating outside of the territorial waters of the United States,'' after ''recreational endorsement,''.

1999—Subsec. (c). Pub. L. 106–31, which directed the insertion of a comma after ''representations'', was executed by inserting the comma after ''representation'', to reflect the probable intent of Congress.

1998—Subsec. (c). Pub. L. 105–277 added subsec. (c).

1996—Subsec. (a). Pub. L. 104–324, § 301(a), substituted ''$10,000'' for ''$500''.

Subsec. (b). Pub. L. 104–324, § 301(b)(1), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''When the owner of a vessel knowingly falsifies or conceals a material fact, or makes a false statement or representation about the documentation of the vessel, that vessel and its equipment are liable to seizure by and forfeiture to the United States Government.''

Subsec. (c). Pub. L. 104–324, § 301(b)(2), struck out subsec. (c) which read as follows: ''When a certificate of documentation is knowingly and fraudulently used for a vessel, that vessel and its equipment are liable to seizure by and forfeiture to the Government.''

1986—Subsec. (a). Pub. L. 99–307 inserted provision that each day of continuing violation is a separate violation.

APPLICATION OF SECTION TO FISHING VESSELS IN CALIFORNIA

Citizen of the United States to include an alien lawfully admitted for permanent residence, for purposes of applying subsec. (b) of this section to vessels operating in waters off the coast of California, subject to United States jurisdiction, see section 317 of Pub. L. 101–595, as amended, set out as a note under section 8103 of this title.

§ 12123. Denial and revocation of endorsements

When the owner of a vessel fails to pay a civil penalty assessed by the Secretary, the Secretary may deny the issuance or renewal of an endorsement or revoke the endorsement on a certificate of documentation issued under this chapter.

(Added Pub. L. 102–587, title V, § 5213(a)(3), Nov. 4, 1992, 106 Stat. 5077.)

PRIOR PROVISIONS

A prior section 12123, added Pub. L. 102–388, title III, § 348(a), Oct. 6, 1992, 106 Stat. 1554, related to the denial and revocation of trade or recreational endorsement upon failure of vessel's owner to pay assessment of civil penalty for violation of law, prior to repeal by Pub. L. 104–324, title VII, § 746(a)(1), Oct. 19, 1996, 110 Stat. 3943.

§ 12124. Surrender of title and number

(a) A documented vessel shall not be titled by a State or required to display numbers under chapter 123, and any certificate of title issued by a State for a documented vessel shall be surrendered in accordance with regulations prescribed by the Secretary of Transportation.

(b) The Secretary may approve the surrender under subsection (a) of a certificate of title for a vessel covered by a preferred mortgage under section 31322(d) of this title only if the mortgagee consents.

(Added Pub. L. 105–383, title IV, § 401(a)(2), Nov. 13, 1998, 112 Stat. 3424.)

CHAPTER 123—NUMBERING UNDOCUMENTED VESSELS

Sec.
12301. Numbering vessels.
12302. Standard numbering system.
12303. Exemption from numbering requirements.
12304. Certificates of numbers.
12305. Displaying numbers.
12306. Safety certificates.
12307. Regulations on numbering and fees.
12308. Providing vessel numbering and registration information.
12309. Penalties.

§ 12301. Numbering vessels

(a) An undocumented vessel equipped with propulsion machinery of any kind shall have a number issued by the proper issuing authority in the State in which the vessel principally is operated.

(b) The Secretary shall require an undocumented barge more than 100 gross tons operating on the navigable waters of the United States to be numbered.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 590; Pub. L. 102–587, title V, § 5305, Nov. 4, 1992, 106 Stat. 5083.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
12301	46:1466

Section 12301 requires that undocumented vessels that are propelled by machinery be issued an identification number by the proper issuing authority in the State in which the vessel is primarily operated.

AMENDMENTS

1992—Pub. L. 102–587 designated existing provisions as subsec. (a) and added subsec. (b).

§ 12302. Standard numbering system

(a) The Secretary shall prescribe by regulation a standard numbering system for vessels to which this chapter applies. On application by a State, the Secretary shall approve a State numbering system that is consistent with the standard numbering system. In carrying out its numbering system, a State shall adopt any definitions of relevant terms prescribed by regulations of the Secretary.

(b) A State with an approved numbering system is the issuing authority within the meaning of this chapter. The Secretary is the issuing authority in a State in which a State numbering system has not been approved.

(c) When a vessel is numbered in a State, it is deemed in compliance with the numbering system of a State in which it temporarily is operated.

(d) When a vessel is removed to a new State of principal operation, the issuing authority of that State shall recognize the validity of the number issued by the original State for 60 days.

(e) If a State has a numbering system approved after the Secretary issues a number, the State shall recognize the validity of the number issued by the Secretary for one year.

(f) When the Secretary decides that a State numbering system is not being carried out consistent with the standard numbering system or the State has changed the system without the Secretary's approval, the Secretary may withdraw approval after giving notice to the State, in writing, stating the reasons for the withdrawal.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 590.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
12302	46:1467

Section 12302 provides for a standard numbering system for undocumented vessels and for approval of State numbering systems by the Secretary. It also requires that a State, when implementing its numbering system, adopt any relevant terms required by the Secretary. In States without approved numbering systems, the Federal Government issues the numbers. This section also provides for the operation of a vessel in a State other than the one in which it was numbered.

§ 12303. Exemption from numbering requirements

(a) When the Secretary is the authority issuing a number under this chapter, the Secretary may exempt a vessel or class of vessels from the numbering requirements of this chapter under conditions the Secretary may prescribe.

(b) When a State is the issuing authority, it may exempt from the numbering requirements of this chapter a vessel or class of vessels exempted under subsection (a) of this section or otherwise as permitted by the Secretary.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 591.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
12303	46:1468

Section 12303 permits the Secretary and any State, when it is the issuing authority, to exempt vessels from the numbering requirements.

§ 12304. Certificates of numbers

(a) A certificate of number is granted for a number issued under this chapter. The certificate shall be pocketsized, shall be at all times available for inspection on the vessel for which issued when the vessel is in operation, and may be valid for not more than 3 years. The certificate of number for a vessel less than 26 feet in length and leased or rented to another for the latter's noncommercial operation of less than 7 days may be retained on shore by the vessel's owner or representative at the place from which the vessel departs or returns to the possession of the owner or the owner's representative. A vessel that does not have the certificate of number on board shall be identified when in operation, and comply with requirements, as the issuing authority prescribes.

(b) The owner of a vessel numbered under this chapter shall provide—

(1) the issuing authority notice of the transfer of any part of the owner's interest in the vessel or of the destruction or abandonment of the vessel, within a reasonable time after the transfer, destruction, or abandonment; and

(2) notice of a change of address within a reasonable time of the change, as prescribed by regulation.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 591.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
12304	46:1469

Section 12304 describes a certificate of number and stipulates when it must be carried on board a vessel. It also requires that the number issuing authority be notified when a boat is sold, transferred, destroyed, or abandoned, or when the owner's address changes.

§ 12305. Displaying numbers

A number required by this chapter shall be painted on, or attached to, each side of the forward half of the vessel for which it was issued, and shall be the size, color, and type as may be prescribed by the Secretary. No other number may be carried on the forward half of the vessel.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 591.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
12305	46:1470

Section 12305 describes the manner in which a number must be displayed on a vessel, and prohibits the display of other numbers on the forward half of the vessel.

§ 12306. Safety certificates

When a State is the authority issuing a number under this chapter, it may require that the individual in charge of a numbered vessel have a valid safety certificate issued under conditions set by the issuing authority, except when the vessel is subject to manning requirements under part F of this subtitle.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 591.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
12306	46:1471

Section 12306 authorizes a State that is an issuing authority to require a numbered vessel operator to hold a valid safety certificate, unless the vessel is subject to manning requirements under part F of this subtitle.

§ 12307. Regulations on numbering and fees

The authority issuing a number under this chapter may prescribe regulations and establish fees to carry out the intent of this chapter. The fees shall apply equally to residents and nonresidents of the State. A State issuing authority may impose only conditions for vessel numbering that are—

(1) prescribed by this chapter or regulations of the Secretary about the standard numbering system; or

(2) related to proof of payment of State or local taxes.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 591.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
12307	46:1472

Section 12307 provides the States or the Secretary with the authority to prescribe regulations and establish fees for carrying out the requirements of this chapter. The fee must apply equally to residents and nonresidents of the State in which the vessel is numbered.

§ 12308. Providing vessel numbering and registration information

A person may request from an authority issuing a number under this chapter the numbering and registration information of a vessel that is retrievable from vessel numbering system records of the issuing authority. When the issuing authority is satisfied that the request is reasonable and related to a boating safety purpose, the information shall be provided on paying the cost of retrieving and providing the information requested.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 592.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
12308	46:1473

Section 12308 requires the number issuing authority to supply for a fee, numbering and registration information to any person, upon request, if the request is reasonable and related to boating safety.

§ 12309. Penalties

(a) A person willfully violating this chapter or a regulation prescribed under this chapter shall be fined not more than $5,000, imprisoned for not more than one year, or both.

(b) A person violating this chapter or a regulation prescribed under this chapter is liable to the United States Government for a civil penalty of not more than $1,000. If the violation involves the operation of a vessel, the vessel also is liable in rem for the penalty.

(c) When a civil penalty of not more than $200 has been assessed under this chapter, the Secretary may refer the matter of collection of the penalty directly to the United States magistrate judge of the jurisdiction in which the person liable may be found for collection procedures under supervision of the district court and under an order issued by the court delegating this authority under section 636(b) of title 28.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 592; Pub. L. 101–650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
12309(a)	46:1483
12309(b)	46:1484(b)
12309(c)	46:1484(d)

Section 12309 provides for civil and criminal penalties for violation of the vessel numbering provisions in this title.

CHANGE OF NAME

''United States magistrate judge'' substituted for ''United States magistrate'' in subsec. (c) pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

CHAPTER 125—VESSEL IDENTIFICATION SYSTEM

Sec.
12501. Establishment of a vessel identification system.
12502. Identification numbers, signal letters, and markings.
12503. Information available to the system.
12504. Information available from the system.
12505. Fees.
12506. Delegation of authority.
12507. Penalties.

HISTORICAL AND REVISION NOTES

Section 101 of H.R. 3105, as amended, adds a new chapter 125 to title 46, United States Code, to establish a vessel identification system for all vessels of the United States. This would include vessels documented under chapter 121 of title 46, numbered under chapter 123 of that title, or titled under the law of a State. This new chapter consists of new sections 12501–12507 as follows.

§ 12501. Establishment of a vessel identification system

(a) The Secretary of Transportation shall establish a vessel identification system to make available information under section 12503 of this title for use by the public for law enforcement and other purposes relating to—

(1) the ownership of documented vessels;

(2) the ownership of vessels numbered under chapter 123 of this title; and

(3) the ownership of vessels titled under the law of a State.

(b) The vessel identification system shall include information prescribed by the Secretary including—

(1) identifying a vessel;

(2) identifying the owner of the vessel, including—

(A) the owner's social security number or, if that number is not available, other means of identification acceptable to the Secretary; or

(B) for an owner other than an individual—

(i) the owner's taxpayer identification number; or

(ii) if the owner does not have a taxpayer identification number, the social security number of an individual who is a corporate officer, general partner, or individual trustee of the owner and who signed the application for documentation or numbering for the vessel;

(3) identifying the State in which it is titled or numbered;

(4) indicating whether the vessel is numbered or titled, or both;

(5) if titled in a State, indicating where evidence of a lien or other security interest may be found against the vessel in that State; and

(6) information assisting law enforcement officials.

(c) The Secretary may maintain information under this chapter in connection with any other information system maintained by the Secretary.

(Pub. L. 100–710, title I, § 101(a), Nov. 23, 1988, 102 Stat. 4735; Pub. L. 101–225, title III, § 302(1), Dec. 12, 1989, 103 Stat. 1922; Pub. L. 101–595, title VI, § 603(10), Nov. 16, 1990, 104 Stat. 2993.)

HISTORICAL AND REVISION NOTES

Revised section 12501

Subsection (a) of section 12501 requires the Secretary of Transportation to establish a system of information concerning vessels of the United States for law enforcement and other purposes. The Secretary is required to make available information from the system relating to the ownership of vessels documented under chapter 121 of title 46, numbered under chapter 123 of that title, and titled under the law of a State. The information is available under section 12503 for use by the public, similarly under the Ship Mortgage Act, 1920.

Subsection (b) lists the vessel identification information which is required to be maintained by the Secretary. The Secretary has the authority to prescribe other information to be maintained in addition to the items listed. For example, the Secretary may identify vessels issued fisheries permits by the Department of Commerce. The Secretary may also monitor transactions involving vessels that require approval by the Secretary under section 9 of the Shipping Act, 1916 (46 App. U.S.C. 808) before interest or control in the vessel may be transferred to a noncitizen.

Subsection (c) clarifies that the Secretary has the flexibility to maintain this system in connection with any other information system maintained by the Secretary, including the Federal Aviation Administration system containing aircraft ownership information. This would also permit the Secretary to combine various systems and data bases maintained by the Secretary such as documentation and numbering of vessels, and safety, casualty, and law enforcement statistics.

AMENDMENTS

1990—Subsec. (b)(2)(A). Pub. L. 101–595 amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''the owner's social security number; or''.

1989—Subsec. (b)(2). Pub. L. 101–225 amended par. (2) generally, adding subpars. (A) and (B).

EFFECTIVE DATE

Chapter effective Jan. 1, 1989, with certain exceptions and qualifications, see section 107 of Pub. L. 100–710, set out as a note under section 30101 of this title.

RECORDS AND OTHER INFORMATION; ESTABLISHMENT, CENTRALIZATION AND COMPUTERIZATION

Section 104(e)(2) of title I of Pub. L. 100–710 provided that: ''To establish, centralize, and computerize records and other information maintained under chapters 121, 125, and 313 of title 46, United States Code, from the effective date of this title [Jan. 1, 1989, with certain exceptions and qualifications, see section 107 of Pub. L. 100–710, set out as a note under section 30101 of this title] through September 30, 1993, the Secretary of Transportation shall spend (out of amounts appropriated for the Department of Transportation under an appropriations law) not less than an amount that is equal to the amounts estimated to be—

''(A) collected under section 9701 of title 31, United States Code, for fees paid for services and things of value provided under chapter 313 of title 46, United States Code (as enacted by section 101 of this Act), and for documenting vessels under chapter 121 of title 46; and

''(B) transferred to or collected by the Secretary under chapter 125 of title 46, United States Code (as enacted by section 101 of this Act).''

PERSONNEL AND EQUIPMENT; RECRUITMENT, COMPENSATION, TRAINING, PURCHASING, OR DEPLOYMENT

Section 104(g) of Pub. L. 100–710 provided that: ''Nothing in this section [amending sections 2101, 2110, 12102, 12103, 12105, 12110, 12112, 12117, 12119, and 12120 of this title and sections 808, 1242, and 1271 of the Appendix to this title, and enacting provisions set out as notes under sections 12501, 12502, and 12505 of this title] requires the Coast Guard to recruit, compensate, train, purchase, or deploy any personnel or equipment to carry out chapter 125 of title 46, United States Code (as enacted by section 101 of this Act), except to the extent that appropriations are made available in an appropriations law for the Department of Transportation.''

[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.]

§ 12502. Identification numbers, signal letters, and markings

(a) For the identification of a vessel of the United States, the Secretary of Transportation—

(1) shall maintain a unique numbering system and assign a number to each vessel of the United States;

(2) may maintain a system of signal letters for a documented vessel;

(3) shall record a name selected by the owner of a documented vessel approved by the Secretary as the vessel's name of record; and

(4) may establish other identification markings.

(b) The manufacturer or owner of a vessel shall affix to the vessel and maintain in the manner prescribed by the Secretary the number assigned and any other markings the Secretary may require.

(c) Once a number is assigned under this section, it may not be used by another vessel.

(d) Once a documented vessel's name is established, the name may not be changed without the approval of the Secretary.

(e) A person may not tamper with or falsify a number or other marking required under this section.

(Pub. L. 100–710, title I, § 101(a), Nov. 23, 1988, 102 Stat. 4736.)

HISTORICAL AND REVISION NOTES

Revised section 12502

Subsection (a) of this section requires the Secretary to maintain a unique numbering system for vessels of the United States. The Secretary may use existing vessel numbering systems such as the hull identification number for this purpose, but must ensure that no two existing vessels of the United States have the same number. The Secretary should consider and propose the use of a 17-digit number to implement this requirement. This subsection also requires the Secretary to maintain a system of signal letters and to record vessel names for documented vessels. The Secretary is authorized to establish other vessel identification markings for vessels of the United States, such as hailing ports.

Subsections (b), (c), (d), and (e) contain other requirements and restrictions concerning vessel identification markings.

This section consolidates the requirements of sections 12114, 12115, 12116, and 12118 of title 46. For this reason, section 106 of this bill repeals those sections.

VESSELS NOT HAVING UNIQUE NUMBER; APPLICABILITY OF PROVISIONS FOR NUMBER ASSIGNMENT

Section 104(f) of Pub. L. 100–710 provided that: ''Section 12502(a)(1) of title 46, United States Code (as enacted by section 101 of this Act), applies to a vessel of the United States that does not have a unique number as prescribed by the Secretary of Transportation under that section until the earlier of the following:

''(1) the next time the vessel is documented, numbered, or titled.

''(2) January 1, 1995.''

§ 12503. Information available to the system

(a) Except as provided in subsections (b) and (c) of this section, a State or a State's delegee approved by the Secretary of Transportation may make information available to the Secretary if, in a manner and form prescribed by the Secretary, the State—

(1) identifies the vessel;

(2) identifies the owner of the vessel, including by—

(A) the owner's social security number or, if that number is not available, other means of identification acceptable to the Secretary; or

(B) for an owner other than an individual—

(i) the owner's taxpayer identification number; or

(ii) if the owner does not have a taxpayer identification number, the social security number of an individual who is a corporate officer, general partner, or individual trustee of the owner and who signed the application for documentation or numbering for the vessel;

(3) identifies the State in which it is titled or numbered;

(4) indicates whether the vessel is numbered or titled, or both;

(5) if titled in a State, indicates where evidence of a lien or other security interest may be found against the vessel in that State;

(6) includes information to assist law enforcement; and

(7) includes other information agreed to by the Secretary and the State.

(b) Except as provided in subsection (c) of this section, the Secretary also may accept information under conditions and in a manner and form prescribed by the Secretary.

(c) The Secretary shall—

(1) retain information on a vessel with a preferred mortgage under section 31322(d) of this title that is no longer titled in a State making information available to the Secretary under this chapter until the mortgage is discharged or the vessel is sold; and

(2) accept information under section 31321(h) of this title only if that information cannot be provided to a State.

(Pub. L. 100–710, title I, § 101(a), Nov. 23, 1988, 102 Stat. 4736; Pub. L. 101–225, title III, § 302(2), Dec. 12, 1989, 103 Stat. 1922; Pub. L. 101–595, title VI, § 603(10), Nov. 16, 1990, 104 Stat. 2993.)

HISTORICAL AND REVISION NOTES

Revised section 12503

Subsection (a) of section 12503 allows a State or approved State delegee to make vessel identification information available to the Secretary. Participation in the system is voluntary on the part of a State. A benefit to boat purchasers and financiers in States with approved titling systems participating in this system is that vessel mortgages or financing instruments made in those States are deemed to be preferred mortgages under chapter 313 of title 46, United States Code (as codified and enacted by this Act).

Under subsection (a), the Secretary may prescribe the manner and form in which the information is made available by the States. In this regard, the Committee intends that the Secretary employ the most efficient, up-to-date computer technology in maintaining information made available from the States to avoid duplication of effort in maintaining information and to reduce the costs of the system. In addition to the vessel identification information made available by States under paragraphs (1)–(6), the Secretary and a State may agree that the State make available other information. For example, the purpose for which a vessel is routinely used would be valuable information for the system.

The Committee intends that most of the information in the system will become available directly and exclusively from the States to the greatest extent possible. However, under subsection (b), the Secretary may accept information from others under conditions and in a manner and form prescribed by the Secretary. Thus, if the Secretary discovers a valuable and reliable source of data that can be conveniently made available to the system, the Secretary can approve it.

Under paragraph (c)(1), the Secretary must maintain information on a State-titled vessel with a preferred mortgage that moves to a nonparticipating, nontitle State, until the mortgage is discharged or the vessel is sold. Under paragraph (c)(2), the Secretary must accept information submitted under section 31321 of title 46 (as enacted by this Act) concerning a discharge of a preferred mortgage on a vessel title under State law. This would be necessary if the vessel moves to a nonparticipating State, and information on that vessel would not be provided to the system by that State. This subsection will allow the Secretary to keep the vessel information system current on these matters and purge files no longer required to be maintained.

AMENDMENTS

1990—Subsec. (a)(2)(A). Pub. L. 101–595 amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''the owner's social security number; or''.

1989—Subsec. (a)(2). Pub. L. 101–225 amended par. (2) generally, adding subpars. (A) and (B).

§ 12504. Information available from the system

For law enforcement or other purposes and under conditions prescribed by the Secretary of Transportation, the Secretary—

(1) shall make available information in the vessel identification system to a State making information available under section 12503(a) of this title; and

(2) may make available information in the vessel identification system to others.

(Pub. L. 100–710, title I, § 101(a), Nov. 23, 1988, 102 Stat. 4736; Pub. L. 101–225, title III, § 302(3), Dec. 12, 1989, 103 Stat. 1923.)

HISTORICAL AND REVISION NOTES

Revised section 12504

This section requires that the Secretary make available information maintained in the vessel identification system to a State participating in the system for law enforcement or other purposes. The Secretary may make available information in the system to others, under conditions the Secretary may prescribe. At first, the Secretary may elect to deal only with the States. However, the Committee firmly expects that information will be made available through computer terminals in satellite offices or direct computer access by modem. In this manner, boating organizations or financial or documentation services could retrieve data without paper transactions for a fee.

AMENDMENTS

1989—Pub. L. 101–225 substituted ''Secretary of Transportation, the Secretary'' for ''Secretary, the Secretary of Transportation''.

§ 12505. Fees

(a) The Secretary of Transportation may charge a fee under section 9701 of title 31 for providing information to or requesting information from the vessel identification system, except to—

(1) an agency; or

(2) a State making information available to the Secretary under section 12503(a) of this title.

(b) The Secretary shall deposit amounts transferred or collected under this section in the general fund of the Treasury as proprietary receipts of the Secretary and ascribed to the vessel identification system.

(Pub. L. 100–710, title I, § 101(a), Nov. 23, 1988, 102 Stat. 4737; Pub. L. 101–595, title VI, § 603(11), Nov. 16, 1990, 104 Stat. 2993.)

HISTORICAL AND REVISION NOTES

Revised section 12505

This section contains the authority for the Secretary to charge a fee under the user charge law, 31 U.S.C. 9701, for providing information to or requesting information from the vessel identification system. Fees may not be charged under this subsection to an agency or a State that is participating in the vessel identification system maintained by the Secretary.

Under subsection (b) of this section, the Secretary may collect an annual fee of not more than $1.00 from the owner of a vessel of the United States under 31 U.S.C. 9701 for the vessel identification system. Since vessel owners will benefit from the vessel identification system, such as from documentation of ownership data and stolen vessel tracking, this fee is designed as a maintenance charge to owners for this service. The collection of the annual fee may be delayed by the Secretary, and an agency, State, or person may be employed to collect the fee under subsection (c). The Committee expects that the Secretary will make agreements with States to collect this fee at the time of vessel registrations. The term of these registrations varies from one to three years as permitted by chapter 123 of title 46.

Under subsection (d) of this section, if a State is employed to collect the fee, the State may retain one-half of the amounts collected, and must transfer the remainder to the Secretary. The amounts retained by a State may be used to cover the costs of making vessel identification information available to the Secretary. This includes upgrading or establishing titling systems as well as making improvements and other changes to vessel numbering systems to make information available. Because States are allowed to make improvements to their vessel titling and numbering systems with the amounts retained under this section, the costs of those programs may decrease. This could result in a corresponding decrease in State numbering fees and offset vessel identification system fees paid by vessel owners.

AMENDMENTS

1990—Subsec. (b). Pub. L. 101–595 redesignated subsec. (e) as (b) and struck out former subsec. (b) which read as follows: ''In addition to any fee under subsection (a) of this section, the Secretary may collect an annual fee of not more than $1.00 from the owner of each vessel of the United States under section 9701 of title 31 for maintaining the vessel identification system. However, the collection of that fee may be delayed under conditions prescribed by the Secretary.''

Subsecs. (c), (d). Pub. L. 101–595 struck out subsecs. (c) and (d) which read as follows:

''(c) The Secretary may employ any agency, State, or person to collect the fee established under subsection (b) of this section.

''(d) If a State is employed to collect a fee under subsection (c) of this section, the State may retain one-half of the amounts collected. A State shall transfer one-half of the amounts collected under subsection (b) of this section to the Secretary.''

Subsec. (e). Pub. L. 101–595 redesignated subsec. (e) as (b).

Subsec. (f). Pub. L. 101–595 struck out subsec. (f) which read as follows: ''The amounts retained by a State under this section may be used to make information available to the Secretary and to pay incremental administrative costs.''

ANNUAL FEE PRIOR TO JAN. 1, 1992

Section 104(e)(1) of Pub. L. 100–710 provided that: ''Before January 1, 1992, the annual fee under section 12505 of title 46, United States Code (as enacted by section 101 of this Act), is $1.00.''

§ 12506. Delegation of authority

The Secretary of Transportation may delegate to an agency, a State, or a qualified person the authority to—

(1) establish and maintain the vessel identification system; and

(2) charge fees under section 12505 of this title to a person making information available to or requesting information from the vessel identification system.

(Pub. L. 100–710, title I, § 101(a), Nov. 23, 1988, 102 Stat. 4737.)

HISTORICAL AND REVISION NOTES

Revised section 12506

This section allows the Secretary to delegate the authority to establish and maintain the vessel identification system to an agency, a State, or a qualified person. The Secretary may also delegate the authority to charge fees under section 12505 for requesting information from or making information available to the vessel identification system.

§ 12507. Penalties

(a) A person shall be fined under title 18, imprisoned for not more than 2 years, or both, if the person with the intent to defraud—

(1) provides false information to the Secretary of Transportation or a State issuing authority regarding the identification of a vessel under this chapter; or

(2) tampers with, removes, or falsifies the unique vessel identification number assigned to a vessel under section 12502 of this title.

(b) A person is liable to the United States Government for a civil penalty of not more than $10,000 if the person—

(1) provides false information to the Secretary or a State issuing authority regarding the identification of a vessel under this chapter;

(2) violates section 12502 of this title; or

(3) fails to comply with requirements prescribed by the Secretary under section 12505 of this title.

(c) A vessel involved in a violation of this chapter, or regulation under this chapter, and its equipment, may be seized by, and forfeited to, the Government.

(d) If a person, not an individual, is involved in a violation of this chapter, the president or chief executive of the person also is subject to any penalty provided under this section.

(Pub. L. 100–710, title I, § 101(a), Nov. 23, 1988, 102 Stat. 4737.)

HISTORICAL AND REVISION NOTES

Revised section 12507

This section establishes criminal and civil penalties for certain violations of chapter 125 of title 46 (as enacted by this Act).

PART I—STATE BOATING SAFETY PROGRAMS

CHAPTER 131—RECREATIONAL BOATING SAFETY

Sec.
13101. State recreational boating safety programs.
13102. Program acceptance.
13103. Allocations.
13104. Availability of allocations.
13105. Computation decisions about State amounts expended.
13106. Authorization of appropriations.
[13107. Repealed.]
13108. Computing amounts allocated to States and State records requirements.
13109. Consultation, cooperation, and regulation.
13110. National Boating Safety Advisory Council.

HISTORICAL AND REVISION NOTES

This Chapter establishes the recreational boating safety and facility program administered by the Coast Guard. The general purpose is to encourage State participation in boating safety education and enforcement activities.

AMENDMENTS

1998—Pub. L. 105–178, title VII, § 7405(c)(2), June 9, 1998, 112 Stat. 488, substituted ''appropriations'' for ''contract spending'' in item 13106.

1984—Pub. L. 98–369, div. A, title X, § 1016(c)(2), July 18, 1984, 98 Stat. 1020, struck out item 13107 ''National Recreational Boating Safety and Facilities Improvement Fund''.

§ 13101. State recreational boating safety programs

(a) To encourage greater State participation and uniformity in boating safety efforts, and particularly to permit the States to assume the greater share of boating safety education, assistance, and enforcement activities, the Secretary shall carry out a national recreational boating safety program. Under this program, the Secretary shall make contracts with, and allocate and distribute amounts to, eligible States to assist them in developing, carrying out, and financing State recreational boating safety programs.

(b) The Secretary shall establish guidelines and standards for the program. In doing so, the Secretary—

(1) shall consider, among other things, factors affecting recreational boating safety by contributing to overcrowding and congestion of waterways, such as the increasing number of recreational vessels operating on those waterways and their geographic distribution, the availability and geographic distribution of recreational boating facilities in and among applying States, and State marine casualty and fatality statistics for recreational vessels;

(2) shall consult with the Secretary of the Interior to minimize duplication with the purposes and expenditures of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460*l*–4—460*l*–11) the Federal Aid in Sport Fish Restoration Act of 1950 (16 U.S.C. 777–777k), and with the guidelines developed under those Acts; and

(3) shall maintain environmental standards consistent with the Coastal Zone Management Act of 1972 (16 U.S.C. 1451–1464) and other laws and policies of the United States intended to safeguard the ecological and esthetic quality of the waters and wetlands of the United States.

(c) A State whose recreational boating safety program has been approved by the Secretary is eligible for allocation and distribution of amounts under this chapter to assist that State in developing, carrying out, and financing its program. Matching amounts shall be allocated and distributed among eligible States by the Secretary as provided by section 13103 of this title.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 592; Pub. L. 98–369, div. A, title X, § 1011(b), July 18, 1984, 98 Stat. 1013; Pub. L. 101–595, title III, § 312(a), Nov. 16, 1990, 104 Stat. 2987.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
13101	46:1474

Section 13101(a) authorizes the Secretary to make contracts with, and allocate amounts to eligible States to assist them in carrying out their recreational boating safety and facilities improvement programs.

Subsection (b) requires the Secretary to establish guidelines and standards for the program, and specifies specific conditions the Secretary must consider, requires consultation with the Secretary of the Interior, and to maintain environmental standards consistent with the Coastal Zone Management Act.

Subsection (c) makes the States who meet the standards prescribed by the Secretary eligible for the amounts authorized under this chapter.

REFERENCES IN TEXT

The Land and Water Conservation Fund Act of 1965, referred to in subsec. (b)(2), is Pub. L. 88–578, Sept. 3, 1964, 78 Stat. 897, as amended, which is classified generally to part B (§ 460*l*–4 et seq.) of subchapter LXIX of chapter 1 of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 460*l*–4 of Title 16 and Tables.

The Federal Aid in Sport Fish Restoration Act of 1950, referred to in subsec. (b)(2), is act Aug. 9, 1950, ch. 658, 64 Stat. 430, as amended, also known as the Dingell-Johnson Sport Fish Restoration Act, the Federal Aid in Fish Restoration Act, and the Fish Restoration and Management Projects Act, which is classified generally to chapter 10B (§ 777 et seq.) of Title 16. For complete classification of this Act to the Code, see Short Title note set out under section 777 of Title 16 and Tables.

The Coastal Zone Management Act of 1972, referred to in subsec. (b)(3), is title III of Pub. L. 89–454 as added by Pub. L. 92–583, Oct. 27, 1972, 86 Stat. 1280, as amended, which is classified generally to chapter 33 (§ 1451 et seq.) of Title 16. For complete classification of this Act to the Code, see Short Title note set out under section 1451 of Title 16 and Tables.

AMENDMENTS

1990—Subsec. (b)(2). Pub. L. 101–595 substituted ''the Federal Aid in Sport Fish Restoration Act of 1950 (16 U.S.C. 777–777k), and with the guidelines developed under those Acts; and'' for ''and with the guidelines developed under that Act; and''.

1984—Subsec. (a). Pub. L. 98–369, § 1011(b), struck out ''and facility improvement'' after ''in boating safety'', struck out ''and facilities improvement'' in two places after ''recreational boating safety'', and substituted ''shall'' for ''may'' in second sentence.

Subsec. (c). Pub. L. 98–369, § 1011(b)(1)(B), struck out ''and facilities improvement'' after ''recreational boating safety''.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 1013 of subpart A (§§ 1010–1013) of part I of subtitle B of title X of division A of Pub. L. 98–369 provided that: ''The amendments made by this subpart [amending this section and sections 2102, 13102, 13103, 13105, 13106, 13108, and 13109 of this title and enacting a provision set out as a note under this section] shall take effect on October 1, 1984, and shall apply with respect to fiscal years beginning after September 30, 1984.''

SHORT TITLE OF 1986 AMENDMENT

Pub. L. 99–626, § 1, Nov. 7, 1986, 100 Stat. 3504, provided that: ''This act [amending sections 13102, 13106, and 13110 of this title and section 1464 of Title 16, Conservation, and enacting provisions set out as notes under section 13110 of this title and section 1456a of Title 16] may be cited as the 'Recreational Boating Safety Act of 1986'.''

SURVEY OF FUEL USE BY RECREATIONAL VESSELS

Pub. L. 100–448, § 6(d), Sept. 28, 1988, 102 Stat. 1841, provided that:

''(1) IN GENERAL.—The Secretary of Transportation and the Secretary of the Interior shall jointly conduct a survey of—

''(A) the number, size, and primary uses of recreational vessels operating on the waters of the United States; and

''(B) the amount and types of fuel used by those vessels.

''(2) AUTHORIZATION OF CONTRACTS.—The Secretary of Transportation and the Secretary of the Interior may enter into contracts for the performance of a survey pursuant to this subsection.

''(3) REPORT.—The Secretary of the Interior and the Secretary of Transportation shall jointly submit a report to the Speaker of the House of Representatives and to the President pro tempore of the Senate which describes the results of the survey conducted pursuant to this section not later than November 15, 1992.

''(4) FUNDING.—Activities under this subsection may be carried out—

''(A) using amounts available to the Secretary of the Interior for administrative expenses under the Act entitled 'An Act to provide that the United States shall aid the States in fish restoration and management projects, and for other purposes' (64 Stat. 430; 16 U.S.C. 777 et seq.); and

''(B) subject to appropriations, using amounts available to the Secretary of Transportation under section 13106(a)(1) of title 46, United States Code (as amended by this Act).''

CONGRESSIONAL DECLARATION OF POLICY FOR 1984 AMENDMENT

Section 1010 of part I (§§ 1010–1017) of subtitle B of title X of division A of Pub. L. 98–369 provided that: ''It is declared to be the policy of Congress and the purpose of this part [enacting sections 4162 and 9504 of Title 26, Internal Revenue Code, amending this section, sections 2102, 13102, 13103, 13105, 13106, 13108, and 13109 of this title, sections 777, 777b to 777e, 777g, and 777k of Title 16, Conservation, and sections 4161 and 9503 of Title 26, repealing section 13107 of this title, and enacting provisions set out as notes under this section, section 777 of Title 16, and sections 4161, 4162, and 9504 of Title 26] to improve recreational boating safety and to foster greater development, use, and enjoyment of all waters of the United States by encouraging and assisting participation by the States, the boating industry, and the boating public in activities related to increasing boating safety; by authorizing the establishment of national construction and performance standards for boats and associated equipment; by creating more flexible authority governing the use of boats and equipment; and by facilitating the provision of services by the United States Coast Guard on behalf of boating safety. It is further declared to be the policy of Congress to encourage greater and continuing uniformity of boating laws and regulations among the States and the Federal Government, to encourage and assist the States in exercising their authorities in boating safety, to foster greater cooperation and assistance between the Federal Government and the States in administering and enforcing Federal and State laws and regulations pertaining to boating safety, and to equitably utilize taxes paid on fuel use in motor boats in a manner which enhances boating safety.''

[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.]

§ 13102. Program acceptance

(a) The Secretary shall make a contract with, and allocate and distribute amounts from the Sport Fish Restoration and Boating Trust Fund established by section 9504 of the Internal Revenue Code of 1986 to, a State that has an approved State recreational boating safety program, if the State demonstrates to the Secretary's satisfaction that—

(1) the program submitted by that State is consistent with this chapter and chapters 61 and 123 of this title;

(2) amounts distributed will be used to develop and carry out a State recreational boating safety program containing the minimum requirements of subsection (c) of this section;

(3) sufficient State matching amounts are available from general State revenue, undocumented vessel numbering and license fees, State marine fuels taxes, or from a fund constituted from the proceeds of those taxes and established to finance a State recreational boating safety program; and

(4) the program submitted by that State designates a State lead authority or agency that will carry out or coordinate carrying out the State recreational boating safety program supported by financial assistance of the United States Government in that State, including the requirement that the designated State authority or agency submit required reports that are necessary and reasonable to carry out properly and efficiently the program and that are in the form prescribed by the Secretary.

(b) Amounts of the Government (except amounts from sources referred to in subsection (a)(3) of this section) may not be used to provide a State's share of the costs of the program described under this section. State matching amounts committed to a program under this chapter may not be used to constitute the State's share of matching amounts required by another program of the Government.

(c) The Secretary shall approve a State recreational boating safety program, and the program is eligible to receive amounts authorized to be expended under section 13106 of this title, if the program includes—

(1) a vessel numbering system approved or carried out by the Secretary under chapter 123 of this title;

(2) a cooperative boating safety assistance program with the Coast Guard in that State;

(3) sufficient patrol and other activity to ensure adequate enforcement of applicable State boating safety laws and regulations;

(4) an adequate State boating safety education program, that includes the dissemination of information concerning the hazards of operating a vessel when under the influence of alcohol or drugs; and

(5) a system, approved by the Secretary, for reporting marine casualties required under section 6102 of this title.

(d) The Secretary's approval under this section is a contractual obligation of the Government for the payment of a proportionate share of the cost of carrying out the program.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 593; Pub. L. 98–369, div. A, title X, §1011(c), July 18, 1984, 98 Stat. 1013; Pub. L. 98–557, §7(b)(3), Oct. 30, 1984, 98 Stat. 2862; Pub. L. 99–307, §1(17), May 19, 1986, 100 Stat. 446; Pub. L. 99–626, §4(a), (b), Nov. 7, 1986, 100 Stat. 3505; Pub. L. 100–448, §6(b)(3)–(5), Sept. 28, 1988, 102 Stat. 1840; Pub. L. 101–595, title III, §312(b), Nov. 16, 1990, 104 Stat. 2987; Pub. L. 109–59, title X, §10141, Aug. 10, 2005, 119 Stat. 1931.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
13102	46:1475

Section 13102(a) authorizes the Secretary to contract with the States and allocate the amounts of them if they demonstrate to the satisfaction of the Secretary that they have a program consistent with this chapter and chapters 61 and 123, that the amounts received will be used to develop and carry out their recreational boating safety and facilities improvement programs, that they have sufficient matching amounts available from specified revenue sources to meet the objectives of the program, that they will submit required reports to the Secretary to ensure continued compliance with the objectives of this chapter.

Subsection (b) prohibits a State from using any other funds received from the Federal Government to meet their required State match.

Subsections (c) and (d) require the Secretary to approve a State's recreational boating safety and facilities improvement program if the program meets the specified requirements of this subsection.

Subsection (e) makes the approval of a State's program a contractual obligation of the Government to pay the Federal portion of the cost to carry out the program.

Subsection (f) allows a State to submit a combined boating safety and facility improvement program if it meets the requirements of all of the objectives of both programs.

REFERENCES IN TEXT

Section 9504 of the Internal Revenue Code of 1986, referred to in subsec. (a), is classified to section 9504 of Title 26, Internal Revenue Code.

AMENDMENTS

2005—Subsec. (a). Pub. L. 109–59 substituted ''the Sport Fish Restoration and Boating Trust Fund'' for ''the Boat Safety Account'' in introductory provisions.

1990—Subsec. (a)(3). Pub. L. 101–595, §312(b)(1), inserted ''State'' after ''general''.

Subsec. (c)(4). Pub. L. 101–595, §312(b)(2), inserted ''or drugs'' after ''alcohol''.

Subsec. (d). Pub. L. 101–595, §312(b)(3), substituted ''a proportionate share'' for ''the proportional share''.

1988—Subsec. (a). Pub. L. 100–448, §6(b)(4), substituted ''1986'' for ''1954.'' in introductory provisions.

Subsec. (a)(4). Pub. L. 100–448, §6(b)(5), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''the program submitted by that State designates a State lead authority or agency that will carry out or coordinate carrying out the State recreational boating safety program supported by financial assistance of the United States Government in that State, including the requirement that the designated State authority or agency submit required reports that are necessary and reasonable to carry out properly and efficiently the program and that are in the form prescribed by the Secretary.''

Subsec. (b). Pub. L. 100–448, §6(b)(3), substituted ''(except amounts from'' for ''from sources (except''.

1986—Subsec. (a). Pub. L. 99–626, §4(a), substituted ''Boat Safety Account established by section 9504 of the Internal Revenue Code of 1954.'' for ''Fund established under section 13107 of this title'' in introductory provisions.

Subsec. (a)(4). Pub. L. 99–626, §4(b), inserted ''out'' after ''carrying''.

Pub. L. 99–307 substituted ''carrying out the State'' for ''carrying the State''.

1984—Subsec. (a). Pub. L. 98–369, §1011(c)(1), (2), in provisions preceding par. (1) substituted ''shall'' for ''may'' and struck out ''and facilities improvement'' after ''boating safety''.

Subsec. (a)(2). Pub. L. 98–369, §1011(c)(1), (3), struck out '', (d), or (f)'' after ''requirements of subsection (c)'' and struck out ''and facilities improvement'' after ''boating safety''.

Subsec. (a)(3), (4). Pub. L. 98–369, §1011(c)(1), struck out ''and facilities improvement'' after ''boating safety''.

Subsec. (c)(4). Pub. L. 98–557 inserted provisions relating to dissemination of information concerning the

hazards of operating a vessel when under the influence of alcohol.

Subsecs. (d), (e). Pub. L. 98–369, § 1011(c)(4), redesignated subsec. (e) as (d). Former subsec. (d), which related to approval of a State recreational boating facilities improvement program by the Secretary, was struck out.

Subsec. (f). Pub. L. 98–369, § 1011(c)(4), struck out subsec. (f) which related to submission by a State to the Secretary of a combined program for the improvement of recreational boating safety and recreational boating facilities.

EFFECTIVE DATE OF 2005 AMENDMENTS

From Aug. 10, 2005, to end of fiscal year 2005, subsec. (a) of this section considered to read as immediately before enactment of Pub. L. 109–59, see section 101(b) of Pub. L. 109–74, set out as a note under section 777b of Title 16, Conservation.

Amendment by Pub. L. 109–59 effective Oct. 1, 2005, see section 10102 of Pub. L. 109–59, set out as a note under section 777b of Title 16, Conservation.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–448 effective Oct. 1, 1988, see section 6(e) of Pub. L. 100–448, set out as a note under section 777 of Title 16, Conservation.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective Oct. 1, 1984, to apply with respect to fiscal years beginning after Sept. 30, 1984, see section 1013 of Pub. L. 98–369, set out as a note under section 13101 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.

§ 13103. Allocations

(a) The Secretary shall allocate amounts available for allocation and distribution under this chapter for State recreational boating safety programs as follows:

(1) One-third shall be allocated equally each fiscal year among eligible States.

(2) One-third shall be allocated among eligible States that maintain a State vessel numbering system approved under chapter 123 of this title and a marine casualty reporting system approved under this chapter so that the amount allocated each fiscal year to each eligible State will be in the same ratio as the number of vessels numbered in that State bears to the number of vessels numbered in all eligible States.

(3) One-third shall be allocated so that the amount allocated each fiscal year to each eligible State will be in the same ratio as the amount of State amounts expended by the State for the State recreational boating safety program during the prior fiscal year bears to the total State amounts expended during that fiscal year by all eligible States for State recreational boating safety programs.

(b) The amount received by a State under this section in a fiscal year may be not more than one-half of the total cost incurred by that State in developing, carrying out, and financing that State's recreational boating safety program in that fiscal year.

(c) The Secretary may allocate not more than 5 percent of the amounts available for allocation and distribution in a fiscal year for national boating safety activities of national nonprofit public service organizations.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 594; Pub. L. 98–369, div. A, title X, § 1011(d), July 18, 1984, 98 Stat. 1013; Pub. L. 101–595, title III, § 312(c), Nov. 16, 1990, 104 Stat. 2987.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
13103	46:1476

Section 13103 requires the Secretary to allocate the amounts available for recreational boating safety and facilities improvement programs according to a specific formula:

(1) ⅓ shall be allocated equally to each eligible State:

(2) ⅓ shall be allocated to those States maintaining an approved numbering system; and

(3) ⅓ shall be allocated to the State in the proportion that the State obligated in the prior fiscal year to the total amount obligated by all of the States in the prior fiscal year.

AMENDMENTS

1990—Subsec. (a)(3). Pub. L. 101–595 struck out ''or obligated'' after ''expended'' in two places.

1984—Subsec. (b). Pub. L. 98–369, § 1011(d), redesignated subsec. (c) as (b), struck out ''and facilities improvement'' after ''boating safety'', and struck out former subsec. (b) which related to allocation of amounts for State recreational boating facilities improvement programs by the Secretary.

Subsec. (c). Pub. L. 98–369, § 1011(d)(1), redesignated subsec. (e) as (c). Former subsec. (c) redesignated (b).

Subsec. (d). Pub. L. 98–369, § 1011(d)(1), struck out subsec. (d) which provided that an allocation or distribution of amounts under this section may not be made to a State to maintain boating facilities under that State's approved recreational boating safety and facilities improvement program.

Subsec. (e). Pub. L. 98–369, § 1011(d)(1), redesignated subsec. (e) as (c).

Subsec. (f). Pub. L. 98–369, § 1011(d)(1), struck out subsec. (f) which provided that the Secretary could extend amounts necessary to carry out this chapter but that there was a limitation on the total amount allocable.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective Oct. 1, 1984, to apply with respect to fiscal years beginning after Sept. 30, 1984, see section 1013 of Pub. L. 98–369, set out as a note under section 13101 of this title.

PAYMENT OF ADMINISTRATIVE COSTS; RETENTION OF AMOUNT PRIOR TO ALLOCATIONS

Pub. L. 99–640, § 7(d), Nov. 10, 1986, 100 Stat. 3548, which provided that before making any allocation under this section [46 U.S.C. 13103] for a fiscal year, the Secretary shall retain not less than one percent nor more than two percent of the amount appropriated for that year for State recreational boating safety programs for the payment of costs of administration of this chapter [46 U.S.C. 13101 et seq.], was repealed by Pub. L. 100–448, § 6(b)(1)(B), Sept. 28, 1988, 102 Stat. 1840.

§ 13104. Availability of allocations

(a)(1) Amounts allocated to a State shall be available for obligation by that State for a period of 3 years after the date of allocation.

(2) Amounts allocated to a State that are not obligated at the end of the 3-year period referred to in paragraph (1) shall be withdrawn and allocated by the Secretary in addition to any other amounts available for allocation in the fiscal year in which they are withdrawn or the following fiscal year.

(b) Amounts available to the Secretary for State recreational boating safety programs for a fiscal year that have not been allocated at the end of the fiscal year shall be allocated among States in the next fiscal year in addition to amounts otherwise available for allocation to States for that next fiscal year.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 595; Pub. L. 99–307, § 1(18), May 19, 1986, 100 Stat. 446; Pub. L. 102–587, title V, § 5101, Nov. 4, 1992, 106 Stat. 5070; Pub. L. 105–178, title VII, § 7405(a), June 9, 1998, 112 Stat. 487; Pub. L. 109–59, title X, § 10142, Aug. 10, 2005, 119 Stat. 1931.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
13104	46:1477

Section 13104 allows a State to use any of the amounts received from the Secretary over a 3 year period. If the State does not spend the money within that period, the amounts revert to the Secretary, who will make the amounts available along with the amounts available for that year.

AMENDMENTS

2005—Subsec. (a)(1). Pub. L. 109–59, § 10142(1), substituted ''3 years'' for ''2 years''.

Subsec. (a)(2). Pub. L. 109–59, § 10142(2), substituted ''3-year'' for ''2-year''.

1998—Subsec. (a)(1). Pub. L. 105–178, § 7405(a)(1), substituted ''2 years'' for ''3 years''.

Subsec. (a)(2). Pub. L. 105–178, § 7405(a)(2), substituted ''2-year'' for ''3-year''.

1992—Pub. L. 102–587 amended section generally. Prior to amendment, section read as follows:

''(a) Amounts allocated to a State shall be available for obligation by that State for a period of 3 years after the date of allocation. Amounts unobligated by the State at the end of the 3 years shall be withdrawn by the Secretary and shall be available with other amounts to be allocated by the Secretary during that fiscal year.

''(b) Amounts available to the Secretary for State recreational boating safety programs that have not been allocated at the end of a fiscal year shall be carried forward as part of the total allocation of amounts for the next fiscal year that may be expended under this chapter.''

1986—Subsec. (b). Pub. L. 99–307 inserted ''for State recreational boating safety programs'' after ''Secretary''.

EFFECTIVE DATE OF 2005 AMENDMENTS

From Aug. 10, 2005, to end of fiscal year 2005, subsec. (a) of this section considered to read as immediately before enactment of Pub. L. 109–59, see section 101(b) of Pub. L. 109–74, set out as a note under section 777b of Title 16, Conservation.

Amendment by Pub. L. 109–59 effective Oct. 1, 2005, see section 10102 of Pub. L. 109–59, set out as a note under section 777b of Title 16, Conservation.

§ 13105. Computation decisions about State amounts expended

(a) Consistent with regulations prescribed by the Secretary, the computation by a State of amounts expended for the State recreational boating safety program shall include—

(1) the acquisition, maintenance, and operating costs of land, facilities, equipment, and supplies;

(2) personnel salaries and reimbursable expenses;

(3) the costs of training personnel;

(4) public boat safety education;

(5) the costs of carrying out the program; and

(6) other expenses that the Secretary considers appropriate.

(b) The Secretary shall decide an issue arising out of the computation made under subsection (a) of this section.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 596; Pub. L. 98–369, div. A, title X, § 1011(e), July 18, 1984, 98 Stat. 1013; Pub. L. 101–595, title III, § 312(c), Nov. 16, 1990, 104 Stat. 2987.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
13105	46:1478

Section 13105 prescribes what amounts expended or obligated by a State will be counted toward the State's share. This section also authorizes the Secretary to settle any dispute over the computations required by this section.

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–595 struck out ''or obligated'' after ''expended'' in provisions preceding par. (1).

1984—Subsec. (a). Pub. L. 98–369 struck out ''and facilities improvement'' after ''boating safety'' in provisions preceding par. (1).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective Oct. 1, 1984, to apply with respect to fiscal years beginning after Sept. 30, 1984, see section 1013 of Pub. L. 98–369, set out as a note under section 13101 of this title.

§ 13106. Authorization of appropriations

(a)(1) Subject to paragraph (2) and subsection (c), the Secretary shall expend in each fiscal year for State recreational boating safety programs, under contracts with States under this chapter, an amount equal to the sum of (A) the amount made available from the Boat Safety Account for that fiscal year under section 15 of the Dingell-Johnson Sport Fish Restoration Act and (B) the amount transferred to the Secretary under subsections (a)(2) and (f) of section 4 of the Dingell-Johnson Sport Fish Restoration Act (16 U.S.C. 777c(a)(2) and (f)). The amount shall be allocated as provided under section 13103 of this title and shall be available for State recreational boating safety programs as provided under the guidelines established under subsection (b) of this section. Amounts authorized to be expended for State recreational boating safety programs shall remain available until expended and are deemed to have been expended only if an amount equal to the total amounts authorized to be expended under this section for the fiscal year in question and all prior fiscal years have been obligated. Amounts previously obligated but released by payment of a final

voucher or modification of a program acceptance shall be credited to the balance of unobligated amounts and are immediately available for expenditure.

(2) The Secretary shall use not more than two percent of the amount available each fiscal year for State recreational boating safety programs under this chapter to pay the costs of investigations, personnel, and activities related to administering those programs.

(b) The Secretary shall establish guidelines prescribing the purposes for which amounts available under this chapter for State recreational boating safety programs may be used. Those purposes shall include—

(1) providing facilities, equipment, and supplies for boating safety education and law enforcement, including purchase, operation, maintenance, and repair;

(2) training personnel in skills related to boating safety and to the enforcement of boating safety laws and regulations;

(3) providing public boating safety education, including educational programs and lectures, to the boating community and the public school system;

(4) acquiring, constructing, or repairing public access sites used primarily by recreational boaters;

(5) conducting boating safety inspections and marine casualty investigations;

(6) establishing and maintaining emergency or search and rescue facilities, and providing emergency or search and rescue assistance;

(7) establishing and maintaining waterway markers and other appropriate aids to navigation; and

(8) providing State recreational vessel numbering and titling programs.

(c)(1) Of the amount transferred to the Secretary under subsection (a)(2) of section 4 of the Dingell-Johnson Sport Fish Restoration Act (16 U.S.C. 777c(a)(2)), $5,500,000 is available to the Secretary for payment of expenses of the Coast Guard for personnel and activities directly related to coordinating and carrying out the national recreational boating safety program under this title, of which not less than $2,000,000 shall be available to the Secretary only to ensure compliance with chapter 43 of this title.

(2) No funds available to the Secretary under this subsection may be used to replace funding traditionally provided through general appropriations, nor for any purposes except those purposes authorized by this section.

(3) Amounts made available by this subsection shall remain available during the 2 succeeding fiscal years. Any amount that is unexpended or unobligated at the end of the 3-year period during which it is available shall be withdrawn by the Secretary and allocated to the States in addition to any other amounts available for allocation in the fiscal year in which they are withdrawn or the following fiscal year.

(4) The Secretary shall publish annually in the Federal Register a detailed accounting of the projects, programs, and activities funded under this subsection.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 596; Pub. L. 98–369, div. A, title X, § 1012, July 18, 1984, 98 Stat. 1013; Pub. L. 99–626, § 4(c), Nov. 7, 1986, 100 Stat. 3505; Pub. L. 99–640, § 7(b), (c), Nov. 10, 1986, 100 Stat. 3548; Pub. L. 100–448, § 6(b)(1)(A), (2), (6), Sept. 28, 1988, 102 Stat. 1839, 1840; Pub. L. 105–178, title VII, § 7405(b), (c)(1), June 9, 1998, 112 Stat. 487, 488; Pub. L. 108–88, § 9(c), Sept. 30, 2003, 117 Stat. 1126; Pub. L. 108–202, § 7(c), Feb. 29, 2004, 118 Stat. 484; Pub. L. 108–224, § 6(c), Apr. 30, 2004, 118 Stat. 632; Pub. L. 108–263, § 6(c), June 30, 2004, 118 Stat. 704; Pub. L. 108–280, § 6(c), July 30, 2004, 118 Stat. 882; Pub. L. 108–310, § 9(c), Sept. 30, 2004, 118 Stat. 1159; Pub. L. 109–14, § 8(c), May 31, 2005, 119 Stat. 335; Pub. L. 109–20, § 8(c), July 1, 2005, 119 Stat. 357; Pub. L. 109–35, § 8(c), July 20, 2005, 119 Stat. 390; Pub. L. 109–37, § 8(c), July 22, 2005, 119 Stat. 405; Pub. L. 109–40, § 8(c), July 28, 2005, 119 Stat. 421; Pub. L. 109–59, title X, § 10143, Aug. 10, 2005, 119 Stat. 1931; Pub. L. 109–74, title I, § 102, title II, § 203, Sept. 29, 2005, 119 Stat. 2030, 2032.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
13106	46:1479

Section 13106 provides the Secretary with liquidating contract authority in an amount equal to the revenues received from the motor boat fuel tax. One third shall be used for State boating safety programs, and ⅔ shall be used for State facilities improvement programs. And as provided in Section 13102(f), the approval of a State's program makes it a contractual obligation of the United States Government to provide the amounts available.

REFERENCES IN TEXT

Section 15 of the Dingell-Johnson Sport Fish Restoration Act, referred to in subsec. (a)(1), is classified to section 777n of Title 16, Conservation.

AMENDMENTS

2005—Subsec. (a)(1). Pub. L. 109–59, § 10143(2), as amended by Pub. L. 109–74, § 102(2), substituted ''subsections (a)(2) and (f) of section 4 of the Dingell-Johnson Sport Fish Restoration Act (16 U.S.C. 777c(a)(2) and (f))'' for ''section 4(b) of the Act of August 9, 1950 (16 U.S.C. 777c(b))''.

Pub. L. 109–59, § 10143(1), as amended by Pub. L. 109–74, § 102(1), substituted ''the amount made available from the Boat Safety Account for that fiscal year under section 15 of the Dingell-Johnson Sport Fish Restoration Act'' for ''the amount appropriated from the Boat Safety Account for that fiscal year''.

Subsec. (a)(2). Pub. L. 109–59, § 10143(3), struck out ''not less than one percent and'' before ''not more than two percent''.

Subsec. (c)(1). Pub. L. 109–74, § 203, substituted ''$5,000,000'' for ''$4,150,685'' and ''$2,000,000'' for ''$1,660,274''.

Pub. L. 109–59, § 10143(4)(D), as amended by Pub. L. 109–74, § 102(3)(B), amended par. (1) as amended by Pub. L. 109–74, § 203, by inserting ''not less than'' before ''$2,000,000''. See Effective Date of 2005 Amendments note below.

Pub. L. 109–59, § 10143(4)(C), as amended by Pub. L. 109–74, § 102(3)(B), amended par. (1) as amended by Pub. L. 109–74, § 203, by substituting ''$5,500,000'' for ''$5,000,000''. See Effective Date of 2005 Amendments note below.

Pub. L. 109–59, § 10143(4)(B), as amended by Pub. L. 109–74, § 102(3)(A), substituted ''(16 U.S.C. 777c(a)(2))'' for ''(16 U.S.C. 777c(b))''.

Pub. L. 109–59, § 10143(4)(A), substituted ''Secretary under subsection (a)(2) of section 4'' for ''Secretary of Transportation under paragraph (5)(C) of section 4(b)''.

Pub. L. 109–40 substituted ''$4,150,685'' for ''$4,100,000'' and ''$1,660,274'' for ''$1,643,836''.

Pub. L. 109–37 substituted ''$4,100,000'' for ''$4,050,000'' and ''$1,643,836'' for ''$1,620,003''.

Pub. L. 109–35 substituted ''$4,050,000'' for ''$4,000,000'' and ''$1,620,003'' for ''$1,600,000''.

Pub. L. 109–20 substituted ''$4,000,000'' for ''$3,750,003'' and ''$1,600,000'' for ''$1,500,003''.

Pub. L. 109–14 substituted ''$3,750,003'' for ''$3,333,336'' and ''$1,500,003'' for ''$1,333,336''.

Subsec. (c)(3). Pub. L. 109–59, § 10143(5), as amended by Pub. L. 109–74, § 102(4), substituted ''during the 2 succeeding fiscal years. Any amount that is unexpended or unobligated at the end of the 3-year period during which it is available shall be withdrawn by the Secretary and allocated to the States in addition to any other amounts available for allocation in the fiscal year in which they are withdrawn or the following fiscal year.'' for ''until expended.''

2004—Subsec. (c). Pub. L. 108–310 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''Of the amount transferred to the Secretary of Transportation under paragraph (4) of section 4(b) of the Dingell-Johnson Sport Fish Restoration Act (16 U.S.C. 777c(b)), $5,000,000 is available to the Secretary for payment of expenses of the Coast Guard for personnel and activities directly related to coordinating and carrying out the national recreational boating safety program under this title, of which $2,000,000 shall be available to the Secretary only to ensure compliance with chapter 43 of this title. No funds available to the Secretary under this subsection may be used to replace funding traditionally provided through general appropriations, nor for any purposes except those purposes authorized by this section. Amounts made available by this subsection shall remain available until expended. The Secretary shall publish annually in the Federal Register a detailed accounting of the projects, programs, and activities funded under this subsection.''

Pub. L. 108–280 substituted ''$5,000,000'' for ''$4,166,668'' and ''$2,000,000'' for ''$1,666,668''.

Pub. L. 108–263 substituted ''$4,166,668'' for ''$3,750,001'' and ''$1,666,668'' for ''$1,500,001''.

Pub. L. 108–224 substituted ''$3,750,001'' for ''$2,916,667'' and ''$1,500,001'' for ''$1,166,667''.

Pub. L. 108–202 substituted ''$2,916,667'' for ''$2,083,333'' and ''$1,166,667'' for ''$833,333''.

2003—Subsec. (c). Pub. L. 108–88 amended first sentence generally. Prior to amendment, first sentence read as follows: ''Of the amount transferred for each fiscal year to the Secretary of Transportation under paragraphs (2) and (3) of section 4(b) of the Act of August 9, 1950 (16 U.S.C. 777c(b)), $5,000,000 is available to the Secretary for payment of expenses of the Coast Guard for personnel and activities directly related to coordinating and carrying out the national recreational boating safety program under this title, of which $2,000,000 shall be available to the Secretary only to ensure compliance with chapter 43 of this title.''

1998—Pub. L. 105–178, § 7405(c)(1), substituted ''appropriations'' for ''contract spending'' in section catchline.

Subsec. (a)(1). Pub. L. 105–178, § 7405(b)(1), substituted ''Subject to paragraph (2) and subsection (c), the Secretary shall expend in each fiscal year for State recreational boating safety programs, under contracts with States under this chapter, an amount equal to the sum of (A) the amount appropriated from the Boat Safety Account for that fiscal year and (B) the amount transferred to the Secretary under section 4(b) of the Act of August 9, 1950 (16 U.S.C. 777c(b)).'' for ''Subject to paragraph (2), the Secretary may expend in each fiscal year, subject to amounts as are provided in appropriations laws for liquidation of contract authority, an amount equal to ½ of the amount transferred for such fiscal year to the Boat Safety Account under section 9503(c)(4) of the Internal Revenue Code of 1986 (26 U.S.C. 9503(c)(4)).''

Subsec. (a)(2). Pub. L. 105–178, § 7405(b)(2), substituted ''available'' for ''appropriated''.

Subsec. (c). Pub. L. 105–178, § 7405(b)(3), added subsec. (c) and struck out former subsec. (c) which read as follows: ''An amount equal to one-half of the amount transferred for each fiscal year to the Boat Safety Account under section 9503(c)(4) of the Internal Revenue Code of 1986 (26 U.S.C. 9503(c)(4)) is available to the Secretary for expenditures out of the operating expenses account of the Coast Guard for services provided by the Coast Guard for recreational boating safety, including services provided by the Coast Guard Auxiliary. Expenditures for a fiscal year under this subsection shall not exceed expenditures for the fiscal year under subsection (a). Amounts made available by this subsection shall remain available until expended.''

1988—Subsec. (a). Pub. L. 100–448, § 61(b)(1)(A), designated existing provisions as par. (1), added par. (2), and amended first sentence of par. (1) generally. Prior to amendment, first sentence read as follows: ''The Secretary may expend in each of the fiscal years 1985, 1986, 1987, and 1988, subject to amounts as are provided in appropriations laws for liquidation of contract authority, an amount equal to one-half for Fiscal Year 1987 and two-thirds for each Fiscal Year thereafter of the amount transferred for such fiscal year to the Boat Safety Account under section 9503(c)(4) of the Internal Revenue Code of 1986 (26 U.S.C. 9503(c)(4)).''

Subsec. (c). Pub. L. 100–448, § 6(b)(2)(A), struck out ''for Fiscal Year 1987 and one-third for each fiscal year thereafter.'' after ''An amount equal to one-half'' in first sentence.

Pub. L. 100–448, § 6(b)(6), substituted ''1986'' for ''1954'' in first sentence.

Pub. L. 100–448, § 6(b)(2)(B), inserted after first sentence ''Expenditures for a fiscal year under this subsection shall not exceed expenditures for the fiscal year under subsection (a).''

1986—Subsec. (a). Pub. L. 99–640, § 7(c), substituted ''one-half for Fiscal Year 1987 and two-thirds for each Fiscal Year thereafter'' for ''two-thirds''.

Subsec. (b). Pub. L. 99–626 substituted ''shall'' for ''may'' after ''Those purposes'' in introductory provisions and substituted ''and'' for ''or'' in par. (8).

Subsec. (c). Pub. L. 99–640, § 7(b), substituted ''one-half for Fiscal Year 1987 and one-third for each Fiscal Year thereafter.'' for ''one-third''.

1984—Pub. L. 98–369 amended section generally and, among other changes, struck out all references to a facilities improvement program, inserted provisions directing the Secretary to establish guidelines prescribing the purposes for which amounts available under this chapter for State recreational safety boating programs may be used, and made available to the Secretary an amount equal to one-third of the amount transferred for each fiscal year to the Boat Safety Account under section 9503(c)(4) of title 26 to be used for expenditures out of the operating expenses account of the Coast Guard for services provided by the Coast Guard for recreational boating safety, including services provided by the Coast Guard Auxiliary.

EFFECTIVE DATE OF 2005 AMENDMENTS

From Aug. 10, 2005, to end of fiscal year 2005, subsecs. (a) and (c)(1), (3) of this section considered to read as immediately before enactment of Pub. L. 109–59, except as provided by the amendments by section 203 of Pub. L. 109–74, see section 101(b) of Pub. L. 109–74, set out as a note under section 777b of Title 16, Conservation.

Amendment by Pub. L. 109–59 effective Oct. 1, 2005, see section 10102 of Pub. L. 109–59, set out as a note under section 777b of Title 16, Conservation.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–448 effective Oct. 1, 1988, see section 6(e) of Pub. L. 100–448, set out as a note under section 777 of Title 16, Conservation.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective Oct. 1, 1984, to apply with respect to fiscal years beginning after Sept. 30, 1984, see section 1013 of Pub. L. 98–369, set out as a note under section 13101 of this title.

BOATING SAFETY FUND

Pub. L. 99–272, title VI, § 6001, Apr. 7, 1986, 100 Stat. 121, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''An amount equal to one-third of the amount transferred for fiscal year 1985 to the Boat Safety Account under section 9503(c)(4) of the Internal Revenue Code of 1986 (26 U.S.C. 9503(c)(4)) shall be deposited in the general fund of the Treasury as proprietary receipts of the department in which the Coast Guard is operating and ascribed to Coast Guard activities. Section 13106(a) of title 46, United States Code, shall be applied with respect to fiscal year 1985 by substituting 'one-third' for 'two-thirds' in the first sentence.''

[§ 13107. Repealed. Pub. L. 98–369, div. A, title X, § 1016(c)(1), July 18, 1984, 98 Stat. 1020]

Section, Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 596, established the National Recreational Boating Safety and Facilities Improvement Fund. See section 9504 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1984, see section 1016(e) of Pub. L. 98–369, set out as an Effective Date note under section 9504 of Title 26, Internal Revenue Code.

§ 13108. Computing amounts allocated to States and State records requirements

(a) Amounts allocated and distributed under section 13103 of this title shall be computed and paid to the States as follows:

(1) During the second quarter of a fiscal year and on the basis of computations made under section 13105 of this title and submitted by the States for the preceding fiscal year, the Secretary shall determine the percentage of the amounts available to which each eligible State is entitled for the next fiscal year.

(2) Notice of the percentage and of the dollar amount, if it can be determined, for each State shall be provided to the States at the earliest practicable time.

(3) If the Secretary determines that an amount made available to a State for a prior fiscal year is greater or less than the amount that should have been made available to the State for the prior fiscal year, because of later or more accurate State expenditure information, the amount for the current fiscal year may be increased or decreased by the appropriate amount.

(b) The Secretary shall schedule the payment of amounts, consistent with the program purposes and applicable regulations prescribed by the Secretary of the Treasury, to minimize the time elapsing between the transfer of amounts from the Treasury and the subsequent disbursement of the amounts by a State.

(c) The Secretary shall notify a State authority or agency that further payments will be made to the State only when the program complies with the prescribed standards or a failure to comply substantially with standards is corrected if the Secretary, after reasonable notice to the designated State authority or agency, finds that—

(1) the State recreational boating safety program submitted by the State and accepted by the Secretary has been so changed that it no longer complies with this chapter or standards prescribed by regulations; or

(2) in carrying out the State recreational boating safety program, there has been a failure to comply substantially with the standards prescribed by regulations.

(d) The Secretary shall provide for the accounting, budgeting, and other fiscal procedures that are necessary and reasonable to carry out this section properly and efficiently. Records related to amounts allocated under this chapter shall be made available to the Secretary and the Comptroller General to conduct audits.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 596; Pub. L. 98–369, div. A, title X, § 1011(f), July 18, 1984, 98 Stat. 1013; Pub. L. 101–595, title III, § 312(d), Nov. 16, 1990, 104 Stat. 2987; Pub. L. 104–324, title VII, § 746(a)(3), (4), Oct. 19, 1996, 110 Stat. 3943.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
13108	46:1480

Section 13108 sets forth the manner that the Secretary shall compute the amounts to be allocated to the States, State record requirements, and authority for the General Accounting Office to review the records when conducting audits.

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104–324 substituted ''preceding'' for ''proceeding'' and ''Secretary'' for ''Secertary''.

1990—Subsec. (a)(1). Pub. L. 101–595 amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''During the last quarter of a fiscal year and on the basis of computations made under section 13105 of this title and submitted by the States, the Secretary shall determine the percentage of the amounts available for the next fiscal year to which each eligible State is entitled.''

1984—Subsec. (c)(1), (2). Pub. L. 98–369 struck out ''and facilities improvement'' after ''boating safety''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective Oct. 1, 1984, to apply with respect to fiscal years beginning after Sept. 30, 1984, see section 1013 of Pub. L. 98–369, set out as a note under section 13101 of this title.

§ 13109. Consultation, cooperation, and regulation

(a) In carrying out responsibilities under this chapter, the Secretary may consult with State and local governments, public and private agencies, organizations and committees, private industry, and other persons having an interest in boating safety.

(b) The Secretary may advise, assist, and cooperate with the States and other interested public and private agencies in planning, developing, and carrying out boating safety programs. Acting under section 141 of title 14, the Secretary shall ensure the fullest cooperation between the State and United States Government authorities in promoting boating safety by making agreements and other arrangements with States when possible. Subject to chapter 23 of title 14, the Secretary may make available, on request of a State, the services of members of the Coast Guard Auxiliary to assist the State in promoting boating safety on State waters.

(c) The Secretary may prescribe regulations to carry out this chapter.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 597; Pub. L. 98–369, div. A, title X, § 1011(g), July 18, 1984, 98 Stat. 1013.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
13109	46:1481

Section 13109 authorizes the Secretary to consult with State and local governments, public and private agencies, and any other persons that have an interest in boating safety.

This section also authorizes the Secretary to advise and assist the States and other public and private agencies in the planning and carrying out of their boating safety and facilities improvement programs.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–369 struck out ''and facilities improvement'' after ''boating safety''.

Subsec. (b). Pub. L. 98–369 struck out ''and facilities improvement'' after ''and carrying out boating safety''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective Oct. 1, 1984, to apply with respect to fiscal years beginning after Sept. 30, 1984, see section 1013 of Pub. L. 98–369, set out as a note under section 13101 of this title.

§ 13110. National Boating Safety Advisory Council

(a) The Secretary shall establish a National Boating Safety Advisory Council. The Council shall consist of 21 members appointed by the Secretary, whom the Secretary considers to have a particular expertise, knowledge, and experience in recreational boating safety.

(b)(1) The membership of the Council shall consist of—

(A) 7 representatives of State officials responsible for State boating safety programs;

(B) 7 representatives of recreational vessel manufacturers and associated equipment manufacturers; and

(C) 7 representatives of national recreational boating organizations and from the general public, at least 5 of whom shall be representatives of national recreational boating organizations.

(2) Additional individuals from the sources referred to in paragraph (1) of this subsection may be appointed to panels of the Council to assist the Council in performing its duties.

(3) At least once a year, the Secretary shall publish a notice in the Federal Register soliciting nominations for membership on the Council.

(c) In addition to the consultation required by section 4302 of this title, the Secretary shall consult with the Council on other major boating safety matters related to this chapter. The Council may make available to Congress information, advice, and recommendations that the Council is authorized to give to the Secretary.

(d) When attending meetings of the Council, a member of the Council or a panel may be paid at a rate not more than the rate for GS–18. When serving away from home or regular place of business, the member may be allowed travel expenses, including per diem in lieu of subsistence as authorized by section 5703 of title 5 for individuals employed intermittently in the Government service. A payment under this section does not make a member of the Council an officer or employee of the United States Government for any purpose.

(e) The Council shall terminate on September 30, 2010.

(Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 598; Pub. L. 99–626, § 3(a)(1), (b)(1), (2), Nov. 7, 1986, 100 Stat. 3505; Pub. L. 100–448, § 20(a), Sept. 28, 1988, 102 Stat. 1846; Pub. L. 102–241, § 24, Dec. 19, 1991, 105 Stat. 2217; Pub. L. 104–324, title III, § 304(f), Oct. 19, 1996, 110 Stat. 3918; Pub. L. 107–295, title III, § 335, Nov. 25, 2002, 116 Stat. 2105; Pub. L. 108–293, title IV, § 418(f), Aug. 9, 2004, 118 Stat. 1049.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
13110	46:1482

Section 13110 establishes the National Boating Safety Advisory Council, the membership of the council, and compensation for individuals serving on the council. This council is to be established consistent with the Federal Advisory Committee Act (P.L. 92–463; 5 U.S.C. App.).

AMENDMENTS

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 ''2000'' for ''1996''.

1991—Subsec. (e). Pub. L. 102–241 substituted ''1996'' for ''1991''.

1988—Subsec. (b)(1). Pub. L. 100–448 substituted ''representatives of'' for ''members from'' wherever appearing.

1986—Subsec. (a). Pub. L. 99–626, § 3(b)(1), struck out ''not more than'' before ''21 members'' and inserted ''recreational'' after ''experience in''.

Subsec. (b)(1). Pub. L. 99–626, § 3(b)(2), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Insofar as practical and to ensure balanced representation, the Secretary shall appoint members equally from—

''(A) State officials responsible for State boating safety programs;

''(B) recreational vessel manufacturers; and

''(C) boating organizations and members of the general public.''

Subsec. (e). Pub. L. 99–626, § 3(a)(1), added subsec. (e).

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

IMPLEMENTATION OF 1988 AMENDMENT

Section 20(b) of Pub. L. 100–448 provided that: ''The Secretary of the department in which the Coast Guard is operating shall carry out the amendments made by subsection (a) [amending this section] as vacancies in the membership of the National Boating Safety Advisory Council occur.''

[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 Secu-

rity, 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.]

IMPLEMENTATION OF 1986 AMENDMENT

Section 3(b)(3) of Pub. L. 99–626 provided that: ''The Secretary of Transportation shall carry out the amendments made by paragraph (2) [amending this section] as vacancies in the membership of the National Boating Safety Advisory Council occur.''

PART J—MEASUREMENT OF VESSELS

HISTORICAL AND REVISION NOTES

Part J contains provisions that apply to the measurement of a vessel to determine its tonnage. Tonnage is a measurement of a vessel's volume and is used for international, customs, and regulatory purposes. This part implements the 1969 International Convention on Tonnage Measurement of Ships and provides a framework for phasing in the international system as the method of measuring ships domestically, to establish uniformity in ship measurement. The availability of an alternate domestic regulatory system of measurement is continued so that the application of domestic laws will be preserved in order that vessels engaged in domestic commerce will not be adversely affected.

CHAPTER 141—GENERAL

Sec.
14101. Definitions.
[14102. Repealed.]
14103. Delegation of authority.
14104. Measurement to determine application of a law.

AMENDMENTS

1990—Pub. L. 101–595, title VI, § 603(12)(B), Nov. 16, 1990, 104 Stat. 2993, struck out item 14102 ''Regulations''.

§ 14101. Definitions

In this part—

(1) ''Convention'' means the International Convention on Tonnage Measurement of Ships, 1969.

(2) ''existing vessel'' means a vessel the keel of which was laid or that was at a similar stage of construction before July 18, 1982.

(3) ''Great Lakes'' means—

(A) the Great Lakes; and

(B) the St. Lawrence River west of—

(i) a rhumb line drawn from Cap des Rosiers to West Point, Anticosti Island; and

(ii) on the north side of Anticosti Island, the meridian of longitude 63 degrees west.

(4) ''vessel engaged on a foreign voyage'' means a vessel—

(A) arriving at a place under the jurisdiction of the United States from a place in a foreign country;

(B) making a voyage between places outside the United States (except a foreign vessel engaged on that voyage);

(C) departing from a place under the jurisdiction of the United States for a place in a foreign country; or

(D) making a voyage between a place within a territory or possession of the United States and another place under the jurisdiction of the United States not within that territory or possession.

(Added Pub. L. 99–509, title V, § 5101(3), Oct. 21, 1986, 100 Stat. 1919.)

HISTORICAL AND REVISION NOTES

Revised section 14101

Source: International Convention on Tonnage Measurement of Ships.

Section 14101 contains definitions that are limited to Part J—Measurement of Vessels. The source of these definitions is the International Convention on Tonnage Measurement of Ships in articles 2 and 4.

[§ 14102. Repealed. Pub. L. 101–595, title VI, § 603(12)(A), Nov. 16, 1990, 104 Stat. 2993]

Section, added Pub. L. 99–509, title V, § 5101(3), Oct. 21, 1986, 100 Stat. 1919, authorized Secretary to prescribe regulations to carry out this part.

§ 14103. Delegation of authority

(a) The Secretary may delegate to a qualified person the authority to measure a vessel and issue an International Tonnage Certificate (1969) or other appropriate certificate of measurement under this part.

(b) Under regulations prescribed by the Secretary, a decision of the person delegated authority under subsection (a) of this section related to measuring a vessel or issuing a certificate may be appealed to the Secretary.

(c) For a vessel intended to be engaged on a foreign voyage, the Secretary may delegate to another country that is a party to the Convention the authority to measure the vessel and issue an International Tonnage Certificate (1969) under chapter 143 of this title.

(d) The Secretary may terminate a delegation made under this section after giving written notice to the person.

(Added Pub. L. 99–509, title V, § 5101(3), Oct. 21, 1986, 100 Stat. 1919.)

HISTORICAL AND REVISION NOTES

Revised section 14103

Source: International Convention on Tonnage Measurement of Ships.

Section 14103(a) authorizes the Secretary to delegate to a qualified person the authority to measure a vessel and issue an International Tonnage Certificate or other certificate of measurement. The term ''qualified person'' means an organization that the Secretary believes has the necessary qualifications to measure a vessel competently, such as the American Bureau of Shipping.

The conferees intend that in section 14103 the term ''qualified person'' includes not only organizations that the Secretary finds to be qualified to perform measurement duties, but any person as that term is defined in section 1 of title 1, United States Code (including individuals), that the Secretary determines qualified to perform measurement duties. The House and Senate conferees also agree that, where authorized, in addition to information required by the Secretary, regulatory tonnage should be used on all certificates and documents related to a vessel unless the owner otherwise requests.

Section 14103(b) provides for the appeal to the Secretary of a decision made by a person that has received delegated authority. This ensures that the Secretary has full oversight of delegated tonnage measurement functions.

Section 14103(c) authorizes the Secretary to delegate to a country that is a party to the International Convention on Tonnage Measurement of Ships, 1969, the authority to measure a vessel and issue an International Tonnage Certificate.

Section 14103(d) clarifies the Secretary's authority to revoke at any time and without cause a delegation of authority to measure a vessel or issue a certificate. This authority is given so that no delay occurs administratively in revoking a delegation wherever the Secretary decides a revocation is warranted.

§ 14104. Measurement to determine application of a law

(a) When the application of a law of the United States to a vessel depends on the vessel's tonnage, the vessel shall be measured under this part.

(b) If a statute allows for an alternate tonnage to be prescribed under this section, the Secretary may prescribe it by regulation. Any such regulation shall be considered to be an interpretive regulation for purposes of section 553 of title 5. Until an alternate tonnage is prescribed, the statutorily established tonnage shall apply to vessels measured under chapter 143 or chapter 145 of this title.

(c) The head of each Federal agency shall ensure that regulations issued by the agency that specify particular tonnages comply with the alternate tonnages implemented by the Secretary.

(Added Pub. L. 99–509, title V, § 5101(3), Oct. 21, 1986, 100 Stat. 1920; amended Pub. L. 104–324, title VII, § 702, Oct. 19, 1996, 110 Stat. 3933.)

HISTORICAL AND REVISION NOTES

Revised section 14104

Source: Section (U.S. Code) 46 App. U.S.C. 71.

Section 14104 requires that a vessel be measured under Part J of this subtitle when the application of a U.S. law to the vessel depends on its tonnage.

AMENDMENTS

1996—Pub. L. 104–324 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

CHAPTER 143—CONVENTION MEASUREMENT

Sec.
14301. Application.
14302. Measurement.
14303. International Tonnage Certificate (1969).
14304. Remeasurement.
14305. Optional regulatory measurement.
14306. Reciprocity for foreign vessels.
14307. Inspection of foreign vessels.

HISTORICAL AND REVISION NOTES

Chapter 143 provides implementing legislation for the International Convention on Tonnage Measurement of Ships (Convention) which came into effect in the United States on February 10, 1983. Chapter 143, therefore, is based primarily on the Convention, not on provisions in existing U.S. law.

§ 14301. Application

(a) Except as otherwise provided in this section, this chapter applies to the following:

(1) a documented vessel.

(2) a vessel that is to be documented under chapter 121 of this title.

(3) a vessel engaged on a foreign voyage.

(b) This chapter does not apply to the following:

(1) a vessel of war.

(2) a vessel of less than 24 meters (79 feet) overall in length.

(3) a vessel operating only on the Great Lakes, unless the owner requests.

(4) a vessel (except a vessel engaged on a foreign voyage) the keel of which was laid or that was at a similar stage of construction before January 1, 1986, unless—

(A) the owner requests; or

(B) the vessel undergoes a change that the Secretary finds substantially affects the vessel's gross tonnage.

(5) before July 19, 1994, an existing vessel unless—

(A) the owner requests; or

(B) the vessel undergoes a change that the Secretary finds substantially affects the vessel's gross tonnage.

(6) a barge (except a barge engaged on a foreign voyage) unless the owner requests.

(c) A vessel made subject to this chapter at the request of the owner may be remeasured only as provided by this chapter.

(d) After July 18, 1994, an existing vessel (except an existing vessel referred to in subsection (b)(5)(A) or (B) of this section) may retain its tonnages existing on July 18, 1994, for the application of relevant requirements under international agreements (except the Convention) and other laws of the United States. However, if the vessel undergoes a change substantially affecting its tonnage after July 18, 1994, the vessel shall be remeasured under this chapter.

(e) This chapter does not affect an international agreement to which the United States Government is a party that is not in conflict with the Convention or the application of IMO Resolutions A.494 (XII) of November 19, 1981, A.540 (XIII) of November 17, 1983, and A.541 (XIII) of November 17, 1983.

(Added Pub. L. 99–509, title V, § 5101(3), Oct. 21, 1986, 100 Stat. 1920; amended Pub. L. 101–595, title III, § 305, Nov. 16, 1990, 104 Stat. 2985.)

HISTORICAL AND REVISION NOTES

Revised section 14301

Source: International Convention on Tonnage Measurement of Ships.

Section 14301 delineates which vessels must be measured in compliance with the standards of the Convention.

Section 14301(a) provides that a vessel must be measured under the standards of the Convention if it is documented or required by law to be documented under chapter 121 of this subtitle or if it is engaged on a foreign voyage, unless the vessel is specifically exempted under section 14301(b).

Section 14301(b) provides the following exemptions from the requirement in section 14301(a) to be measured under the Convention:

1. A vessel of war;

2. A vessel of less than 24 meters (79 feet) overall in length (''overall in length'' is defined in section 2101);

3. A vessel that operates only on the Great Lakes (although the owner may request that it be measured under the Convention);

4. A vessel whose keel was laid or was at a similar stage of construction before January 1, 1986, and is on a domestic voyage, unless the vessel undergoes a change that significantly changes its tonnage or the owner requests that the vessel be measured under the Convention; and

5. A vessel whose keel was laid or was at a similar stage of construction before July 18, 1982, unless the vessel undergoes a change that significantly changes the vessel's tonnage or the owner requests that the vessel be measured under the Convention.

Together, subsections (b)(4) and (5) provide that, unless the owner requests measurement under the Convention, unaltered vessels built before 1986 engaging only on domestic voyages do not have to be measured under the Convention or use Convention measurement for the application of any domestic laws. Further, these subsections provide that unaltered vessels that are built before July 18, 1982, engaging on foreign voyages do not have to be measured under the Convention until 1994 and are not required to use Convention measurement as a basis for the application of any domestic laws.

Section 14301(c) provides that if a vessel owner requests that the vessel be measured under the Convention, the vessel may only be remeasured under the Convention.

Section 14301(d) provides that after July 18, 1994, a vessel whose keel was laid or was at a similar stage of construction before July 18, 1982 may retain its regulatory tonnage for the application of requirements under U.S. laws or international agreements, except the International Convention on Tonnage Measurement of Ships. However, if the vessel was not required to be measured under the Convention, but the vessel's owner requested that the vessel be measured under the Convention system before July 19, 1994, or if the vessel undergoes a change affecting its tonnage, the vessel may not use its regulatory tonnage for the application of U.S. laws or international agreements after July 19, 1994.

Section 14301(e) provides that this chapter does not affect any international agreement to which the United States is a party that is not in conflict with the International Convention on Tonnage Measurement of Ships, 1969. It further provides that this chapter does not affect the application of the three interim schemes of the International Maritime Organization, which are discussed under section 14305 below.

AMENDMENTS

1990—Subsec. (b)(6). Pub. L. 101–595 added par. (6).

REPORT TO CONGRESS

Section 5103(g) of Pub. L. 99–509 provided that: ''The Secretary of Transportation shall—

''(1) before July 19, 1990, submit to Congress—

''(A) a study of—

''(i) the impact of applying vessel tonnage determined under chapter 143 of title 46 (as enacted by section 5101 of this subtitle), United States Code, in laws of the United States that contain provisions based on tonnage, including an analysis of the number and types of vessels that would become subject to additional laws or more stringent requirements because of that application; and

''(ii) the extent to which the tonnage thresholds in laws of the United States whose application is based on tonnage would have to be raised so that additional vessels would not become subject to those laws if their application is based on tonnage determined under chapter 143; and

''(B) a recommendation of the levels to which the tonnage thresholds in laws of the United States whose application is based on tonnage should be raised if a complete conversion to the International Convention measurement system under chapter 143 is made;

''(2) in conducting the study under clause (1) of this subsection, consult with representatives of the private sector having experience with the operation of vessels likely to be affected by laws of the United States whose application is based on tonnage; and

''(3) before July 19, 1988, submit to Congress an interim progress report on the study conducted under clause (1) of this subsection.''

§ 14302. Measurement

(a) The Secretary shall measure a vessel to which this chapter applies in the way provided by this chapter and the Convention.

(b) Except as provided in section 1602(a) of the Panama Canal Act of 1979 (22 U.S.C. 3792(a)), a vessel measured under this chapter may not be required to be measured under another law.

(c) Unless otherwise provided by law, the measurement of a vessel under this chapter applies to a law of the United States whose applicability depends on a vessel's tonnage, if that law—

(1) becomes effective after July 18, 1994; or

(2) is in effect before July 19, 1994, is not enumerated in section 14305 of this title, and is identified by the Secretary by regulation as a law to which this chapter applies.

(Added Pub. L. 99–509, title V, § 5101(3), Oct. 21, 1986, 100 Stat. 1921.)

HISTORICAL AND REVISION NOTES

Revised section 14302

Source: International Convention on Tonnage Measurement of Ships.

Section 14302(a) requires the Secretary to measure a vessel to which this chapter applies, in the way provided by this chapter and by the Convention. Section 14302(b) provides that a vessel that is required to be measured under this chapter can not also be required to be measured under another law. The exception allows the Panama Canal Commission to continue to use the Canal measurement system for calculation of tolls. Section 14302(c) provides that the applicability of tonnage-based laws that become effective after July 18, 1994, will be based on Convention tonnage measurements. The applicability of tonnage-based laws in effect before July 19, 1994, which are listed by the Secretary, will also be based on Convention tonnage. Therefore, the laws that will be based on regulatory tonnage are those not listed by the Secretary by regulation and those listed in section 14305 of this legislation.

§ 14303. International Tonnage Certificate (1969)

(a) After measuring a vessel under this chapter, the Secretary shall issue, on request of the owner, an International Tonnage Certificate (1969) and deliver it to the owner or master of the vessel.

(b) The certificate shall be maintained as required by the Secretary.

(Added Pub. L. 99–509, title V, § 5101(3), Oct. 21, 1986, 100 Stat. 1921.)

HISTORICAL AND REVISION NOTES

Revised section 14303

Source: International Convention on Tonnage Measurement of Ships.

Section 14303(a) requires the Secretary to issue, on the request of the owner, an International Tonnage Certificate after measuring a vessel under this chapter. Section 14303(b) requires that the certificate be maintained as required by the Secretary.

§ 14304. Remeasurement

(a) To the extent necessary, the Secretary shall remeasure a vessel to which this chapter applies if—

(1) the Secretary or the owner alleges an error in its measurement; or

(2) the vessel or the use of its space is changed in a way that substantially affects its tonnage.

(b) Except as provided in this chapter or section 14504 of this title, a vessel that has been

measured does not have to be remeasured to obtain another document or endorsement under chapter 121 of this title.

(Added Pub. L. 99–509, title V, § 5101(3), Oct. 21, 1986, 100 Stat. 1921.)

HISTORICAL AND REVISION NOTES

Revised section 14304

Source: International Convention on Tonnage Measurement of Ships.

Section 14304(a) requires the Secretary to remeasure a vessel, to the extent necessary, if there is an alleged error regarding its measurement or if the vessel or its use undergoes a change substantially affecting its tonnage. The phrase ''to the extent necessary'' was included to indicate that a complete remeasurement of the vessel may not be necessary if, for example, an error was made in one portion of the vessel's measurement and only that portion needs to be remeasured.

Section 14304(b) provides that except as provided in section 14504, a vessel that has been measured does not have to be remeasured to obtain another document or endorsement under chapter 121 of this title.

§ 14305. Optional regulatory measurement

(a) On request of the owner of a documented vessel measured under this chapter, the Secretary also shall measure the vessel under chapter 145 of this title. The tonnages determined under that chapter shall be used in applying—

(1) parts A, B, C, E, F, and G and sections 12106(c) and 12108(c) of this title;

(2) section 3(d)(3) of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 903(d)(3));

(3) section 4 of the Bridge to Bridge Radiotelephone Act (33 U.S.C. 1203(a));

(4) section 4(a)(3) of the Ports and Waterways Safety Act (33 U.S.C. 1223(a)(3));

(5) section 4283 of the Revised Statutes of the United States (46 App. U.S.C. 183);

(6) sections 27 and 27A of the Act of June 5, 1920 (46 App. U.S.C. 883 and 883–1);

(7) Act of July 14, 1956 (46 App. U.S.C. 883a);

(8) sections 351, 352, 355, and 356 of the Ship Radio Act (47 U.S.C. 351, 352, 354, and 354a);

(9) section 403 of the Commercial Fishing Industry Vessel Act (46 U.S.C. 3302 note);

(10) the Officers' Competency Certificates Convention, 1936, and sections 8303 and 8304 of this title;

(11) the International Convention for the Safety of Life at Sea as provided by IMCO Resolution A.494 (XII) of November 19, 1981;

(12) the International Convention on Standards of Training, Certification, and Watchkeeping for Seafarers, 1978, as provided by IMO Resolution A.540 (XIII) of November 17, 1983;

(13) the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973, as provided by IMO Resolution A.541 (XIII) of November 17, 1983;

(14) provisions of law establishing the threshold tonnage levels at which evidence of financial responsibility must be demonstrated; or

(15) unless otherwise provided by law, any other law of the United States in effect before July 19, 1994, and not listed by the Secretary under section 14302(c) of this title.

(b) As long as the owner of a vessel has a request in effect under subsection (a) of this section, the tonnages determined under that request shall be used in applying the other provisions of law described in subsection (a) to that vessel.

(Added Pub. L. 99–509, title V, § 5101(3), Oct. 21, 1986, 100 Stat. 1921.)

HISTORICAL AND REVISION NOTES

Revised section 14305

Source: International Convention on Tonnage Measurement of Ships.

Section 14305 requires that the Secretary measure a vessel under chapter 145 (Regulatory Measurement) of this title (in addition to measuring it under the Convention) at the request of the owner. For vessels that have obtained a regulatory tonnage measurement under this section, the Secretary is required to use the regulatory tonnage measurement to determine the application of those laws listed in section 14305(a) and those not listed by the Secretary by regulation, as provided in section 14302(c). It is the intent of the Committee to list in section 14305(a) certain U.S. tonnage-based laws that would impose increased regulatory burdens on industry if the Convention measurement were used for applicability determinations.

Clause (1) of section 14305(a) includes the following parts of subtitle II of title 46, U.S.C.:

Part A: General provisions (including definitions.)

Part B: Inspection and Regulation of Vessels.

Part C: Load Lines, which is enacted as part of this legislation. Although most load line requirements are based on vessel length, and not tonnage, a few requirements are based on tonnage. (It is only the tonnage based requirements to which this provision applies.)

Part E: Licenses, Certificates, and Merchant Mariners' Documents.

Part F: Manning of Vessels.

Part G: Merchant Seamen Protection and Relief.

Part H: Sections 12106(c) and 12108(c) only—Identification of Vessels.

The other U.S. laws listed in clause (2) through (10) of this section are self-explanatory. Clause (10) refers to domestic law as well as the Officers' Competency Certificates Convention, 1936.

In addition, three other international conventions are listed in clauses (11) through (13): (1) the Convention for the Safety of Life at Sea, (2) the Convention on the Standards of Training, Certification, and Watchkeeping for Seafarers, and (3) the Convention for the Prevention of Pollution from Ships. The International Maritime Organization has established interim schemes which address the use of the Convention tonnage measurement system as a basis for the applicability of these three conventions. The applicable sections of those schemes are the following:

The International Convention for the Safety of Life at Sea: IMCO Resolution A.494 (XII) of November 19, 1981 provides ''that at the request of a shipowner, the Administration may allow a ship required to be measured under the provisions of the International Convention on Tonnage Measurement of Ships, 1969, to use the gross tonnage measured under the national tonnage rules which are in effect prior to the coming into force of the 1969 Tonnage Convention, for the purpose of application of the provisions of the International Convention for the Safety of Life at Sea, such tonnage, however, shall not be shown on the 1969 Tonnage Certificate.'' The resolution further provides that ''the interim scheme shall not apply to ships the keels of which are laid after 31 December 1985 with the following exceptions:

''(a) In respect of the requirements of Regulation 3 of Chapter IV of the 1974 SOLAS Convention for ships

the keels of which are laid before 18 July 1994, the Administration may continue to apply the interim scheme, in which case the above-mentioned entry should be made in the Radio-telephony Certificate only; and

''(b) In respect of the regulations for cargo ships of less than 1,600 tons gross tonnage (as measured under national systems), the keels of which are laid after 31 December 1985, the Administration may continue to apply the interim scheme until 18 July 1984.''

The International Convention on Standards of Training, Certification, and Watchkeeping for Seafarers, 1978: IMO Resolution A.540 (XIII) of November 17, 1983, provides ''that the revised interim scheme for tonnage measurement for certain ships adopted by resolution A.494 (XII), [described above] should also be applicable in respect of the provision of the International Convention, and Watchkeeping for Seafarers, 1978.''

The International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973: IMO Resolution A.541 (XIII) of November 17, 1983, provides that:

At the request of a shipowner, the Administration may allow a ship of less than 400 tons gross tonnage (measured under the previous national tonnage rules) the keel of which is laid on or before 31 December 1985 and which is required to be measured under the provisions of the International Convention on Tonnage Measurement of Ships, 1969, to use the gross tonnage measured under the national tonnage rules which were in effect prior to the coming into force of the 1969 Tonnage Convention, for the purpose of application of the provisions of MARPOL 73/78. Such tonnage, however, shall not be shown on the 1969 Tonnage Certificate.

It further provides that ''the interim scheme shall not apply to ships the keels of which are laid after 31 December 1985, except that in respect of regulations for ships of less than 400 tons gross tonnage (as measured under previous national rules), the keels of which are laid after 31 December 1985, the Administration may continue to apply the interim scheme until 18 July 1994.''

Clause (14) provides that the regulatory measurement system may be used to determine which vessels must demonstrate evidence of financial responsibility (when such a demonstration is required by law). If it is determined that a vessel must show evidence of financial responsibility, the limits of financial responsibility are determined using the vessel's Convention measurement.

Clause (15) provides that the regulatory measurement system may be used for the application of laws not identified by the Secretary under section 14302(c).

Section 14305(b) provides that if a vessel is measured under the regulatory tonnage measurement system for the application of one law listed in subsection (a), it must be measured under that system for the application of all laws listed in subsection (a).

REFERENCES IN TEXT

Section 4 of the Bridge to Bridge Radiotelephone Act (33 U.S.C. 1203(a)), referred to in subsec. (a)(3), probably means section 4(a) of the Vessel Bridge-to-Bridge Radiotelephone Act, which is classified to section 1203(a) of Title 33, Navigation and Navigable Waters.

Act of July 14, 1956 (46 App. U.S.C. 883a), referred to in subsec. (a)(7), probably means section 2 of Act July 14, 1956, ch. 600, 70 Stat. 544, as amended, which is classified to section 883a of the Appendix to this title. For complete classification of this Act to the Code, see References in Text note set out under section 883a of the Appendix to this title and Tables.

Sections 351, 352, 355, and 356 of the Ship Radio Act (47 U.S.C. 351, 352, 354, and 354a), referred to in subsec. (a)(8), probably means sections 351, 352, 355, and 356 of the Communications Act of 1934, June 19, 1934, ch. 652, 48 Stat. 1064, as amended, which are classified to sections 351, 352, 354, and 354a, respectively, of Title 47, Telegraphs, Telephones, and Radiotelegraphs.

The Officers' Competency Certificates Convention, 1936, referred to in subsec. (a)(10), is set out in 54 Stat. Pt. 2, p. 1683.

For provisions relating to International Conventions for the Safety of Life at Sea, referred to in subsec. (a)(11), to which the United States has been a party, see section 1602 of Title 33, Navigation and Navigable Waters, and notes thereunder.

For provisions relating to the International Convention for the Prevention of Pollution from Ships, as modified, referred to in subsec. (a)(13), see chapter 33 (§ 1901 et seq.) of Title 33.

§ 14306. Reciprocity for foreign vessels

(a) When the Secretary finds that the laws and regulations of a foreign country related to measurement of vessels are similar to those of this chapter and the regulations prescribed under this chapter, or when a foreign country is a party to the Convention, the Secretary shall accept the measurement and certificate of a vessel of that foreign country as complying with this chapter and the regulations prescribed under this chapter.

(b) Subsection (a) of this section does not apply to a vessel of a foreign country that does not recognize measurements under this chapter. The Secretary may apply measurement standards the Secretary considers appropriate to the vessel, subject to applicable international agreements to which the United States Government is a party.

(Added Pub. L. 99–509, title V, § 5101(3), Oct. 21, 1986, 100 Stat. 1922.)

HISTORICAL AND REVISION NOTES

Revised section 14306

Source: International Convention on Tonnage Measurement of Ships. Section (U.S. Code) 46 App. U.S.C. 81.

Section 14306(a) requires that the Secretary accept the measurement and certificate of a vessel of a foreign country as evidence of compliance with this chapter when the Secretary finds that the laws and regulations of that foreign country that are related to measurement are similar to those of this chapter, or that that country is a party to the Convention.

Section 14306(b) provides that the Secretary does not have to accept the measurement and certificate of a vessel of a country that does not recognize United States measurements. It also authorizes the Secretary to apply appropriate measurement standards to such foreign vessels, subject to international agreements to which the United States is a party.

§ 14307. Inspection of foreign vessels

(a) The Secretary may inspect a vessel of a foreign country to verify that—

(1) the vessel has an International Tonnage Certificate (1969) and the main characteristics of the vessel correspond to the information in the certificate; or

(2) if the vessel is from a country not a party to the Convention, the vessel has been measured under laws and regulations similar to those of this chapter and the regulations prescribed under this chapter.

(b) For a vessel of a country that is a party to the Convention, if the inspection reveals that the vessel does not have an International Tonnage Certificate (1969) or that the main characteristics of the vessel differ from those stated on the certificate or other records in a way that increases the gross or net tonnage of the vessel,

the Secretary promptly shall inform the country whose flag the vessel is flying.

(c) For a vessel of a country not a party to the Convention—

(1) if the vessel has been measured under laws and regulations that the Secretary finds are similar to those of this chapter and the regulations prescribed under this chapter, the vessel shall be deemed to have been issued an International Tonnage Certificate (1969); and

(2) if the vessel has not been measured as described in clause (1) of this subsection, the Secretary may measure the vessel.

(d) An inspection under this section shall be conducted in a way that does not delay a vessel of a country that is a party to the Convention.

(Added Pub. L. 99–509, title V, § 5101(3), Oct. 21, 1986, 100 Stat. 1922.)

HISTORICAL AND REVISION NOTES

Revised section 14307

Source: International Convention on Tonnage Measurement of Ships.

Section 14307(a) authorizes the Secretary to inspect a vessel of a foreign country to verify that the vessel has an International Tonnage Certificate and that the main characteristics of the vessel correspond to the information in the certificate. Section 14307(a) also authorizes the Secretary to inspect a vessel from a foreign country that is not a party to the Convention in order to verify that the vessel has been measured under laws and regulations similar to those of this chapter.

Section 14307(b) requires that if the Secretary inspects a vessel of a country that is a party to the Convention and finds that the vessel does not have an International Tonnage Certificate or that the main characteristics of the vessel differ from those stated on the certificate or other records in a way that increases the gross or net tonnage of the vessel, the Secretary must inform the country whose flag the vessel is flying.

Section 14307(c) provides that if the Secretary finds that a vessel of a country not a party to the Convention has been measured under laws and regulations similar to those of this chapter, that the vessel shall be deemed to have been issued an International Tonnage Certificate. It also provides that the Secretary may measure the vessel if the Secretary finds that the vessel has not been measured under laws and regulations similar to those of this chapter.

Section 14307(d) provides that an inspection under this section shall be conducted in a way that does not delay a vessel of a country that is a party to the Convention.

CHAPTER 145—REGULATORY MEASUREMENT

SUBCHAPTER I—GENERAL

Sec.
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SUBCHAPTER II—FORMAL SYSTEMS

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SUBCHAPTER III—SIMPLIFIED SYSTEM

14521. Application.
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HISTORICAL AND REVISION NOTES

This chapter provides for the measurement of vessels for the purpose of the application of domestic laws.

SUBCHAPTER I—GENERAL

HISTORICAL AND REVISION NOTES

This subchapter contains the general provisions for implementing regulatory measurement systems.

§ 14501. Application

This chapter applies to the following:

(1) a vessel not measured under chapter 143 of this title if—

(A) the vessel is to be documented under chapter 121 of this title; or

(B) the application of a law of the United States to the vessel depends on the vessel's tonnage.

(2) a vessel measured under chapter 143 of this title if the owner requests that the vessel also be measured under this chapter as provided in section 14305 of this title.

(Added Pub. L. 99–509, title V, § 5101(3), Oct. 21, 1986, 100 Stat. 1923.)

HISTORICAL AND REVISION NOTES

Revised section 14501

Source: Section (U.S. Code) 46 App. U.S.C. 71.

Section 14501 delineates the vessels that must be measured under this chapter, i.e. under the regulatory tonnage measurement system. Section 14501(1) states that a vessel must be measured under this chapter if the vessel has not been measured under the International Convention on Tonnage Measurement of Ships, and if the vessel is to be documented as a vessel of the United States under chapter 121 of this subtitle, or if the application of a United States law depends on the vessels tonnage. Section 14501(2) states that a vessel must be measured under the regulatory measurement system if the owner requests.

§ 14502. Measurement

The Secretary shall measure a vessel to which this chapter applies in the way provided by this chapter.

(Added Pub. L. 99–509, title V, § 5101(3), Oct. 21, 1986, 100 Stat. 1923.)

HISTORICAL AND REVISION NOTES

Revised section 14502

Source: Section (U.S. Code) 46 App. U.S.C. 71, 77, 83.

Section 14502 requires the Secretary to measure a vessel to which this chapter applies as provided by this chapter.

§ 14503. Certificate of measurement

The Secretary shall prescribe the certificate to be issued as evidence of a vessel's measurement under this chapter.

(Added Pub. L. 99–509, title V, § 5101(3), Oct. 21, 1986, 100 Stat. 1923.)

HISTORICAL AND REVISION NOTES

Revised section 14503

Source: Section (U.S. Code) 46 App. U.S.C. 72.

Section 14503 requires the Secretary to issue a certificate, in a manner that is to be prescribed by the Secretary, as evidence of a vessel's regulatory measurement.

§ 14504. Remeasurement

(a) To the extent necessary, the Secretary shall remeasure a vessel to which this chapter applies if—

(1) the Secretary or the owner alleges an error in its measurement;

(2) the vessel or the use of its space is changed in a way that substantially affects its tonnage;

(3) after being measured under subchapter III of this chapter, the vessel becomes subject to subchapter II of this chapter because the vessel or its use is changed; or

(4) although not required to be measured under subchapter II of this chapter, the vessel was measured under subchapter II and the owner requests that the vessel be measured under subchapter III of this chapter.

(b) Except as provided in this section and chapter 143 of this title, a vessel that has been measured does not have to be remeasured to obtain another document or endorsement under chapter 121 of this title.

(Added Pub. L. 99–509, title V, § 5101(3), Oct. 21, 1986, 100 Stat. 1923.)

HISTORICAL AND REVISION NOTES

Revised section 14504

Source: Section (U.S. Code) 46 App. U.S.C. 71.

Section 14504(a) provides that the Secretary shall remeasure a vessel that has been measured under the regulatory measurement system if either the Secretary or the owner alleges an error in its measurement; if the vessel, or its use, undergoes a substantial change affecting its tonnage; if the vessel loses its eligibility for measurement under the simplified system because of a change in the vessel or its use; or if the vessel owner requests that the vessel be measured under the simplified system after having been measured under the standard regulatory measurement system. Section 14504(b) provides that a vessel that has been measured does not have to be remeasured to obtain another document or endorsement under chapter 121—''Documentation of Vessels''—except as provided above or in chapter 143 of this subtitle.

SUBCHAPTER II—FORMAL SYSTEMS

HISTORICAL AND REVISION NOTES

This subchapter provides for the standard regulatory measurement of vessels for vessels that do not qualify for the simplified measurement systems.

§ 14511. Application

This subchapter applies to a vessel described in section 14501 of this title if—

(1) the owner requests; or

(2) the vessel is—

(A) self-propelled;

(B) at least 24 meters (79 feet) overall in length; and

(C) not operated only for pleasure.

(Added Pub. L. 99–509, title V, § 5101(3), Oct. 21, 1986, 100 Stat. 1924.)

HISTORICAL AND REVISION NOTES

Revised section 14511

Source: Section (U.S. Code) 46 App. U.S.C. 71.

Section 14511 lists the types of vessels that are to be measured under the standard regulatory measurement system. They are vessels for which the owner requests a standard measurement or vessels which are self-propelled, at least 79 feet in length, and not operated only for pleasure.

§ 14512. Standard tonnage measurement

(a) The Secretary shall prescribe regulations for measuring the gross and net tonnages of a vessel under this subchapter. The regulations shall provide for tonnages comparable to the tonnages that could have been assigned under sections 4151 and 4153 of the Revised Statutes of the United States, as sections 4151 and 4153 existed immediately before the enactment of this section.

(b) On application of the owner or master of a vessel of the United States used in foreign trade, the Secretary may attach an appendix to the vessel's register stating the measurement of spaces that may be deducted from gross tonnage under laws and regulations of other countries but not under those of the United States.

(Added Pub. L. 99–509, title V, § 5101(3), Oct. 21, 1986, 100 Stat. 1924.)

HISTORICAL AND REVISION NOTES

Revised section 14512

Source: Section (U.S. Code) 46 App. U.S.C. 75, 77.

Section 14512(a) requires the Secretary to prescribe regulations for regulatory measurement systems. It further provides that the regulations must allow for the determination of tonnages similar to those that could have been found under the existing law (46 App. U.S.C. 75 & 77).

Section 14512(b) authorizes the Secretary to attach an appendix to a vessel's register stating the measurement of spaces that may be deducted from the gross tonnage under laws and regulations of other countries but not under the laws of the United States.

REFERENCES IN TEXT

Sections 4151 and 4153 of the Revised Statutes, referred to in subsec. (a), were classified to sections 75 and 77 of the Appendix to this title and were repealed by section 5104(b) of Pub. L. 99–509.

§ 14513. Dual tonnage measurement

(a) On application by the owner and approval by the Secretary, the tonnage of spaces prescribed by the Secretary may be excluded in measuring under this section the gross tonnage of a vessel measured under section 14512 of this title. The spaces prescribed by the Secretary shall be comparable to the spaces that could have been excluded under section 2 of the Act of September 29, 1965 (Public Law 89–219, 79 Stat. 891), as section 2 existed immediately before the enactment of this section.

(b) The Secretary shall prescribe the design, location, and dimensions of the tonnage mark to be placed on a vessel measured under this section.

(c)(1) If a vessel's tonnage mark is below the uppermost part of the load line marks, each certificate stating the vessel's tonnages shall state the gross and net tonnages when the mark is submerged and when it is not submerged.

(2) Except as provided in paragraph (1) of this subsection, a certificate stating a vessel's tonnages may state only one set of gross and net tonnages.

(Added Pub. L. 99–509, title V, § 5101(3), Oct. 21, 1986, 100 Stat. 1924.)

HISTORICAL AND REVISION NOTES

Revised section 14513

Source: Section (U.S. Code) 46 App. U.S.C. 83 to 83g.

Section 14513 gives discretionary authority to the Secretary to exclude certain spaces in measuring the regulatory tonnage of a vessel, and requires the Sec-

retary to prescribe the design, location and dimensions of the tonnage mark to be placed on the vessel. Section 14513 further provides that if spaces are excluded by the Secretary, they shall be comparable to those the Secretary could have excluded in existing law (46 App. U.S.C. 83a). Section 14513(c) provides that if a vessel's tonnage mark is below the uppermost part of the load line mark, each certificate that states the vessel's tonnages must state the gross and net tonnages when the mark is submerged and when it is not submerged.

REFERENCES IN TEXT

Section 2 of the Act of September 29, 1965, referred to in subsec. (a), was classified to section 83a of the Appendix to this title and was repealed by section 5104(b) of Pub. L. 99–509.

SUBCHAPTER III—SIMPLIFIED SYSTEM

HISTORICAL AND REVISION NOTES

This subchapter provides for a simplified regulatory measurement of vessels that are either non-self-propelled, under 79′ in length, or operated only for pleasure.

§ 14521. Application

This subchapter applies to a vessel described in section 14501 of this title that is not measured under subchapter II of this chapter.

(Added Pub. L. 99–509, title V, § 5101(3), Oct. 21, 1986, 100 Stat. 1925.)

HISTORICAL AND REVISION NOTES

Revised section 14521

Source: Section (U.S. Code) 46 App. U.S.C. 71.

Section 14521 provides that vessels that are to be measured under the regulatory measurement system in this chapter, but are not measured under the standard regulatory measurement system in subchapter II, shall be measured under the simplified measurement system.

§ 14522. Measurement

(a) In this section, ''length'' means the horizontal distance of the hull between the foremost part of the stem and the aftermost part of the stern, excluding fittings and attachments.

(b)(1) The Secretary shall assign gross and net tonnages to a vessel based on its length, breadth, depth, other dimensions, and appropriate coefficients.

(2) The Secretary shall prescribe the way dimensions (except length) are measured and which coefficients are appropriate.

(c) The resulting gross tonnages, taken as a group, reasonably shall reflect the relative internal volumes of the vessels measured under this subchapter. The resulting net tonnages shall be in approximately the same ratios to corresponding gross tonnages as are the net and gross tonnages of comparable vessels measured under subchapter II of this chapter.

(d) Under regulations prescribed by the Secretary, the Secretary may determine the gross and net tonnages of a vessel representative of a designated class, model, or type, and then assign those gross and net tonnages to other vessels of the same class, model, or type.

(Added Pub. L. 99–509, title V, § 5101(3), Oct. 21, 1986, 100 Stat. 1925.)

HISTORICAL AND REVISION NOTES

Revised section 14522

Source: Section (U.S. Code) 46 App. U.S.C. 71.

Section 14522(a) defines the term ''length'' as it is used in the simplified measurement system.

Section 14522(b) requires the Secretary to assign gross and net tonnages under the simplified system, based on a vessel's length, breadth, depth, other dimensions and appropriate coefficients, as the Secretary deems appropriate.

Section 14522(c) provides that the gross tonnages as measured under this section shall reflect the relative internal volumes of vessels. It provides further that the net tonnages measured under this section shall be in approximately the same ratio to corresponding gross tonnages as are the net and gross tonnages of comparable vessels measured under the standard regulatory measurement system.

CHAPTER 147—PENALTIES

Sec.
14701. General violation.
14702. False statements.

HISTORICAL AND REVISION NOTES

This chapter provides for penalties for violations of Part J—Measurement of Vessels.

§ 14701. General violation

The owner, charterer, managing operator, agent, master, and individual in charge of a vessel violating this part or a regulation prescribed under this part are each liable to the United States Government for a civil penalty of not more than $20,000. Each day of a continuing violation is a separate violation. The vessel also is liable in rem for the penalty.

(Added Pub. L. 99–509, title V, § 5101(3), Oct. 21, 1986, 100 Stat. 1925.)

HISTORICAL AND REVISION NOTES

Revised section 14701

Source: Section (U.S. Code) 46 App. U.S.C. 83j.

Section 14701 provides that the owner, charterer, managing operator, agent, master, and individual in charge of a vessel violating Part J—Measurement of Vessels—are each liable to the U.S. Government for a civil penalty of not more than $20,000. It also provides that the vessel is liable in rem for the penalty and that each day of a continuing violation is a separate violation.

§ 14702. False statements

A person knowingly making a false statement or representation in a matter in which a statement or representation is required by this part or a regulation prescribed under this part is liable to the United States Government for a civil penalty of not more than $20,000 for each false statement or representation. The vessel also is liable in rem for the penalty.

(Added Pub. L. 99–509, title V, § 5101(3), Oct. 21, 1986, 100 Stat. 1925.)

HISTORICAL AND REVISION NOTES

Revised section 14702

Source: Section (U.S. Code) 46 App. U.S.C. 83i.

Section 14702 provides that a person knowingly making a false statement or representation in a matter in which a statement or representation is required by this part or a regulation prescribed under this part is liable to the United States Government for a civil penalty of not more than $20,000 for each false statement or representation. It further provides that the vessel is liable in rem for the penalty. This penalty is increased from $1,000 in existing law and conforms with the level of similar penalties throughout the subtitle.

Subtitle III—Maritime Liability

Chap.		Sec.
301.	**General**	**30101**
	[Chapters 303–311—Reserved]	
313.	**Commercial Instruments and Maritime Liens**	**31301**
	[Chapter 315—Reserved]	

HISTORICAL AND REVISION NOTES

Section 101 [102] of H.R. 3105 revises, consolidates, and enacts certain general and permanent laws of the United States related to commercial instruments and liens and public vessels and goods. It amends subtitle III of title 46, United States Code by striking at the end ''Chapters 313, 315—Reserved'' and substituting ''Chapter 313—Commercial Instruments and Maritime Liens''. Chapter 313 is essentially a codification of the Ship Mortgage Act, 1920 (46 App. U.S.C. 911–984). H.R. 3105 is the second step in the process of enacting laws compiled in title 46 of the Code into positive law. The first step in the codification process began in 1983 when certain general and permanent laws related to vessels and seamen were enacted as subtitle II of the title 46, United States Code.

HOUSE FLOOR STATEMENT

Section 102 of this bill adds a new subtitle III to title 46, which contains a codification of the Ship Mortgage Act, 1920 and other related provisions. A previous version of this codification and the remaining sections of the bill were recently reported by the Merchant Marine and Fisheries Committee in H.R. 3105 (H. Rept. 100–918). The significant additions or changes by this provision to the version of H.R. 3105 reported by the Merchant Marine and Fisheries Committee are explained as follows: [see sections 30101, 31305, 31321, 31322, 31325, 31329, 31330, 31343 of this title].

CHAPTER 301—GENERAL

Sec.
30101. Definitions.

§ 30101. Definitions

In this subtitle—

(1) ''documented vessel'' means a vessel documented under chapter 121 of this title;

(2) ''foreign vessel'' means a vessel of foreign registry or operated under the authority of a foreign country;

(3) ''public vessel'' means (except in chapter 315 of this title) a vessel that is owned, demise chartered, or operated by the United States Government or a government of a foreign country;

(4) ''recreational vessel'' means a vessel—

(A) operated primarily for pleasure; or

(B) leased, rented, or demise chartered to another for the latter's pleasure;

(5) ''seaman'' means a master or a crewmember of a vessel in operation;

(6) ''State'' means a State of the United States, Guam, Puerto Rico, the Virgin Islands, American Samoa, the District of Columbia, the Northern Mariana Islands, and any other territory or possession of the United States;

(7) ''State vessel'' means a vessel owned or demise chartered by the government of a State or an authority or a political subdivision of a State;

(8) ''United States'', when used in a geographic sense, means the States of the United States, Guam, Puerto Rico, the Virgin Islands, American Samoa, the District of Columbia, the Northern Mariana Islands, and any other territory or possession of the United States; and

(9) ''vessel of the United States'' means a vessel documented under chapter 121 of this title, numbered under chapter 123 of this title, or titled under the law of a State.

(Pub. L. 100–710, title I, § 102(c), Nov. 23, 1988, 102 Stat. 4738.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
30101(1)	46:911(1), (2), (4)
30101(2)	2101
30101(3)	New
30101(4)	2101
30101(5)	New
30101(6)	2101
30101(8), (9)	2101

This section defines general terms to be used throughout subtitle III of title 46. Some of the terms will not be used in chapter 313, but will be used in other chapters in the subtitle when they are codified.

Section 30101(1) defines a ''documented vessel'' to be a vessel documented under chapter 121 of title 46.

Section 30101(2) defines a ''foreign vessel'' to be a vessel of a foreign registry or operated under the authority of a foreign country. This definition is from section 2101 of the already codified subtitle II of title 46.

Section 30101(3) defines a ''public vessel'' to be a vessel that is owned, demise chartered, or operated by the United States Government or a government of a foreign country.

Section 30101(4) defines a ''recreational vessel'' to be a vessel used primarily for pleasure; or leased, rented, or demise chartered to another for the latter's pleasure. This is the same definition as in section 2101.

Section 30101(5) defines a ''seaman'' to be a master or a crewmember of a vessel in operation.

Section 30101(6) defines a ''State'' to mean the States of the United States, Guam, Puerto Rico, the Virgin Islands, American Samoa, the District of Columbia, the Northern Mariana Islands, and any other territory or possession of the United States. This is the same definition as in section 2101.

Section 30101(7) defines a ''State vessel'' to be a vessel owned or demise chartered by the government of a State or an authority or political subdivision of a State.

Section 30101(8) defines the ''United States'' when it is used in a geographic sense. This means the States of the United States, Guam, Puerto Rico, the Virgin Islands, American Samoa, the District of Columbia, the Northern Mariana Islands, and any other territory or possession of the United States. This is the same definition as in section 2101.

Section 30101(9) defines a ''vessel of the United States'' to be a vessel that is documented under chapter 121 or numbered under chapter 123. This is the same definition as in section 2101.

HOUSE FLOOR STATEMENT

Paragraph (9) of this section amends the definition of ''vessel of United States'' to include vessels titled under the law of a State.

EFFECTIVE DATE

Section 107 of title I of Pub. L. 100–710 provided that: ''(a) This title and amendments made by this title [enacting this section and sections 12501 to 12507, 31301 to 31309, 31321 to 31330, and 31341 to 31343 of this title, amending sections 2101, 2110, 12102, 12103, 12105, 12109 to 12112, 12117, 12119, and 12120 of this title and sections 808, 1242, and 1271 of the Appendix to this title, repealing sections 12113 to 12116, 12118, and 12121 of this title and sections 838, 840, 911, 921 to 927, 941, 951 to 954, 961,

971 to 975, 981 to 984, and 1011 to 1014 of the Appendix to this title, enacting provisions set out as notes under sections 12501, 12502, and 12505 of this title and preceding section 2101 of this title, and repealing provisions set out as a note under section 961 of the Appendix to this title and in Title 5, Appendix, Government Organization and Employees] take effect on January 1, 1989. However, sections 31321 and 31322 of title 46 (as enacted by section 102 of this Act), United States Code (as sections 31321 and 32322 [probably should be 31322] apply to vessels for which an application for documentation has been filed), take effect on January 1, 1990.

''(b) An instrument filed before January 1, 1989, but not recorded before that date, is deemed to comply with section 31321 of title 46, United States Code, if it is in substantial compliance with the provisions in that section that had corresponding requirements under the law on December 31, 1988. However, the mortgage may not become a preferred mortgage until the vessel is documented.

''(c) This title and the amendments made by this title do not affect the validity of any instrument filed or recorded before January 1, 1989, if there was a corresponding requirement under the law on December 31, 1988.

''(d) An instrument filed or recorded before January 1, 1989, is deemed to comply with any new requirement under chapter 313 of title 46, United States Code (as enacted by section 102 of this Act), affecting the validity of that instrument.

''(e) Section 102 of this Act and amendments made by that section [enacting sections 30101, 31301 to 31309, 31321 to 31330, and 31341 to 31343 of this title and provisions set out as a note preceding section 2101 of this title] do not affect any civil action filed before January 1, 1989.

''(f) Section 104(b) of this Act and the amendments made by section 104(b) of this Act [amending section 808 of the Appendix to this title] do not apply to any change in control resulting from, or which may at any time result from, any proposed plan of reorganization filed under the United States bankruptcy laws prior to the date of enactment of this Act [Nov. 23, 1988], except that transactions undertaken as a result of such a plan shall continue to be governed by section 9 of the Shipping Act, 1916 (46 App. U.S.C. 808), as it existed prior to the date of enactment of this Act, to the extent that such section 9 would have governed such transactions.''

[CHAPTERS 303–311—RESERVED]

CHAPTER 313—COMMERCIAL INSTRUMENTS AND MARITIME LIENS

SUBCHAPTER I—GENERAL

Sec.
31301. Definitions.
31302. Availability of instruments, copies, and information.
31303. Certain civil actions not authorized.
31304. Liability for noncompliance.
31305. Waiver of lien rights.
31306. Declaration of citizenship.
31307. State statutes superseded.
31308. Secretary of Commerce or Transportation as mortgagee.
31309. General civil penalty.

SUBCHAPTER II—COMMERCIAL INSTRUMENTS

31321. Filing, recording, and discharge.
31322. Preferred mortgages.
31323. Disclosing and incurring obligations before executing preferred mortgages.
31324. Retention and examination of mortgages of vessels covered by preferred mortgages.
31325. Preferred mortgage liens and enforcement.
31326. Court sales to enforce preferred mortgage liens and maritime liens and priority of claims.
31327. Forfeiture of mortgagee interest.
[31328. Repealed.]
31329. Court sales of documented vessels.
31330. Penalties.

SUBCHAPTER III—MARITIME LIENS

31341. Persons presumed to have authority to procure necessaries.
31342. Establishing maritime liens.
31343. Recording and discharging notices of claim of maritime lien.

AMENDMENTS

2002—Pub. L. 107–295, title II, § 205(a)(2), Nov. 25, 2002, 116 Stat. 2096, substituted ''notices of claim of maritime lien'' for ''liens on preferred mortgage vessels'' in item 31343.

1996—Pub. L. 104–324, title XI, § 1113(b)(3), Oct. 19, 1996, 110 Stat. 3970, struck out item 31328 ''Limitations on parties serving as trustees of mortgaged vessel interests''.

SUBCHAPTER I—GENERAL

§ 31301. Definitions

In this chapter—

(1) ''acknowledge'' means making—

(A) an acknowledgment or notarization before a notary public or other official authorized by a law of the United States or a State to take acknowledgments of deeds; or

(B) a certificate issued under the Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents, 1961;

(2) ''district court'' means—

(A) a district court of the United States (as defined in section 451 of title 28);

(B) the District Court of Guam;

(C) the District Court of the Virgin Islands;

(D) the District Court for the Northern Mariana Islands;

(E) the High Court of American Samoa; and

(F) any other court of original jurisdiction of a territory or possession of the United States;

(3) ''mortgagee'' means—

(A) a person to whom property is mortgaged; or

(B) when a mortgage on a vessel involves a trust, the trustee that is designated in the trust agreement;

(4) ''necessaries'' includes repairs, supplies, towage, and the use of a dry dock or marine railway;

(5) ''preferred maritime lien'' means a maritime lien on a vessel—

(A) arising before a preferred mortgage was filed under section 31321 of this title;

(B) for damage arising out of maritime tort;

(C) for wages of a stevedore when employed directly by a person listed in section 31341 of this title;

(D) for wages of the crew of the vessel;

(E) for general average; or

(F) for salvage, including contract salvage; and

(6) ''preferred mortgage''—

(A) means a mortgage that is a preferred mortgage under section 31322 of this title; and

(B) also means in sections 31325 and 31326 of this title, a mortgage, hypothecation, or similar charge that is established as a security on a foreign vessel if the mortgage, hypothecation, or similar charge was executed under the laws of the foreign country under whose laws the ownership of the vessel is documented and has been registered under those laws in a public register at the port of registry of the vessel or at a central office.

(Pub. L. 100–710, title I, § 102(c), Nov. 23, 1988, 102 Stat. 4739.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
31301(1), (2)	New
31301(3)	46:911(5)
31301(4)	Derived from 46:971–974
31301(5)	46:953(a)
31301(6)(A)	46:922(b)
31301(6)(B)	46:951 (2d par. less proviso)

Section 31301(1) defines the term ''acknowledge''. This paragraph makes a substantive change to law to expand the current law by allowing a notarization under State law, a form prescribed by the Secretary, as well as a certificate issued under the Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents, 1961.

Section 31301(2) defines ''district court''. This paragraph makes a substantive change to law by including the District Court of Guam, the District Court of the Virgin Islands, the District Court of the Northern Mariana Islands, the High Court of American Samoa, and other Federal territorial courts as they are established. Under current law, only the district courts of the United States have jurisdiction under the Ship Mortgage Act, 1920.

Section 31301(3) defines ''mortgagee'' as a person to whom property is mortgaged and the trustee authorized under section 31328 that is designated in the trust agreement.

Section 31301(4) defines ''necessaries'' to include repairs, supplies, towage, and the use of a drydock and marine railway for a vessel. As in all codifications, the term ''includes'' means ''includes but is not limited to'' and, therefore, is not intended to be an exclusive listing of those items that a court has determined or may determine as falling within the meaning of the term ''other necessaries'' as contained in current law. The definition is new, is based on 46 App. U.S.C. 971–974, and makes no substantive change to law.

Section 31301(5) defines ''preferred maritime lien'' to mean a lien on a vessel that arises before a preferred mortgage was filed under section 31321 of this title for damages arising out of maritime tort, stevedore wages, crew wages, general average, and salvage. The definition is new and is based on 46 App. U.S.C. 953(a). The only substantive change to law made by this paragraph is to change the effective date from the day the preferred mortgage is recorded and endorsed to when it is filed. This change is in keeping with other changes with regard to filing. The term ''duly and validly'' that is in existing law is not used because it is unnecessary. An instrument that is not ''duly and validly'' executed is not executed under the laws of the foreign country. This makes no substantive change to law.

Section 31301(6)(A) defines ''preferred mortgage'' to mean a mortgage that meets the requirements of section 31322. This clause makes no substantive change to law.

Section 31301(6)(B) defines ''preferred mortgage'' to also mean a mortgage on a documented foreign vessel that is preferred under sections 31325 and 31326 for purposes of enforcement of the outstanding mortgage indebtedness. Preference is only granted if the mortgage is executed under the laws of a foreign country, registered under those laws in a public register at the port of registry or at a central office. The use of the word ''established'' in place of ''created'' in the current law or ''effective'' as used in the treaties is not intended to make any substantive change to law. The only substantive changes to law made by this clause are the elimination of the exemption of foreign vessels of less than 200 gross tons, and clarification of the rule of interpretation that if a vessel is registered in one country, but is permitted to fly temporarily the flag of another country (such as through a demise charter), it is the law of the country in which the ownership of the vessel is documented that is used to determine when a mortgage attains preferred status.

EFFECTIVE DATE

Chapter effective Jan. 1, 1989, with certain exceptions and qualifications, and not to affect any civil action filed before that date, see section 107 of Pub. L. 100–710, set out as a note under section 30101 of this title.

§ 31302. Availability of instruments, copies, and information

The Secretary of Transportation shall—

(1) make any instrument filed or recorded with the Secretary under this chapter available for public inspection;

(2) on request, provide a copy, including a certified copy, of any instrument made available for public inspection under this chapter; and

(3) on request, provide a certificate containing information included in an instrument filed or recorded under this chapter.

(Pub. L. 100–710, title I, § 102(c), Nov. 23, 1988, 102 Stat. 4740.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
31302(1)	46:927 (1st sentence)
31302(2)	46:927 (2d sentence)
31302(3)	New

Section 31302(1) makes all instruments filed for recording or recorded with the Secretary of Transportation available for public inspection. The only substantive change to law made by this subsection is the inclusion of instruments filed for recording, which is in keeping with the new requirements on filing of instruments made in section 31321.

Section 31302(2) requires the Secretary to provide the public with a certified copy of the material made available to the public under subsection (a). This subsection makes no substantive change to law.

Section 31302(3) requires the Secretary, on request, to issue a certificate containing the information included in instruments on file, such as certificates of ownership.

§ 31303. Certain civil actions not authorized

If a mortgage covers a vessel and additional property that is not a vessel, this chapter does not authorize a civil action in rem to enforce the rights of the mortgagee under the mortgage against the additional property.

(Pub. L. 100–710, title I, § 102(c), Nov. 23, 1988, 102 Stat. 4740.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
31303	46:954(b)

Section 31303 makes it clear that, if a mortgage covers a vessel and additional property that is not a vessel, this chapter does not authorize a civil action *in rem* in admiralty to enforce rights against the additional property. This section makes no substantive change to law.

§ 31304. Liability for noncompliance

(a) If a person makes a contract secured by, or on the credit of, a vessel covered by a mortgage filed or recorded under this chapter and sustains a monetary loss because the mortgagor or the master or other individual in charge of the vessel does not comply with a requirement imposed on the mortgagor, master, or individual under this chapter, the mortgagor is liable for the loss.

(b) A civil action may be brought to recover for losses referred to in subsection (a) of this section. The district courts have original jurisdiction of the action, regardless of the amount in controversy or the citizenship of the parties. If the plaintiff prevails, the court shall award costs and attorney fees to the plaintiff.

(Pub. L. 100–710, title I, § 102(c), Nov. 23, 1988, 102 Stat. 4740.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
31304	46:941(c)

Section 31304 imposes liability on the mortgagor if the mortgagor, master, or other individual in charge of the vessel does not comply with the statutory requirements. A civil action may be brought in a district court of the United States for losses incurred. If the plaintiff prevails, the court shall award costs and attorneys fees to the plaintiff. This section makes two substantive changes to law. First, is the broadening of its coverage from documented vessels covered by a preferred mortgage to any vessel covered by a mortgage that is filed or recorded under the chapter. The second substantive change repeals the liability on the United States Government for losses caused because the Secretary did not comply with statutory requirements. This is covered by the Federal Tort Claims Act due to the nondiscretionary responsibility of the Secretary.

§ 31305. Waiver of lien rights

This chapter does not prevent a mortgagee or other lien holder from waiving or subordinating at any time by agreement or otherwise the lien holder's right to a lien, the priority or, if a preferred mortgage lien, the preferred status of the lien.

(Pub. L. 100–710, title I, § 102(c), Nov. 23, 1988, 102 Stat. 4741.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
31305	46:974

Section 31305 provides for the waiver of lien rights by the mortgagee or a person performing or supplying necessaries. This section makes no substantive change to law and is included only because of a like provision in current law. Without this provision the Committee believes these waivers would be permissible as a matter of law as they do not violate any public policy and on their face reflect an arms length transaction between the parties. The inclusion of this provision should not raise the implication that a similar provision is required for other matters that may be waivable as a matter of law.

HOUSE FLOOR STATEMENT

Section 31305 has been changed to clarify that the chapter does not prevent a mortgagee or other lien holder from waiving by contract the right to a lien, or the priority of that lien.

§ 31306. Declaration of citizenship

(a) Except as provided by the Secretary of Transportation, when an instrument transferring an interest in a vessel is presented to the Secretary for filing or recording, the transferee shall file with the instrument a declaration, in the form the Secretary may prescribe by regulation, stating information about citizenship and other information the Secretary may require to show the transaction involved does not violate section 9 or 37 of the Shipping Act, 1916 (46 App. U.S.C. 808, 835).

(b) A declaration under this section filed by a corporation must be signed by its president, secretary, treasurer, or other official authorized by the corporation to execute the declaration.

(c) Except as provided by the Secretary, an instrument transferring an interest in a vessel is not valid against any person until the declaration required by this section has been filed.

(d) A person knowingly making a false statement of a material fact in a declaration filed under this section shall be fined under title 18, imprisoned for not more than 5 years, or both.

(Pub. L. 100–710, title I, § 102(c), Nov. 23, 1988, 102 Stat. 4741; Pub. L. 101–225, title III, § 303(1), Dec. 12, 1989, 103 Stat. 1923.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
31306	46:838

Section 31306(a) requires that a person submitting an instrument transferring interest in a vessel to the Secretary for recording is also to file a declaration stating information about citizenship and other information to show that the transfer is not in violation of section 9 of the Shipping Act, or section 37 of that Act in a national emergency. This section makes no substantive change to law.

Section 31306(b) requires that a declaration filed by a corporation must be signed by the president, secretary, treasurer, or other official authorized by the corporation to execute the declaration. This section makes no substantive change to law.

Section 31306(c) invalidates any instrument transferring an interest until the declaration is filed. This section makes no substantive change to law.

Section 31306(d) provides for a criminal penalty for a violation of this section. The amount of the fine is prescribed under title 18, United States Code, and may include imprisonment for not more than 5 years, or both. This section makes no substantive change to law.

AMENDMENTS

1989—Subsec. (a). Pub. L. 101–225, § 303(1)(A), substituted ''Except as provided by the Secretary of Transportation, when'' for ''When'' and ''Secretary for filing'' for ''Secretary of Transportation for filing''.

Subsec. (c). Pub. L. 101–225, § 303(1)(B), substituted ''Except as provided by the Secretary, an'' for ''An''.

§ 31307. State statutes superseded

This chapter supersedes any State statute conferring a lien on a vessel to the extent the statute establishes a claim to be enforced by a civil action in rem against the vessel for necessaries.

(Pub. L. 100–710, title I, § 102(c), Nov. 23, 1988, 102 Stat. 4741.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
31307	46:975

Section 31307 provides for preemption of State laws to the extent a claim for necessaries is enforced by a civil action *in rem* in admiralty against the vessel.

§ 31308. Secretary of Commerce or Transportation as mortgagee

When the Secretary of Commerce or Transportation is a mortgagee under this chapter, the Secretary may foreclose on a lien arising from a right established under a mortgage under title XI of the Merchant Marine Act, 1936 (46 App. U.S.C. 1271 et seq.), subject to section 362(b) of title 11.

(Pub. L. 100–710, title I, § 102(c), Nov. 23, 1988, 102 Stat. 4741; Pub. L. 101–595, title VI, § 603(13), Nov. 16, 1990, 104 Stat. 2993.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
31308	46:952 (last sentence)

Section 31308 allows the Secretary of Commerce or Transportation to foreclose on a lien arising from a right established under a mortgage under title XI of the Merchant Marine Act, 1936. This section makes no substantive change to law.

REFERENCES IN TEXT

The Merchant Marine Act, 1936, referred to in text, is act June 29, 1936, ch. 858, 49 Stat. 1985, as amended. Title XI of the Act is classified generally to subchapter XI (§ 1271 et seq.) of chapter 27 of the Appendix to this title. For complete classification of this Act to the Code, see section 1245 of the Appendix to this title and Tables.

AMENDMENTS

1990—Pub. L. 101–595 substituted ''(46 App. U.S.C. 1271 et seq.)'' for ''(46 App. U.S.C. 1241 et seq.)''.

§ 31309. General civil penalty

Except as otherwise provided in this chapter, a person violating this chapter or a regulation prescribed under this chapter is liable to the United States Government for a civil penalty of not more than $10,000.

(Pub. L. 100–710, title I, § 102(c), Nov. 23, 1988, 102 Stat. 4741.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
31309	New

Section 31309 provides for a civil penalty of not more than $10,000 for a violation of this chapter or a regulation prescribed under this chapter.

SUBCHAPTER II—COMMERCIAL INSTRUMENTS

§ 31321. Filing, recording, and discharge

(a)(1) A bill of sale, conveyance, mortgage, assignment, or related instrument, whenever made, that includes any part of a documented vessel or a vessel for which an application for documentation is filed, must be filed with the Secretary of Transportation to be valid, to the extent the vessel is involved, against any person except—

(A) the grantor, mortgagor, or assignor;

(B) the heir or devisee of the grantor, mortgagor, or assignor; and

(C) a person having actual notice of the sale, conveyance, mortgage, assignment, or related instrument.

(2) Each bill of sale, conveyance, mortgage, assignment, or related instrument that is filed in substantial compliance with this section is valid against any person from the time it is filed with the Secretary.

(3) The parties to an instrument or an application for documentation shall use diligence to ensure that the parts of the instrument or application for which they are responsible are in substantial compliance with the filing and documentation requirements.

(4) A bill of sale, conveyance, mortgage, assignment, or related instrument may be filed electronically under regulations prescribed by the Secretary.

(b) To be filed, a bill of sale, conveyance, mortgage, assignment, or related instrument must—

(1) identify the vessel;

(2) state the name and address of each party to the instrument;

(3) state, if a mortgage, the amount of the direct or contingent obligations (in one or more units of account as agreed to by the parties) that is or may become secured by the mortgage, excluding interest, expenses, and fees;

(4) state the interest of the grantor, mortgagor, or assignor in the vessel;

(5) state the interest sold, conveyed, mortgaged, or assigned; and

(6) be signed and acknowledged.

(c) If a bill of sale, conveyance, mortgage, assignment, or related document is filed that involves a vessel for which an application for documentation is filed, and the Secretary decides that the vessel cannot be documented by an applicant—

(1) the Secretary shall send notice of the Secretary's decision, including reasons for the decision, to each interested party to the instrument filed for recording; and

(2) 90 days after sending the notice as provided under clause (1) of this subsection, the Secretary—

(A) may terminate the filing; and

(B) may return the instrument filed without recording it under subsection (e) of this section.

(d) A person may withdraw an application for documentation of a vessel for which a mortgage has been filed under this section only if the mortgagee consents.

(e) The Secretary shall—

(1) record the bills of sale, conveyances, mortgages, assignments, and related instruments of a documented vessel complying with subsection (b) of this section in the order they are filed; and

(2) maintain appropriate indexes, for use by the public, of instruments filed or recorded, or both.

(f) On full and final discharge of the indebtedness under a mortgage recorded under subsection (e)(1) of this section, a mortgagee, on request of the Secretary or mortgagor, shall provide the Secretary with an acknowledged certificate of discharge of the indebtedness in a form prescribed by the Secretary. The Secretary shall record the certificate.

(g) The mortgage or related instrument of a vessel covered by a preferred mortgage under section 31322(d) of this title, that is later filed under this section at the time an application for documentation is filed, is valid under this section from the time the mortgage or instrument representing financing became a preferred mortgage under section 31322(d).

(h) On full and final discharge of the indebtedness under a mortgage deemed to be a preferred mortgage under section 31322(d) of this title, a mortgagee, on request of the Secretary, a State, or mortgagor, shall provide the Secretary or the State, as appropriate, with an acknowledged certificate of discharge of the indebtedness in a form prescribed by the Secretary or the State, as applicable. If filed with the Secretary, the Secretary shall enter that information in the vessel identification system under chapter 125 of this title.

(Pub. L. 100–710, title I, § 102(c), Nov. 23, 1988, 102 Stat. 4741; Pub. L. 101–225, title III, § 303(2), Dec. 12, 1989, 103 Stat. 1923; Pub. L. 104–324, title III, § 305, Oct. 19, 1996, 110 Stat. 3918; Pub. L. 107–295, title IV, § 420, Nov. 25, 2002, 116 Stat. 2124.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
31321(a)(1)	46:921(a)
31321(a)(2)	46:1012
31321(a)(3)	New
31321(b)	46:926(a), (b)
31321(c), (d)	New
31321(e)	46:921(b)
31321(f)	46:925(b)
31321(g)	New
31321(h)	46:925(b)

Section 31321(a)(1) provides for the filing of a bill of sale, conveyance, mortgage, assignment, or related instrument of a vessel. This subsection makes substantive changes to law. The bill would allow a bill of sale, conveyance, mortgage, assignment, or related instrument to be filed at the same time an application for documentation under chapter 121 is filed. The Committee intends that the types of related instruments required to be filed be defined by regulations prescribed by the Secretary of Transportation. A major change the bill makes is that the instrument needs only be filed with the Secretary of Transportation to be valid. It is not necessary that it be recorded. This change is being made to eliminate a problem under existing law that prevents a person from recording an instrument when the vessel has not been yet documented. When filed with the Secretary, it is valid (to the extent the vessel is involved) against any person except the grantor, mortgagor, or assignor, their heirs or devisees, and a person having actual notice of that instrument. Clauses (A)–(C) make no substantive change to law.

Paragraph (2) provides that each bill of sale, conveyance, mortgage, assignment, or related instrument that is filed in substantial compliance with the requirements of this section is valid against any person from the time it is filed with the Secretary.

Paragraph (3) provides that it is the responsibility of the parties to an instrument to use diligence to ensure that the particulars of a filed instrument for which they are responsible are in substantial compliance. It is not the responsibility of the Secretary to validate the information in the instrument. If an instrument is later found to be invalid because it is not in substantial compliance, and the parties lose the benefits of a preferred mortgage, it is their fault, not the Secretary's.

Section 31321(b) sets out the requirements that an instrument must meet to be properly filed. To be filed the instruments must: (1) identify the vessel; (2) state the name and address of each party to the instrument; (3) state, if a mortgage, the amount of the direct or contingent obligations (in one or more units of account as agreed to by the parties) that is or may become secured by the mortgage, excluding interest, expenses, and fees; (4) state the interest of the grantor, mortgagor, or assignor; (5) state the interest sold, conveyed, mortgaged, or assigned; and (6) be signed and acknowledged. While most of these items are required under current law to be included in the index, and therefore required to be submitted to the Secretary to be recorded, this subsection makes a number of substantive changes to law. First, while vessel names are currently required to be submitted, this requirement has been broadened so that hull identification numbers and official numbers can be used to more specifically identify a vessel (since many vessels have the same name). Second, it requires the mortgage to state the maximum amount of the obligation, including principal, interest, fees, etc., that are secured by the mortgage. It also clarifies that the mortgage obligation may be payable in more than one unit of account, such as yen, franc, or special drawing right. Third, it recognizes that under some modern financing practices an instrument may not have a date of maturity. The requirement for supplying the date of maturity has been eliminated.

Section 31321(c) provides that if an instrument filed involves a vessel that has not yet been documented, and the Secretary decides that the vessel cannot be documented by the applicant, then the Secretary shall send notice of that denial to the parties, including the reasons for the Secretary's decision. If the parties have not corrected the deficiencies within 90 days, the Secretary may terminate the filing and return the instruments. This invalidates the instruments.

Section 31321(d) prohibits a person from withdrawing an application for documentation of a vessel for which a mortgage has been filed unless the mortgagee consents. Since the withdrawal will invalidate the mortgage, the mortgagee should be allowed to prohibit the withdrawal.

Section 31321(e) makes a substantive change to law. It requires the Secretary to record instruments in the order they are received for filing, not in the order in which they were received for recording. It also makes a substantive change by eliminating the specific indexes required under the law and substituting a general requirement for the Secretary to maintain indexes of instruments filed or recorded, or both, for use by the public. These indexes, prescribed by regulations, must be in keeping with U.S. obligations under treaties to which the United States is a party. Since section 104 [105] of this Act makes the existing rules and regulations applicable under this subsection, the current indexing system will be maintained that includes the names of the vessels; names of the parties to the instruments; time and date each instrument was received; the interest in the vessel that was sold, conveyed, mortgaged, or assigned; and the date of the maturity of the mortgage, if any. However, it allows the Secretary by regulation to automate the system with computers, as long as the new system provides the public with an adequate method of finding and examining these public records.

Section 31321(f) makes a substantive change to law by eliminating the requirement that a partial discharge of indebtedness be filed with the Secretary. The bill requires that on the full and final discharge of indebted-

ness the mortgagee, on request of the Secretary or mortgagor, shall provide the Secretary with a written, acknowledged certificate of discharge of the indebtedness. This subsection also makes a substantive change by requiring that the mortgagee, not the mortgagor, provide the certificate of discharge. The Secretary shall then record the certificate. However, this does not prohibit a person from submitting a certificate of discharge under subsection (a) since it is a related instrument. This subsection also makes a substantive change to law by eliminating the requirement that the discharge be endorsed on the vessel's certificate of documentation, and that the Customs Service only may clear a vessel after an endorsement has been made. This change is made because of the elimination of endorsements under section 31322.

HOUSE FLOOR STATEMENT

Section 31321 has been changed to clarify that a mortgage, whenever made, must be filed to be valid against third parties. This clarification allows mortgage closings to occur previous to filing of an instrument, and to eliminate the need for a fictional simultaneous closing and filing.

Subsection (g) clarifies that if an application for documentation is filed for a vessel covered by a preferred mortgage under section 31322(d) (as enacted by this Act), the preferred mortgage must be filed with the Secretary at the same time the application for documentation is filed to be valid against third parties. If the preferred mortgage is filed with the Secretary at the time the documentation application is filed, it is valid from the time it became a preferred mortgage under section 31322(d).

When a State preferred mortgage under section 31322(d) is finally discharged, subsection (h) of this section requires the mortgagee to provide upon request to the Secretary or a State, whichever is more appropriate, an acknowledged certificate of discharge of indebtedness. This is necessary when a vessel in the system moves from a participating titling State and is not retitled in another participating State. In this case, there is no way to update the status of the indebtedness through the original titling State. The Secretary is required to accept this information to be maintained in the vessel identification system under section 12503(c) of title 46 (as enacted by this Act).

AMENDMENTS

2002—Subsec. (a)(4) Pub. L. 107–295 struck out subpar. (A) designation before ''A bill of sale'' and subpar. (B) which read as follows: ''A filing made electronically under subparagraph (A) shall not be effective after the 10-day period beginning on the date of the filing unless the original instrument is provided to the Secretary within that 10-day period.''

1996—Subsec. (a). Pub. L. 104–324 added par. (4).

1989—Subsec. (c). Pub. L. 101–225 substituted ''for which an application for documentation is filed'' for ''that has not yet been documented'' in introductory provisions and ''interested party to'' for ''party whose name and address is stated on'' in par. (1).

EFFECTIVE DATE

Section effective Jan. 1, 1989, not to affect any civil action filed before that date, and, insofar as applicable to vessels for which an application for documentation has been filed, effective Jan. 1, 1990, with further provision for an instrument filed before Jan. 1, 1989, but not recorded before that date, and with other qualifications, see section 107 of Pub. L. 100–710, set out as a note under section 30101 of this title.

§ 31322. Preferred mortgages

(a) A preferred mortgage is a mortgage, whenever made, that—

(1) includes the whole of the vessel;

(2) is filed in substantial compliance with section 31321 of this title;

(3)(A) covers a documented vessel; or

(B) covers a vessel for which an application for documentation is filed that is in substantial compliance with the requirements of chapter 121 of this title and the regulations prescribed under that chapter; and

(4) with respect to a vessel with a fishery endorsement that is 100 feet or greater in registered length, has as the mortgagee—

(A) a person eligible to own a vessel with a fishery endorsement under section 12102(c) of this title;

(B) a state[1] or federally chartered financial institution that is insured by the Federal Deposit Insurance Corporation;

(C) a farm credit lender established under title 12, chapter 23 of the United States Code;

(D) a commercial fishing and agriculture bank established pursuant to State law;

(E) a commercial lender organized under the laws of the United States or of a State and eligible to own a vessel under section 12102(a) of this title; or

(F) a mortgage trustee under subsection (f) of this section.

(b) Any indebtedness secured by a preferred mortgage that is filed or recorded under this chapter, or that is subject to a mortgage, security agreement, or instruments granting a security interest that is deemed to be a preferred mortgage under subsection (d) of this section, may have any rate of interest to which the parties agree.

(c)(1) If a preferred mortgage includes more than one vessel or property that is not a vessel, the mortgage may provide for the separate discharge of each vessel and all property not a vessel by the payment of a part of the mortgage indebtedness.

(2) If a vessel covered by a preferred mortgage that includes more than one vessel or property that is not a vessel is to be sold on the order of a district court in a civil action in rem, and the mortgage does not provide for separate discharge as provided under paragraph (1) of this subsection—

(A) the mortgage constitutes a lien on that vessel in the full amount of the outstanding mortgage indebtedness; and

(B) an allocation of mortgage indebtedness for purposes of separate discharge may not be made among the vessel and other property covered by the mortgage.

(d)(1) A mortgage, security agreement, or instrument granting a security interest perfected under State law covering the whole of a vessel titled in a State is deemed to be a preferred mortgage if—

(A) the Secretary certifies that the State titling system complies with the Secretary's guidelines for a titling system under section 13106(b)(8) of this title; and

(B) information on the vessel covered by the mortgage, security agreement, or instrument is made available to the Secretary under chapter 125 of this title.

[1] So in original. Probably should be capitalized.

(2) This subsection applies to mortgages, security agreements, or instruments covering vessels titled in a State after—

(A) the Secretary's certification under paragraph (1)(A) of this subsection; and

(B) the State begins making information available to the Secretary under chapter 125 of this title.

(3) A preferred mortgage under this subsection continues to be a preferred mortgage even if the vessel is no longer titled in the State where the mortgage, security agreement, or instrument granting a security interest became a preferred mortgage under this subsection.

(e) If a vessel is already covered by a preferred mortgage when an application for titling or documentation is filed—

(1) the status of the preferred mortgage covering the vessel to be titled in the State is determined by the law of the jurisdiction where the vessel is currently titled or documented; and

(2) the status of the preferred mortgage covering the vessel to be documented under chapter 121 is determined by subsection (a) of this section.

(f)(1) A mortgage trustee may hold in trust, for an individual or entity, an instrument or evidence of indebtedness, secured by a mortgage of the vessel to the mortgage trustee, provided that the mortgage trustee—

(A) is eligible to be a preferred mortgagee under subsection (a)(4), subparagraphs (A)–(E) of this section;

(B) is organized as a corporation, and is doing business, under the laws of the United States or of a State;

(C) is authorized under those laws to exercise corporate trust powers;

(D) is subject to supervision or examination by an official of the United States Government or a State;

(E) has a combined capital and surplus (as stated in its most recent published report of condition) of at least $3,000,000; and

(F) meets any other requirements prescribed by the Secretary.

(2) If the beneficiary under the trust arrangement is not a commercial lender, a lender syndicate or eligible to be a preferred mortgagee under subsection (a)(4), subparagraphs (A)–(E) of this section, the Secretary must determine that the issuance, assignment, transfer, or trust arrangement does not result in an impermissible transfer of control of the vessel to a person not eligible to own a vessel with a fishery endorsement under section 12102(c) of this title.

(3) A vessel with a fishery endorsement may be operated by a mortgage trustee only with the approval of the Secretary.

(4) A right under a mortgage of a vessel with a fishery endorsement may be issued, assigned, or transferred to a person not eligible to be a mortgagee of that vessel under this section only with the approval of the Secretary.

(5) The issuance, assignment, or transfer of an instrument or evidence of indebtedness contrary to this subsection is voidable by the Secretary.

(g) For purposes of this section a ''commercial lender'' means an entity primarily engaged in the business of lending and other financing transactions with a loan portfolio in excess of $100,000,000, of which not more than 50 per centum in dollar amount consists of loans to borrowers in the commercial fishing industry, as certified to the Secretary by such lender.

(h) For purposes of this section a ''lender syndicate'' means an arrangement established for the combined extension of credit of not less than $20,000,000 made up of four or more entities that each have a beneficial interest, held through an agent, under a trust arrangement established pursuant to subsection (f), no one of which may exercise powers thereunder without the concurrence of at least one other unaffiliated beneficiary.

(Pub. L. 100–710, title I, § 102(c), Nov. 23, 1988, 102 Stat. 4743; Pub. L. 101–225, title III, § 303(3), Dec. 12, 1989, 103 Stat. 1923; Pub. L. 104–324, title XI, § 1113(a), Oct. 19, 1996, 110 Stat. 3970; Pub. L. 105–277, div. C, title II, § 202(b), Oct. 21, 1998, 112 Stat. 2681–618; Pub. L. 105–383, title IV, § 401(c)(1)–(4), Nov. 13, 1998, 112 Stat. 3425; Pub. L. 106–31, title III, § 3027(a)(1), May 21, 1999, 113 Stat. 101; Pub. L. 107–20, title II, § 2202(b), (c), July 24, 2001, 115 Stat. 168, 169.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
31322(a)(1)	46:922(a), (b)
31322(a)(2)	New
31322(b)	46:926(d)
31322(c)(1)	46:922(e)
31322(c)(2)	46:922(f)
31322(d), (e)	New

Section 31322 sets out the conditions that must be met for a mortgage to be considered a preferred mortgage, and the types of endorsements that the Secretary must make on any certificate of documentation of a vessel that is to be covered by a preferred mortgage.

Subsection (a)(1) makes many substantive changes to law. While a preferred mortgage must still include the whole of a vessel, this subsection eliminates the exception of certain vessels under 25 gross tons. It allows a vessel for which an application for documentation has been filed to have a preferred mortgage. It allows a mortgage to be a preferred mortgage from the time all four conditions are met, rather than from when the vessel is finally documented. Therefore, a mortgage will usually attain its preferred status when the application for documentation and the instrument have been filed. This subsection changes the requirement that all documented vessels have as a mortgagee a person that is a citizen of the United States, as defined in section 2 of the Shipping Act, 1916, and allows a State, the United States Government, a federally insured depository institution, or any other person approved by the Secretary to be a mortgagee.

Subsection (a)(2) makes a substantive change to law exempting fishing, fish processing, and fish tender vessels, and vessels operated only for pleasure from the mortgagee restrictions, since these vessels do not have significant national defense use.

Subsection (b) permits a preferred mortgage to have any rate of interest that is agreeable to the parties to the mortgage. This subsection makes no substantive change to law.

Subsection (c)(1) applies to a mortgage that covers more than one vessel or additional property that is not a vessel. This subsection allows a preferred mortgage to include a separate discharge of the additional vessels and property.

Subsection (c)(2) applies when a preferred mortgage covers more than one vessel, does not provide for the separate discharge of a vessel, and is to be sold by court

order. The amount of the mortgage indebtedness attributable to a vessel is that part of the indebtedness, increased by 20 percent, that the court determines approximates the value that the particular vessel bears to the value of all the vessels and property covered by the mortgage. In other words, the amount to be set by the court is the estimated value of the one vessel plus 20 percent of that value to assure sufficiency of collateral.

This section also makes a substantive change by eliminating the requirement that a vessel's certificate of documentation be endorsed with information from the mortgage. This change is made since most of the information is out of date when examined, and since a mortgage must be carried on self-propelled vessels under section 31324(b). This section also eliminates the requirement for the inclusion of an affidavit of good faith. However, both criminal and civil penalties have been added [in section 31330] to help ensure that there is not fraud. This section also eliminates the requirement that a preferred mortgage include a separate discharge for additional property that is not a vessel, the requirement that the mortgage does not stipulate that the mortgagee waives the mortgage's preferred status; and the requirement for clearing vessels with endorsed documents through Customs.

HOUSE FLOOR STATEMENT

Under section 31322(a)(2) a ''vessel operated only for pleasure'' is exempt from any restrictions on who can be a mortgagee. This standard is the same as used for the documentation of a recreational vessel under section 12109 of title 46. The Committee intends that vessels that have a recreational vessel license, or combined fisheries and recreational license, fall under this exemption. However, if the vessel has a Coastwise License, Great Lakes License, or Registry combined with a Recreational License, the vessel would not fall under this exemption.

Under subsection (c)(2), if a vessel covered by a preferred mortgage that includes more than one vessel or property that is not a vessel is to be sold on the order of a district court *in rem*, and there is not a separate discharge, then the mortgage constitutes a lien on that vessel in the full amount of the outstanding mortgage indebtedness, and an allocation of mortgage indebtedness for purposes of a separate discharge may not be made. This change is made to eliminate the formula that did not work and to allow the vessel to be sold free and clear, regardless of the amount of the sale.

Under subsection (d) of section 31322, a mortgage or other instrument representing financing of a vessel under State law that is made under applicable State law and covers the whole of a vessel titled in a State is deemed to be a preferred mortgage if two conditions are fulfilled. The first condition is that the Secretary must certify that the State in which the vessel is titled has a titling system that complies with the Secretary's vessel titling guidelines established under section 13106(b)(8) of title 46. Congress mandated the promulgation of these guidelines in the Recreational Boating Safety Act of 1986, Public Law 99–626. The second condition is that the State in which the vessel is titled must make information available to the Secretary for the vessel identification system established under chapter 125 of title 46 (as enacted by this Act) on the vessel covered by the mortgage or other instrument. This status only applies to vessels titled in the State after those two conditions are met. The phrase ''instrument representing financing of a vessel under State law'' is used in addition to ''mortgage'' because State laws do not always use the term mortgage when referring to financing. It is intended, however, that the financing covered by this phrase would be the same as that covered by the concept of a mortgage under other Federal law.

Paragraph (2) of subsection (d) clarifies that mortgages or other financing instruments may obtain preferred status under subsection (d) if they cover vessels titled in a State after the Secretary certifies the compliance of the State's titling system, and the State begins making vessel identification information available to the Secretary. Preferred mortgage status can only be attained when these two conditions are in effect. Mortgages or financing instruments made prior to that are not preferred and, if these two conditions cease to exist, new mortgages or forecasting instruments made after that time cannot attain preferred status.

The law of the titling State controls the making of the preferred mortgage or financing instrument under this subsection. No additional Federal recording requirements may be imposed for the mortgage or instrument to obtain preferred status under this subsection.

Paragraph (3) of this subsection ensures that a preferred mortgage under this subsection retains that status if the vessel covered by the mortgage later relinquishes its title. If the vessel is subsequently documented, the continuing validity of the mortgage is determined by section 31321(g) (as enacted by this Act).

Subsection (e) of section 31322 clarifies the validity of preferred mortgages made under subsection (d). In the case of a State titled vessel covered by a preferred mortgage for which a new titling application is filed, the validity of the mortgage is governed by the law of the titling State in which the mortgage became preferred. In the case of a documented vessel covered by a preferred mortgage for which an application for a State title is filed, or a State titled vessel covered by a preferred mortgage for which an application for documentation is filed, the validity of the preferred mortgage is governed by section 31322(a) of title 46 (as enacted by this Act).

Information on vessels with preferred mortgages made under State law will be available to creditors from the vessel identification system under chapter 125 of title 46 (as enacted by this Act).

AMENDMENTS

2001—Subsec. (a)(4)(B) to (F). Pub. L. 107–20, § 2202(b), added subpars. (B) to (F) and struck out former subpars. (B) and (C) which read as follows:

''(B) a state or federally chartered financial institution that satisfies the controlling interest criteria of section 2(b) of the Shipping Act, 1916 (46 U.S.C. 802(b));

''(C) a person that complies with the provisions of section 12102(c)(4) of this title.''

Subsec. (f) to (h). Pub. L. 107–20, § 2202(c), added subsecs. (f) to (h).

1999—Subsec. (a)(4). Pub. L. 106–31 made technical amendment to directory language of Pub. L. 105–277, § 202(b). See 1998 Amendment note below.

1998—Subsec. (a)(4). Pub. L. 105–277, § 202(b), as amended by Pub. L. 106–31, added par. (4).

Subsec. (b). Pub. L. 105–383, § 401(c)(1), added subsec. (b) and struck out former subsec. (b) which read as follows: ''A preferred mortgage filed or recorded under this chapter may have any rate of interest that the parties to the mortgage agree to.''

Subsec. (d)(1). Pub. L. 105–383, § 401(c)(2), substituted ''mortgage, security agreement, or instrument'' for ''mortgage or instrument'' in introductory provisions and subpar. (B).

Subsec. (d)(2). Pub. L. 105–383, § 401(c)(4), substituted ''mortgages, security agreements, or instruments'' for ''mortgages or instruments'' in introductory provisions.

Subsec. (d)(3). Pub. L. 105–383, § 401(c)(3), added par. (3) and struck out former par. (3) which read as follows: ''A preferred mortgage under this subsection continues to be a preferred mortgage if the vessel is no longer titled in the State where the mortgage was made.''

1996—Subsec. (a). Pub. L. 104–324 amended subsec. (a) generally. Prior to amendment, subsec. (a) consisted of 2 pars. with substantially similar provisions defining a preferred mortgage except that it included a mortgage with a State, the United States Government, a federally insured depository institution, or specified individual as mortgagee.

1989—Subsec. (a)(2). Pub. L. 101–225, § 303(3)(A), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Paragraph (1)(D) of this subsection does not apply to a vessel operated only as a fishing vessel,

fish processing vessel, or a fish tender vessel (as defined in section 2101 of this title) or to a vessel operated only for pleasure.''

Subsec. (d)(1). Pub. L. 101–225, § 303(3)(B), substituted ''granting a security interest perfected under State law'' for ''representing financing of a vessel under State law that is made under applicable State law''.

Subsec. (e). Pub. L. 101–225, § 303(3)(C), substituted ''the status of the preferred mortgage'' for ''the validity of the preferred mortgage'' in pars. (1) and (2).

EFFECTIVE DATE OF 2001 AMENDMENT

This section, as amended by Pub. L. 107–20, not effective until Apr. 1, 2003, see section 2202(d) of Pub. L. 107–20, set out as a note under section 12102 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

This section, as amended by Pub. L. 105–277, not effective until Apr. 1, 2003, see section 2202(d) of Pub. L. 107–20, set out as a note under section 12102 of this title.

EFFECTIVE DATE

Section effective Jan. 1, 1989, not to affect any civil action filed before that date, and, insofar as applicable to vessels for which an application for documentation has been filed, effective Jan. 1, 1990, with other exceptions and qualifications, see section 107 of Pub. L. 100–710, set out as a note under section 30101 of this title.

§ 31323. Disclosing and incurring obligations before executing preferred mortgages

(a) On request of the mortgagee and before executing a preferred mortgage, the mortgagor shall disclose in writing to the mortgagee the existence of any obligation known to the mortgagor on the vessel to be mortgaged.

(b) After executing a preferred mortgage and before the mortgagee has had a reasonable time to file the mortgage, the mortgagor may not incur, without the consent of the mortgagee, any contractual obligation establishing a lien on the vessel except a lien for—

(1) wages of a stevedore when employed directly by a person listed in section 31341 of this title;

(2) wages for the crew of the vessel;

(3) general average; or

(4) salvage, including contract salvage.

(c) On conviction of a mortgagor under section 31330(a)(1)(A) or (B) of this title for violating this section, the mortgage indebtedness, at the option of the mortgagee, is payable immediately.

(Pub. L. 100–710, title I, § 102(c), Nov. 23, 1988, 102 Stat. 4744.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
31323(a)	46:924(1)
31323(b)	46:924(2)
31323(c)	46:941(b) (last sentence)

Section 31323(a) requires the mortgagor to disclose any obligations on the vessel before executing a preferred mortgage. This subsection makes no substantive change to law.

Section 31323(b) provides that, after executing a preferred mortgage, the mortgagor may not incur, without consent of the mortgagee, any contractual obligations establishing a lien on the vessel—except a lien for stevedore wages, crew wages, general average, and salvage. The only substantive change to law made by this subsection is that the reasonable time to record a mortgage is changed to a reasonable time to file the mortgage, and the elimination of the reference to endorsements. These changes are in keeping with the changes made in section 31322.

Section 31323(c) provides that if a mortgagor is convicted of a violation of this section, then the mortgage indebtedness, at the option of the mortgagee, is payable immediately. This subsection makes no substantive change to law.

§ 31324. Retention and examination of mortgages of vessels covered by preferred mortgages

(a) On request, the owner, master, or individual in charge of a vessel covered by a preferred mortgage shall permit a person to examine the mortgage if the person has business with the vessel that may give rise to a maritime lien or the sale, conveyance, mortgage, or assignment of a mortgage of the vessel.

(b) A mortgagor of a preferred mortgage covering a self-propelled vessel shall use diligence in keeping a certified copy of the mortgage on the vessel.

(Pub. L. 100–710, title I, § 102(c), Nov. 23, 1988, 102 Stat. 4744.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
31324	46:923

Section 31324(a) provides for examination of mortgages of a vessel that is covered by a preferred mortgage by persons that have business with the vessel that may give rise to a maritime lien or the sale, conveyance, mortgage, or assignment of the mortgage. This subsection makes no substantive change to law.

Section 31324(b) requires that a certified copy of the mortgage must be on board a self-propelled vessel. This subsection makes no substantive change to law.

§ 31325. Preferred mortgage liens and enforcement

(a) A preferred mortgage is a lien on the mortgaged vessel in the amount of the outstanding mortgage indebtedness secured by the vessel.

(b) On default of any term of the preferred mortgage, the mortgagee may—

(1) enforce the preferred mortgage lien in a civil action in rem for a documented vessel, a vessel to be documented under chapter 121 of this title, a vessel titled in a State, or a foreign vessel;

(2) enforce a claim for the outstanding indebtedness secured by the mortgaged vessel in—

(A) a civil action in personam in admiralty against the mortgagor, maker, comaker, or guarantor for the amount of the outstanding indebtedness or any deficiency in full payment of that indebtedness; and

(B) a civil action against the mortgagor, maker, comaker, or guarantor for the amount of the outstanding indebtedness or any deficiency in full payment of that indebtedness; and

(3) enforce the preferred mortgage lien or a claim for the outstanding indebtedness secured by the mortgaged vessel, or both, by exercising any other remedy (including an extrajudicial remedy) against a documented vessel, a vessel for which an application for

documentation is filed under chapter 121 of this title, a vessel titled in a State, a foreign vessel, or a mortgagor, maker, comaker, or guarantor for the amount of the outstanding indebtedness or any deficiency in full payment of that indebtedness, if—

(A) the remedy is allowed under applicable law; and

(B) the exercise of the remedy will not result in a violation of section 9 or 37 of the Shipping Act, 1916 (46 App. U.S.C. 808, 835).

(c) The district courts have original jurisdiction of a civil action brought under subsection (b)(1) or (2) of this section. However, for a documented vessel, a vessel to be documented under chapter 121 of this title, a vessel titled in a State, or a foreign vessel, this jurisdiction is exclusive of the courts of the States for a civil action brought under subsection (b)(1) of this section.

(d)(1) Actual notice of a civil action brought under subsection (b)(1) of this section, or to enforce a maritime lien, must be given in the manner directed by the court to—

(A) the master or individual in charge of the vessel;

(B) any person that recorded under section 31343(a) or (d) of this title an unexpired notice of a claim of an undischarged lien on the vessel; and

(C) a mortgagee of a mortgage filed or recorded under section 31321 of this title that is an undischarged mortgage on the vessel.

(2) Notice under paragraph (1) of this subsection is not required if, after search satisfactory to the court, the person entitled to the notice has not been found in the United States.

(3) Failure to give notice required by this subsection does not affect the jurisdiction of the court in which the civil action is brought. However, unless notice is not required under paragraph (2) of this subsection, the party required to give notice is liable to the person not notified for damages in the amount of that person's interest in the vessel terminated by the action brought under subsection (b)(1) of this section. A civil action may be brought to recover the amount of the terminated interest. The district courts have original jurisdiction of the action, regardless of the amount in controversy or the citizenship of the parties. If the plaintiff prevails, the court may award costs and attorney fees to the plaintiff.

(e) In a civil action brought under subsection (b)(1) of this section—

(1) the court may appoint a receiver and authorize the receiver to operate the mortgaged vessel and shall retain in rem jurisdiction over the vessel even if the receiver operates the vessel outside the district in which the court is located; and

(2) when directed by the court, a United States marshal may take possession of a mortgaged vessel even if the vessel is in the possession or under the control of a person claiming a possessory common law lien.

(f)(1) Before title to the documented vessel or vessel for which an application for documentation is filed under chapter 121 is transferred by an extrajudicial remedy, the person exercising the remedy shall give notice of the proposed transfer to the Secretary, to the mortgagee of any mortgage on the vessel filed in substantial compliance with section 31321 of this title before notice of the proposed transfer is given to the Secretary, and to any person that recorded an unexpired notice of a claim of an undischarged lien on the vessel under section 31343(a) or (d) of this title before notice of the proposed transfer is given to the Secretary.

(2) Failure to give notice as required by this subsection shall not affect the transfer of title to a vessel. However, the rights of any holder of a maritime lien or a preferred mortgage on the vessel shall not be affected by a transfer of title by an extrajudicial remedy exercised under this section, regardless of whether notice is required by this subsection or given.

(3) The Secretary shall prescribe regulations establishing the time and manner for providing notice under this subsection.

(Pub. L. 100–710, title I, § 102(c), Nov. 23, 1988, 102 Stat. 4745; Pub. L. 101–225, title III, § 303(4), Dec. 12, 1989, 103 Stat. 1923; Pub. L. 104–324, title XI, § 1124(a), (b), Oct. 19, 1996, 110 Stat. 3980; Pub. L. 105–383, title IV, § 401(c)(5)–(7), Nov. 13, 1998, 112 Stat. 3425; Pub. L. 107–295, title II, § 205(b), Nov. 25, 2002, 116 Stat. 2096.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
31325(a)	46:951 (1st sentence)
31325(b)(1)	46:951 (2d sentence)
31325(b)(2)	46:954(a)
31325(b)(3)	New
31325(c)	46:951 (3d sentence)
31325(d)	46:951 (4th to 6th sentences)
31325(e)	46:952 (1st, 2d sentences)

Section 31325 provides for the enforcement of a preferred mortgage lien.

Section 31325(a) makes a ''preferred mortgage'' a lien on the vessel in the amount of the mortgage indebtedness secured by the vessel outstanding at foreclosure. This subsection makes no substantive change to law.

Section 31325(b) provides that, on default of any term, the mortgagee may enforce the preferred mortgage lien in a civil action *in rem*, or *in personam* in admiralty against the mortgagor, comaker, or guarantor for the amount of the outstanding indebtedness secured by the vessel or any deficiency in paying off that indebtedness. This subsection makes a substantive change to law by allowing a nonadmiralty civil action to be brought against the mortgagor, comaker, or guarantor for the amount of the outstanding indebtedness secured by the vessel or any deficiency in paying off that indebtedness. This change allows an action to be brought even when the vessel is outside U.S. jurisdiction. This section will also allow the action to be brought against the comaker or guarantor of the mortgage.

Section 31325(c) provides for original and exclusive jurisdiction by a district court, to the exclusion of the courts of a State for civil actions brought *in rem*. It also provides for original jurisdiction for civil actions brought *in personam* in admiralty and civil actions brought under subsection (b)(3). This subsection makes a substantive change to law by broadening the jurisdiction to courts in the territories, as defined in section 31301, as well as giving original jurisdiction to the district courts in nonadmiralty civil actions brought to enforce the preferred mortgage lien.

Subsection (d) provides that actual notice of a civil action *in rem* to enforce a maritime lien must be given in a manner directed by the court to the master, individual in charge of the vessel, to any person that recorded a notice of a claim of an undischarged lien, and,

for the first time, to the mortgagee of a mortgage filed with the Secretary. This notice is not required if, after a search is made that is satisfactory to the court, the person entitled to notice is not found in the United States. Failure to give notice does not affect the court's jurisdiction. However, the mortgagor is still liable to the person not notified for damages in the amount of that person's interest in the vessel that was terminated by the civil action *in rem*, and a civil action may still be brought to recover the amount of the terminated interest. The district courts have original jurisdiction of the action, regardless of the amount in controversy or the citizenship of the parties. If plaintiff prevails, the court shall award costs and attorneys fees to the plaintiff.

Subsection (e) provides that, in a civil action *in rem*, the court may appoint a receiver and authorize operation of the vessel. When directed by the court, a United States marshal may take possession—even if the vessel is in the possession of or under the control of a person claiming a possessory common law lien. This subsection makes a substantive change to law by allowing the court to retain *in rem* jurisdiction over the vessel even if the receiver operates the vessel outside the district in which the court is located.

HOUSE FLOOR STATEMENT

Subsection (c) of this section clarifies that the district courts have original jurisdiction for a civil action under subsection (b) of this section, and exclusive jurisdiction in the case of vessels documented or to be documented under chapter 121 of title 46.

AMENDMENTS

2002—Subsec. (d)(1)(B). Pub. L. 107–295, § 205(b)(1), substituted ''an unexpired notice of a claim'' for ''a notice of a claim''.

Subsec. (f)(1). Pub. L. 107–295, § 205(b)(2), substituted ''an unexpired notice of a claim'' for ''a notice of a claim''.

1998—Subsecs. (b)(1), (3), (c). Pub. L. 105–383 inserted ''a vessel titled in a State,'' after ''chapter 121 of this title,''.

1996—Subsec. (b). Pub. L. 104–324, § 1124(a)(1), substituted ''mortgagee may'' for ''mortgage may'' in introductory provisions.

Subsec. (b)(1). Pub. L. 104–324, § 1124(a)(2)(A), substituted ''preferred'' for ''perferred''.

Subsec. (b)(3). Pub. L. 104–324, § 1124(a)(2)(B), (3), added par. (3).

Subsec. (f). Pub. L. 104–324, § 1124(b), added subsec. (f).

1989—Subsecs. (b), (c). Pub. L. 101–225 amended subsecs. (b) and (c) generally. Prior to amendment, subsecs. (b) and (c) read as follows:

''(b) On default of any term of the preferred mortgage, the mortgagee may enforce the preferred mortgage lien in—

''(1) a civil action in rem for a documented vessel or a vessel to be documented under chapter 121 of this title;

''(2) a civil action in personam in admiralty against the mortgagor, comaker, or guarantor for the amount of the outstanding indebtedness secured by the mortgaged vessel or any deficiency in full payment of that indebtedness; and

''(3) a civil action against the mortgagor, comaker, or guarantor for the amount of the outstanding indebtedness secured by the mortgaged vessel or any deficiency in full payment of that indebtedness.

''(c) The district courts have original jurisdiction of a civil action brought under subsection (b) of this section. However, for documented vessels or vessels to be documented under chapter 121 of this title, this jurisdiction is exclusive of the courts of the States for a civil action under subsection (b)(1) of this section.''

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–295 effective Jan. 1, 2003, see section 205(e) of Pub. L. 107–295, set out as a note under section 12111 of this title.

CONSTRUCTION OF 1996 AMENDMENTS

Section 1124(c) of Pub. L. 104–324 provided that: ''The amendments made by subsections (a) and (b) [amending this section] may not be construed to imply that remedies other than judicial remedies were not available before the date of enactment of this section [Oct. 19, 1996] to enforce claims for outstanding indebtedness secured by mortgaged vessels.''

§ 31326. Court sales to enforce preferred mortgage liens and maritime liens and priority of claims

(a) When a vessel is sold by order of a district court in a civil action in rem brought to enforce a preferred mortgage lien or a maritime lien, any claim in the vessel existing on the date of sale is terminated, including a possessory common law lien of which a person is deprived under section 31325(e)(2) of this title, and the vessel is sold free of all those claims.

(b) Each of the claims terminated under subsection (a) of this section attaches, in the same amount and in accordance with their priorities to the proceeds of the sale, except that—

(1) the preferred mortgage lien, including a preferred mortgage lien on a foreign vessel whose mortgage has been guaranteed under title XI of the Merchant Marine Act, 1936 (46 App. U.S.C. 1101 et seq.)[1] has priority over all claims against the vessel (except for expenses and fees allowed by the court, costs imposed by the court, and preferred maritime liens); and

(2) for a foreign vessel whose mortgage has not been guaranteed under title XI of that Act, the preferred mortgage lien is subordinate to a maritime lien for necessaries provided in the United States.

(Pub. L. 100–710, title I, § 102(c), Nov. 23, 1988, 102 Stat. 4746; Pub. L. 103–160, div. A, title XIII, § 1360, Nov. 30, 1993, 107 Stat. 1816.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
31326(a)	46:953(b), 961(c)
31326(b)(1)	46:953(b)
31326(b)(2)	46:951 (2d par. proviso)

Section 31326(a) provides for a court-ordered sale to enforce a preferred mortgage lien or a maritime lien and the priority of claims. When a mortgaged vessel is sold by court order in a civil action *in rem*, any prior claim in the vessel is terminated—including any possessory common law lien. This subsection makes a substantive change to law by making the process the same for maritime liens as was provided for preferred mortgage liens. This eliminates the requirement for making a new mortgagee for a court sale to enforce a maritime lien. This section also broadens the jurisdiction to courts in the territories, as defined in section 31301.

Section 31326(b)(1) provides that each of these terminated claims attaches, in the same amount and priority, to the proceeds of sale—except that the preferred mortgage lien always has priority over these other claims. However, the preferred mortgage lien is still subordinated to expenses and fees allowed by the court, costs imposed by the court, and any preferred maritime liens. This may include statutory fees such as the fee of the United States Marshal under 28 U.S.C. 1921. Except for broadening its coverage under subsection (a), this makes no substantive change to law.

[1] So in original. Probably should be followed by a comma.

Section 31326(b)(2) provides in the case of a foreign vessel, the preferred mortgage lien is also subordinated to a maritime lien for necessaries performed or supplied for the vessel in the United States. ''Provided'' has been substituted for ''provided or supplied'' for consistency in usage. Except for broadening its coverage under subsection (a), this paragraph makes no substantive change to law.

REFERENCES IN TEXT

The Merchant Marine Act, 1936, referred to in subsec. (b), is act June 29, 1936, ch. 858, 49 Stat. 1985, as amended. Title XI of the Act is classified generally to subchapter XI (§ 1271 et seq.) of chapter 27 of the Appendix to this title. For complete classification of this Act to the Code, see section 1245 of the Appendix to this title and Tables.

AMENDMENTS

1993—Subsec. (b)(1). Pub. L. 103–160, § 1260(1), inserted '', including a preferred mortgage lien on a foreign vessel whose mortgage has been guaranteed under title XI of the Merchant Marine Act, 1936 (46 App. U.S.C. 1101 et seq.)'' after ''preferred mortgage lien''.

Subsec. (b)(2). Pub. L. 103–160, § 1360(2), inserted ''whose mortgage has not been guaranteed under title XI of that Act'' after ''foreign vessel''.

§ 31327. Forfeiture of mortgagee interest

The interest of a mortgagee in a documented vessel or a vessel covered by a preferred mortgage under section 31322(d) of this title may be terminated by a forfeiture of the vessel for a violation of a law of the United States only if the mortgagee authorized, consented, or conspired to do the act, failure, or omission that is the basis of the violation.

(Pub. L. 100–710, title I, § 102(c), Nov. 23, 1988, 102 Stat. 4746.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
31327	46:961(b)

Section 31327 provides for forfeiture of the mortgagee's interest if the mortgagee authorized, consented, or conspired to do the act, failure, or omission that is the basis of the violation that caused forfeiture of the vessel. This section makes no substantive change to law.

[§ 31328. Repealed. Pub. L. 104–324, title XI, § 1113(b)(1), Oct. 19, 1996, 110 Stat. 3970]

Section, Pub. L. 100–710, title I, § 102(c), Nov. 23, 1988, 102 Stat. 4746, related to limitations on parties serving as trustees of mortgaged vessel interests.

§ 31329. Court sales of documented vessels

(a) A documented vessel may be sold by order of a district court only to—

(1) a person eligible to own a documented vessel under section 12102 of this title; or

(2) a mortgagee of that vessel.

(b) When a vessel is sold to a mortgagee not eligible to own a documented vessel—

(1) the vessel must be held by the mortgagee for resale;

(2) the vessel held by the mortgagee is subject to section 902 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1242); and

(3) the sale of the vessel to the mortgagee is not a sale foreign within the terms of the first proviso of section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883).

(c) Unless waived by the Secretary of Transportation, a person purchasing a vessel by court order under subsection (a)(1) of this section or from a mortgagee under subsection (a)(2) of this section must document the vessel under chapter 121 of this title.

(d) The vessel may be operated by the mortgagee not eligible to own a documented vessel only with the approval of the Secretary.

(e) A sale of a vessel contrary to this section is void.

(f) This section does not apply to a documented vessel that has been operated only for pleasure.

(Pub. L. 100–710, title I, § 102(c), Nov. 23, 1988, 102 Stat. 4747; Pub. L. 104–324, title XI, § 1118, Oct. 19, 1996, 110 Stat. 3973.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
31329	46:961(f)

Section 31329 sets out certain restrictions on the court sale of a documented vessel.

Section 31329(a) restricts the sale only to a person eligible to own a documented vessel under section 12102 of title 46 or to the mortgagee, which may be a trustee acting as a holder of a preferred mortgage on a documented vessel for the benefit of a person not eligible to be the holder of a preferred mortgage on that vessel.

Section 31329(b) sets out conditions on the sale to a trustee acting as a holder of a preferred mortgage on a documented vessel for the benefit of a person not eligible to be the holder of a preferred mortgage on that vessel. First, the vessel must be held by the trustee for resale. Second, while being held for resale, the vessel is subject to requisition or purchase during a national emergency under section 902 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1242). And third, the sale of the vessel to the trustee is not a sale foreign within the terms of the First Proviso of section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883).

Section 31329(c) requires a person that is eligible to document the vessel that purchases a vessel from the court to document the vessel. This subsection also requires the person purchasing the vessel from the trustee to document it, thereby restricting to whom the trustee can sell the vessel. Many documented vessels have no national defense utility, such as recreational vessels and fishing vessels. Therefore, both of these restrictions can be waived by the Secretary. As previously discussed, these waivers can be on a case-by-case basis or with a blanket waiver.

Section 31329(d) prohibits a trustee from operating the vessel without the approval of the Secretary.

Section 31329(e) voids any sale that is done contrary to this section.

HOUSE FLOOR STATEMENT

Under section 31329(d) a vessel may be operated by the trustee only with the approval of the Secretary. Under current law a vessel may be documented by a trust if all of the members of the trust are citizens of the United States. If the trust buying the vessel at the court sale includes foreign investors, the vessel cannot be documented. The Committee intends in this section that the vessel will only be ''operated'' in a maintenance manner, but not in a commercial service.

AMENDMENTS

1996—Subsec. (f). Pub. L. 104–324 added subsec. (f).

§ 31330. Penalties

(a)(1) A mortgagor shall be fined under title 18, imprisoned for not more than 2 years, or both, if the mortgagor—

(A) with intent to defraud, does not disclose an obligation on a vessel as required by section 31323(a) of this title;

(B) with intent to defraud, incurs a contractual obligation in violation of section 31323(b) of this title;

(C) with intent to hinder or defraud an existing or future creditor of the mortgagor or a lienor of the vessel, files a mortgage with the Secretary of Transportation; or

(D) with intent to defraud, does not comply with section 31321(h) of this title.

(2) A mortgagor is liable to the United States Government for a civil penalty of not more than $10,000 if the mortgagor—

(A) does not disclose an obligation on a vessel as required by section 31323(a) of this title;

(B) incurs a contractual obligation in violation of section 31323(b) of this title;

(C) files with the Secretary a mortgage made not in good faith; or

(D) does not comply with section 31321(h) of this title.

(b)(1) A person that knowingly violates section 31329 of this title shall be fined under title 18, imprisoned for not more than 3 years, or both.

(2) A person violating section 31329 of this title is liable to the Government for a civil penalty of not more than $25,000.

(3) A vessel involved in a violation under section 31329 of this title and its equipment may be seized by, and forfeited to, the Government.

(c) If a person not an individual violates this section, the president or chief executive of the person also is subject to any penalty provided under this section.

(Pub. L. 100–710, title I, § 102(c), Nov. 23, 1988, 102 Stat. 4747; Pub. L. 104–324, title XI, § 1113(b)(2), Oct. 19, 1996, 110 Stat. 3970.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
31330(a)	46:941(b) (1st sentence)
31330(b)	New
31330(c)	46:941(b) (1st sentence)

Section 31330(a) provides for criminal penalties for not disclosing obligations, incurring contractual obligations in violation of section 31323(b), and filing a mortgage made not in good faith. This subsection makes a substantive change to law by adding civil penalties and by making it a crime to record with the Secretary of Transportation a mortgage made not in good faith with the intent to hinder an existing or future creditor of the mortgagor or a lienor of the vessel. This is done since the affidavit of good faith has been eliminated from the elements of a preferred mortgage.

Section 31330(b) adds criminal and civil penalties for violating the sale and trust requirements under sections 31328 and 31329. It also makes a vessel and its equipment involved in those violations subject to seizure by the Government.

Section 31330(c) makes the president or chief executive officer of a corporation or association liable as a mortgagor for the penalties under this section.

HOUSE FLOOR STATEMENT

Subsection (a) of this section adds criminal and civil penalties for a preferred mortgagor's failure to carry out certain requirements under chapter 313 of title 46 (as enacted by this Act).

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–324 struck out ''31328 or'' before ''31329'' in pars. (1) to (3).

SUBCHAPTER III—MARITIME LIENS

§ 31341. Persons presumed to have authority to procure necessaries

(a) The following persons are presumed to have authority to procure necessaries for a vessel:

(1) the owner;

(2) the master;

(3) a person entrusted with the management of the vessel at the port of supply; or

(4) an officer or agent appointed by—

(A) the owner;

(B) a charterer;

(C) an owner pro hac vice; or

(D) an agreed buyer in possession of the vessel.

(b) A person tortiously or unlawfully in possession or charge of a vessel has no authority to procure necessaries for the vessel.

(Pub. L. 100–710, title I, § 102(c), Nov. 23, 1988, 102 Stat. 4748; Pub. L. 101–225, title III, § 303(5), Dec. 12, 1989, 103 Stat. 1924.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
31341(a)	46:972 (1st sentence), 973
31341(b)	46:972 (2d sentence)

Section 31341(a) lists those persons who are presumed to have authority to procure necessaries for a vessel. These include the owner, master, or a manager at the port of supply; and an officer or agent appointed by the owner, charterer, owner *pro hac vice*, or buyer in possession of the vessel. This subsection makes no substantive change to law.

Section 31341(b) provides that any person that is tortiously or unlawfully in possession of or in charge of a vessel has no authority to procure necessaries. This subsection makes no substantive change to law.

AMENDMENTS

1989—Subsec. (a)(3). Pub. L. 101–225 substituted ''management'' for ''mangement''.

§ 31342. Establishing maritime liens

(a) Except as provided in subsection (b) of this section, a person providing necessaries to a vessel on the order of the owner or a person authorized by the owner—

(1) has a maritime lien on the vessel;

(2) may bring a civil action in rem to enforce the lien; and

(3) is not required to allege or prove in the action that credit was given to the vessel.

(b) This section does not apply to a public vessel.

(Pub. L. 100–710, title I, § 102(c), Nov. 23, 1988, 102 Stat. 4748; Pub. L. 101–225, title III, § 303(6), Dec. 12, 1989, 103 Stat. 1924.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
31342	46:971

Section 31342 provides that any authorized person providing necessaries for a vessel has a maritime lien on the vessel, may bring a civil action *in rem* in admiralty to enforce the lien, and is not required to allege or prove that credit was given to the vessel. ''Providing'' has been substituted for ''furnishing'' for consistency with other laws. This section makes no substantive change to law. This section does not supersede the prohibition under the Public Vessels Act, the Foreign Sovereign Immunities Act, or the Suits in Admiralty Act, on bringing an *in rem* action against a public vessel.

AMENDMENTS

1989—Pub. L. 101–225 designated existing provisions as subsec. (a), substituted ''Except as provided in subsection (b) of this section, a person providing necessaries to a vessel on the order of the owner'' for ''A person providing necessaries to a vessel (except a public vessel) on the order of a person listed in section 31341 of this title'', and added subsec. (b).

§ 31343. Recording and discharging notices of claim of maritime lien

(a) Except as provided under subsection (d) of this section, a person claiming a lien on a vessel documented, or for which an application for documentation has been filed, under chapter 121 may record with the Secretary of Transportation a notice of that person's lien claim on the vessel. To be recordable, the notice must—

(1) state the nature of the lien;

(2) state the date the lien was established;

(3) state the amount of the lien;

(4) state the name and address of the person; and

(5) be signed and acknowledged.

(b)(1) The Secretary shall record a notice complying with subsection (a) of this section if, when the notice is presented to the Secretary for recording, the person having the claim files with the notice a declaration stating the following:

(A) The information in the notice is true and correct to the best of the knowledge, information, and belief of the individual who signed it.

(B) A copy of the notice, as presented for recordation, has been sent to each of the following:

(i) The owner of the vessel.

(ii) Each person that recorded under subsection (a) of this section an unexpired notice of a claim of an undischarged lien on the vessel.

(iii) The mortgagee of each mortgage filed or recorded under section 31321 of this title that is an undischarged mortgage on the vessel.

(2) A declaration under this subsection filed by a person that is not an individual must be signed by the president, member, partner, trustee, or other individual authorized to execute the declaration on behalf of the person.

(c)(1) On full and final discharge of the indebtedness that is the basis for a notice of claim of lien recorded under subsection (b) of this section, the person having the claim shall provide the Secretary with an acknowledged certificate of discharge of the indebtedness. The Secretary shall record the certificate.

(2) The district courts of the United States shall have jurisdiction over a civil action in Admiralty to declare that a vessel is not subject to a lien claimed under subsection (b) of this section, or that the vessel is not subject to the notice of claim of lien, or both, regardless of the amount in controversy or the citizenship of the parties. Venue in such an action shall be in the district where the vessel is found or where the claimant resides or where the notice of claim of lien is recorded. The court may award costs and attorneys fees to the prevailing party, unless the court finds that the position of the other party was substantially justified or other circumstances make an award of costs and attorneys fees unjust. The Secretary shall record any such declaratory order.

(d) A person claiming a lien on a vessel covered by a preferred mortgage under section 31322(d) of this title must record and discharge the lien as provided by the law of the State in which the vessel is titled.

(e) A notice of claim of lien recorded under subsection (b) of this section shall expire 3 years after the date the lien was established, as such date is stated in the notice under subsection (a) of this section.

(f) This section does not alter in any respect the law pertaining to the establishment of a maritime lien, the remedy provided by such a lien, or the defenses thereto, including any defense under the doctrine of laches.

(Pub. L. 100–710, title I, § 102(c), Nov. 23, 1988, 102 Stat. 4748; Pub. L. 107–295, title II, § 205(a)(1), Nov. 25, 2002, 116 Stat. 2095.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
31343	46:925

Section 31343 provides that any person claiming a lien on a vessel covered by a preferred mortgage may record a notice of lien. This notice must state the nature of the lien, date it was established; the amount; and the name and address of the person claiming a lien, and it must be acknowledged. The Secretary must record a notice of lien if it complies with these requirements. When any part of the indebtedness is discharged, the claimant shall provide the Secretary with a written, acknowledged certificate of discharge of the indebtedness, and the Secretary shall record the certificate. This section makes no substantive change to law.

Section 31343(c) provides that, on the full and final discharge of an indebtedness that is the basis for a claim, the person having the claim shall provide the Secretary with an acknowledged certificate of discharge on the request of the Secretary or owner of the vessel. This subsection makes a substantive change to law by not requiring partial discharges to be filed, as well as making the filing of discharge certificates only at the request of the Secretary or owner of the vessel.

HOUSE FLOOR STATEMENT

Subsection (d) of this section requires a person claiming a lien on a vessel covered by a preferred mortgage under section 31322(d) to record and discharge the lien as provided by the law of the State in which the vessel is titled.

AMENDMENTS

2002—Pub. L. 107–295, § 205(a)(1)(A), substituted ''notices of claim of maritime lien'' for ''liens on preferred mortgage vessels'' in section catchline.

Subsec. (a). Pub. L. 107–295, § 205(a)(1)(B), substituted ''documented, or for which an application for documentation has been filed, under chapter 121'' for ''cov-

ered by a preferred mortgage filed or recorded under this chapter'' in introductory provisions.

Subsec. (b). Pub. L. 107–295, § 205(a)(1)(C), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''The Secretary shall record a notice complying with subsection (a) of this section.''

Subsec. (c). Pub. L. 107–295, § 205(a)(1)(D), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''On full and final discharge of the indebtedness that is the basis for a claim recorded under subsection (b) of this section, on request of the Secretary or owner, the person having the claim shall provide the Secretary with an acknowledged certificate of discharge of the indebtedness. The Secretary shall record the certificate.''

Subsecs. (e), (f). Pub. L. 107–295, § 205(a)(1)(E), added subsecs. (e) and (f).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–295 effective Jan. 1, 2003, see section 205(e) of Pub. L. 107–295, set out as a note under section 12111 of this title.

[CHAPTER 315—RESERVED]

[Subtitle IV—Reserved]

Subtitle V—Merchant Marine

Chap. Sec.
531. Maritime Security Fleet 53101

CHAPTER 531—MARITIME SECURITY FLEET

Sec.
53101. Definitions.
53102. Establishment of Maritime Security Fleet.
53103. Award of operating agreements.
53104. Effectiveness of operating agreements.
53105. Obligations and rights under operating agreements.
53106. Payments.
53107. National security requirements.
53108. Regulatory relief.
53109. Special rule regarding age of participating fleet vessel.
53110. Regulations.
53111. Authorization of appropriations.

§ 53101. Definitions

In this chapter:

(1) BULK CARGO.—The term ''bulk cargo'' means cargo that is loaded and carried in bulk without mark or count.

(2) CONTRACTOR.—The term ''contractor'' means an owner or operator of a vessel that enters into an operating agreement for the vessel with the Secretary under section 53103.

(3) FLEET.—The term ''Fleet'' means the Maritime Security Fleet established under section 53102(a).

(4) FOREIGN COMMERCE.—The term ''foreign commerce''—

(A) subject to subparagraph (B), means—

(i) commerce or trade between the United States, its territories or possessions, or the District of Columbia, and a foreign country; and

(ii) commerce or trade between foreign countries; and

(B) includes, in the case of liquid and dry bulk cargo carrying services, trading between foreign ports in accordance with normal commercial bulk shipping practices in such manner as will permit United States-documented vessels freely to compete with foreign-flag bulk carrying vessels in their operation or in competing for charters, subject to rules and regulations promulgated by the Secretary of Transportation pursuant to this chapter or subtitle D of the Maritime Security Act of 2003.

(5) LASH VESSEL.—The term ''LASH vessel'' means a lighter aboard ship vessel.

(6) PARTICIPATING FLEET VESSEL.—The term ''participating fleet vessel'' means any vessel that—

(A) on October 1, 2005—

(i) meets the requirements of paragraph (1), (2), (3), or (4) of section 53102(c); and

(ii) is less than 25 years of age, or less than 30 years of age in the case of a LASH vessel; and

(B) on December 31, 2004, is covered by an operating agreement under subtitle B of title VI of the Merchant Marine Act, 1936 (46 U.S.C. App. 1187 et seq.).

(7) PERSON.—The term ''person'' includes corporations, partnerships, and associations existing under or authorized by the laws of the United States, or any State, Territory, District, or possession thereof, or of any foreign country.

(8) PRODUCT TANK VESSEL.—The term ''product tank vessel'' means a double hulled tank vessel capable of carrying simultaneously more than 2 separated grades of refined petroleum products.

(9) SECRETARY.—The term ''Secretary'' means the Secretary of Transportation.

(10) TANK VESSEL.—The term ''tank vessel'' has the meaning that term has under section 2101 of this title.

(11) UNITED STATES.—The term ''United States'' includes the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, the Virgin Islands.

(12) UNITED STATES CITIZEN TRUST.—(A) Subject to subparagraph (C), the term ''United States citizen trust'' means a trust that is qualified under this paragraph.

(B) A trust is qualified under this paragraph with respect to a vessel only if—

(i) each of the trustees is a citizen of the United States; and

(ii) the application for documentation of the vessel under chapter 121 of this title includes the affidavit of each trustee stating that the trustee is not aware of any reason involving a beneficiary of the trust that is not a citizen of the United States, or involving any other person that is not a citizen of the United States, as a result of which the beneficiary or other person would hold more than 25 percent of the aggregate power to influence or limit the exercise of the authority of the trustee with respect to matters involving any ownership or operation of the vessel that may adversely affect the interests of the United States.

(C) If any person that is not a citizen of the United States has authority to direct or participate in directing a trustee for a trust in

matters involving any ownership or operation of the vessel that may adversely affect the interests of the United States or in removing a trustee for a trust without cause, either directly or indirectly through the control of another person, the trust is not qualified under this paragraph unless the trust instrument provides that persons who are not citizens of the United States may not hold more than 25 percent of the aggregate authority to so direct or remove a trustee.

(D) This paragraph shall not be considered to prohibit a person who is not a citizen of the United States from holding more than 25 percent of the beneficial interest in a trust.

(13) UNITED STATES-DOCUMENTED VESSEL.—The term ''United States-documented vessel'' means a vessel documented under chapter 121 of this title.

(Added Pub. L. 108–136, div. C, title XXXV, § 3531(a), Nov. 24, 2003, 117 Stat. 1803.)

REFERENCES IN TEXT

The Maritime Security Act of 2003, referred to in par. (4)(B), is title XXXV of div. C of Pub. L. 108–136, Nov. 24, 2003, 117 Stat. 1788. Subtitle D of the Act amended section 1273 of the Appendix to this title and enacted provisions set out as a note under this section. For complete classification of this Act to the Code, see Short Title of 2003 Amendment note set out under this section and Tables.

The Merchant Marine Act, 1936, referred to in par. (6)(B), is act June 29, 1936, ch. 858, 49 Stat. 1985, as amended. Subtitle B of title VI of the Act is classified generally to part B (§ 1187 et seq.) of subchapter VI of chapter 27 of the Appendix to this title. For complete classification of this Act to the Code, see section 1245 of the Appendix to this title and Tables.

EFFECTIVE DATE

Pub. L. 108–136, div. C, title XXXV, § 3537, Nov. 24, 2003, 117 Stat. 1819, provided that:

''(a) IN GENERAL.—Except as provided in subsections (b) and (c), this subtitle [subtitle C (§§ 3531–3537) of title XXXV of div. C of Pub. L. 108–136, enacting this chapter, amending section 12102 of this title and sections 808 and 1162 of the Appendix to this title, repealing sections 1187 to 1187e and 1222 of the Appendix to this title, enacting provisions set out as a note under section 53110 of this title, and amending provisions set out as a note under section 53102 of this title] shall take effect October 1, 2004.''

''(b) REPEALS AND CONFORMING AMENDMENTS.—Section 3534 [amending section 12102 of this title, repealing sections 1187 to 1187e and 1222 of the Appendix to this title, and amending provisions set out as a note under section 1187 of the Appendix to this title] shall take effect October 1, 2005.''

''(c) OTHER PROVISIONS.—Sections 3533 [enacting provisions set out as a note under section 53110 of this title], 3535 [not classified to the Code], and this section shall take effect on the date of the enactment of this Act [Nov. 24, 2003].''

SHORT TITLE OF 2003 AMENDMENT

Pub. L. 108–136, div. C, title XXXV, § 3501, Nov. 24, 2003, 117 Stat. 1789, provided that: ''This title [enacting this chapter and section 1280b of the Appendix to this title, amending section 12102 of this title and sections 808, 1158, 1162, 1241f, 1271, 1273, 1275, 1279a, 1295a to 1295c and 1295e of the Appendix to this title, repealing sections 1187 to 1187e and 1222 of the Appendix to this title, enacting provisions set out as notes under this section, section 53110 of this title, and section 1271 of the Appendix to this title, and amending provisions set out as notes under section 1220 of Title 16, Conservation, and section 1187 of the Appendix to this title] may be cited as the 'Maritime Security Act of 2003'.''

MAINTENANCE AND REPAIR REIMBURSEMENT PILOT PROGRAM

Pub. L. 108–136, div. C, title XXXV, § 3517, Nov. 24, 2003, 117 Stat. 1796, as amended by Pub. L. 109–163, div. C, title XXXV, § 3503, Jan. 6, 2006, 119 Stat. 3548, provided that:

''(a) AUTHORITY TO ENTER AGREEMENTS.—

''(1) IN GENERAL.—The Secretary of Transportation shall carry out a pilot program under which the Secretary shall enter into an agreement with 1 or more contractors under chapter 531 of title 46, United States Code, regarding maintenance and repair of 1 or more vessels that are subject to an operating agreement under that chapter.

''(2) REQUIREMENT OF AGREEMENT.—The Secretary shall, subject to the availability of appropriations, require 1 or more persons to enter into an agreement under this section as a condition of awarding an operating agreement to the person under chapter 531 of title 46, United States Code, for 1 or more vessels that normally make port calls in the United States.

''(b) TERMS OF AGREEMENT.—An agreement under this section—

''(1) shall require that except as provided in subsection (c), all qualified maintenance or repair on the vessel shall be performed in the United States;

''(2) shall require that the Secretary shall reimburse the contractor in accordance with subsection (d) for the costs of qualified maintenance or repair performed in the United States; and

''(3) shall apply to qualified maintenance or repair performed during the 5-year period beginning on the date the vessel begins operating under the operating agreement under chapter 531 of title 46, United States Code.

''(c) EXCEPTION TO REQUIREMENT TO PERFORM WORK IN THE UNITED STATES.—A contractor shall not be required to have qualified maintenance or repair work performed in the United States under this section if—

''(1) the Secretary determines that there is no facility capable of meeting all technical requirements of the qualified maintenance or repair in the United States located in the geographic area in which the vessel normally operates available to perform the work in the time required by the contractor to maintain its regularly scheduled service;

''(2) the Secretary determines that there are insufficient funds to pay reimbursement under subsection (d) with respect to the work; or

''(3) the Secretary fails to make the certification described in subsection (e)(2).

''(d) REIMBURSEMENT.—

''(1) IN GENERAL.—The Secretary shall, subject to the availability of appropriations, reimburse a contractor for costs incurred by the contractor for qualified maintenance or repair performed in the United States under this section.

''(2) AMOUNT.—The amount of reimbursement shall be equal to the difference between—

''(A) the fair and reasonable cost of obtaining the qualified maintenance or repair in the United States; and

''(B) the fair and reasonable cost of obtaining the qualified maintenance or repair outside the United States, in the country in which the contractor would otherwise undertake the qualified maintenance or repair.

''(3) DETERMINATION OF FAIR AND REASONABLE COSTS.—The Secretary shall determine fair and reasonable costs for purposes of paragraph (2).

''(e) NOTIFICATION REQUIREMENTS.—

''(1) NOTIFICATION BY CONTRACTOR.—The Secretary is not required to pay reimbursement to a contractor under this section for qualified maintenance or repair, unless the contractor—

''(A) notifies the Secretary of the intent of the contractor to obtain the qualified maintenance or

repair, by not later than 90 days before the date of the performance of the qualified maintenance or repair; and

''(B) includes in such notification—

''(i) a description of all qualified maintenance or repair that the contractor should reasonably expect may be performed;

''(ii) a description of the vessel's normal route and port calls in the United States;

''(iii) an estimate of the cost of obtaining the qualified maintenance or repair described under clause (i) in the United States; and

''(iv) an estimate of the cost of obtaining the qualified maintenance or repair described under clause (i) outside the United States, in the country in which the contractor otherwise would undertake the qualified maintenance or repair.

''(2) CERTIFICATION BY SECRETARY.—

''(A) Not later than 30 days after the date of receipt of notification under paragraph (1), the Secretary shall certify to the contractor—

''(i) whether the cost estimates provided by the contractor are fair and reasonable;

''(ii) if the Secretary determines that such cost estimates are not fair and reasonable, the Secretary's estimate of fair and reasonable costs for such work;

''(iii) whether there are available to the Secretary sufficient funds to pay reimbursement under subsection (d) with respect to such work; and

''(iv) that the Secretary commits such funds to the contractor for such reimbursement, if such funds are available for that purpose.

''(B) If the contractor notification described in paragraph (1) does not include an estimate of the cost of obtaining qualified maintenance and repair in the United States, then not later than 30 days after the date of receipt of such notification, the Secretary shall—

''(i) certify to the contractor whether there is a facility capable of meeting all technical requirements of the qualified maintenance and repair in the United States located in the geographic area in which the vessel normally operates available to perform the qualified maintenance and repair described in the notification by the contractor under paragraph (1) in the time period required by the contractor to maintain its regularly scheduled service; and

''(ii) if there is such a facility, require the contractor to resubmit such notification with the required cost estimate for such facility.

''(f) REGULATIONS.—

''(1) REQUIREMENT TO ISSUE NOTICE OF PROPOSED RULE MAKING.—The Secretary shall—

''(A) by not later than 30 days after the effective date of this subsection [probably means effective date of Pub. L. 109–163, Jan. 6, 2006], issue a notice of proposed rule making to implement this section;

''(B) in such notice, solicit the submission of comments by the public regarding rules to implement this section; and

''(C) provide a period of at least 30 days for the submission of such comments.

''(2) INTERIM RULES.—Upon expiration of the period for submission of comments pursuant to paragraph (1)(C), the Secretary may prescribe interim rules necessary to carry out the Secretary's responsibilities under this section. For this purpose, the Secretary is excepted from compliance with the notice and comment requirements of section 553 of title 5, United States Code. At the time interim rules are issued, the Secretary shall solicit comments on the interim rules from the public and other interested persons. Such period for comment shall not be less than 90 days. All interim rules prescribed under the authority of this subsection that are not earlier superseded by final rules shall expire no later than 270 days after the effective date of this subsection.

''(g) QUALIFIED MAINTENANCE OR REPAIR DEFINED.—In this section the term 'qualified maintenance or repair'—

''(1) except as provided in paragraph (2), means—

''(A) any inspection of a vessel that is—

''(i) required under chapter 33 of title 46, United States Code; and

''(ii) performed in the period in which the vessel is subject to an agreement under this section;

''(B) any maintenance or repair of a vessel that is determined, in the course of an inspection referred to in subparagraph (A), to be necessary; and

''(C) any additional maintenance or repair the contractor intends to undertake at the same time as the work described in subparagraph (B); and

''(2) does not include—

''(A) maintenance or repair not agreed to by the contractor to be undertaken at the same time as the work described in paragraph (1); or

''(B) any emergency work that is necessary to enable a vessel to return to a port in the United States.

''(h) ANNUAL REPORT.—The Secretary shall submit to the Congress by not later than September 30 each year a report on the program under this section. The report shall include a listing of future inspection schedules for all vessels included in the Maritime Security Fleet under section 53102 of title 46, United States Code.

''(i) AUTHORIZATION OF APPROPRIATIONS.—In addition to the other amounts authorized by this title [see Short Title of 2003 Amendment note above], for reimbursement of costs of qualified maintenance or repair under this section there is authorized to be appropriated to the Secretary of Transportation $19,500,000 for each of fiscal years 2006 through 2011.''

NATIONAL DEFENSE TANK VESSEL CONSTRUCTION ASSISTANCE

Pub. L. 108–136, div. C, title XXXV, subtitle D, Nov. 24, 2003, 117 Stat. 1820, as amended by Pub. L. 108–375, div. C, title XXXV, § 3503, Oct. 28, 2004, 118 Stat. 2195; Pub. L. 109–163, div. C, title XXXV, § 3504, Jan. 6, 2006, 119 Stat. 3551, provided that:

''SEC. 3541. NATIONAL DEFENSE TANK VESSEL CONSTRUCTION PROGRAM.

''The Secretary of Transportation shall establish a program for the provision of financial assistance for the construction in the United States of a fleet of up to 5 privately owned product tank vessels—

''(1) to be operated in commercial service in foreign commerce; and

''(2) to be available for national defense purposes in time of war or national emergency pursuant to an Emergency Preparedness Plan approved by the Secretary of Defense pursuant to section 3543(e).

''SEC. 3542. APPLICATION PROCEDURE.

''(a) REQUEST FOR PROPOSALS.—Within 90 days after the date of the enactment of this subtitle [Nov. 24, 2003], and on an as-needed basis thereafter, the Secretary, in consultation with the Secretary of Defense, shall publish in the Federal Register a request for competitive proposals for the construction of new product tank vessels necessary to meet the commercial and national security needs of the United States and to be built with assistance under this subtitle.

''(b) QUALIFICATION.—Any citizen of the United States or any shipyard in the United States may submit a proposal to the Secretary of Transportation for purposes of constructing a product tank vessel with assistance under this subtitle.

''(c) REQUIREMENT.—The Secretary, with the concurrence of the Secretary of Defense, may enter into an agreement with the submitter of a proposal for assistance under this subtitle if the Secretary determines that—

''(1) the plans and specifications call for construction of a new product tank vessel of not less than 35,000 deadweight tons and not greater than 60,000 deadweight tons, that—

''(A) will meet the requirements of foreign commerce;

''(B) is capable of carrying militarily useful petroleum products, and will be suitable for national defense or military purposes in time of war, national emergency, or other military contingency; and

''(C) will meet the construction standards necessary to be documented under the laws of the United States;

''(2) the shipyard in which the vessel will be constructed has the necessary capacity and expertise to successfully construct the proposed number and type of product tank vessels in a reasonable period of time as determined by the Secretary of Transportation, taking into consideration the recent prior commercial shipbuilding history of the proposed shipyard in delivering a vessel or series of vessels on time and in accordance with the contract price and specifications; and

''(3) the person proposed to be the operator of the proposed vessel possesses the ability, experience, financial resources, and any other qualifications determined to be necessary by the Secretary for the operation and maintenance of the vessel.

''(d) PRIORITY.—The Secretary—

''(1) subject to paragraph (2), shall give priority consideration to a proposal submitted by a person that is a citizen of the United States under section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802) [46 App. U.S.C. 802, 803]; and

''(2) may give priority to consideration of proposals that provide the best value to the Government, taking into consideration—

''(A) the costs of vessel construction;

''(B) the commercial and national security needs of the United States; and

''(C) with respect to any proposal for financial assistance to be provided from amounts appropriated for a fiscal year after fiscal year 2005, acceptance of the vessel to be constructed with the assistance for participation in the Shipboard Technology Evaluation Program as outlined in Navigation and Vessel Inspection Circular 01–04, issued by the Commandant of the United States Coast Guard on January 2, 2004.

''SEC. 3543. AWARD OF ASSISTANCE.

''(a) IN GENERAL.—If after review of a proposal, the Secretary determines that the proposal fulfills the requirements under this subtitle, the Secretary shall, to the extent of the availability of appropriations, enter into a contract with the proposed purchaser and the proposed shipyard for the construction of a product tank vessel with assistance under this subtitle.

''(b) AMOUNT OF ASSISTANCE.—The contract shall provide that the Secretary shall pay, subject to the availability of appropriations, the actual construction cost of the vessel, but in no case more than $50,000,000 per vessel.

''(c) CONSTRUCTION IN UNITED STATES.—A contract under this section shall require that construction of a vessel with assistance under this subtitle shall be performed in a shipyard in the United States.

''(d) DOCUMENTATION OF VESSEL.—

''(1) CONTRACT REQUIREMENT.—A contract under this section shall require that, upon delivery of a vessel constructed with assistance under the contract, the vessel shall be documented under chapter 121 of title 46, United States Code, with a registry endorsement only.

''(2) RESTRICTION ON COASTWISE ENDORSEMENT.—A vessel constructed with assistance under this subtitle shall not be eligible for a certificate of documentation with a coastwise endorsement.

''(3) AUTHORITY TO REFLAG NOT APPLICABLE.—Section 9(g) of the Shipping Act, 1916, (46 U.S.C. App. 808(g)) shall not apply to a vessel constructed with assistance under this subtitle.

''(e) EMERGENCY PREPAREDNESS AGREEMENT.—

''(1) IN GENERAL.—A contract under this section shall require that the person who will be the operator of a vessel constructed with assistance under the contract shall enter into an Emergency Preparedness Agreement for the vessel under section 53107 of title 46, United States Code, as amended by this Act.

''(2) TREATMENT AS CONTRACTOR.—For purposes of the application, under paragraph (1), of section 53107 of title 46, United States Code, to a vessel constructed with assistance under this subtitle, the term 'contractor' as used in that section means the person who will be the operator of a vessel constructed with assistance under this subtitle.

''(f) ADDITIONAL TERMS.—The Secretary shall incorporate in the contract the requirements set forth in this subtitle, and may incorporate in the contract any additional terms the Secretary considers necessary.

''SEC. 3544. PRIORITY FOR TITLE XI ASSISTANCE.

[Amended section 1273 of the Appendix to this title.]

''SEC. 3545. DEFINITIONS.

''In this subtitle the definitions set forth in section 53101 of title 46, United States Code, as amended by this Act, shall apply.

''SEC. 3546. AUTHORIZATION OF APPROPRIATIONS.

''There are authorized to be appropriated to the Secretary to carry out this subtitle a total of $250,000,000 for fiscal years after fiscal year 2004.''

§ 53102. Establishment of Maritime Security Fleet

(a) IN GENERAL.—The Secretary of Transportation, in consultation with the Secretary of Defense, shall establish a fleet of active, commercially viable, militarily useful, privately owned vessels to meet national defense and other security requirements and maintain a United States presence in international commercial shipping. The Fleet shall consist of privately owned, United States-documented vessels for which there are in effect operating agreements under this chapter, and shall be known as the Maritime Security Fleet.

(b) VESSEL ELIGIBILITY.—A vessel is eligible to be included in the Fleet if—

(1) the vessel meets the requirements of paragraph (1), (2), (3), or (4) of subsection (c);

(2) the vessel is operated (or in the case of a vessel to be constructed, will be operated) in providing transportation in foreign commerce;

(3) the vessel is self-propelled and is—

(A) a roll-on/roll-off vessel with a carrying capacity of at least 80,000 square feet or 500 twenty-foot equivalent units and that is 15 years of age or less on the date the vessel is included in the Fleet;

(B) a tank vessel that is constructed in the United States after the date of the enactment of this chapter;

(C) a tank vessel that is 10 years of age or less on the date the vessel is included in the Fleet;

(D) a LASH vessel that is 25 years of age or less on the date the vessel is included in the Fleet; or

(E) any other type of vessel that is 15 years of age or less on the date the vessel is included in the Fleet;

(4) the vessel is—

(A) determined by the Secretary of Defense to be suitable for use by the United States for national defense or military purposes in time of war or national emergency; and

(B) determined by the Secretary to be commercially viable; and

(5) the vessel—

(A) is a United States-documented vessel; or

(B) is not a United States-documented vessel, but—

(i) the owner of the vessel has demonstrated an intent to have the vessel documented under chapter 121 of this title if it is included in the Fleet; and

(ii) at the time an operating agreement for the vessel is entered into under this chapter, the vessel is eligible for documentation under chapter 121 of this title.

(c) REQUIREMENTS REGARDING CITIZENSHIP OF OWNERS, CHARTERERS, AND OPERATORS.—

(1) VESSEL OWNED AND OPERATED BY SECTION 2 CITIZENS.—A vessel meets the requirements of this paragraph if, during the period of an operating agreement under this chapter that applies to the vessel, the vessel will be owned and operated by one or more persons that are citizens of the United States under section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802).

(2) VESSEL OWNED BY SECTION 2 CITIZEN OR UNITED STATES CITIZEN TRUST, AND CHARTERED TO DOCUMENTATION CITIZEN.—A vessel meets the requirements of this paragraph if—

(A) during the period of an operating agreement under this chapter that applies to the vessel, the vessel will be—

(i) owned by a person that is a citizen of the United States under section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802) or that is a United States citizen trust; and

(ii) demise chartered to a person—

(I) that is eligible to document the vessel under chapter 121 of this title;

(II) the chairman of the board of directors, chief executive officer, and a majority of the members of the board of directors of which are citizens of the United States under section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802), and are appointed and subjected to removal only upon approval by the Secretary; and

(III) that certifies to the Secretary that there are no treaties, statutes, regulations, or other laws that would prohibit the contractor for the vessel from performing its obligations under an operating agreement under this chapter;

(B) in the case of a vessel that will be demise chartered to a person that is owned or controlled by another person that is not a citizen of the United States under section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802), the other person enters into an agreement with the Secretary not to influence the operation of the vessel in a manner that will adversely affect the interests of the United States; and

(C) the Secretary and the Secretary of Defense notify the Committee on Armed Services and the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Armed Services of the House of Representatives that they concur with the certification required under subparagraph (A)(ii)(III), and have reviewed and agree that there are no other legal, operational, or other impediments that would prohibit the contractor for the vessel from performing its obligations under an operating agreement under this chapter.

(3) VESSEL OWNED AND OPERATED BY DEFENSE CONTRACTOR.—A vessel meets the requirements of this paragraph if—

(A) during the period of an operating agreement under this chapter that applies to the vessel, the vessel will be owned and operated by a person that—

(i) is eligible to document a vessel under chapter 121 of this title;

(ii) operates or manages other United States-documented vessels for the Secretary of Defense, or charters other vessels to the Secretary of Defense;

(iii) has entered into a special security agreement for purposes of this paragraph with the Secretary of Defense;

(iv) makes the certification described in paragraph (2)(A)(ii)(III); and

(v) in the case of a vessel described in paragraph (2)(B), enters into an agreement referred to in that paragraph; and

(B) the Secretary and the Secretary of Defense notify the Committee on Armed Services and the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Armed Services of the House of Representatives that they concur with the certification required under subparagraph (A)(iv), and have reviewed and agree that there are no other legal, operational, or other impediments that would prohibit the contractor for the vessel from performing its obligations under an operating agreement under this chapter.

(4) VESSEL OWNED BY DOCUMENTATION CITIZEN AND CHARTERED TO SECTION 2 CITIZEN.—A vessel meets the requirements of this paragraph if, during the period of an operating agreement under this chapter that applies to the vessel, the vessel will be—

(A) owned by a person that is eligible to document a vessel under chapter 121 of this title; and

(B) demise chartered to a person that is a citizen of the United States under section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802).

(d) REQUEST BY SECRETARY OF DEFENSE.—The Secretary of Defense shall request the Secretary of Homeland Security to issue any waiver under the first section of Public Law 81–891 (64 Stat. 1120; 46 U.S.C. App. note prec. 3) that is necessary for purposes of this chapter.

(e) VESSEL STANDARDS.—

(1) CERTIFICATE OF INSPECTION.—A vessel used to provide oceangoing transportation which the Secretary of the department in which the Coast Guard is operating determines meets the criteria of subsection (b) of this section but which, on the date of enactment of the Maritime Security Act of 2003, is not a documented vessel (as that term is defined in section 12101[1] of this title) shall be eli-

[1] So in original. Probably should refer to section 2101.

gible for a certificate of inspection if the Secretary determines that—

(A) the vessel is classed by and designed in accordance with the rules of the American Bureau of Shipping, or another classification society accepted by the Secretary;

(B) the vessel complies with applicable international agreements and associated guidelines, as determined by the country in which the vessel was documented immediately before becoming a documented vessel (as defined in that section); and

(C) that country has not been identified by the Secretary as inadequately enforcing international vessel regulations as to that vessel.

(2) CONTINUED ELIGIBILITY FOR CERTIFICATE.—Paragraph (1) does not apply to a vessel after any date on which the vessel fails to comply with the applicable international agreements and associated guidelines referred to in paragraph (1)(B).

(3) RELIANCE ON CLASSIFICATION SOCIETY.—

(A) IN GENERAL.—The Secretary may rely on a certification from the American Bureau of Shipping or, subject to subparagraph (B), another classification society accepted by the Secretary to establish that a vessel is in compliance with the requirements of paragraphs (1) and (2).

(B) FOREIGN CLASSIFICATION SOCIETY.—The Secretary may accept certification from a foreign classification society under subparagraph (A) only—

(i) to the extent that the government of the foreign country in which the society is headquartered provides access on a reciprocal basis to the American Bureau of Shipping; and

(ii) if the foreign classification society has offices and maintains records in the United States.

(f) WAIVER OF AGE RESTRICTION.—The Secretary of Defense, in conjunction with the Secretary of Transportation, may waive the application of an age restriction under subsection (b)(3) if the Secretaries jointly determine that the waiver—

(1) is in the national interest;

(2) is appropriate to allow the maintenance of the economic viability of the vessel and any associated operating network; and

(3) is necessary due to the lack of availability of other vessels and operators that comply with the requirements of this chapter.

(Added Pub. L. 108–136, div. C, title XXXV, § 3531(a), Nov. 24, 2003, 117 Stat. 1805.)

REFERENCES IN TEXT

The date of the enactment of this chapter, referred to in subsec. (b)(3)(B), is the date of enactment of Pub. L. 108–136, which was approved Nov. 24, 2003.

Section 2 of the Shipping Act, 1916, referred to in subsec. (c)(1), (2)(A)(i), (ii)(II), (B), (4)(B), is classified to sections 802 and 803 of the Appendix to this title.

The date of enactment of the Maritime Security Act of 2003, referred to in subsec. (e)(1), is the date of enactment of Pub. L. 108–136, which was approved Nov. 24, 2003.

VESSEL STANDARDS

Pub. L. 104–324, title XI, § 1137, Oct. 19, 1996, 110 Stat. 3988, as amended by Pub. L. 108–136, div. C, title XXXV, § 3534(b)(2), Nov. 24, 2003, 117 Stat. 1818, provided that:

''(a) CERTIFICATE OF INSPECTION.—A vessel used to provide transportation service as a common carrier which the Secretary of Transportation determines meets the criteria of section 53102(b) of title 46, United States Code, but which on the date of enactment of this Act [Oct. 19, 1996] is not a documented vessel (as that term is defined in section 2101 of title 46, United States Code), shall be eligible for a certificate of inspection if the Secretary determines that—

''(1) the vessel is classed by and designed in accordance with the rules of the American Bureau of Shipping or another classification society accepted by the Secretary;

''(2) the vessel complies with applicable international agreements and associated guidelines, as determined by the country in which the vessel was documented immediately before becoming a documented vessel (as defined in that section); and

''(3) that country has not been identified by the Secretary as inadequately enforcing international vessel regulations as to that vessel.

''(b) CONTINUED ELIGIBILITY FOR CERTIFICATE.—Subsection (a) does not apply to a vessel after any date on which the vessel fails to comply with the applicable international agreements and associated guidelines referred to in subsection (a)(2).

''(c) RELIANCE ON CLASSIFICATION SOCIETY.—

''(1) IN GENERAL.—The Secretary may rely on a certification from the American Bureau of Shipping or, subject to paragraph (2), another classification society accepted by the Secretary to establish that a vessel is in compliance with the requirements of subsections (a) and (b).

''(2) FOREIGN CLASSIFICATION SOCIETY.—The Secretary may accept certification from a foreign classification society under paragraph (1) only—

''(A) to the extent that the government of the foreign country in which the society is headquartered provides access on a reciprocal basis to the American Bureau of Shipping; and

''(B) if the foreign classification society has offices and maintains records in the United States.''

§ 53103. Award of operating agreements

(a) IN GENERAL.—The Secretary shall require, as a condition of including any vessel in the Fleet, that the person that is the owner or operator of the vessel for purposes of section 53102(c) enter into an operating agreement with the Secretary under this section.

(b) PROCEDURE FOR APPLICATIONS.—

(1) ACCEPTANCE OF APPLICATIONS.—Beginning no later than 30 days after the effective date of this chapter, the Secretary shall accept applications for enrollment of vessels in the Fleet.

(2) ACTION ON APPLICATIONS.—Within 90 days after receipt of an application for enrollment of a vessel in the Fleet, the Secretary shall approve the application in conjunction with the Secretary of Defense, and shall enter into an operating agreement with the applicant, or provide in writing the reason for denial of that application.

(3) PARTICIPATING FLEET VESSELS.—

(A) IN GENERAL.—The Secretary shall accept an application for an operating agreement for a participating fleet vessel under the priority under subsection (c)(1)(B) only from a person that has authority to enter into an operating agreement for the vessel with respect to the full term of the operating agreement.

(B) VESSEL UNDER DEMISE CHARTER.—For purposes of subparagraph (A), in the case of a vessel that is subject to a demise charter that terminates by its terms on September 30, 2005 (without giving effect to any extension provided therein for completion of a voyage or to effect the actual redelivery of the vessel), or that is terminable at will by the owner of the vessel after such date, only the owner of the vessel shall be treated as having the authority referred to in paragraph (1).

(C) VESSEL OWNED BY UNITED STATES CITIZEN TRUST.—For purposes of subparagraph (B), in the case of a vessel owned by a United States citizen trust, the term ''owner of the vessel'' includes a beneficial owner of the vessel with respect to such trust.

(c) PRIORITY FOR AWARDING AGREEMENTS.—

(1) IN GENERAL.—Subject to the availability of appropriations, the Secretary shall enter into operating agreements according to the following priority:

(A) NEW TANK VESSELS.—First, for any tank vessel that—

(i) is constructed in the United States after the effective date of this chapter;

(ii) is eligible to be included in the Fleet under section 53102(b); and

(iii) during the period of an operating agreement under this chapter that applies to the vessel, will be owned and operated by one or more persons that are citizens of the United States under section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802),

except that the Secretary shall not enter into operating agreements under this subparagraph for more than 5 such vessels.

(B) PARTICIPATING FLEET VESSELS.—Second, to the extent amounts are available after applying subparagraphs (A), for any participating fleet vessel, except that the Secretary shall not enter into operating agreements under this subparagraph for more than 47 vessels.

(C) CERTAIN VESSELS OPERATED BY SECTION 2 CITIZENS.—Third, to the extent amounts are available after applying subparagraphs (A) and (B), for any other vessel that is eligible to be included in the Fleet under section 53102(b), and that, during the period of an operating agreement under this chapter that applies to the vessel, will be—

(i) owned and operated by one or more persons that are citizens of the United States under section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802); or

(ii) owned by a person that is eligible to document the vessel under chapter 121 of this title, and operated by a person that is a citizen of the United States under section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802).

(D) OTHER ELIGIBLE VESSELS.—Fourth, to the extent amounts are available after applying subparagraphs (A), (B), and (C), for any other vessel that is eligible to be included in the Fleet under section 53102(b).

(2) REDUCTION IN NUMBER OF SLOTS FOR PARTICIPATING FLEET VESSELS.—The number in paragraph (1)(B) shall be reduced by 1—

(A) for each participating fleet vessel for which an application for enrollment in the Fleet is not received by the Secretary within the 90-day period beginning on the effective date of this chapter; and

(B) for each participating fleet vessel for which an application for enrollment in the Fleet received by the Secretary is not approved by the Secretary and the Secretary of Defense within the 90-day period beginning on the date of such receipt.

(3) DISCRETION WITHIN PRIORITY.—The Secretary—

(A) subject to subparagraph (B), may award operating agreements within each priority under paragraph (1) as the Secretary considers appropriate; and

(B) shall award operating agreement within a priority—

(i) in accordance with operational requirements specified by the Secretary of Defense;

(ii) in the case of operating agreements awarded under subparagraph (C) or (D) of paragraph (1), according to applicants' records of owning and operating vessels; and

(iii) subject to the approval of the Secretary of Defense.

(4) TREATMENT OF TANK VESSEL TO BE REPLACED.—(A) For purposes of the application of paragraph (1)(A) with respect to the award of an operating agreement, the Secretary may treat an existing tank vessel that is eligible to be included in the Fleet under section 53102(b) as a vessel that is constructed in the United States after the effective date of this chapter, if—

(i) a binding contract for construction in the United States of a replacement vessel to be operated under the operating agreement is executed by not later than 9 months after the first date amounts are available to carry out this chapter; and

(ii) the replacement vessel is eligible to be included in the Fleet under section 53102(b).

(B) No payment under this chapter may be made for an existing tank vessel for which an operating agreement is awarded under this paragraph after the earlier of—

(i) 4 years after the first date amounts are available to carry out this chapter; or

(ii) the date of delivery of the replacement tank vessel.

(d) LIMITATION.—The Secretary may not award operating agreements under this chapter that require payments under section 53106 for a fiscal year for more than 60 vessels.

(Added Pub. L. 108–136, div. C, title XXXV, § 3531(a), Nov. 24, 2003, 117 Stat. 1808.)

REFERENCES IN TEXT

The effective date of this chapter, referred to in subsecs. (b)(1), (c)(1)(A)(i), (2)(A), (4)(A), is Oct. 1, 2004, see section 3537(a) of Pub. L. 108–136, set out as an Effective Date note under section 53101 of this title.

Section 2 of the Shipping Act, 1916, referred to in subsec. (c)(1)(A)(iii), (C)(i), (ii), is classified to sections 802 and 803 of the Appendix to this title.

§ 53104. Effectiveness of operating agreements

(a) EFFECTIVENESS, GENERALLY.—The Secretary may enter into an operating agreement under this chapter for fiscal year 2006. Except as provided in subsection (b), the agreement shall be effective only for 1 fiscal year, but shall be renewable, subject to the availability of appropriations, for each subsequent fiscal year through the end of fiscal year 2015.

(b) VESSELS UNDER CHARTER TO UNITED STATES.—Unless an earlier date is requested by the applicant, the effective date for an operating agreement with respect to a vessel that is, on the date of entry into an operating agreement, on charter to the United States Government, other than a charter pursuant to an Emergency Preparedness Agreement under section 53107, shall be the expiration or termination date of the Government charter covering the vessel, or any earlier date the vessel is withdrawn from that charter.

(c) TERMINATION.—

(1) TERMINATION BY SECRETARY.—If the contractor with respect to an operating agreement materially fails to comply with the terms of the agreement—

(A) the Secretary shall notify the contractor and provide a reasonable opportunity to comply with the operating agreement;

(B) the Secretary shall terminate the operating agreement if the contractor fails to achieve such compliance; and

(C) upon such termination, any funds obligated by the agreement shall be available to the Secretary to carry out this chapter.

(2) EARLY TERMINATION BY CONTRACTOR, GENERALLY.—An operating agreement under this chapter shall terminate on a date specified by the contractor if the contractor notifies the Secretary, by not later than 60 days before the effective date of the termination, that the contractor intends to terminate the agreement.

(3) EARLY TERMINATION BY CONTRACTOR, WITH AVAILABLE REPLACEMENT.—An operating agreement under this chapter shall terminate upon the expiration of the 3-year period beginning on the date a vessel begins operating under the agreement, if—

(A) the contractor notifies the Secretary, by not later than 2 years after the date the vessel begins operating under the agreement, that the contractor intends to terminate the agreement under this paragraph; and

(B) the Secretary, in conjunction with the Secretary of Defense, determines that—

(i) an application for an operating agreement under this chapter has been received for a replacement vessel that is acceptable to the Secretaries; and

(ii) during the period of an operating agreement under this chapter that applies to the replacement vessel, the replacement vessel will be—

(I) owned and operated by one or more persons that are citizens of the United States under section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802); or

(II) owned by a person that is eligible to document the vessel under chapter 121 of this title, and operated by a person that is a citizen of the United States under section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802).

(d) NONRENEWAL FOR LACK OF FUNDS.—If, by the first day of a fiscal year, sufficient funds have not been appropriated under the authority provided by this chapter for that fiscal year, then the Secretary shall notify the Committee on Armed Services and the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Armed Services of the House of Representatives that operating agreements authorized under this chapter for which sufficient funds are not available will not be renewed for that fiscal year if sufficient funds are not appropriated by the 60th day of that fiscal year.

(e) RELEASE OF VESSELS FROM OBLIGATIONS.—If an operating agreement under this chapter is terminated under subsection (c)(3), or if funds are not appropriated for payments under an operating agreement under this chapter for any fiscal year by the 60th day of that fiscal year, then—

(1) each vessel covered by the operating agreement is thereby released from any further obligation under the operating agreement;

(2) the owner or operator of the vessel may transfer and register such vessel under a foreign registry that is acceptable to the Secretary of Transportation and the Secretary of Defense, notwithstanding section 9 of the Shipping Act, 1916 (46 U.S.C. App. 808); and

(3) if section 902 of the Merchant Marine Act, 1936 (46 U.S.C. App. 1242) is applicable to such vessel after registration of the vessel under such a registry, then the vessel is available to be requisitioned by the Secretary of Transportation pursuant to section 902 of such Act.

(Added Pub. L. 108–136, div. C, title XXXV, § 3531(a), Nov. 24, 2003, 117 Stat. 1810.)

REFERENCES IN TEXT

Section 2 of the Shipping Act, 1916, referred to in subsec. (c)(3)(B)(ii), is classified to sections 802 and 803 of the Appendix to this title.

§ 53105. Obligations and rights under operating agreements

(a) OPERATION OF VESSEL.—An operating agreement under this chapter shall require that, during the period a vessel is operating under the agreement—

(1) the vessel—

(A) shall be operated exclusively in the foreign commerce or in mixed foreign commerce and domestic trade allowed under a registry endorsement issued under section 12105 of this title; and

(B) shall not otherwise be operated in the coastwise trade; and

(2) the vessel shall be documented under chapter 121 of this title.

(b) ANNUAL PAYMENTS BY SECRETARY.—

(1) IN GENERAL.—An operating agreement under this chapter shall require, subject to the availability of appropriations, that the Sec-

retary make a payment each fiscal year to the contractor in accordance with section 53106.

(2) OPERATING AGREEMENT IS OBLIGATION OF UNITED STATES GOVERNMENT.—An operating agreement under this chapter constitutes a contractual obligation of the United States Government to pay the amounts provided for in the agreement to the extent of actual appropriations.

(c) DOCUMENTATION REQUIREMENT.—Each vessel covered by an operating agreement (including an agreement terminated under section 53104(c)(2)) shall remain documented under chapter 121 of this title, until the date the operating agreement would terminate according to its terms.

(d) NATIONAL SECURITY REQUIREMENTS.—

(1) IN GENERAL.—A contractor with respect to an operating agreement (including an agreement terminated under section 53104(c)(2)) shall continue to be bound by the provisions of section 53107 until the date the operating agreement would terminate according to its terms.

(2) EMERGENCY PREPAREDNESS AGREEMENT.—All terms and conditions of an Emergency Preparedness Agreement entered into under section 53107 shall remain in effect until the date the operating agreement would terminate according to its terms, except that the terms of such Emergency Preparedness Agreement may be modified by the mutual consent of the contractor, the Secretary of Transportation, and the Secretary of Defense.

(e) TRANSFER OF OPERATING AGREEMENTS.—A contractor under an operating agreement may transfer the agreement (including all rights and obligations under the agreement) to any person that is eligible to enter into that operating agreement under this chapter, if the transfer is approved by the Secretary and the Secretary of Defense.

(f) REPLACEMENT VESSEL.—A contractor may replace a vessel under an operating agreement with another vessel that is eligible to be included in the Fleet under section 53102(b), if the Secretary, in conjunction with the Secretary of Defense, approve replacement of the vessel.

(Added Pub. L. 108–136, div. C, title XXXV, § 3531(a), Nov. 24, 2003, 117 Stat. 1812.)

§ 53106. Payments

(a) ANNUAL PAYMENT.—

(1) IN GENERAL.—The Secretary, subject to the availability of appropriations and the other provisions of this section, shall pay to the contractor for an operating agreement, for each vessel that is covered by the operating agreement, an amount equal to—

(A) $2,600,000 for each of fiscal years 2006, 2007, and 2008;

(B) $2,900,000, for each of fiscal years 2009, 2010, and 2011; and

(C) $3,100,000 for each fiscal years 2012, 2013, 2014, and 2015.

(2) TIMING.—The amount shall be paid in equal monthly installments at the end of each month. The amount shall not be reduced except as provided by this section.

(b) CERTIFICATION REQUIRED FOR PAYMENT.—As a condition of receiving payment under this section for a fiscal year for a vessel, the contractor for the vessel shall certify, in accordance with regulations issued by the Secretary, that the vessel has been and will be operated in accordance with section 53105(a)(1) for at least 320 days in the fiscal year. Days during which the vessel is drydocked, surveyed, inspected, or repaired shall be considered days of operation for purposes of this subsection.

(c) GENERAL LIMITATIONS.—The Secretary of Transportation shall not make any payment under this chapter for a vessel with respect to any days for which the vessel is—

(1) under a charter to the United States Government, other than a charter pursuant to an Emergency Preparedness Agreement under section 53107;

(2) not operated or maintained in accordance with an operating agreement under this chapter; or

(3) more than—

(A) 25 years of age, except as provided in subparagraph (B) or (C);

(B) 20 years of age, in the case of a tank vessel; or

(C) 30 years of age, in the case of a LASH vessel.

(d) REDUCTIONS IN PAYMENTS.—With respect to payments under this chapter for a vessel covered by an operating agreement, the Secretary—

(1) except as provided in paragraph (2), shall not reduce any payment for the operation of the vessel to carry military or other preference cargoes under section 2631 of title 10, United States Code, the Act of March 26, 1934 (46 U.S.C. App. 1241–1), section 901(a), 901(b), or 901b of the Merchant Marine Act, 1936 (46 U.S.C. App. 1241(a), 1241(b), or 1241f), or any other cargo preference law of the United States;

(2) shall not make any payment for any day that the vessel is engaged in transporting more than 7,500 tons of civilian bulk preference cargoes pursuant to section 901(a), 901(b), or 901b of the Merchant Marine Act, 1936 (46 U.S.C. App. 1241(a), 1241(b), or 1241f), that is bulk cargo; and

(3) shall make a pro rata reduction in payment for each day less than 320 in a fiscal year that the vessel is not operated in accordance with section 53105(a)(1), with days during which the vessel is drydocked or undergoing survey, inspection, or repair considered to be days on which the vessel is operated.

(e) LIMITATION REGARDING NONCONTIGUOUS DOMESTIC TRADE.—

(1) IN GENERAL.—No contractor shall receive payments pursuant to this chapter during a period in which it participates in noncontiguous domestic trade.

(2) LIMITATION ON APPLICATION.—Paragraph (1) shall not apply to any person that is a citizen of the United States within the meaning of section 2(c) of the Shipping Act, 1916 (46 U.S.C. App. 802(c)).

(3) PARTICIPATES IN A NONCONTIGUOUS DOMESTIC TRADE DEFINED.—In this subsection the term ''participates in a noncontiguous domes-

tic trade'' means directly or indirectly owns, charters, or operates a vessel engaged in transportation of cargo between a point in the contiguous 48 States and a point in Alaska, Hawaii, or Puerto Rico, other than a point in Alaska north of the Arctic Circle.

(Added Pub. L. 108–136, div. C, title XXXV, § 3531(a), Nov. 24, 2003, 117 Stat. 1813.)

REFERENCES IN TEXT

Act of March 26, 1934, referred to in subsec. (d)(1), is act Mar. 26, 1934, ch. 90, 48 Stat. 500, as amended, known as the Reconstruction Finance Corporation Exports Resolution, which is classified to section 1241–1 of the Appendix to this title.

§ 53107. National security requirements

(a) EMERGENCY PREPAREDNESS AGREEMENT REQUIRED.—The Secretary shall establish an Emergency Preparedness Program under this section that is approved by the Secretary of Defense. Under the program, the Secretary, in conjunction with the Secretary of Defense, shall include in each operating agreement under this chapter a requirement that the contractor enter into an Emergency Preparedness Agreement under this section with the Secretary. The Secretary shall negotiate and enter into an Emergency Preparedness Agreement with each contractor as promptly as practicable after the contractor has entered into an operating agreement under this chapter.

(b) TERMS OF AGREEMENT.—

(1) IN GENERAL.—An Emergency Preparedness Agreement under this section shall require that upon a request by the Secretary of Defense during time of war or national emergency, or whenever determined by the Secretary of Defense to be necessary for national security or contingency operation (as that term is defined in section 101 of title 10, United States Code), a contractor for a vessel covered by an operating agreement under this chapter shall make available commercial transportation resources (including services).

(2) BASIC TERMS.—(A) The basic terms of the Emergency Preparedness Agreement shall be established (subject to subparagraph (B)) by the Secretary and the Secretary of Defense.

(B) In any Emergency Preparedness Agreement, the Secretary and a contractor may agree to additional or modifying terms appropriate to the contractor's circumstances if those terms have been approved by the Secretary of Defense.

(c) PARTICIPATION AFTER EXPIRATION OF OPERATING AGREEMENT.—Except as provided by section 53105(d), the Secretary may not require, through an Emergency Preparedness Agreement or operating agreement, that a contractor continue to participate in an Emergency Preparedness Agreement after the operating agreement with the contractor has expired according to its terms or is otherwise no longer in effect. After expiration of an Emergency Preparedness Agreement, a contractor may volunteer to continue to participate in such an agreement.

(d) RESOURCES MADE AVAILABLE.—The commercial transportation resources to be made available under an Emergency Preparedness Agreement shall include vessels or capacity in vessels, intermodal systems and equipment, terminal facilities, intermodal and management services, and other related services, or any agreed portion of such nonvessel resources for activation as the Secretary of Defense may determine to be necessary, seeking to minimize disruption of the contractor's service to commercial shippers.

(e) COMPENSATION.—

(1) IN GENERAL.—The Secretary shall include in each Emergency Preparedness Agreement provisions approved by the Secretary of Defense under which the Secretary of Defense shall pay fair and reasonable compensation for all commercial transportation resources provided pursuant to this section.

(2) SPECIFIC REQUIREMENTS.—Compensation under this subsection—

(A) shall not be less than the contractor's commercial market charges for like transportation resources;

(B) shall be fair and reasonable considering all circumstances;

(C) shall be provided from the time that a vessel or resource is required by the Secretary of Defense until the time that it is redelivered to the contractor and is available to reenter commercial service; and

(D) shall be in addition to and shall not in any way reflect amounts payable under section 53106.

(f) TEMPORARY REPLACEMENT VESSELS.—Notwithstanding section 2631 of title 10, United States Code, the Act of March 26, 1934 (46 U.S.C. App. 1241–1), section 901(a), 901(b), or 901b of the Merchant Marine Act, 1936 (46 U.S.C. App. 1241(a), 1241(b), or 1241f), or any other cargo preference law of the United States—

(1) a contractor may operate or employ in foreign commerce a foreign-flag vessel or foreign-flag vessel capacity as a temporary replacement for a United States-documented vessel or United States-documented vessel capacity that is activated by the Secretary of Defense under an Emergency Preparedness Agreement or under a primary Department of Defense-approved sealift readiness program; and

(2) such replacement vessel or vessel capacity shall be eligible during the replacement period to transport preference cargoes subject to section 2631 of title 10, United States Code, the Act of March 26, 1934 (46 U.S.C. App. 1241–1), and sections 901(a), 901(b), and 901b of the Merchant Marine Act, 1936 (46 U.S.C. App. 1241(a), 1241(b), and 1241b)[1] to the same extent as the eligibility of the vessel or vessel capacity replaced.

(g) REDELIVERY AND LIABILITY OF UNITED STATES FOR DAMAGES.—

(1) IN GENERAL.—All commercial transportation resources activated under an Emergency Preparedness Agreement shall, upon termination of the period of activation, be redelivered to the contractor in the same good order and condition as when received, less ordinary wear and tear, or the Secretary of De-

[1] So in original. Probably should be ''1241f)''.

fense shall fully compensate the contractor for any necessary repair or replacement.

(2) LIMITATION ON LIABILITY OF U.S.—Except as may be expressly agreed to in an Emergency Preparedness Agreement, or as otherwise provided by law, the Government shall not be liable for disruption of a contractor's commercial business or other consequential damages to a contractor arising from activation of commercial transportation resources under an Emergency Preparedness Agreement.

(Added Pub. L. 108–136, div. C, title XXXV, § 3531(a), Nov. 24, 2003, 117 Stat. 1814.)

REFERENCES IN TEXT

Act of March 26, 1934, referred to in subsec. (f), is act Mar. 26, 1934, ch. 90, 48 Stat. 500, as amended, known as the Reconstruction Finance Corporation Exports Resolution, which is classified to section 1241–1 of the Appendix to this title.

§ 53108. Regulatory relief

(a) OPERATION IN FOREIGN COMMERCE.—A contractor for a vessel included in an operating agreement under this chapter may operate the vessel in the foreign commerce of the United States without restriction.

(b) OTHER RESTRICTIONS.—The restrictions of section 901(b)(1) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1241(b)(1)) concerning the building, rebuilding, or documentation of a vessel in a foreign country shall not apply to a vessel for any day the operator of that vessel is receiving payments for operation of that vessel under an operating agreement under this chapter.

(c) TELECOMMUNICATIONS EQUIPMENT.—The telecommunications and other electronic equipment on an existing vessel that is redocumented under the laws of the United States for operation under an operating agreement under this chapter shall be deemed to satisfy all Federal Communications Commission equipment certification requirements, if—

(1) such equipment complies with all applicable international agreements and associated guidelines as determined by the country in which the vessel was documented immediately before becoming documented under the laws of the United States;

(2) that country has not been identified by the Secretary as inadequately enforcing international regulations as to that vessel; and

(3) at the end of its useful life, such equipment will be replaced with equipment that meets Federal Communications Commission equipment certification standards.

(Added Pub. L. 108–136, div. C, title XXXV, § 3531(a), Nov. 24, 2003, 117 Stat. 1816.)

§ 53109. Special rule regarding age of participating fleet vessel

Any age restriction under section 53102(b)(3) or 53106(c)(3) shall not apply to a participating fleet vessel during the 30-month period beginning on the date the vessel begins operating under an operating agreement under this title, if the Secretary determines that the contractor for the vessel has entered into an arrangement to obtain and operate under the operating agreement for the participating fleet vessel a replacement vessel that, upon commencement of such operation, will be eligible to be included in the Fleet under section 53102(b).

(Added Pub. L. 108–136, div. C, title XXXV, § 3531(a), Nov. 24, 2003, 117 Stat. 1817.)

§ 53110. Regulations

The Secretary and the Secretary of Defense may each prescribe rules as necessary to carry out their respective responsibilities under this chapter.

(Added Pub. L. 108–136, div. C, title XXXV, § 3531(a), Nov. 24, 2003, 117 Stat. 1817.)

INTERIM RULES

Pub. L. 108–136, div. C, title XXXV, § 3533, Nov. 24, 2003, 117 Stat. 1818, provided that: "The Secretary of Transportation and the Secretary of Defense may each prescribe interim rules necessary to carry out their respective responsibilities under this subtitle [subtitle C (§§ 3531–3537) of title XXXV of div. C of Pub. L. 108–136, enacting this chapter, amending section 12102 of this title and sections 808 and 1162 of the Appendix to this title, repealing sections 1187 to 1187e and 1222 of the Appendix to this title, enacting provisions set out as a note under section 53101 of this title, and amending provisions set out as a note under section 1187 of the Appendix to this title] and the amendments made by this subtitle. For this purpose, the Secretaries are excepted from compliance with the notice and comment requirements of section 553 of title 5, United States Code. All interim rules prescribed under the authority of this section that are not earlier superseded by final rules shall expire no later than 270 days after the effective date of this subtitle [see Effective Date note set out under section 53101 of this title]."

§ 53111. Authorization of appropriations

There are authorized to be appropriated for payments under section 53106, to remain available until expended—

(1) $156,000,000 for each of fiscal years 2006, 2007, and 2008;

(2) $174,000,000 for each of fiscal years 2009, 2010, and 2011; and

(3) $186,000,000 for each fiscal year thereafter through fiscal year 2015.

(Added Pub. L. 108–136, div. C, title XXXV, § 3531(a), Nov. 24, 2003, 117 Stat. 1817.)

Subtitle VI—Miscellaneous

Chap. Sec.
701. Port Security 70101

CHAPTER 701—PORT SECURITY

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70101. Definitions.
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[1] So in original. Does not conform to section catchline.

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70119.[4] Enforcement by State and local officers.
70119.[5] Civil penalty.

AMENDMENTS

2004—Pub. L. 108–293, title VIII, § 802(c), Aug. 9, 2004, 118 Stat. 1080, added items 70117 ''In rem liability for civil penalties and certain costs'', 70118 ''Enforcement by injunction or withholding of clearance'', and 70119 ''Civil penalty'', and struck out former item 70119 ''Enforcement by State and local officers''.

Pub. L. 108–293, title VIII, § 801(b), Aug. 9, 2004, 118 Stat. 1078, added items 70118 ''Enforcement'' and 70119 ''Enforcement by State and local officers''.

§ 70101. Definitions

For the purpose of this chapter:

(1) The term ''Area Maritime Transportation Security Plan'' means an Area Maritime Transportation Security Plan prepared under section 70103(b).

(2) The term ''facility'' means any structure or facility of any kind located in, on, under, or adjacent to any waters subject to the jurisdiction of the United States.

(3) The term ''National Maritime Transportation Security Plan'' means the National Maritime Transportation Security Plan prepared and published under section 70103(a).

(4) The term ''owner or operator'' means—

(A) in the case of a vessel, any person owning, operating, or chartering by demise, such vessel; and

(B) in the case of a facility, any person owning, leasing, or operating such facility.

(5) The term ''Secretary'' means the Secretary of the department in which the Coast Guard is operating.

(6) The term ''transportation security incident'' means a security incident resulting in a significant loss of life, environmental damage, transportation system disruption, or economic disruption in a particular area.

(Added Pub. L. 107–295, title I, § 102(a), Nov. 25, 2002, 116 Stat. 2068.)

REGULATIONS

Pub. L. 107–295, title I, § 102(d), Nov. 25, 2002, 116 Stat. 2084, provided that:

''(1) INTERIM FINAL RULE AUTHORITY.—The Secretary shall issue an interim final rule as a temporary regulation implementing this section [enacting this subtitle and provisions set out as notes under sections 70104 and 70114 of this title] (including the amendments made by this section) as soon as practicable after the date of enactment of this section [Nov. 25, 2002], without regard to the provisions of chapter 5 of title 5, United States Code. All regulations prescribed under the authority of this subsection that are not earlier superseded by final regulations shall expire not later than 1 year after the date of enactment of this Act [Nov. 25, 2002].

''(2) INITIATION OF RULEMAKING.—The Secretary may initiate a rulemaking to implement this section (including the amendments made by this section) as soon as practicable after the date of enactment of this section. The final rule issued pursuant to that rulemaking may supersede the interim final rule promulgated under this subsection.''

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.

WATCH LISTS FOR PASSENGERS ABOARD VESSELS

Pub. L. 108–458, title IV, § 4071, Dec. 17, 2004, 118 Stat. 3729, provided that:

''(a) WATCH LISTS.—

''(1) IN GENERAL.—As soon as practicable but not later than 180 days after the date of the enactment of this Act [Dec. 17, 2004], the Secretary of Homeland Security shall—

''(A) implement a procedure under which the Department of Homeland Security compares information about passengers and crew who are to be carried aboard a cruise ship with a comprehensive, consolidated database containing information about known or suspected terrorists and their associates;

''(B) use the information obtained by comparing the passenger and crew information with the information in the database to prevent known or suspected terrorists and their associates from boarding such ships or to subject them to specific additional security scrutiny, through the use of 'no transport' and 'automatic selectee' lists or other means.

''(2) WAIVER.—The Secretary may waive the requirement in paragraph (1)(B) with respect to cruise ships embarking at foreign ports if the Secretary determines that the application of such requirement to such cruise ships is impracticable.

''(b) COOPERATION FROM OPERATORS OF CRUISE SHIPS.—The Secretary of Homeland Security shall by rulemaking require operators of cruise ships to provide the passenger and crew information necessary to implement the procedure required by subsection (a).

''(c) MAINTENANCE OF ACCURACY AND INTEGRITY OF 'NO TRANSPORT' AND 'AUTOMATIC SELECTEE' LISTS.—

''(1) WATCH LIST DATABASE.—The Secretary of Homeland Security, in consultation with the Terrorist Screening Center, shall develop guidelines, policies, and operating procedures for the collection, removal, and updating of data maintained, or to be maintained, in the 'no transport' and 'automatic selectee' lists described in subsection (a)(1) that are designed to ensure the accuracy and integrity of the lists.

''(2) ACCURACY OF ENTRIES.—In developing the 'no transport' and 'automatic selectee' lists under subsection (a)(1)(B), the Secretary shall establish a simple and timely method for correcting erroneous entries, for clarifying information known to cause false hits or misidentification errors, and for updating relevant information that is dispositive in the passenger and crew screening process. The Secretary shall also establish a process to provide an individual whose name is confused with, or similar to, a name in the watch list database with a means of demonstrating that such individual is not the person named in the database.

''(d) CRUISE SHIP DEFINED.—In this section, the term 'cruise ship' means a vessel on an international voyage

[2] So in original. Section redesignated 70119 without corresponding repeal of item 70117.

[3] So in original. Two sections ''70118'' have been enacted and appear in a different order in this chapter.

[4] Editorially supplied. Two sections ''70119'' have been enacted.

[5] Two sections ''70119'' have been enacted.

that embarks or disembarks passengers at a port of United States jurisdiction to which subpart C of part 160 of title 33, Code of Federal Regulations, applies and that provides overnight accommodations.''

VESSEL AND INTERMODAL SECURITY REPORTS

Pub. L. 108–293, title VIII, § 809(g)–(i), (k), Aug. 9, 2004, 118 Stat. 1087, 1088, provided that:

''(g) EVALUATION OF CARGO INSPECTION TARGETING SYSTEM FOR INTERNATIONAL INTERMODAL CARGO CONTAINERS.—Within 180 days after the date of the enactment of this Act [Aug. 9, 2004] and annually thereafter, the Inspector General of the department in which the Coast Guard is operating shall prepare a report that includes an assessment of—

''(1) the effectiveness of the current tracking system to determine whether it is adequate to prevent international intermodal containers from being used for purposes of terrorism;

''(2) the sources of information, and the quality of the information at the time of reporting, used by the system to determine whether targeting information is collected from the best and most credible sources and evaluate data sources to determine information gaps and weaknesses;

''(3) the targeting system for reporting and analyzing inspection statistics, as well as testing effectiveness;

''(4) the competence and training of employees operating the system to determine whether they are sufficiently capable to detect potential terrorist threats; and

''(5) whether the system is an effective system to detect potential acts of terrorism and whether additional steps need to be taken in order to remedy deficiencies in targeting international intermodal containers for inspection.

''(h) ACTION REPORT.—If the Inspector General of the department in which the Coast Guard is operating determines in any of the reports prepared under subsection (g) that the targeting system is insufficiently effective as a means of detecting potential acts of terrorism utilizing international intermodal containers, then the Secretary of the department in which the Coast Guard is operating shall, within 90 days, submit a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure [of the] House of Representatives on what actions will be taken to correct deficiencies identified in the Inspector General Report.

''(i) COMPLIANCE WITH SECURITY STANDARDS ESTABLISHED PURSUANT TO MARITIME TRANSPORTATION SECURITY PLANS.—Within 180 days after the date of the enactment of this Act [Aug. 9, 2004] and annually thereafter, the Secretary of the department in which the Coast Guard is operating shall prepare a report on compliance and steps taken to ensure compliance by ports, terminals, vessel operators, and shippers with security standards established pursuant to section 70103 of title 46, United States Code. The reports shall also include a summary of security standards established pursuant to such section during the previous year. The Secretary shall submit the reports to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.

''(k) REPORT AND PLAN FORMATS.—The Secretary and the Inspector General of the department in which the Coast Guard is operating may submit any plan or report required by this section in both classified and redacted formats, if the Secretary determines that it is appropriate or necessary.''

FINDINGS

Pub. L. 107–295, title I, § 101, Nov. 25, 2002, 116 Stat. 2066, provided that:

''The Congress makes the following findings:

''(1) There are 361 public ports in the United States that are an integral part of our Nation's commerce.

''(2) United States ports handle over 95 percent of United States overseas trade. The total volume of goods imported and exported through ports is expected to more than double over the next 20 years.

''(3) The variety of trade and commerce carried out at ports includes bulk cargo, containerized cargo, passenger transport and tourism, and intermodal transportation systems that are complex to secure.

''(4) The United States is increasingly dependent on imported energy for a substantial share of its energy supply, and a disruption of that share of supply would seriously harm consumers and our economy.

''(5) The top 50 ports in the United States account for about 90 percent of all the cargo tonnage. Twenty-five United States ports account for 98 percent of all container shipments. Cruise ships visiting foreign destinations embark from at least 16 ports. Ferries in the United States transport 113,000,000 passengers and 32,000,000 vehicles per year.

''(6) Ports often are a major locus of Federal crime, including drug trafficking, cargo theft, and smuggling of contraband and aliens.

''(7) Ports are often very open and exposed and are susceptible to large scale acts of terrorism that could cause a large loss of life or economic disruption.

''(8) Current inspection levels of containerized cargo are insufficient to counter potential security risks. Technology is currently not adequately deployed to allow for the nonintrusive inspection of containerized cargo.

''(9) The cruise ship industry poses a special risk from a security perspective.

''(10) Securing entry points and other areas of port facilities and examining or inspecting containers would increase security at United States ports.

''(11) Biometric identification procedures for individuals having access to secure areas in port facilities are important tools to deter and prevent port cargo crimes, smuggling, and terrorist actions.

''(12) United States ports are international boundaries that—

''(A) are particularly vulnerable to breaches in security;

''(B) may present weaknesses in the ability of the United States to realize its national security objectives; and

''(C) may serve as a vector or target for terrorist attacks aimed at the United States.

''(13) It is in the best interests of the United States—

''(A) to have a free flow of interstate and foreign commerce and to ensure the efficient movement of cargo;

''(B) to increase United States port security by establishing improving communication among law enforcement officials responsible for port security;

''(C) to formulate requirements for physical port security, recognizing the different character and nature of United States port facilities, and to require the establishment of security programs at port facilities;

''(D) to provide financial assistance to help the States and the private sector to increase physical security of United States ports;

''(E) to invest in long-term technology to facilitate the private sector development of technology that will assist in the nonintrusive timely detection of crime or potential crime at United States ports;

''(F) to increase intelligence collection on cargo and intermodal movements to address areas of potential threat to safety and security; and

''(G) to promote private sector procedures that provide for in-transit visibility and support law enforcement efforts directed at managing the security risks of cargo shipments.

''(14) On April 27, 1999, the President established the Interagency Commission on Crime and Security in United States Ports to undertake a comprehensive study of the nature and extent of the problem of

crime in our ports, as well as the ways in which governments at all levels are responding. The Commission concluded that frequent crimes in ports include drug smuggling, illegal car exports, fraud, and cargo theft. Internal conspiracies are an issue at many ports and contribute to Federal crime. Criminal organizations are exploiting weak security at ports to commit a wide range of cargo crimes. Intelligence and information sharing among law enforcement agencies needs to be improved and coordinated at many ports. A lack of minimum physical and personnel security standards at ports and related facilities leaves many ports and port users very vulnerable. Access to ports and operations within ports is often uncontrolled. Security-related and detection-related equipment, such as small boats, cameras, large-scale x-ray machines, and vessel tracking devices, are lacking at many ports.

''(15) The International Maritime Organization and other similar international organizations are currently developing a new maritime security system that contains the essential elements for enhancing global maritime security. Therefore, it is in the best interests of the United States to implement new international instruments that establish such a system.''

MARITIME SECURITY PROFESSIONAL TRAINING

Pub. L. 107–295, title I, § 109, Nov. 25, 2002, 116 Stat. 2090, provided that:

''(a) IN GENERAL.—

''(1) DEVELOPMENT OF STANDARDS.—Not later than 6 months after the date of enactment of this Act [Nov. 25, 2002], the Secretary of Transportation shall develop standards and curriculum to allow for the training and certification of maritime security professionals. In developing these standards and curriculum, the Secretary shall consult with the National Maritime Security Advisory Committee established under section 70112 of title 46, United States Code, as amended by this Act.

''(2) SECRETARY TO CONSULT ON STANDARDS.—In developing standards under this section, the Secretary may, without regard to the Federal Advisory Committee Act (5 U.S.C. App.), consult with the Federal Law Enforcement Training Center, the United States Merchant Marine Academy's Global Maritime and Transportation School, the Maritime Security Council, the International Association of Airport and Port Police, the National Cargo Security Council, and any other Federal, State, or local government or law enforcement agency or private organization or individual determined by the Secretary to have pertinent expertise.

''(b) MINIMUM STANDARDS.—The standards established by the Secretary under subsection (a) shall include the following elements:

''(1) The training and certification of maritime security professionals in accordance with accepted law enforcement and security guidelines, policies, and procedures, including, as appropriate, recommendations for incorporating a background check process for personnel trained and certified in foreign ports.

''(2) The training of students and instructors in all aspects of prevention, detection, investigation, and reporting of criminal activities in the international maritime environment.

''(3) The provision of off-site training and certification courses and certified personnel at United States and foreign ports used by United States-flagged vessels, or by foreign-flagged vessels with United States citizens as passengers or crewmembers, to develop and enhance security awareness and practices.

''(c) TRAINING PROVIDED TO LAW ENFORCEMENT AND SECURITY PERSONNEL.—

''(1) IN GENERAL.—The Secretary is authorized to make the training opportunities provided under this section available to any Federal, State, local, and private law enforcement or maritime security personnel in the United States or to personnel employed in foreign ports used by vessels with United States citizens as passengers or crewmembers.

''(2) ACADEMIES AND SCHOOLS.—The Secretary may provide training under this section at—

''(A) each of the 6 State maritime academies;

''(B) the United States Merchant Marine Academy;

''(C) the Appalachian Transportation Institute; and

''(D) other security training schools in the United States.

''(d) USE OF CONTRACT RESOURCES.—The Secretary may employ Federal and contract resources to train and certify maritime security professionals in accordance with the standards and curriculum developed under this Act [see Tables for classification].

''(e) ANNUAL REPORT.—The Secretary shall transmit an annual report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on the expenditure of appropriated funds and the training under this section.

''(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary to carry out this section $5,500,000 for each of fiscal years 2003 through 2008.''

[For transfer of functions, personnel, assets, and liabilities of the Federal Law Enforcement Training Center of the Department of the Treasury to the Secretary of Homeland Security, and for treatment of related references, see sections 203(4), 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 TRAINING CENTER

Pub. L. 107–295, title I, § 110(b), Nov. 25, 2002, 116 Stat. 2091, provided that: ''The Commandant of the United States Coast Guard, in conjunction with the Secretary of the Navy, shall submit to Congress a report, at the time they submit their fiscal year 2005 budget, on the life cycle costs and benefits of creating a Center for Coastal and Maritime Security. The purpose of the Center would be to provide an integrated training complex to prevent and mitigate terrorist threats against coastal and maritime assets of the United States, including ports, harbors, ships, dams, reservoirs, and transport nodes.''

REPORT ON FOREIGN-FLAG VESSELS

Pub. L. 107–295, title I, § 112, Nov. 25, 2002, 116 Stat. 2092, provided that: ''Within 6 months after the date of enactment of this Act [Nov. 25, 2002] and every year thereafter, the Secretary of the department in which the Coast Guard is operating, in consultation with the Secretary of State, shall provide a report to the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Transportation and Infrastructure of the House of Representatives that lists the following information:

''(1) A list of all nations whose flag vessels have entered United States ports in the previous year.

''(2) Of the nations on that list, a separate list of those nations—

''(A) whose registered flag vessels appear as Priority III or higher on the Boarding Priority Matrix maintained by the Coast Guard;

''(B) that have presented, or whose flag vessels have presented, false, intentionally incomplete, or fraudulent information to the United States concerning passenger or cargo manifests, crew identity or qualifications, or registration or classification of their flag vessels;

''(C) whose vessel registration or classification procedures have been found by the Secretary to be noncompliant with international classifications or do not exercise adequate control over safety and security concerns; or

''(D) whose laws or regulations are not sufficient to allow tracking of ownership and registration histories of registered flag vessels.

''(3) Actions taken by the United States, whether through domestic action or international negotiation, including agreements at the International Maritime Organization under section 902 of the International Maritime and Port Security Act (46 U.S.C. App. 1801), to improve transparency and security of vessel registration procedures in nations on the list under paragraph (2).

''(4) Recommendations for legislative or other actions needed to improve security of United States ports against potential threats posed by flag vessels of nations named in paragraph (2).''

§ 70102. United States facility and vessel vulnerability assessments

(a) INITIAL ASSESSMENTS.—The Secretary shall conduct an assessment of vessel types and United States facilities on or adjacent to the waters subject to the jurisdiction of the United States to identify those vessel types and United States facilities that pose a high risk of being involved in a transportation security incident.

(b) FACILITY AND VESSEL ASSESSMENTS.—(1) Based on the information gathered under subsection (a) of this section and by not later than December 31, 2004, the Secretary shall conduct a detailed vulnerability assessment of the facilities and vessels that may be involved in a transportation security incident. The vulnerability assessment shall include the following:

(A) Identification and evaluation of critical assets and infrastructures.

(B) Identification of the threats to those assets and infrastructures.

(C) Identification of weaknesses in physical security, passenger and cargo security, structural integrity, protection systems, procedural policies, communications systems, transportation infrastructure, utilities, contingency response, and other areas as determined by the Secretary.

(2) Upon completion of an assessment under this subsection for a facility or vessel, the Secretary shall provide the owner or operator with a copy of the vulnerability assessment for that facility or vessel.

(3) The Secretary shall update each vulnerability assessment conducted under this section at least every 5 years.

(4) In lieu of conducting a facility or vessel vulnerability assessment under paragraph (1), the Secretary may accept an alternative assessment conducted by or on behalf of the owner or operator of the facility or vessel if the Secretary determines that the alternative assessment includes the matters required under paragraph (1).

(Added Pub. L. 107–295, title I, § 102(a), Nov. 25, 2002, 116 Stat. 2068; amended Pub. L. 108–458, title IV, § 4072(b), Dec. 17, 2004, 118 Stat. 3730.)

AMENDMENTS

2004—Subsec. (b)(1). Pub. L. 108–458 substituted ''and by not later than December 31, 2004, the Secretary'' for '', the Secretary'' in introductory provisions.

§ 70103. Maritime transportation security plans

(a) NATIONAL MARITIME TRANSPORTATION SECURITY PLAN.—(1) Not later than April 1, 2005, the Secretary shall prepare a National Maritime Transportation Security Plan for deterring and responding to a transportation security incident.

(2) The National Maritime Transportation Security Plan shall provide for efficient, coordinated, and effective action to deter and minimize damage from a transportation security incident, and shall include the following:

(A) Assignment of duties and responsibilities among Federal departments and agencies and coordination with State and local governmental agencies.

(B) Identification of security resources.

(C) Procedures and techniques to be employed in deterring a national transportation security incident.

(D) Establishment of procedures for the coordination of activities of—

(i) Coast Guard maritime security teams established under this chapter; and

(ii) Federal Maritime Security Coordinators required under this chapter.

(E) A system of surveillance and notice designed to safeguard against as well as ensure earliest possible notice of a transportation security incident and imminent threats of such a security incident to the appropriate State and Federal agencies.

(F) Establishment of criteria and procedures to ensure immediate and effective Federal identification of a transportation security incident, or the substantial threat of such a security incident.

(G) Designation of—

(i) areas for which Area Maritime Transportation Security Plans are required to be prepared under subsection (b); and

(ii) a Coast Guard official who shall be the Federal Maritime Security Coordinator for each such area.

(H) A risk-based system for evaluating the potential for violations of security zones designated by the Secretary on the waters subject to the jurisdiction of the United States.

(I) A recognition of certified systems of intermodal transportation.

(J) A plan for ensuring that the flow of cargo through United States ports is reestablished as efficiently and quickly as possible after a transportation security incident.

(3) The Secretary shall, as the Secretary considers advisable, revise or otherwise amend the National Maritime Transportation Security Plan.

(4) Actions by Federal agencies to deter and minimize damage from a transportation security incident shall, to the greatest extent possible, be in accordance with the National Maritime Transportation Security Plan.

(5) The Secretary shall inform vessel and facility owners or operators of the provisions in the National Transportation Security Plan that the Secretary considers necessary for security purposes.

(b) AREA MARITIME TRANSPORTATION SECURITY PLANS.—(1) The Federal Maritime Security Coordinator designated under subsection (a)(2)(G) for an area shall—

(A) submit to the Secretary an Area Maritime Transportation Security Plan for the area; and

(B) solicit advice from the Area Security Advisory Committee required under this chapter, for the area to assure preplanning of joint deterrence efforts, including appropriate procedures for deterrence of a transportation security incident.

(2) The Area Maritime Transportation Security Plan for an area shall—

(A) when implemented in conjunction with the National Maritime Transportation Security Plan, be adequate to deter a transportation security incident in or near the area to the maximum extent practicable;

(B) describe the area and infrastructure covered by the plan, including the areas of population or special economic, environmental, or national security importance that might be damaged by a transportation security incident;

(C) describe in detail how the plan is integrated with other Area Maritime Transportation Security Plans, and with facility security plans and vessel security plans under this section;

(D) include consultation and coordination with the Department of Defense on matters relating to Department of Defense facilities and vessels;

(E) include any other information the Secretary requires; and

(F) be updated at least every 5 years by the Federal Maritime Security Coordinator.

(3) The Secretary shall—

(A) review and approve Area Maritime Transportation Security Plans under this subsection; and

(B) periodically review previously approved Area Maritime Transportation Security Plans.

(4) In security zones designated by the Secretary in each Area Maritime Transportation Security Plan, the Secretary shall consider—

(A) the use of public/private partnerships to enforce security within the security zones, shoreside protection alternatives, and the environmental, public safety, and relative effectiveness of such alternatives; and

(B) technological means of enhancing the security zones of port, territorial waters, and waterways of the United States.

(c) VESSEL AND FACILITY SECURITY PLANS.—(1) Within 6 months after the prescription of interim final regulations on vessel and facility security plans, an owner or operator of a vessel or facility described in paragraph (2) shall prepare and submit to the Secretary a security plan for the vessel or facility, for deterring a transportation security incident to the maximum extent practicable.

(2) The vessels and facilities referred to in paragraph (1)—

(A) except as provided in subparagraph (B), are vessels and facilities that the Secretary believes may be involved in a transportation security incident; and

(B) do not include any vessel or facility owned or operated by the Department of Defense.

(3) A security plan required under this subsection shall—

(A) be consistent with the requirements of the National Maritime Transportation Security Plan and Area Maritime Transportation Security Plans;

(B) identify the qualified individual having full authority to implement security actions, and require immediate communications between that individual and the appropriate Federal official and the persons providing personnel and equipment pursuant to subparagraph (C);

(C) include provisions for—

(i) establishing and maintaining physical security, passenger and cargo security, and personnel security;

(ii) establishing and controlling access to secure areas of the vessel or facility;

(iii) procedural security policies;

(iv) communications systems; and

(v) other security systems;

(D) identify, and ensure by contract or other means approved by the Secretary, the availability of security measures necessary to deter to the maximum extent practicable a transportation security incident or a substantial threat of such a security incident;

(E) describe the training, periodic unannounced drills, and security actions of persons on the vessel or at the facility, to be carried out under the plan to deter to the maximum extent practicable a transportation security incident, or a substantial threat of such a security incident;

(F) be updated at least every 5 years; and

(G) be resubmitted for approval of each change to the vessel or facility that may substantially affect the security of the vessel or facility.

(4) The Secretary shall—

(A) promptly review each such plan;

(B) require amendments to any plan that does not meet the requirements of this subsection;

(C) approve any plan that meets the requirements of this subsection; and

(D) review each plan periodically thereafter.

(5) A vessel or facility for which a plan is required to be submitted under this subsection may not operate after the end of the 12-month period beginning on the date of the prescription of interim final regulations on vessel and facility security plans, unless—

(A) the plan has been approved by the Secretary; and

(B) the vessel or facility is operating in compliance with the plan.

(6) Notwithstanding paragraph (5), the Secretary may authorize a vessel or facility to operate without a security plan approved under this subsection, until not later than 1 year after the date of the submission to the Secretary of a plan for the vessel or facility, if the owner or operator of the vessel or facility certifies that the owner or operator has ensured by contract or other means approved by the Secretary to deter to the maximum extent practicable a transportation security incident or a substantial threat of such a security incident.

(7) The Secretary shall require each owner or operator of a vessel or facility located within or

adjacent to waters subject to the jurisdiction of the United States to implement any necessary interim security measures, including cargo security programs, to deter to the maximum extent practicable a transportation security incident until the security plan for that vessel or facility operator is approved.

(d) NONDISCLOSURE OF INFORMATION.—Notwithstanding any other provision of law, information developed under this chapter is not required to be disclosed to the public, including—

(1) facility security plans, vessel security plans, and port vulnerability assessments; and

(2) other information related to security plans, procedures, or programs for vessels or facilities authorized under this chapter.

(Added Pub. L. 107–295, title I, § 102(a), Nov. 25, 2002, 116 Stat. 2069; amended Pub. L. 108–458, title IV, § 4072(a), Dec. 17, 2004, 118 Stat. 3730.)

AMENDMENTS

2004—Subsec. (a)(1). Pub. L. 108–458 substituted ''Not later than April 1, 2005, the Secretary'' for ''The Secretary''.

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.

REVISION OF PORT SECURITY PLANNING GUIDE

Pub. L. 107–295, title I, § 113, Nov. 25, 2002, 116 Stat. 2093, provided that: ''The Secretary of Transportation, acting through the Maritime Administration and after consultation with the National Maritime Security Advisory Committee and the Coast Guard, shall publish a revised version of the document entitled 'Port Security: A National Planning Guide', incorporating the requirements prescribed under chapter 701 of title 46, United States Code, as amended by this Act, within 3 years after the date of enactment of this Act [Nov. 25, 2002], and make that revised document available on the Internet.''

§ 70104. Transportation security incident response

(a) FACILITY AND VESSEL RESPONSE PLANS.—The Secretary shall—

(1) establish security incident response plans for vessels and facilities that may be involved in a transportation security incident; and

(2) make those plans available to the Director of the Federal Emergency Management Agency for inclusion in the Director's response plan for United States ports and waterways.

(b) CONTENTS.—Response plans developed under subsection (a) shall provide a comprehensive response to an emergency, including notifying and coordinating with local, State, and Federal authorities, including the Director of the Federal Emergency Management Agency, securing the facility or vessel, and evacuating facility and vessel personnel.

(c) INCLUSION IN SECURITY PLAN.—A response plan required under this subsection for a vessel or facility may be included in the security plan prepared under section 70103(c).

(Added Pub. L. 107–295, title I, § 102(a), Nov. 25, 2002, 116 Stat. 2072.)

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 313(1), 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.

DEADLINE

Pub. L. 107–295, title I, § 102(c), Nov. 25, 2002, 116 Stat. 2084, provided that: ''The Secretary shall establish the plans required under section 70104(a)(1) of title 46, United States Code, as enacted by this Act, before April 1, 2003.''

§ 70105. Transportation security cards

(a) PROHIBITION.—(1) The Secretary shall prescribe regulations to prevent an individual from entering an area of a vessel or facility that is designated as a secure area by the Secretary for purposes of a security plan for the vessel or facility that is approved by the Secretary under section 70103 of this title unless the individual—

(A) holds a transportation security card issued under this section and is authorized to be in the area in accordance with the plan; or

(B) is accompanied by another individual who holds a transportation security card issued under this section and is authorized to be in the area in accordance with the plan.

(2) A person shall not admit an individual into such a secure area unless the entry of the individual into the area is in compliance with paragraph (1).

(b) ISSUANCE OF CARDS.—(1) The Secretary shall issue a biometric transportation security card to an individual specified in paragraph (2), unless the Secretary decides that the individual poses a security risk under subsection (c) warranting denial of the card.

(2) This subsection applies to—

(A) an individual allowed unescorted access to a secure area designated in a vessel or facility security plan approved under section 70103 of this title;

(B) an individual issued a license, certificate of registry, or merchant mariners document under part E of subtitle II of this title;

(C) a vessel pilot;

(D) an individual engaged on a towing vessel that pushes, pulls, or hauls alongside a tank vessel;

(E) an individual with access to security sensitive information as determined by the Secretary; and

(F) other individuals engaged in port security activities as determined by the Secretary.

(c) DETERMINATION OF TERRORISM SECURITY RISK.—(1) An individual may not be denied a transportation security card under subsection (b) unless the Secretary determines that individual—

(A) has been convicted within the preceding 7-year period of a felony or found not guilty by reason of insanity of a felony—

(i) that the Secretary believes could cause the individual to be a terrorism security risk to the United States; or

(ii) for causing a severe transportation security incident;

(B) has been released from incarceration within the preceding 5-year period for committing a felony described in subparagraph (A);

(C) may be denied admission to the United States or removed from the United States under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.); or

(D) otherwise poses a terrorism security risk to the United States.

(2) The Secretary shall prescribe regulations that establish a waiver process for issuing a transportation security card to an individual found to be otherwise ineligible for such a card under paragraph (1). In deciding to issue a card to such an individual, the Secretary shall—

(A) give consideration to the circumstances of any disqualifying act or offense, restitution made by the individual, Federal and State mitigation remedies, and other factors from which it may be concluded that the individual does not pose a terrorism risk warranting denial of the card; and

(B) issue a waiver to an individual without regard to whether that individual would otherwise be disqualified if the individual's employer establishes alternate security arrangements acceptable to the Secretary.

(3) The Secretary shall establish an appeals process under this section for individuals found to be ineligible for a transportation security card that includes notice and an opportunity for a hearing.

(4) Upon application, the Secretary may issue a transportation security card to an individual if the Secretary has previously determined, under section 5103a of title 49, that the individual does not pose a security risk.

(d) BACKGROUND RECORDS CHECK.—(1) On request of the Secretary, the Attorney General shall—

(A) conduct a background records check regarding the individual; and

(B) upon completing the background records check, notify the Secretary of the completion and results of the background records check.

(2) A background records check regarding an individual under this subsection shall consist of the following:

(A) A check of the relevant criminal history databases.

(B) In the case of an alien, a check of the relevant databases to determine the status of the alien under the immigration laws of the United States.

(C) As appropriate, a check of the relevant international databases or other appropriate means.

(D) Review of any other national security-related information or database identified by the Attorney General for purposes of such a background records check.

(e) RESTRICTIONS ON USE AND MAINTENANCE OF INFORMATION.—(1) Information obtained by the Attorney General or the Secretary under this section may not be made available to the public, including the individual's employer.

(2) Any information constituting grounds for denial of a transportation security card under this section shall be maintained confidentially by the Secretary and may be used only for making determinations under this section. The Secretary may share any such information with other Federal law enforcement agencies. An individual's employer may only be informed of whether or not the individual has been issued the card under this section.

(f) DEFINITION.—In this section, the term ''alien'' has the meaning given the term in section 101(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(3)).

(Added Pub. L. 107–295, title I, § 102(a), Nov. 25, 2002, 116 Stat. 2073.)

REFERENCES IN TEXT

The Immigration and Nationality Act, referred to in subsec. (c)(1)(C), is act June 27, 1952, ch. 477, 66 Stat. 163, as amended, which is classified principally to chapter 12 (§ 1101 et seq.) of Title 8, Aliens and Nationality. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of Title 8 and Tables.

§ 70106. Maritime safety and security teams

(a) IN GENERAL.—To enhance the domestic maritime security capability of the United States, the Secretary shall establish such maritime safety and security teams as are needed to safeguard the public and protect vessels, harbors, ports, facilities, and cargo in waters subject to the jurisdiction of the United States from destruction, loss or injury from crime, or sabotage due to terrorist activity, and to respond to such activity in accordance with the transportation security plans developed under section 70103.

(b) MISSION.—Each maritime safety and security team shall be trained, equipped, and capable of being employed to—

(1) deter, protect against, and rapidly respond to threats of maritime terrorism;

(2) enforce moving or fixed safety or security zones established pursuant to law;

(3) conduct high speed intercepts;

(4) board, search, and seize any article or thing on or at, respectively, a vessel or facility found to present a risk to the vessel or facility, or to a port;

(5) rapidly deploy to supplement United States armed forces domestically or overseas;

(6) respond to criminal or terrorist acts within a port so as to minimize, insofar as possible, the disruption caused by such acts;

(7) assist with facility vulnerability assessments required under this chapter; and

(8) carry out other security missions as are assigned to it by the Secretary.

(c) COORDINATION WITH OTHER AGENCIES.—To the maximum extent feasible, each maritime safety and security team shall coordinate its activities with other Federal, State, and local law enforcement and emergency response agencies.

(Added Pub. L. 107–295, title I, § 102(a), Nov. 25, 2002, 116 Stat. 2074.)

§ 70107. Grants

(a) IN GENERAL.—The Secretary shall establish a grant program for making a fair and equitable allocation of funds to implement Area Maritime Transportation Security Plans and facility security plans among port authorities, facility operators, and State and local government agencies required to provide port security services. Before awarding a grant under the program, the Secretary shall provide for review and comment by the appropriate Federal Maritime Security Coordinators and the Maritime Administrator. In administering the grant program, the Secretary shall take into account national economic and strategic defense concerns.

(b) ELIGIBLE COSTS.—The following costs of funding the correction of Coast Guard identified vulnerabilities in port security and ensuring compliance with Area Maritime Transportation Security Plans and facility security plans are eligible to be funded:

(1) Salary, benefits, overtime compensation, retirement contributions, and other costs of additional Coast Guard mandated security personnel.

(2) The cost of acquisition, operation, and maintenance of security equipment or facilities to be used for security monitoring and recording, security gates and fencing, marine barriers for designated security zones, security-related lighting systems, remote surveillance, concealed video systems, security vessels, and other security-related infrastructure or equipment that contributes to the overall security of passengers, cargo, or crewmembers.

(3) The cost of screening equipment, including equipment that detects weapons of mass destruction and conventional explosives, and of testing and evaluating such equipment, to certify secure systems of transportation.

(4) The cost of conducting vulnerability assessments to evaluate and make recommendations with respect to security.

(c) MATCHING REQUIREMENTS.—

(1) 75-PERCENT FEDERAL FUNDING.—Except as provided in paragraph (2), Federal funds for any eligible project under this section shall not exceed 75 percent of the total cost of such project.

(2) EXCEPTIONS.—

(A) SMALL PROJECTS.—There are no matching requirements for grants under subsection (a) for projects costing not more than $25,000.

(B) HIGHER LEVEL OF SUPPORT REQUIRED.—If the Secretary determines that a proposed project merits support and cannot be undertaken without a higher rate of Federal support, then the Secretary may approve grants under this section with a matching requirement other than that specified in paragraph (1).

(d) COORDINATION AND COOPERATION AGREEMENTS.—The Secretary shall ensure that projects paid for, or the costs of which are reimbursed, under this section within any area or port are coordinated with other projects, and may require cooperative agreements among users of the port and port facilities with respect to projects funded under this section.

(e) ADMINISTRATION.—

(1) IN GENERAL.—The program shall require eligible port authorities, facility operators, and State and local agencies required to provide security services, to submit an application, at such time, in such form, and containing such information and assurances as the Secretary may require, and shall include appropriate application, review, and delivery mechanisms.

(2) MINIMUM STANDARDS FOR PAYMENT OR REIMBURSEMENT.—Each application for payment or reimbursement of eligible costs shall include, at a minimum, the following:

(A) A copy of the applicable Area Maritime Transportation Security Plan or facility security plan.

(B) A comprehensive description of the need for the project, and a statement of the project's relationship to the applicable Area Maritime Transportation Security Plan or facility security plan.

(C) A determination by the Captain of the Port that the security project addresses or corrects Coast Guard identified vulnerabilities in security and ensures compliance with Area Maritime Transportation Security Plans and facility security plans.

(3) PROCEDURAL SAFEGUARDS.—The Secretary shall by regulation establish appropriate accounting, reporting, and review procedures to ensure that amounts paid or reimbursed under this section are used for the purposes for which they were made available, all expenditures are properly accounted for, and amounts not used for such purposes and amounts not obligated or expended are recovered.

(4) PROJECT APPROVAL REQUIRED.—The Secretary may approve an application for the payment or reimbursement of costs under this section only if the Secretary is satisfied that—

(A) the project is consistent with Coast Guard vulnerability assessments and ensures compliance with Area Maritime Transportation Security Plans and facility security plans;

(B) enough money is available to pay the project costs that will not be reimbursed by the United States Government under this section;

(C) the project will be completed without unreasonable delay; and

(D) the recipient has authority to carry out the project as proposed.

(f) AUDITS AND EXAMINATIONS.—A recipient of amounts made available under this section shall keep such records as the Secretary may require, and make them available for review and audit by the Secretary, the Comptroller General of the United States, or the Inspector General of the department in which the Coast Guard is operating.

(g) REPORTS ON SECURITY FUNDING AND COMPLIANCE.—

(1) INITIAL REPORT.—Within 6 months after the date of enactment of this Act, the Secretary shall transmit an unclassified report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure, that—

(A) includes a funding proposal and rationale to fund the correction of Coast Guard identified vulnerabilities in port security and to help ensure compliance with Area Maritime Transportation Security Plans and facility security plans for fiscal years 2003 through 2008; and

(B) includes projected funding proposals for fiscal years 2003 through 2008 for the following security programs:

(i) The Sea Marshall program.

(ii) The Automated Identification System and a system of polling vessels on entry into United States waters.

(iii) The maritime intelligence requirements in this Act.

(iv) The issuance of transportation security cards required by section 70105.

(v) The program of certifying secure systems of transportation.

(2) OTHER EXPENDITURES.—The Secretary shall, as part of the report required by paragraph (1) report, in coordination with the Commissioner of Customs, on projected expenditures of screening and detection equipment and on cargo security programs over fiscal years 2003 through 2008.

(3) ANNUAL REPORTS.—Annually, beginning 1 year after transmittal of the report required by paragraph (1) until October 1, 2009, the Secretary shall transmit an unclassified annual report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure, on progress in achieving compliance with the correction of Coast Guard identified vulnerabilities in port security and compliance with Area Maritime Transportation Security Plans and facility security plans that—

(A) identifies any modifications necessary in funding to ensure the correction of Coast Guard identified vulnerabilities and ensure compliance with Area Maritime Transportation Security Plans and facility security plans;

(B) includes an assessment of progress in implementing the grant program established by subsection (a);

(C) includes any recommendations the Secretary may make to improve these programs; and

(D) with respect to a port selected by the Secretary, describes progress and enhancements of applicable Area Maritime Transportation Security Plans and facility security plans and how the Maritime Transportation Security Act of 2002 has improved security at that port.

(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for each of fiscal years 2003 through 2008 such sums as are necessary to carry out subsections (a) through (g).

(i) INVESTIGATIONS.—

(1) IN GENERAL.—The Secretary shall conduct investigations, fund pilot programs, and award grants, to examine or develop—

(A) methods or programs to increase the ability to target for inspection vessels, cargo, crewmembers, or passengers that will arrive or have arrived at any port or place in the United States;

(B) equipment to detect accurately explosives, chemical, or biological agents that could be used in a transportation security incident against the United States;

(C) equipment to detect accurately nuclear or radiological materials, including scintillation-based detection equipment capable of signalling the presence of nuclear or radiological materials;

(D) improved tags and seals designed for use on shipping containers to track the transportation of the merchandise in such containers, including sensors that are able to track a container throughout its entire supply chain, detect hazardous and radioactive materials within that container, and transmit that information to the appropriate law enforcement authorities;

(E) tools, including the use of satellite tracking systems, to increase the awareness of maritime areas and to identify potential transportation security incidents that could have an impact on facilities, vessels, and infrastructure on or adjacent to navigable waterways, including underwater access;

(F) tools to mitigate the consequences of a transportation security incident on, adjacent to, or under navigable waters of the United States, including sensor equipment, and other tools to help coordinate effective response to a transportation security incident;

(G) applications to apply existing technologies from other areas or industries to increase overall port security;

(H) improved container design, including blast-resistant containers; and

(I) methods to improve security and sustainability of port facilities in the event of a maritime transportation security incident, including specialized inspection facilities.

(2) IMPLEMENTATION OF TECHNOLOGY.—

(A) IN GENERAL.—In conjunction with ongoing efforts to improve security at United States ports, the Secretary may conduct pilot projects at United States ports to test the effectiveness and applicability of new port security projects, including—

(i) testing of new detection and screening technologies;

(ii) projects to protect United States ports and infrastructure on or adjacent to the navigable waters of the United States, including underwater access; and

(iii) tools for responding to a transportation security incident at United States ports and infrastructure on or adjacent to the navigable waters of the United States, including underwater access.

(B) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary $35,000,000 for each of fiscal years 2005 through 2009 to carry out this subsection.

(3) NATIONAL PORT SECURITY CENTERS.—

(A) IN GENERAL.—The Secretary may make grants or enter into cooperative agreements

with eligible nonprofit institutions of higher learning to conduct investigations in collaboration with ports and the maritime transportation industry focused on enhancing security of the Nation's ports in accordance with this subsection through National Port Security Centers.

(B) APPLICATIONS.—To be eligible to receive a grant under this paragraph, a nonprofit institution of higher learning, or a consortium of such institutions, shall submit an application to the Secretary in such form and containing such information as the Secretary may require.

(C) COMPETITIVE SELECTION PROCESS.—The Secretary shall select grant recipients under this paragraph through a competitive process on the basis of the following criteria:

(i) Whether the applicant can demonstrate that personnel, laboratory, and organizational resources will be available to the applicant to carry out the investigations authorized in this paragraph.

(ii) The applicant's capability to provide leadership in making national and regional contributions to the solution of immediate and long-range port and maritime transportation security and risk mitigation problems.

(iii) Whether the applicant can demonstrate that is[1] has an established, nationally recognized program in disciplines that contribute directly to maritime transportation safety and education.

(iv) Whether the applicant's investigations will involve major United States ports on the East Coast, the Gulf Coast, and the West Coast, and Federal agencies and other entities with expertise in port and maritime transportation.

(v) Whether the applicant has a strategic plan for carrying out the proposed investigations under the grant.

(4) ADMINISTRATIVE PROVISIONS.—

(A) NO DUPLICATION OF EFFORT.—Before making any grant, the Secretary shall coordinate with other Federal agencies to ensure the grant will not duplicate work already being conducted with Federal funding.

(B) ACCOUNTING.—The Secretary shall by regulation establish accounting, reporting, and review procedures to ensure that funds made available under paragraph (1) are used for the purpose for which they were made available, that all expenditures are properly accounted for, and that amounts not used for such purposes and amounts not expended are recovered.

(C) RECORDKEEPING.—Recipients of grants shall keep all records related to expenditures and obligations of funds provided under paragraph (1) and make them available upon request to the Inspector General of the department in which the Coast Guard is operating and the Secretary for audit and examination.

(5) ANNUAL REVIEW AND REPORT.—The Inspector General of the department in which the Coast Guard is operating shall annually review the programs established under this subsection to ensure that the expenditures and obligations of funds are consistent with the purposes for which they are provided, and report the findings to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.

(Added Pub. L. 107–295, title I, § 102(a), Nov. 25, 2002, 116 Stat. 2075; amended Pub. L. 108–293, title VIII, §§ 804(a), (b), 808(a), Aug. 9, 2004, 118 Stat. 1081, 1083.)

REFERENCES IN TEXT

The date of enactment of this Act, referred to in subsec. (g)(1), probably means the date of enactment of Pub. L. 107–295, which enacted this section and was approved Nov. 25, 2002.

This Act, referred to in subsec. (g)(1)(B)(iii), probably means the Maritime Transportation Security Act of 2002, Pub. L. 107–295, Nov. 25, 2002, 116 Stat. 2064, which enacted this subtitle. For complete classification of this Act to the Code, see Tables.

The Maritime Transportation Security Act of 2002, referred to in subsec. (g)(3)(D), is Pub. L. 107–295, Nov. 25, 2002, 116 Stat. 2064. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–293, § 804(a), reenacted heading without change and amended text of subsec. (a) generally. Prior to amendment, text read as follows: "The Secretary of Transportation, acting through the Maritime Administrator, shall establish a grant program for making a fair and equitable allocation among port authorities, facility operators, and State and local agencies required to provide security services of funds to implement Area Maritime Transportation Security Plans and facility security plans. The program shall take into account national economic and strategic defense considerations."

Subsec. (c)(2)(B). Pub. L. 108–293, § 804(b)(1), substituted "Secretary determines" for "Secretary of Transportation determines".

Subsecs. (d), (e). Pub. L. 108–293, § 804(b)(1), substituted "Secretary" for "Secretary of Transportation" wherever appearing.

Subsec. (f). Pub. L. 108–293, § 804(b), substituted "Secretary" for "Secretary of Transportation" in two places and "department in which the Coast Guard is operating" for "Department of Transportation".

Subsecs. (g), (h). Pub. L. 108–293, § 804(b)(1), substituted "Secretary" for "Secretary of Transportation" wherever appearing.

Subsec. (i). Pub. L. 108–293, § 808(a), added subsec. (i) and struck out former subsec. (i) which related to research and development grants for port security.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–293, title VIII, § 804(c), Aug. 9, 2004, 118 Stat. 1081, provided that: "Subsections (a) and (b) [amending this section]—

"(1) shall take effect October 1, 2004; and

"(2) shall not affect any grant made before that date."

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.

[1] So in original. Probably should be "the applicant".

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 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.

§ 70108. Foreign port assessment

(a) IN GENERAL.—The Secretary shall assess the effectiveness of the antiterrorism measures maintained at—

(1) a foreign port—

(A) served by vessels documented under chapter 121 of this title; or

(B) from which foreign vessels depart on a voyage to the United States; and

(2) any other foreign port the Secretary believes poses a security risk to international maritime commerce.

(b) PROCEDURES.—In conducting an assessment under subsection (a), the Secretary shall assess the effectiveness of—

(1) screening of containerized and other cargo and baggage;

(2) security measures to restrict access to cargo, vessels, and dockside property to authorized personnel only;

(3) additional security on board vessels;

(4) licensing or certification of compliance with appropriate security standards;

(5) the security management program of the foreign port; and

(6) other appropriate measures to deter terrorism against the United States.

(c) CONSULTATION.—In carrying out this section, the Secretary shall consult with—

(1) the Secretary of Defense and the Secretary of State—

(A) on the terrorist threat that exists in each country involved; and

(B) to identify foreign ports that pose a high risk of introducing terrorism to international maritime commerce;

(2) the Secretary of the Treasury;

(3) appropriate authorities of foreign governments; and

(4) operators of vessels.

(Added Pub. L. 107–295, title I, § 102(a), Nov. 25, 2002, 116 Stat. 2079.)

§ 70109. Notifying foreign authorities

(a) IN GENERAL.—If the Secretary, after conducting an assessment under section 70108, finds that a port in a foreign country does not maintain effective antiterrorism measures, the Secretary shall notify the appropriate authorities of the government of the foreign country of the finding and recommend the steps necessary to improve the antiterrorism measures in use at the port.

(b) TRAINING PROGRAM.—The Secretary, in cooperation with the Secretary of State, shall operate a port security training program for ports in foreign countries that are found under section 70108 to lack effective antiterrorism measures.

(Added Pub. L. 107–295, title I, § 102(a), Nov. 25, 2002, 116 Stat. 2080.)

§ 70110. Actions when foreign ports not maintaining effective antiterrorism measures

(a) IN GENERAL.—If the Secretary finds that a foreign port does not maintain effective antiterrorism measures, the Secretary—

(1) may prescribe conditions of entry into the United States for any vessel arriving from that port, or any vessel carrying cargo or passengers originating from or transshipped through that port;

(2) may deny entry into the United States to any vessel that does not meet such conditions; and

(3) shall provide public notice for passengers of the ineffective antiterrorism measures.

(b) EFFECTIVE DATE FOR SANCTIONS.—Any action taken by the Secretary under subsection (a) for a particular port shall take effect—

(1) 90 days after the government of the foreign country with jurisdiction over or control of that port is notified under section 70109 unless the Secretary finds that the government has brought the antiterrorism measures at the port up to the security level the Secretary used in making an assessment under section 70108 before the end of that 90-day period; or

(2) immediately upon the finding of the Secretary under subsection (a) if the Secretary finds, after consulting with the Secretary of State, that a condition exists that threatens the safety or security of passengers, vessels, or crew traveling to or from the port.

(c) STATE DEPARTMENT TO BE NOTIFIED.—The Secretary immediately shall notify the Secretary of State of a finding that a port does not maintain effective antiterrorism measures.

(d) ACTION CANCELED.—An action required under this section is no longer required if the Secretary decides that effective antiterrorism measures are maintained at the port.

(Added Pub. L. 107–295, title I, § 102(a), Nov. 25, 2002, 116 Stat. 2080.)

§ 70111. Enhanced crewmember identification

(a) REQUIREMENT.—The Secretary, in consultation with the Attorney General and the Secretary of State, shall require crewmembers on vessels calling at United States ports to carry and present on demand any identification that the Secretary decides is necessary.

(b) FORMS AND PROCESS.—The Secretary, in consultation with the Attorney General and the Secretary of State, shall establish the proper forms and process that shall be used for identification and verification of crewmembers.

(Added Pub. L. 107–295, title I, § 102(a), Nov. 25, 2002, 116 Stat. 2080.)

INTERNATIONAL SEAFARER IDENTIFICATION

Pub. L. 107–295, title I, § 103, Nov. 25, 2002, 116 Stat. 2084, provided that:

''(a) TREATY INITIATIVE.—The Secretary of the department in which the Coast Guard is operating is encouraged to negotiate an international agreement, or an amendment to an international agreement, that provides for a uniform, comprehensive, international sys-

tem of identification for seafarers that will enable the United States and another country to establish authoritatively the identity of any seafarer aboard a vessel within the jurisdiction, including the territorial waters, of the United States or such other country.

''(b) LEGISLATIVE ALTERNATIVE.—If the Secretary fails to complete a negotiation process undertaken under subsection (a) within 24 months after the date of enactment of this Act [Nov. 25, 2002], the Secretary shall transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a draft of legislation that, if enacted, would establish a uniform, comprehensive system of identification for seafarers.''

[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.]

§ 70112. Maritime Security Advisory Committees

(a) ESTABLISHMENT OF COMMITTEES.—(1) The Secretary shall establish a National Maritime Security Advisory Committee. The Committee—

(A) may advise, consult with, report to, and make recommendations to the Secretary on matters relating to national maritime security matters;

(B) may make available to the Congress recommendations that the Committee makes to the Secretary; and

(C) shall meet at the call of—

(i) the Secretary, who shall call such a meeting at least once during each calendar year; or

(ii) a majority of the Committee.

(2)(A) The Secretary may—

(i) establish an Area Maritime Security Advisory Committee for any port area of the United States; and

(ii) request such a committee to review the proposed Area Maritime Transportation Security Plan developed under section 70103(b) and make recommendations to the Secretary that the Committee considers appropriate.

(B) A committee established under this paragraph for an area—

(i) may advise, consult with, report to, and make recommendations to the Secretary on matters relating to maritime security in that area;

(ii) may make available to the Congress recommendations that the committee makes to the Secretary; and

(iii) shall meet at the call of—

(I) the Secretary, who shall call such a meeting at least once during each calendar year; or

(II) a majority of the committee.

(b) MEMBERSHIP.—(1) Each of the committees established under subsection (a) shall consist of not less than 7 members appointed by the Secretary, each of whom has at least 5 years practical experience in maritime security operations.

(2) The term of each member shall be for a period of not more than 5 years, specified by the Secretary.

(3) Before appointing an individual to a position on such a committee, the Secretary shall publish a notice in the Federal Register soliciting nominations for membership on the committee.

(4) The Secretary may require an individual to have passed an appropriate security background examination before appointment to the Committee.

(5) The membership of an Area Maritime Security Advisory Committee shall include representatives of the port industry, terminal operators, port labor organizations, and other users of the port areas.

(c) CHAIRPERSON AND VICE CHAIRPERSON.—(1) Each committee established under subsection (a) shall elect 1 of its members as the Chairman and 1 of its members as the Vice Chairperson.

(2) The Vice Chairman shall act as Chairman in the absence or incapacity of the Chairman, or in the event of a vacancy in the office of the Chairman.

(d) OBSERVERS.—(1) The Secretary shall, and the head of any other interested Federal agency may, designate a representative to participate as an observer with the Committee.

(2) The Secretary's designated representative shall act as the executive secretary of the Committee and shall perform the duties set forth in section 10(c) of the Federal Advisory Committee Act (5 U.S.C. App.).

(e) CONSIDERATION OF VIEWS.—The Secretary shall consider the information, advice, and recommendations of the Committee in formulating policy regarding matters affecting maritime security.

(f) COMPENSATION AND EXPENSES.—(1) A member of a committee established under this section, when attending meetings of the committee or when otherwise engaged in the business of the committee, is entitled to receive—

(A) compensation at a rate fixed by the Secretary, not exceeding the daily equivalent of the current rate of basic pay in effect for GS–15 of the General Schedule under section 5332 of title 5 including travel time; and

(B) travel or transportation expenses under section 5703 of title 5.

(2) A member of such a committee shall not be considered to be an officer or employee of the United States for any purpose based on their receipt of any payment under this subsection.

(g) FACA; TERMINATION.—(1) The Federal Advisory Committee Act (5 U.S.C. App.)—

(A) applies to the National Maritime Security Advisory Committee established under this section, except that such committee terminates on September 30, 2008; and

(B) does not apply to Area Maritime Security Advisory Committees established under this section.

(2) Not later than September 30, 2006, each committee established under this section shall submit to the Congress its recommendation regarding whether the committee should be renewed and continued beyond the termination date.

(Added Pub. L. 107–295, title I, § 102(a), Nov. 25, 2002, 116 Stat. 2081; amended Pub. L. 108–293, title VIII, § 806, Aug. 9, 2004, 118 Stat. 1082.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsecs. (d)(2) and (g)(1), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

2004—Subsec. (b)(5). Pub. L. 108–293 added par. (5).

§ 70113. Maritime intelligence

(a) IN GENERAL.—The Secretary shall implement a system to collect, integrate, and analyze information concerning vessels operating on or bound for waters subject to the jurisdiction of the United States, including information related to crew, passengers, cargo, and intermodal shipments. The system may include a vessel risk profiling component that assigns incoming vessels a terrorism risk rating.

(b) CONSULTATION.—In developing the information system under subsection (a), the Secretary shall consult with the Transportation Security Oversight Board and other departments and agencies, as appropriate.

(c) INFORMATION INTEGRATION.—To deter a transportation security incident, the Secretary may collect information from public and private entities to the extent that the information is not provided by other Federal departments and agencies.

(Added Pub. L. 107–295, title I, § 102(a), Nov. 25, 2002, 116 Stat. 2082; amended Pub. L. 108–293, title VIII, § 803(a), Aug. 9, 2004, 118 Stat. 1080.)

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–293 inserted at end ''The system may include a vessel risk profiling component that assigns incoming vessels a terrorism risk rating.''

§ 70114. Automatic identification systems

(a) SYSTEM REQUIREMENTS.—(1) Subject to paragraph (2), the following vessels, while operating on the navigable waters of the United States, shall be equipped with and operate an automatic identification system under regulations prescribed by the Secretary:

(A) A self-propelled commercial vessel of at least 65 feet overall in 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 overall in length and 600 horsepower.

(D) Any other vessel for which the Secretary decides that an automatic identification system is necessary for the safe navigation of the vessel.

(2) The Secretary may—

(A) exempt a vessel from paragraph (1) if the Secretary finds that an automatic identification system is 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 automatic identification systems are not needed for safe navigation on those waters.

(b) REGULATIONS.—The Secretary shall prescribe regulations implementing subsection (a), including requirements for the operation and maintenance of the automatic identification systems required under subsection (a).

(Added Pub. L. 107–295, title I, § 102(a), Nov. 25, 2002, 116 Stat. 2082.)

EFFECTIVE DATE

Pub. L. 107–295, title I, § 102(e), Nov. 25, 2002, 116 Stat. 2084, provided that:

''(1) SCHEDULE.—Section 70114 of title 46, United States Code, as enacted by this Act, shall apply as follows:

''(A) On and after January 1, 2003, to any vessel built after that date.

''(B) On and after July 1, 2003, to any vessel built before the date referred to in subparagraph (A) that is—

''(i) a passenger vessel required to carry a certificate under the International Convention for the Safety of Life at Sea, 1974 (SOLAS) [see 33 U.S.C. 1602 and notes thereunder];

''(ii) a tanker; or

''(iii) a towing vessel engaged in moving a tank vessel.

''(C) On and after December 31, 2004, to all other vessels built before the date referred to in subparagraph (A).

''(2) DEFINITION.—The terms in this subsection have the same meaning as those terms have under section 2101 of title 46, United States Code.''

§ 70115. Long-range vessel tracking system

The Secretary shall, consistent with international treaties, conventions, and agreements to which the United States is a party, develop and implement a long-range automated vessel tracking system for all vessels in United States waters that are equipped with the Global Maritime Distress and Safety System or equivalent satellite technology. The system shall be designed to provide the Secretary the capability of receiving information on vessel positions at interval positions appropriate to deter transportation security incidents. The Secretary may use existing maritime organizations to collect and monitor tracking information under the system.

(Added Pub. L. 107–295, title I, § 102(a), Nov. 25, 2002, 116 Stat. 2083; amended Pub. L. 108–293, title VIII, § 803(b), Aug. 9, 2004, 118 Stat. 1080.)

AMENDMENTS

2004—Pub. L. 108–293, in first sentence, substituted ''shall, consistent with international treaties, conventions, and agreements to which the United States is a party,'' for ''may''.

§ 70116. Secure systems of transportation

(a) IN GENERAL.—The Secretary, in consultation with the Transportation Security Oversight Board, shall establish a program to evaluate and certify secure systems of international intermodal transportation.

(b) ELEMENTS OF PROGRAM.—The program shall include—

(1) establishing standards and procedures for screening and evaluating cargo prior to loading in a foreign port for shipment to the United States either directly or via a foreign port;

(2) establishing standards and procedures for securing cargo and monitoring that security while in transit;

(3) developing performance standards to enhance the physical security of shipping containers, including standards for seals and locks;

(4) establishing standards and procedures for allowing the United States Government to ensure and validate compliance with this program; and

(5) any other measures the Secretary considers necessary to ensure the security and integrity of international intermodal transport movements.

(Added Pub. L. 107–295, title I, § 102(a), Nov. 25, 2002, 116 Stat. 2083.)

REPORT ON SECURE SYSTEM OF TRANSPORTATION PROGRAM

Pub. L. 107–295, title I, § 110(c), Nov. 25, 2002, 116 Stat. 2092, provided that:

''Within 1 year after the secure system of transportation program is implemented under section 70116 of title 46, United States Code, as amended by this Act, the Secretary of the department in which the Coast Guard is operating shall transmit a report to the Senate Committees on Commerce, Science, and Transportation and Finance and the House of Representatives Committees on Transportation and Infrastructure and Ways and Means that—

''(1) evaluates the secure system of transportation program and its components;

''(2) states the Secretary's view as to whether any procedure, system, or technology evaluated as part of the program offers a higher level of security than requiring imported goods to clear customs under existing procedures and for the requirements of the National Maritime Security Plan for reopening of United States ports to commerce;

''(3) states the Secretary's view as to the integrity of the procedures, technology, or systems evaluated as part of the program;

''(4) makes a recommendation with respect to whether the program, or any procedure, system, or technology should be incorporated in a nationwide system for preclearance of imports of waterborne goods and for the requirements of the National Maritime Security Plan for the reopening of United States ports to Commerce;

''(5) describes the impact of the program on staffing levels at the department in which the Coast Guard is operating, and the Customs Service; and

''(6) states the Secretary's views as to whether there is a method by which the United States could validate foreign ports so that cargo from those ports is preapproved for entry into the United States and for the purpose of the requirements of the National Maritime Security Plan for the reopening of United States ports to commerce.''

[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.]

[For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 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.]

PERFORMANCE STANDARDS

Pub. L. 107–295, title I, § 111, Nov. 25, 2002, 116 Stat. 2092, provided that: ''Not later than January 1, 2004, the Secretary of the department in which the Coast Guard is operating, in consultation with the Transportation Security Oversight Board, shall—

''(1) develop and maintain an antiterrorism cargo identification, tracking, and screening system for containerized cargo shipped to and from the United States either directly or via a foreign port; and

''(2) develop performance standards to enhance the physical security of shipping containers, including standards for seals and locks.''

[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.]

§ 70117. In rem liability for civil penalties and certain costs

(a) CIVIL PENALTIES.—Any vessel operated in violation of this chapter or any regulations prescribed under this chapter shall be liable in rem for any civil penalty assessed pursuant to section 70120[1] for such violation, and may be proceeded against for such liability in the United States district court for any district in which the vessel may be found.

(b) REIMBURSABLE COSTS OF SERVICE PROVIDERS.—A vessel shall be liable in rem for the reimbursable costs incurred by any service provider related to implementation and enforcement of this chapter and arising from a violation by the operator of the vessel of this chapter or any regulations prescribed under this chapter, and may be proceeded against for such liability in the United States district court for any district in which such vessel may be found.

(c) DEFINITIONS.—In this subsection—

(1) the term ''reimbursable costs'' means costs incurred by any service provider acting in conformity with a lawful order of the Federal government or in conformity with the instructions of the vessel operator; and

(2) the term ''service provider'' means any port authority, facility or terminal operator, shipping agent, Federal, State, or local government agency, or other person to whom the management of the vessel at the port of supply is entrusted, for—

(A) services rendered to or in relation to vessel crew on board the vessel, or in transit to or from the vessel, including accommodation, detention, transportation, and medical expenses; and

(B) required handling of cargo or other items on board the vessel.

(Added Pub. L. 108–293, title VIII, § 802(a)(2), Aug. 9, 2004, 118 Stat. 1078.)

REFERENCES IN TEXT

Section 70120, referred to in subsec. (a), probably should be a reference to section 70119 of this title, relat-

[1] See References in Text note below.

ing to civil penalty. No section 70120 of this title has been enacted.

PRIOR PROVISIONS

A prior section 70117 was renumbered section 70119 of this title.

§ 70118.[1] Withholding of clearance

(a) REFUSAL OR REVOCATION OF CLEARANCE.—If any owner, agent, master, officer, or person in charge of a vessel is liable for a penalty under section 70119,[2] or if reasonable cause exists to believe that the owner, agent, master, officer, or person in charge may be subject to a penalty under section 70120,[2] the Secretary may, with respect to such vessel, refuse or revoke any clearance required by section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91).

(b) CLEARANCE UPON FILING OF BOND OR OTHER SURETY.—The Secretary may require the filing of a bond or other surety as a condition of granting clearance refused or revoked under this subsection.

(Added Pub. L. 108–293, title VIII, § 802(a)(2), Aug. 9, 2004, 118 Stat. 1079.)

REFERENCES IN TEXT

Section 70119, referred to in subsec. (a), probably means the section 70119 of this title relating to civil penalty.

Section 70120, referred to in subsec. (a), probably should be a reference to section 70119 of this title, relating to civil penalty. No section 70120 of this title has been enacted.

§ 70118.[1] Firearms, arrests, and seizure of property

Subject to guidelines approved by the Secretary, members of the Coast Guard may, in the performance of official duties—

(1) carry a firearm; and

(2) while at a facility—

(A) make an arrest without warrant for any offense against the United States committed in their presence; and

(B) seize property as otherwise provided by law.

[1] Another section 70118 is set out after this section.

[2] See References in Text note below.

[1] Another section 70118 is set out preceding this section.

(Added Pub. L. 108–293, title VIII, § 801(a), Aug. 9, 2004, 118 Stat. 1078.)

§ 70119.[1] Enforcement by State and local officers

(a) IN GENERAL.—Any State or local government law enforcement officer who has authority to enforce State criminal laws may make an arrest for violation of a security zone regulation prescribed under section 1 of title II of the Act of June 15, 1917 (chapter 30; 50 U.S.C. 191) or security or safety zone regulation under section 7(b) of the Ports and Waterways Safety Act (33 U.S.C. 1226(b)) or a safety zone regulation prescribed under section 10(d) of the Deepwater Port Act of 1974 (33 U.S.C. 1509(d)) by a Coast Guard official authorized by law to prescribe such regulations, if—

(1) such violation is a felony; and

(2) the officer has reasonable grounds to believe that the person to be arrested has committed or is committing such violation.

(b) OTHER POWERS NOT AFFECTED.—The provisions of this section are in addition to any power conferred by law to such officers. This section shall not be construed as a limitation of any power conferred by law to such officers, or any other officer of the United States or any State. This section does not grant to such officers any powers not authorized by the law of the State in which those officers are employed.

(Added Pub. L. 108–293, title VIII, § 801(a), Aug. 9, 2004, 118 Stat. 1078.)

§ 70119.[1] Civil penalty

Any person that violates this chapter or any regulation under this chapter shall be liable to the United States for a civil penalty of not more than $25,000 for each violation.

(Added Pub. L. 107–295, title I, § 102(a), Nov. 25, 2002, 116 Stat. 2084, § 70117; renumbered § 70119, Pub. L. 108–293, title VIII, § 802(a)(1), Aug. 9, 2004, 118 Stat. 1078.)

[1] Another section 70119 is set out after this section.

[1] Another section 70119 is set out preceding this section.